

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

(UKRAINE v. RUSSIAN FEDERATION)

MEMORIAL

SUBMITTED BY UKRAINE

12 JUNE 2018

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PART I: INTRODUCTION

1. The Russian Federation is responsible for a brazen and comprehensive assault on human rights and international law in the territory of Ukraine. In carrying out this campaign, Russia has committed systematic violations of the International Convention for the Suppression of the Financing of Terrorism (“ICSFT”), and the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).¹

2. In Ukraine’s east, the Russian Federation relies on proxies — illegal armed groups that advance Russia’s agenda, in significant part by terrorizing and intimidating the population. These proxies used a Russian-supplied Buk, a component part of a powerful missile system, to shoot down Malaysia Airlines Flight 17 from Ukraine’s skies, murdering nearly three hundred innocent civilians. They used Russian-supplied rockets to bombard known civilian areas, including residential neighborhoods and a civilian checkpoint. And they used Russian-supplied military-grade explosives in Ukraine’s cities, targeting unity rallies and nightclubs, and attempting to silence outspoken public figures.

3. In Crimea, the Russian Federation acts overtly and directly. There, in Ukrainian territory that Russia unlawfully occupies, Russia maintains its domination through a policy of racial discrimination and cultural erasure directed against those ethnic communities that dared to oppose its purported annexation of the peninsula. It has methodically trampled the political and civil rights of these communities: disappearing, torturing, and murdering Crimean Tatar and Ukrainian activists; subjecting others to arbitrary searches and detention; and banning the Mejlis, the representative institution that has been a bulwark for the rights of the Crimean Tatar people since it returned from Stalin’s ruthless exile. Russia is also choking off the cultural expression that these communities need

¹ International Convention for the Suppression of the Financing of Terrorism, 2798 U.N.T.S. 197 (entered into force 10 April 2002) (hereinafter ICSFT); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (entered into force 4 January 1969) (hereinafter CERD).

if they are to preserve and perpetuate their distinct identities: banning or disrupting cultural gatherings; suppressing the media outlets serving Crimean Tatar and Ukrainian audiences; and restricting opportunities for children from those communities to be educated in their native languages.

4. These well-documented and widely-condemned actions violate international law. The U.N. Security Council immediately demanded accountability for the shoot-down of Flight MH17, and the attack has been meticulously investigated by a multinational Joint Investigation Team. That team announced on 24 May 2018 that the Buk missile that downed Flight MH17 was supplied by the 53rd Anti-Aircraft Missile Brigade of the Russian Federation.

5. U.N. monitors from the Office of the High Commissioner for Human Rights (“OHCHR”) have reported on the systematic intimidation and terror perpetrated by Russia’s proxies in eastern Ukraine, as well as Russia’s role in arming them. A monitoring mission of the Organization for Security and Co-operation in Europe (“OSCE”) has documented these groups’ responsibility for attacks on civilians.

6. The U.N. General Assembly has repeatedly condemned the discriminatory closure of the Mejlis of the Crimean Tatar People, and other acts of discrimination by the Russian occupation authorities in Crimea.² In resolution 72/190 adopted on 19 December 2017, for example, the U.N. General Assembly condemned “violations, abuses, measures and practices of discrimination against the residents of the temporarily occupied Crimea, including Crimean Tatars, as well as Ukrainians and persons belonging to other ethnic and religious groups, by the Russian occupation authorities[.]” The OHCHR also has documented the pervasive discrimination against Crimean Tatars and Ukrainians in Crimea.

7. Far from suppressing the financing of terrorism, Russia has comprehensively supported such financing. Far from seeking to eliminate all forms of racial discrimination,

² See, e.g., U.N. General Assembly Resolution 72/190, U.N. Doc. A/Res/72/190 (19 December 2017) (Annex 50).

Russia has employed such discriminatory tactics. Yet Russia has evaded responsibility. This Memorial establishes Russia's international responsibility for violating its treaty obligations in relation to these acts.

A. Russia's Campaign for Hegemony in Ukraine

8. Although Russia's means and methods have differed, they reflect a common aim: to maintain Russian control over those parts of its "near abroad" that it considers under its rightful sphere of influence. When Ukraine declared its independence from the Soviet Union in 1991 and began to chart its own sovereign course, the Russian Federation committed to respect Ukraine's sovereignty and territorial integrity within its settled borders. It has become clear, however, that Russia is only prepared to honor that commitment if Ukraine agrees to remain under Russian hegemony.

9. In recent years, the Russian Federation's view of its role in the region, and its attempts to force Ukraine into closer integration with Russia on its terms, have been challenged by Ukraine and its people. Ukraine has pursued an approach to international affairs in which it is not beholden to Russia. Russia has responded with punitive trade sanctions, gas cut-offs, and threats to Ukraine's territorial integrity. Perhaps less visibly, Russia mounted a campaign of ideological subversion and propaganda, funding pro-Russian organizations in Crimea and eastern Ukraine, and spreading false information through media and other outlets.

10. Russia's efforts to subordinate Ukraine and compel it to forge a closer union with Russia failed. From November 2013 to February 2014, thousands of Ukrainians gathered peacefully in Kyiv's Maidan Nezalezhnosti ("Independence Square"). Despite brutal tactics, including the murder of unarmed protestors, support for leaders who had been compromised by Russia evaporated. In its "Revolution of Dignity," Ukraine reaffirmed its core values under its Constitution and its desire for true independence.

11. Since its campaign of propaganda, threats, and economic warfare did not weaken Ukraine's resolve, the Russian Federation escalated to more extreme methods in pursuit of hegemony over Ukraine. In Crimea, Russia's rhetoric boiled over into action and

overt aggression. In late February 2014, the Russian military amassed at Ukraine's border and armed men wearing green uniforms without insignia — later identified as Russian Armed Forces³ — started appearing at strategic locations in Crimea. These “little green men” worked alongside paramilitary groups, including Self-Defense Forces, Cossacks, and elements of the Berkut special police that had fired upon protestors in Kyiv’s Independence Square.⁴

12. While the Russian Federation claimed at the time that it had nothing to do with these developments, that was later shown to be a lie. By Russian President Putin’s own admission, he convened a meeting on 22 and 23 February 2014 to “begin working on returning Crimea to Russia.”⁵ Indeed, planning for the invasion of Crimea had no doubt begun before that date.

13. On 27 February 2014, Russian forces — still wearing no insignia — seized the Crimean Parliament Building and raised the Russian flag. Under the supervision of these armed men, the hijacked Parliament purported to dismiss the existing government and illegally appointed Sergey Aksyonov, leader of the previously marginal Russian Unity Party,

³ As these men wore green uniforms camouflaged in patterns similar to the uniforms of the Russian Armed Forces, but with no insignia, the local media dubbed them the “little green men.” Vitaly Shevchenko, *“Little Green Men” or “Russian invaders”?* BBC News (11 March 2014) (Annex 567). Many of these “little green men,” as President Putin later acknowledged, were members of the Russian Armed Forces. Alan Taylor, *‘Believed to Be Russian Soldiers’*, The Atlantic (11 March 2014) (Annex 505).

⁴ Direct Line with Vladimir Putin, President of Russia (17 April 2014), p. 78 (Annex 51).

⁵ Vladimir Putin, Interview given to the TV channel “Rossiya” as part of a documentary “Crimea: Path to the Homeland” (video) (Annex 53).

as the “Prime Minister of Crimea.”⁶ Over the next few days, Russian forces seized other key installations and surrounded Ukrainian military bases.⁷

14. Russia sought to convert its unlawful occupation of Crimea into outright annexation through a sham “referendum.”⁸ As President Putin would euphemistically put it, “Russia created [the] conditions” for the referendum to occur.⁹ The international community roundly condemned it. The U.N. General Assembly declared the referendum unlawful and said that its results could not be recognized, and the Venice Commission of the Council of Europe concluded that it violated constitutional principles.¹⁰ Nevertheless, on 18 March 2014, the Russian Federation cited the referendum as the basis for its purported annexation of Crimea.

15. With Crimea under its physical control, Russia began to mete out punishment to ethnic communities that had stood in its way. In doing so, Russia has compounded its blatant violations of the U.N. Charter with overt violations of the CERD, in an open campaign of discrimination and cultural erasure directed against the Crimean Tatar and Ukrainian communities.

⁶ Resolution No. 1656-6 /14 (27 February 2014) (Annex 435); OHCHR, *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)* (22 February 2014 to 12 September 2017), paras. 5, 23 (Annex 758).

⁷ BBC News, *Putin Reveals Secrets of Russia's Crimea Takeover Plot* (9 March 2015) (Annex 52); Kyiv Post, *Russian Armed Forces Seize Crimea as Putin Threatens Wider Military Invasion of Ukraine* (2 March 2014) (Annex 503).

⁸ Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1702-6/14, arts. 1–2 (6 March 2014) (Annex 604).

⁹ Direct Line with Vladimir Putin, President of Russia (17 April 2014), p. 28 (Annex 51).

¹⁰ U.N. General Assembly Resolution 68/262, U.N. Doc. A/RES/68/262, *Territorial Integrity of Ukraine* (27 March 2014) (Annex 43); Council of Europe, 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 Organize a Referendum on Becoming a Constituent Territory of the Russian Federation or Restoring Crimea’s 1992 Constitution is Compatible with Constitutional Principles,” CDL-AD(2014)002 (21–22 March 2014) (Annex 354).

16. At the same time that Russia openly intervened in Crimea, it employed more covert tactics — supporting and arming illegal proxy groups — to assert its influence and dominance over eastern Ukraine. In the east, Russia sought to use many of the same techniques that it had employed in Crimea, attempting to instigate and support separatist movements to proclaim “people’s republics” across a wide swathe of territory from Odesa in the south to Kharkiv in the north east. The first steps of Russia’s proxy campaign were taken in February and March 2014. In this period, Russia instigated, organized, and financed anti-government protests across cities in eastern Ukraine with significant Russian-speaking populations.¹¹ As the OHCHR documented, there were numerous reports that “people were brought in buses and paid to take part in protests and conduct them according to specific scenarios, including causing violent incidents.”¹²

17. Russia’s attempts to foment a general uprising in eastern Ukraine failed to gain broad public support. So Russia turned to arming its proxies to advance its agenda through violent means. With Russia’s active support, multiple armed groups comprised of pro-Russian Ukrainians and Russian nationals often fresh from service in other theatres, emerged in the Donbas region of eastern Ukraine, spanning the Donetsk and Luhansk oblasts. Many of these groups’ early leaders had close ties to, and received support from, the

¹¹ Putin-advisor Sergey Glazyev discussed providing funds to pro-Russian organizations in Ukraine, mobilizing Russians or pro-Russian Ukrainians to join demonstrations, and encouraging takeovers of regional councils. See Protocol of Intercepted Conversations of Sergey Glazyev, Advisor to Russian President Putin (12 June 2014), pp. 10–14 (Annex 392); Witness Statement of Andrii Tkachenko (5 June 2018), para. 14–17 [hereinafter Tkachenko Statement] (Annex 10).

¹² OHCHR, *Report on Human Rights Situation in Ukraine* (15 April 2014), para. 68 (describing demonstrations in early March) (Annex 44).

Russian Federation, and key Russian advisers to these armed groups helped to facilitate their operations.¹³

18. In March and April 2014, these illegal armed groups occupied public and administration buildings in Donetsk and Luhansk.¹⁴ On 11 May 2014, some of these armed groups, calling themselves the “Donetsk People’s Republic” (“DPR”) and “Luhansk People’s Republic” (“LPR”), announced their political goal as autonomy from Kyiv, and held a purported “referendum” that, like the one in Crimea, has been roundly condemned.¹⁵

19. Throughout the unrest in Donbas, Russia has insisted that the DPR, LPR, and associated armed groups are distinct from the Russian Federation. At the same time, as with Crimea, Russia has not been able to maintain its false claim that “[t]here are no Russian units in eastern Ukraine — no special services, no tactical advisors.”¹⁶ In fact, Russia would go on to admit having its advisors on the ground, with President Putin claiming that “[w]e never said there were not people there who carried out certain tasks.”¹⁷

20. Over the summer of 2014, the armed groups associated with the DPR and LPR had become increasingly organized. As reported by the OHCHR, “[t]heir leadership, many of whom are nationals of the Russian Federation,” have “brought together” “[w]hat

¹³ See *Ukraine Crisis: Key Players in Eastern Unrest*, BBC News (28 August 2014) (Annex 541); Council of the European Union, *List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine* pp. 17, 19 (2017) (Annex 541).

¹⁴ OHCHR, *Report on Human Rights Situation in Ukraine*, (15 May 2014), para. 90 (Annex 45).

¹⁵ OHCHR, *Report on the Human Rights Situation in Ukraine* (15 June 2014), paras. 2, 160–161 (Annex 46).

¹⁶ Direct Line with Vladimir Putin, President of Russia (17 April 2014), p. 5 (Annex 46).

¹⁷ The Guardian, *Putin Admits Russian Military Presence in Ukraine for the First Time* (17 December 2015) (Annex 585).

was previously something of a rag tag [band] of armed groups with different loyalties and agendas.”¹⁸

21. These armed groups also received a massive influx of weaponry from the Russian Federation. Russian nationals who have served in the Russian military also embedded within the DPR and LPR, in order to provide advice, assistance, and add manpower.¹⁹ In parallel, the DPR and LPR were also elaborating their political agenda through detailed demands for greater autonomy from the Ukrainian government. In early September 2014, in the midst of negotiations in Minsk between the Ukrainian and Russian governments to end the conflict in eastern Ukraine, the DPR and LPR articulated a list of political demands: that the Ukrainian government recognize the special status of their territories and grant them greater autonomy; grant them the right to make Russian their official language; and grant each region the ability to engage in its own economic relations with Russia.²⁰ On the eve of further negotiations in Minsk in February 2015, leaders of both groups again released a detailed list of political demands that included “constitutional

¹⁸ OHCHR, *Report on Human Rights Situation in Ukraine* (15 July 2014), para. 8 (Annex 296).

¹⁹ See, e.g., Signed Declaration of Vladimir Starkov, Suspect Interrogation Protocol (27 July 2015), pp. 1–4, 6–8, 10, 13–16, 18 (admitting that he is a member of the Russian military who, along with over 70 other officers, was told he “would be going either to the ‘Donetsk People’s Republic’ or to the ‘Lugansk People’s Republic,’” and that he was sent to serve “as [an] advisor[] to the local senior officers, to train them in how to take charge of a particular service correctly”) (Annex 234); see also Signed Declaration of Serhiy Semenchenko, Suspect Interrogation Protocol (10 July 2017), pp. 2–6 (Annex 267); Signed Declaration of Paylak Mikhaelian, Suspect Interrogation Protocol (10 October 2016), p. 2 (Annex 249); Signed Declaration of Volodymyr Vodyratskyi, Suspect Interrogation Protocol (11 September 2015), p. 9 (Annex 243); Signed Declaration of Oleksandr Oleksechuk, Suspect Interrogation Protocol (16 February 2017), p. 1 (Annex 255); Signed Declaration of Igor Panchyshyn, Witness Interrogation Protocol (18 June 2015), p. 3 (Annex 232).

²⁰ MKRU, *The DPR and LPR Promise Kiev That They Will Remain Part of Ukraine in Exchange for Recognition of Their Status* (1 September 2014) (Annex 542); Petyr Kozlov & Alexey Nikolsky, *The Self-Proclaimed Republics in the East of Ukraine Put Forward their “Negotiation Demands” to Kiev, Vedomosti* (2 September 2014) (Annex 543).

reforms in Ukraine, including extensive decentralization by granting individual areas of the Donbas an autonomous status.”²¹ In service of these aims, Russia’s proxies engaged in what OHCHR has described as a “reign of intimidation and terror.”²² That reign of terror was not confined to Donbas, but rocked the streets of Kharkiv, Odesa, and later Kyiv in a series of bombings by the Kharkiv Partisans and other groups.

* * *

22. Whether covert or overt, a common element of the Russian Federation’s campaign for hegemony in Ukraine has been its disrespect for human rights and the rule of law. While not every aspect of this campaign is before the Court, Ukraine asks this Court to hold the Russian Federation accountable for its systematic breaches of its obligations under the ICSFT and the CERD which have brought great harm to Ukraine and its citizens, and indeed the world. In ratifying the ICSFT and the CERD, Russia committed to suppress the financing of terrorism and to eliminate racial discrimination. Far from respecting those commitments, Russia has transferred vast quantities of dangerous weapons and other funds to groups on Ukrainian soil known to engage in terrorist acts, and has adopted a systematic policy of racial discrimination in a territory it illegally occupies. Such egregious wrongs demand a judicial remedy. Pursuant to the ICSFT and the CERD, Ukraine calls upon this Court to uphold international law, find Russia responsible for treaty breaches under the ICSFT and the CERD, and provide a remedy for the shocking and continuing toll these violations have taken on the people of Ukraine and the broader international community.

B. Structure of the Memorial

23. The Russian Federation has submitted to this Court’s jurisdiction for the resolution of disputes concerning the interpretation or application of the ICSFT and the CERD. Ukraine has repeatedly objected to the Russian Federation’s violations of the ICSFT

²¹ Lb.ua, *Media Publish the Demands of the DPR and LPR for the Resolution of the Conflict (Documents)* (11 February 2015) (Annex 558); Zn.ua, *The DPR’s and LPR’s Proposals at the Negotiations in Minsk* (11 February 2015) (Annex 559).

²² OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26 (Annex 296).

and CERD and has demanded that Russia cease its illegal actions and make appropriate reparation. The parties engaged in numerous rounds of negotiations relating to the disputes under both treaties, but made no progress. Accordingly, on 16 January 2017, Ukraine submitted an Application instituting proceedings before this Court pursuant to Article 24 of the ICSFT and Article 22 of the CERD. On 19 April 2017, the Court issued an order finding that it *prima facie* had jurisdiction over the case and indicating provisional measures.

24. **Part II** of this Memorial presents Ukraine's claims under the ICSFT. Under the ICSFT, Russia is responsible for numerous acts of commission and omission. Ukraine claims that illegal armed groups in its territory have perpetrated terrorist acts covered by the ICSFT; that Russian officials and other Russian nationals have provided massive amounts of funds to these groups knowing of their acts of terrorism, including providing specific weapons used in terrorism; and that Russia is responsible for violating the ICSFT in relation to these terrorism financing offenses, including by failing to prevent its own officials from directly engaging in such offenses themselves. Part II of the Memorial elaborates on this claim and provides the detailed factual and legal support for it.

25. **Section A** of Part II (Chapters 1, 2, and 3) sets forth the facts and evidence establishing these violations. **Chapter 1** presents the numerous and well-documented acts of terrorism that Russia's proxies — the DPR, the LPR, the Kharkiv Partisans, and others — have committed in Ukraine since the spring of 2014. **Chapter 2** demonstrates how Russian officials and other Russian nationals escalated their provision of weapons, training, and financial support to Russia's proxies, knowing that they were engaged in a "reign of terror" in the spring and summer of 2014, and continued to do so as these groups committed additional acts of terrorism. **Chapter 3** shows that Russia has systematically refused to cooperate with Ukraine in its efforts to stop the influx from Russian territory of weapons, money, and other support to Russia's proxies operating in Ukraine.

26. **Section B** (Chapters 4, 5, and 6) demonstrates on the basis of this evidence that Russia bears international responsibility for violating the ICSFT. **Chapter 4** establishes that the acts documented in Chapter 1 are covered acts of terrorism under the

ICSFT. **Chapter 5** shows that the provision of funds by Russian officials, as well as by other Russian nationals, to these groups that committed acts of terrorism in Ukraine, constituted knowing financing of terrorism within the meaning of ICSFT Article 2(1). **Chapter 6** establishes that Russia has violated ICSFT Article 18 by failing to take practicable measures to prevent and stop the financing of terrorism by any persons under its jurisdiction, including Russian officials. It also demonstrates that Russia has violated its other cooperation obligations under ICSFT Articles 8, 9, 10, and 12. Finally, **Chapter 7**, Section C establishes that all pre-conditions to this Court's jurisdiction over the parties' dispute under the ICSFT have been met in this case.

27. **Part III** of the Memorial presents Ukraine's claims under the CERD. Ukraine claims that the Russian Federation has engaged in a systematic campaign of discrimination against the Crimean Tatar and Ukrainian communities in Crimea, in the course of which it has violated numerous obligations under the CERD. Specifically, the Russian Federation has engaged in discrimination in violation of the CERD by carrying out or tolerating a series of abductions, disappearances, murders, and torture of Crimean Tatar and Ukrainian individuals; suppressing the political rights of the Crimean Tatar community through persecution of the Mejlis and its leaders; conducting arbitrary searches of Crimean Tatar homes, schools, and towns; restricting the Crimean Tatar and Ukrainian communities' attempts to hold culturally-significant gatherings; restricting media outlets designed to serve the Crimean Tatar and Ukrainian communities in Crimea; and by suppressing the educational rights of the Crimean Tatar and Ukrainian communities in Crimea. The Russian Federation's pervasive policy and practice of racial discrimination, aimed ultimately at the cultural erasure of the Crimean Tatar and Ukrainian communities in Crimea, is a further violation of the CERD.

28. **Section A** (Chapters 8, 9, and 10) sets forth the evidence of a Russian campaign of racial discrimination in Crimea aimed at the cultural erasure of the Crimean Tatar and Ukrainian communities. **Chapter 8** provides historical and ethnic context for the Russian Federation's actions in Crimea and describes the origins of Russia's campaign.

29. **Chapter 9** describes in detail how the Russian Federation has selectively deprived the Crimean Tatar and Ukrainian communities of their civil and political rights, placing them in a vulnerable position. This includes instigation or toleration of the abduction, torture, and murder of numerous Crimean Tatar and Ukrainian activists to create a climate of intimidation in the run-up to the referendum; stripping the Crimean Tatar people of representative structures on which they have relied to defend their interests since their return to Crimea; the use of arbitrary and discriminatory searches and detentions to keep the broader Crimean Tatar and Ukrainian communities in a state of fear and uncertainty; and the imposition of Russian citizenship, residency, and immigration legislation to justify discrimination against non-citizens of Russia in Crimea.

30. **Chapter 10** describes the Russian Federation's discriminatory actions directed at the cultural activities by which the Crimean Tatar and Ukrainian communities express their distinct identities and pass them on to future generations. This includes blocking or disrupting gatherings of cultural importance to the Crimean Tatar and Ukrainian communities; silencing independent Crimean Tatar and Ukrainian media outlets, either by direct physical action or by the pretextual denial of applications to reregister under Russian law; degrading Crimean Tatar cultural heritage and Ukrainian cultural activity in Crimea; and reorienting the education system in Crimea to support Russian cultural dominance, with opportunities to learn in the Ukrainian and Crimean Tatar languages sharply curtailed.

31. **Section B** (Chapters 11 and 12) addresses the legal consequences under the CERD of Russia's conduct in Crimea. **Chapter 11** describes the fundamental obligations of non-discrimination assumed by States Parties under the CERD. **Chapter 12** describes the myriad ways in which Russia's conduct in Crimea violates the CERD. Finally, **Chapter 13**, Section C, establishes that all pre-conditions to this Court's jurisdiction over the parties' dispute under the CERD have been met in this case.

* * *

32. Russia has pursued its goal of regional hegemony through various methods and means. But whether it operates overtly through a discriminatory occupation regime or

indirectly by arming proxies and fostering support for their campaigns of violence and intimidation, Russia has displayed a fundamental disrespect for its obligations under international law, and for the human rights of the Ukrainian people. Ukraine urges the Court to hold Russia accountable for its violations of both the ICSFT and the CERD.

PART II: THE RUSSIAN FEDERATION'S VIOLATIONS OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

33. In adopting the ICSFT, States Parties recognized the financing of terrorism to be “a matter of grave concern to the international community as a whole,” and concluded that “the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain.”²³ The ICSFT sought a comprehensive solution to this matter of grave concern, born of the “urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism.”²⁴

34. Russia’s proxies have committed numerous acts of violence and intimidation against civilians in the territory of Ukraine, with extensive support from the Russian Federation. This Part of the Memorial establishes that through its role in this campaign of terrorism financing, the Russian Federation has systematically and flagrantly violated its obligations under the ICSFT.

35. Under ICSFT Article 2, the main offense of providing funds for use in terrorism is defined in two distinct steps. First, Article 2 defines the acts of terrorism that are covered by the Convention, covering violations of an enumerated list of treaties (Article 2(1)(a)), and a broad category covering any act intended to cause death or serious bodily injury to a civilian, and which by its nature or context has the purpose of intimidating a population or compelling a government to do or abstain from any act (Article 2(1)(b)). Article 2(1) then makes it an offense for “any person” to provide “funds” — defined broadly by Article 1 to constitute “assets of every kind” — intending or knowing that they are to be used, in full or in part, to carry out a covered act of terrorism. Article 2(1) provides in full:

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds [defined in

²³ ICSFT, pmbL.

²⁴ *Ibid.*

Article 1 to mean “assets of every kind”] with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex [including the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the International Convention for the Suppression of Terrorist Bombings]; or
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.²⁵

36. Article 2(5) further provides that any person who “[o]rganizes or directs others to commit an offense” under Article 2(1) also commits a covered offense under the ICSFT.

37. The ICSFT also creates a series of obligations on States to prohibit or act to prevent the Article 2 offenses of financing terrorism. Most comprehensively, Article 18 obliges States to take all practicable measures to cooperate to prevent and to counter preparations in their territories for the commission of acts of terrorism financing both within and outside their territory. Article 18 requires States to prevent acts of terrorism financing by “any person,” a broad term under Article 2 that encompasses both state officials and private actors. Article 18(1) provides:

States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories . . .²⁶

38. The ICSFT also enumerates a range of concrete steps States must take to cooperate in the prevention of terrorism financing, including the identification, detection, freezing, seizing, and forfeiting of funds allocated for financing terrorism (Article 8),

²⁵ *Ibid.*, art. 2(1).

²⁶ *Ibid.*, art. 18(1).

investigating and prosecuting or extraditing financiers of terrorism (Articles 9 and 10), and affording other States the greatest measure of assistance in investigations of terrorism financing offenses (Article 12).

39. In Section A below, Ukraine makes a detailed factual showing that Russia's proxies in Ukraine have carried out a campaign of violence and intimidation against civilians (Chapter 1); that Russian officials and other Russian nationals have directly and indirectly provided these groups with funds including both arms and money (Chapter 2); and that the Russian Federation has not taken practicable measures to cooperate in the prevention of such financing; but, rather, has rebuffed Ukraine's requests for good-faith cooperation (Chapter 3). Section B then shows how Russia's actions violate the ICSFT. It establishes that Russia's proxies carry out terrorist acts covered under ICSFT Article 2 (Chapter 4); that Russian officials and other Russian nationals knowingly fund those terrorist acts (Chapter 5); and that by failing to prevent, tolerating, encouraging, and even supporting these acts of terrorism financing, the Russian Federation violates Articles 8, 9, 10, 12, and 18 of the ICSFT (Chapter 6).

40. Finally, in Section C (Chapter 7), Ukraine establishes that all prerequisites for the Court's jurisdiction have been met.

Section A: Evidence Showing the Financing of Terrorism in Ukraine

Chapter 1. SYSTEMATIC TERRORISM BY RUSSIA'S PROXIES IN UKRAINE

41. Since the spring of 2014, Russia's proxies — the DPR, the LPR, the Kharkiv Partisans, and others²⁷ — have committed numerous brazen and deadly acts of terrorism in Ukraine. This Chapter details some of these groups' most serious acts of terrorism. Targeted killings and torture of civilians in the spring and summer of 2014 progressed to the shocking shoot-down of Malaysia Airlines Flight MH17 ("Flight MH17" or "MH17") in July 2014. This pattern continued with major shelling attacks on Ukrainian civilians in January and February 2015, and a sustained bombing campaign in the city of Kharkiv from July 2014 to February 2015. And in early 2017, just days after Ukraine filed its Application in this Court, Russia's proxies mounted an attack on the civilian population of another city, Avdiivka, and attempted to assassinate a Ukrainian member of parliament in Kyiv.

²⁷ As referenced in Chapter 1, Section A, Russia's proxies emerged in the Donbas region of eastern Ukraine in the spring of 2014, comprised of loosely affiliated groups of pro-Russian Ukrainians and Russian nationals, some of whom declared themselves the "Donetsk People's Republic" ("DPR") and the "Luhansk People's Republic" ("LPR"). In cities outside of Donbas, Russian proxy groups such as the Kharkiv Partisans also fomented unrest and engaged in violent activities.

Map 1: Terrorism by Russia's Proxies in Ukraine



A. Since Their Inception, Russia's Proxies Have Engaged in a Pattern of Terrorist Acts to Intimidate Civilians and Coerce the Ukrainian Government

42. From their earliest days, the DPR and LPR committed acts of violence and intimidation targeted at civilians in furtherance of their political objectives and their attempt to consolidate control over areas of Ukrainian territory. Terrorist acts form a key element of their *modus operandi*. As the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) has extensively documented, the DPR and LPR adopted a persistent practice of targeting civilian political opponents with violence and intimidation.

43. One of the most notorious acts of terrorism against a civilian opposing the DPR and LPR — the abduction, torture, and murder of Horlivka town councilor Volodymyr Rybak — occurred in April 2014. Mr. Rybak was well known for his support of Ukrainian

unity.²⁸ As OHCHR reported, on the afternoon of 17 April 2014, Mr. Rybak tried to replace the DPR flag with the Ukrainian national flag outside the Horlivka town hall, but he was rebuffed by DPR supporters.²⁹ Later that day at approximately 18:00, several masked and armed men seized Mr. Rybak and forced him into a waiting car.³⁰ That was the last time he was seen alive.

44. Mr. Rybak's body was found a day later on 18 April 2014 in a river near the settlement of Raigorodok, along with the body of student Maidan activist Yurii Popravko.³¹ As reported by OHCHR, forensic evidence revealed that "before his death, Rybak was tied; his abdomen ripped off, and he was thrown into the water."³² Mr. Popravko's body also showed signs of torture.³³ Less than two weeks later, the body of another student Maidan activist, Turii Diakovskiy, was found at the same site, also bearing signs of torture.³⁴ He had last been seen alive traveling with Mr. Popravko to the town of Sloviyansk.³⁵

45. Intercepted telephone conversations link DPR commander Igor Bezler to Mr. Rybak's abduction, torture and murder. Bezler, a Russian national with ties to the Russian

²⁸ Luke Harding and Oksana Grytsenko, *Kidnapping of Ukrainian Patriots Has Russia's Full Support, Says Kiev*, *Guardian* (23 April 2014) (Annex 507).

²⁹ OHCHR, *Accountability for Killing in Ukraine from January 2014 to May 2016* (2016), p. 33 (Annex 49).

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.* paras. 33–35.

³⁵ *Ibid.* Contemporaneous reports also documented these events. See, e.g., OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), paras. 95–96 (Annex 45).

military, helped lead an illegal armed group in Horlivka associated with the DPR.³⁶ In intercepted calls on 17 April 2014, Bezler can be heard ordering a subordinate to capture Mr. Rybak:

Bezler: Listen carefully, go inside of the city administration, Rybak is misbehaving there [cursing], go inside of the city administration, people are trying to restrain him there. Press him!

[. . .]

Look, guys, press him slightly, [put] him into your car and take him as further out [cursing], further out [cursing]. And then, stop and tell me where I should come. Do you understand? Do it.

Soon after Mr. Rybak's torture and murder, Ukrainian authorities released these intercepts.³⁷ At the U.N. Security Council, a member condemned these "attacks targeting political figures in the strongest terms."³⁸ The message from Mr. Rybak's torture and murder was clear: those who dare to show support for Ukrainian unity will be targeted, made to suffer, and potentially even be killed.

46. Igor Girkin (also called "Strelkov" or "Strellok"), another DPR commander with ties to Russian intelligence services, also targeted supporters of Ukrainian unity in

³⁶ Council of the European Union, *List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine*, p. 19 (2017) [hereinafter EU Sanctions] (Annex 357); BBC News, *Ukraine Crisis: Key Players in Eastern Unrest* (28 August 2014) (Annex 541); Glavcom, *Igor (Bes) Bezler: I Don't Watch TV - I don't Know About the Minsk Agreements* (21 October 2014) (Annex 545).

³⁷ See, e.g., Jamie Dettmer, *'In Cold Blood' in Ukraine*, The Daily Beast (3 May 2014) (Annex 545); MKRU, *SBU - People's Mayor Slavyansk Discussed with an Officer of the GRU RF How to Red of the Corpse of Deputy Rybak* (24 April 2014) (Annex 509).

³⁸ U.N. Security Council, Records of 7165th Meeting, U.N. Doc. S/PV.7165 (29 Apr. 2014), p. 8 (Annex 290).

spring 2014.³⁹ Girkin supported Russia’s military intervention in Crimea as an advisor to Crimean “Prime Minister” Sergei Aksyonov. He then moved on to Donbas to help lead an illegal armed group associated with the DPR operating out of the city of Slovyansk.⁴⁰ In an interview, Girkin admitted that in Slovyansk in 2014 he engaged in “executions,” including one person he considered an “ideological” supporter of a Ukrainian political movement.⁴¹ In early July 2014, the OHCHR reported on Girkin’s ruthless tactics, including summary executions.

47. This cold-blooded targeting of civilians for their political stances — and the unmistakable message of intimidation it sent — was hardly an isolated incident. These acts of terror also coincided with the emergence of Russian nationals with close ties to the

³⁹ The European Union has identified Girkin as “staff of [the] Main Intelligence Directorate of the General Staff of the Armed Forces of the Russian Federation (GRU).” EU Sanction, pp. 17, 40 (Annex 357); MKRU, *Colonel of the FSB Igor Strelkov Called the Senseless Assault on the Donetsk Airport* (1 December 2014) (Annex 548).

⁴⁰ Zavtra, *Who Are You, Shooter?* (20 November 2014) (Annex 546); BBC News, *Ukraine Crisis: Key Players in Eastern Unrest* (28 August 2014) (Annex 541); Aleksander Vasovic & Maria Tsvetkova, *Elusive Muscovite with Three Names Takes Control of Ukraine Rebels*, Reuters (15 May 2014) (Annex 515); Alec Luhn, *Fight Club, Donetsk*, Foreign Policy (18 June 2014) (Annex 523). Like DPR leader Borodai, he also previously worked for Konstantin Malofeev, a Russian billionaire with close ties President Putin. Courtney Weaver, *Malofeev: The Russian Billionaire Linking Moscow to the Rebels*, Financial Times (24 July 2014) (Annex 533).

⁴¹ Anna Shamanska, *Former Commander of Pro-Russian Separatists Says He Executed People Based on Stalin-Era Laws*, Radio Free Europe / Radio Liberty (19 January 2016) (Annex 587). OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 47 (“Written records of execution orders authorized and signed personally by the ‘Commander-inChief’ of the armed groups, Igor Girkin (known as Strelkov), as well as protocols of hearings of a ‘military tribunal’ convicting people to death, were found in Slovyansk by a journalist on 7 July. The convictions were apparently of people associated with armed groups, and a common criminal.”) (Annex 296).

Russian Government as leaders of the DPR and LPR.⁴² OHCHR reported at the time that the DPR and LPR targeted countless other political opponents, real or perceived, of the “people’s republics” for death or injury throughout the spring and summer of 2014.⁴³ For example:

- On 8 May, “the burned body of Valeriy Salo, a farmer and head of a local cultural organization known as a ‘Pro-Maidan’ activist, was found a day after he had been abducted by armed persons from his village.”⁴⁴
- Two days later on 10 May, OHCHR reported that “three ‘Pro-Ukrainian’ female activists not involved in any fighting were abducted and detained by armed persons in Kramatorsk.”⁴⁵ One of them was released the next day after reportedly being tortured. She was subsequently hospitalised in Slovyansk, suffering from broken ribs, a pierced liver, a head injury and multiple bruises.”⁴⁶

⁴² In addition to Bezler and Girkin, soon after the purported DPR and LPR “referendums” described in Part I, Section A, Alexander Borodai, who has close ties to Russian intelligence services, became the purported “prime minister” of the DPR. Christopher Miller, *Russian Resigns to Make Way for Ukrainian as New Head of ‘Donetsk People’s Republic,’* Guardian (8 August 2014) (Annex 536); *Alexander Borodai: I am a Russian Imperialist*, Actual Comment (24 November 2014) (Annex 547); Harriet Salem, *Who’s Who in the Donetsk People’s Republic*, VICE News (1 July 2014). Borodai had previously served as an advisor to Aksyonov in Crimea and also worked for Mr. Malofeev. Courtney Weaver, *Malofeev: The Russian Billionaire Linking Moscow to the Rebels*, Financial Times (24 July 2014) (Annex 533); Henry Meyer and Onur Ant, *Analysis: The Russian ‘Philosopher’ Who Links Putin, Bannon, Turkey: Alexander Dugin*, Chicago Tribune (3 February 2017) (Annex 591); Christopher Miller, *Russian Resigns to Make Way for Ukrainian as New Head of ‘Donetsk People’s Republic,’* Guardian (8 August 2014) (Annex 591). Russian national Valery Bolotov, who served in the Soviet Army in the late 1980s, emerged as the leader of the LPR. Tom Balmforth, *A Guide To The Separatists Of Eastern Ukraine*, Radio Free Europe / Radio Liberty (3 June 2014) (Annex 519).

⁴³ See, e.g., OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), para. 102 (reporting that “[o]n 29 April, a local activist, was allegedly abducted by unidentified persons, and is now unlawfully detained by an armed group in the occupied building of the State Security Service in Luhansk”; “[o]n 2 May in Donetsk an armed group abducted an activist and aide. He was unlawfully detained, beaten and interrogated for three days. He was released on 5 May”; “[o]n 3 May, pro-unity activists were unlawfully detained, beaten and interrogated in Luhansk. They were released on 4 May”) (Annex 45); OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 205 (reporting that on May 9–10 in the Donetsk region, “an armed group together with police officers allegedly abducted the parents of a local activist from ‘Svoboda’”) (Annex 46).

⁴⁴ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 209 (Annex 46).

⁴⁵ *Ibid.* para. 199.

⁴⁶ *Ibid.*

- On 18 May, DPR members forcibly seized an elderly farmer from his home in a village near Slovyansk who was accused of bringing food to the Ukrainian forces.⁴⁷ They brought him into his yard, read a “sentence” in the name of the ‘Donetsk People’s Republic’ and shot [him] dead, in front of his family and neighbours.”⁴⁸
- On 29 August 2014, the LPR murdered Mr. Hennadii Khitrenko, a retired policeman and a member of the Krymske village council, in his own home in front of his father.⁴⁹ Khitrenko’s father stated he believed his son “was killed because he was known to be a supporter of the territorial integrity of Ukraine. Several days before, he had gone to the military commissariat of the town of Lysychansk (Luhansk region) to volunteer into the National Guard of Ukraine.”⁵⁰

48. Far from concealing their aim of terrorizing Ukrainian civilians, leaders of the DPR have openly acknowledged this practice. In a July press briefing, U.N. Human Rights Chief Navi Pillay noted a “disturb[ing] . . . message on the website of one leader of the self-proclaimed ‘Donetsk People’s Republic’, which state[d] that underage children and women are legitimate targets and that the goal is to ‘immerse them in horror.’”⁵¹

49. The OHCHR further reported in May 2014 that “[a]rmed groups [in eastern Ukraine] have increasingly committed human rights abuses, including abductions, torture/ill-treatment, unlawful detentions and killings[.]”⁵² For example:

- Throughout May 2014, the OHCHR received “several reports of killings at checkpoints held by armed groups.”⁵³ On 8 May, for example, the OHCHR

⁴⁷ *Ibid.* para. 210.

⁴⁸ *Ibid.*

⁴⁹ OHCHR, *Accountability for Killing in Ukraine from January 2014 to May 2016* (2016), para. 50 (Annex 49).

⁵⁰ *Ibid.*

⁵¹ OHCHR, *Intensified Fighting Putting at Risk Lives of People in Donetsk and Luhansk – Pillay* (4 July 2014) (Annex 295).

⁵² OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), para. 58 (Annex 515).

⁵³ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 209 (Annex 45).

reported that “an Orthodox priest was shot dead at a checkpoint near his hometown of Druzhivka[.]”⁵⁴

- The OHCHR also documented “numerous cases” of torture of civilians throughout April and May 2014.⁵⁵ On 4 May 2014, for example, “a group of armed men abducted six residents of Novogrodovka in Donetsk region, including town councillors and trade union members,” and held them in the occupied building of the Regional State Administration in Donetsk.⁵⁶ The civilians “were severely beaten and tortured while unlawfully detained.”⁵⁷

50. In July 2014, the OHCHR summarized that “[e]gregious human rights abuses have been committed in the Donetsk and Luhansk regions of eastern Ukraine, where armed groups supporting the self-proclaimed ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ (DPR and LPR respectively)” operate.⁵⁸ OHCHR continued that “[t]here have

⁵⁴ *Ibid.*

⁵⁵ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), paras. 212–14 (Annex 46).

⁵⁶ OHCHR, *Report on Human Rights Situation in Ukraine* (15 May 2014), para. 102 (Annex 45).

⁵⁷ *Ibid.* See also OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 200 (reporting that from May 4 to 18, a female interpreter was abducted by the DPR, and “[u]pon her release, she reported having been detained by armed groups in Donetsk and to having being subjected to ill-treatment and sexual assault”) (Annex 293); *ibid.* (reporting that on 8 May, a woman with cancer and undergoing chemotherapy was abducted by the DPR in Slovyansk while trying to secure the release of her son) (Annex 46).

⁵⁸ OHCHR, *Report on Human Rights Situation in Ukraine* (15 July 2014), para. 2 (Annex 296). See *ibid.* para. 38 (“Intimidation and violence by the armed groups against civilians in the east has continued, with people being abducted and detained often for purposes of hostage taking. The armed groups also carry out acts of ill-treatment, torture and murder.”).

been hundreds of abductions with many victims tortured. Increasing numbers of civilians have been killed.”⁵⁹ OHCHR issued similar reports throughout the remainder of 2014.⁶⁰

51. In keeping with their political goals of greater autonomy from Ukraine, DPR and LPR acts of violence against civilians were frequently targeted at perceived opponents of their organizations and supporters of Ukrainian unity. In addition to the shocking murder of Mr. Rybak and other atrocities referenced above, more generally, OHCHR reported in June 2014 that:

NGOs in Donetsk have highlighted to the [monitoring mission] a growing pattern of the systematic persecution against civil society. According to them, fear is spreading in the Donetsk and Luhansk regions, with an *increasing number of acts of intimidation and violence by armed groups, targeting “ordinary” people who support Ukrainian unity or who openly oppose the either of the two “people’s republics.”*⁶¹

52. A Human Rights Watch (“HRW”) report released in August 2014 similarly documented “[s]ince April 2014 . . . over two dozen of cases of insurgents torturing political activists they detained in Donetsk, Sloviyansk, Makyivka, and Luhansk.”⁶² In December

⁵⁹ *Ibid.* para. 2. See OHCHR, *Accountability for Killing in Ukraine from January 2014 to May 2016* (2016), para. 37 (reporting that “[a] considerable number of bodies bearing signs suggesting summary executions were found in the territories controlled by the armed groups”) (Annex 313).

⁶⁰ See, e.g., OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), paras. 16–17 (reporting that “the armed groups continued to carry out abductions, physical and psychological torture, ill-treatment and other serious human rights violations,” and that it had received reports of “armed groups preventing residents from leaving the regions, including by harassing them at checkpoints . . . and firing at vehicles transporting fleeing civilians, and reportedly using them as human shields”) (Annex 317); OHCHR, *Report on Human Rights Situation in Ukraine* (15 November 2014), para. 6 (reporting that “[i]n territories under the control of both ‘republics’, cases of serious human rights abuses by armed groups continued to be reported, including torture, arbitrary and incommunicado detention, summary executions, forced labour, sexual violence, as well as the destruction and illegal seizure of property”) (Annex 48).

⁶¹ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 207 (emphasis added) (Annex 46).

⁶² Human Rights Watch, *Ukraine: Rebel Forces Detain, Torture Civilians* (28 August 2014), p. 10 (Annex 444).

2014, OHCHR reiterated that “[p]ersecution and intimidation of people suspected of supporting Ukrainian forces or merely holding pro-Ukrainian sympathies (or perceived as such) remains widespread[.]”⁶³

53. As intended, the DPR’s and the LPR’s strategy of violence against civilians in eastern Ukraine created “an atmosphere of intimidation and consequent fear” in Donetsk and Luhansk, in the words of OHCHR.⁶⁴ In July 2014, OHCHR reported:

The armed groups fighting in the east must abide by international law but unfortunately this has not been the case. Grave human rights abuses have been committed by those armed groups. And it must be remembered that these groups have taken control of Ukrainian territory and inflicted on the populations a reign of intimidation and terror to maintain their position of control.⁶⁵

54. During a briefing to the U.N. Security Council in early August on this report, Assistant Secretary-General for Human Rights Ivan Simonović reinforced this message, warning that the “report details what amounts to a reign of fear and terror in areas under control of the armed groups, twinned with the breakdown of law and order.”⁶⁶

55. In response to this reign of terror and intimidation, many Ukrainian civilians fled from areas under DPR and LPR control. In August 2014, the OSCE documented that “[t]he activity of armed gangs targeting the local population and, in general, a lack of rule of

⁶³ OHCHR, *Report on Human Rights Situation in Ukraine* (15 December 2014), para. 41 (Annex 303).

⁶⁴ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 4 (Annex 46).

⁶⁵ OHCHR, *Report on Human Rights Situation in Ukraine* (15 July 2014), para. 26 (Annex 256). See OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), para. 16 (“The reign of fear and intimidation by the armed groups has been well-documented in the reports of the Human Rights Monitoring Mission in Ukraine. Forced mobilization and threats of the death penalty were additional means to terrorize the population in the territory under the control of the armed groups.”) (Annex 47).

⁶⁶ Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights on the Human Rights Situation in Ukraine (8 August 2014), p. 2 (Annex 298).

law” motivated people to flee.⁶⁷ Many did so specifically because of “[d]irect experience or the witnessing of acts of violence, such as killings, abductions, threats and intimidation, as well as the perception by people that these acts of violence could affect also them personally.”⁶⁸

56. The OHCHR has released regular, contemporaneous public reports on the DPR’s and LPR’s practices, regularly briefing the United Nations Security Council and other U.N. bodies of which Russia is a member.⁶⁹ Many of these attacks were also covered by the international and local Ukrainian and Russian media. The thorough and contemporaneous reporting of the OHCHR, OSCE, HRW, and other neutral observers, as well as local and

⁶⁷ OSCE, *Thematic Report: Internal Displacement in Ukraine* (Aug. 12, 2014), pp. 5–6 (Annex 316).

⁶⁸ *Ibid.*

⁶⁹ See, e.g., Press Statement by the ASG Ivan Simonovic, *UN Office of the High Commissioner for Human Rights, Launch of the Second Report on the Human Rights Situation in Ukraine* (16 May 2014) (Annex 291); Briefing by ASG Ivan Šimonović to the UN Security Council (16 April 2014) (Annex 289); OHCHR, *UN Official Cites ‘Worsening’ Human Rights Situation in Southern, Eastern Regions* (21 May 2014) (reporting that OHCHR briefed the Security Council on its 15 May 2014 report) (Annex 292); Statement of the Assistant Secretary-General Ivan Šimonović at the Security Council meeting on Ukraine (24 June 2014) (Annex 294); Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights on the human rights situation in Ukraine (8 August 2014) (Annex 298); Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights, meeting on Ukraine (24 October 2014) (Annex 302); see also OHCHR, *Human Rights Council Takes Up People of African Descent, Racism and Racial Discrimination, and Situation in Ukraine* (23 September 2014) (Annex 300); Statement by Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights, at the Interactive Dialogue on the Situation of Human Rights in Ukraine at the 27th Session of the Human Rights Council (24 September 2014) (Annex 301).

international press,⁷⁰ put the entire international community — and certainly the DPR's and LPR's patron, the Russian Federation — on notice of what was happening in eastern Ukraine.

57. Against this backdrop, and with this knowledge from reports to the U.N Security Council and other sources, the Russian Federation decided not to suppress the financing of this ongoing campaign of terrorism. Instead, Russia decided to promote and support illegal armed groups in eastern Ukraine, including by using state officials to send money and weapons to these groups known to terrorize the civilian population.

B. The Shoot-Down of Malaysia Airlines Flight 17

58. As detailed further in Chapter 2, as the pattern of violence against civilians continued in Donbas at the hands of DPR and LPR, Russian support escalated, enhancing these groups' firepower as well as their capacity to harm innocent civilian life. The catastrophic downing of Flight MH17 was one tragic result.

59. On 17 July 2014, the DPR destroyed Flight MH17, a civilian aircraft flying in civilian airspace over eastern Ukraine. The attack murdered all 298 civilians on board, including three infants, 280 other passengers, four flight crew members, and 11 cabin crew members. Many of those onboard were Dutch tourists heading to vacation destinations on the Kuala Lumpur-bound flight. More than 30 nationalities were onboard, including a

⁷⁰ See, e.g., *Ukrainian Orthodox Church Confirms Priest Murdered in Donetsk Region*, Kyiv Post (10 May 2014) (Annex 514); *In Donetsk Region, an Orthodox Priest Was Killed*, Gazeta (5 May 2014) (Annex 511); Human Rights Watch, *Ukraine: Captives Describe Brutal Beatings* (5 May 2014) (Annex 441); Hannah Levintova, *Armed Groups in Ukraine Target Gays, Journalists, Minorities, and Anyone Who Speaks Up*, Mother Jones (21 May 2014) (Annex 518); Luke Harding and Oksana Grytsenko, *Kidnapping of Ukrainian Patriots has Russia's Full Support, Says Kiev*, The Guardian (23 April 2014) (Annex 507); *Ukrainian Deputy Rybak Was Tortured and Then Drowned*, MKRU (23 April 2014) (Annex 508); Tatyana Popova, *Leaders of the Outrages of the DNR*, Ukrainska Pravda (23 September 2014) (Annex 544); *The Body of the Heads of the Krasnolimanskaya Prosvita Was Found in a Burned Car*, Radiosvoboda (8 May 2014) (Annex 513); *Details of Shooting a Farmer Near Slaviansk*, PN (19 May 2014) (Annex 517); Terrorist Shot a Resident of Donetsk Region in Front of his Family, Unian (18 May 2014) (Annex 516).

significant number of Malaysian and Australian nationals. The armed groups used a 9M38 series missile, launched from a Buk TELAR that had been delivered by the members of a Russian military brigade to DPR-controlled territory in Ukraine. The DPR deployed this weapon despite the fact that it could not reliably distinguish between military and civilian targets, and that civilian airspace was open.

60. The international community's reaction to this atrocity was swift. On 21 July 2014, the Security Council passed a resolution in which it “[d]emand[ed] that those responsible for this incident be held to account and that all States cooperate fully with efforts to establish accountability.”⁷¹ Far from supporting these efforts, Russia obstructed them, propagating false narratives about the attack, and vetoing a Security Council resolution that would have established an international tribunal to prosecute persons responsible for the attack on Flight MH17.⁷²

61. Despite Russia's obstruction, multilateral efforts to investigate the attack proceeded. As part of this international response, the Dutch Safety Board (“DSB”) conducted an independent investigation into the causes of the crash. The DSB operated “in accordance with the international regulations that apply to independent accident investigation, laid down in Annex 13 of the Convention on International Civil Aviation.”⁷³ Pursuant to these regulations, the DSB cooperated and shared information with relevant States, including the Russian Federation.⁷⁴

62. At the same time, a criminal investigation was launched by a Joint Investigation Team (“JIT”), comprised of the Netherlands Public Prosecutor’s Office, the Dutch National Police, and law enforcement authorities from Australia, Belgium, Malaysia,

⁷¹ U.N. Security Council Resolution 2166, U.N. Doc. S/RES/2166 (21 July 2014), para. 11 (Annex 297).

⁷² UN News Centre, *Security Council Fails to Adopt Proposal to Create Tribunal on Crash of Malaysian Airlines Flight MH17* (29 July 2015) (Annex 311).

⁷³ See Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17* (17 July 2014), p. 7 [hereinafter DSB Report MH17 Crash] (Annex 38).

⁷⁴ *Ibid.*

and Ukraine. While that process is still ongoing, Mr. Gerardus Wilhelmus Christiaan Thiry, chief inspector with the National Crime Squad of the Dutch National Police, has submitted two official reports to this Court addressing key pieces of evidence from the JIT's ongoing investigation. Those reports are found at Annexes 39 and 40. That evidence definitively shows Russian responsibility for supplying the Buk TELAR that was used to shoot down Flight MH17, as discussed further in Chapter 2.

63. On the basis of forensic study and other investigative techniques, the DSB and the JIT determined that Flight MH17 was destroyed by a Buk TELAR, and ruled out alternative hypotheses. In summary, the DSB found:

The combination of the recorded pressure wave, the damage pattern found on the wreckage caused by blast and the impact of fragments, the bow-tie shaped fragments found in the cockpit and in the body of one of the crew members in the cockpit, the injuries sustained by three crew members in the cockpit, the analysis of the in-flight break-up, the analysis of the explosive residues and paint found, and the size and distinct, bow-tie shape of some of the fragments, led the Dutch Safety Board to conclude that the aeroplane was struck by a 9N314M warhead as carried on a 9M38-series missile and launched by a Buk surface-to-air missile system.⁷⁵

64. Based on potential missile trajectories that could have caused the pattern of damage seen on the aircraft, the DSB narrowed the launch zone to a 320-square kilometer area, encompassing the Ukrainian towns of Snizhne and Pervomaisky,⁷⁶ located in the Donetsk oblast and under separatist control.⁷⁷

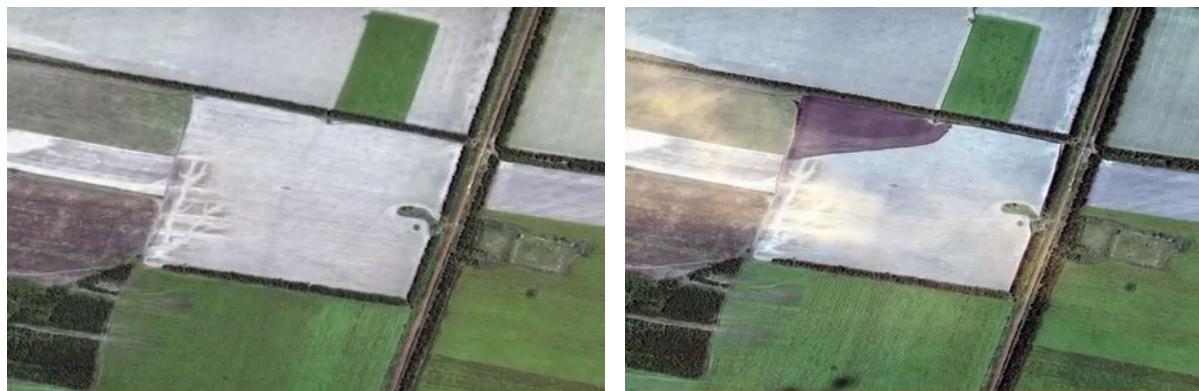
⁷⁵ *Ibid.* p. 137.

⁷⁶ *Ibid.* p. 144.

⁷⁷ Official Report of the Dutch National Police, and accompanying annexes, at Annexe 1 p. 11 (16 May 2018) (original in Dutch) (noting area under separatist control) [hereinafter 16 May Dutch National Police Report] (Annex 41).

65. The JIT similarly determined that “flight MH17 was shot down on 17 July 2014 by a missile of the 9M38 series, launched by a BUK-TELAR.”⁷⁸ As part of this investigation, the JIT identified the specific launch site as a field near Snizhne and Pervomaiskiy.⁷⁹ Satellite imagery shows that on 16 July 2014, the day before the attack, the field looked ordinary. In the days following the attack, the field appeared scorched and plowed:

Figure 1⁸⁰



Left: Satellite image of the launch site on 16 July 2014.

Right: Satellite image of the launch site on 21 July 2014.

66. The Buk was also photographed and captured on video by local residents in Snizhne on 17 July, who posted the images to the Internet shortly before the attack. Dutch investigators examined and validated these images, concluding that the Buk convoy was in fact in Snizhne shortly before the attack.⁸¹

⁷⁸ Joint Investigation Team, *Presentation Preliminary Results Criminal Investigation MH17*, Openbaar Ministerie [Public Prosecution Service] (28 September 2016) [hereinafter 2016 JIT Presentation] (Annex 39).

⁷⁹ 16 May Dutch National Police Report, p. 1; *ibid.*, Annexe 1 pp. 12–14 (noting the launch site as an area near Snizhne, and analysis of scorched fields near Snizhne); *ibid.* p. 16 (“The investigation also ascertained that the Buk TELAR that brought down flight MH17 launched a missile from an agricultural field south of Snizhne and west of Pervomaiskyi.”) (Annex 41).

⁸⁰ 2016 JIT Presentation (with accompanying animation, MH17 Animation regarding the transport route and the launch site, at 8:59–9:35) (Annex 39); see also 16 May Dutch National Police Report, Annex 8 (photos in original Dutch version) (Annex 41).

⁸¹ 16 May Dutch National Police Report, Annex 6 (Annex 41).

Figure 2⁸²



Left: Photograph of the Buk in Snizhne on 17 July 2014. **Right:** Screenshot from footage of the Buk taken shortly after the shoot-down of Flight MH17 on 17 July 2014.

67. The transportation of the Buk TELAR to the launch site was also discussed in an intercepted conversation that specifically refers to Snizhne:

Caller 1: Listen . . . it turns to be the last checkpoint leaving Snizhne before Stepanivka . . . to the left . . . Is my sense of direction correct?

Caller 2: You have to go rightwards in Stepaninka and across the field to this f*ckng what's it . . . this f*cking Snizhne?

Caller 1: Yes.

Caller 2: So, go to Snizhne. I'll give you further directions there.

⁸² 16 May Dutch National Police Report, Annexe 1 pp. 6–16 (photo in original Dutch version, pp. 7, 9) (Annex 41).

*Caller 1: Got it. Ok.*⁸³

68. The mobile phone belonging to one of the participants in the conversation — which took place at 13:09, just minutes before the attack — was connected to the telephone tower located closest to the agricultural field near Pervomaisky.⁸⁴

69. Russia's proxies deployed the Buk missile against Flight MH17 fully aware that the skies of eastern Ukraine within range of their weapon were open to civilian air traffic. Under a public Notice to Airmen ("NOTAM"), the airspace below 32,000 feet was restricted to Ukrainian state aircraft, meaning that civilian air traffic above that level was expressly permitted.⁸⁵

70. Substantial civilian air traffic passed through the airspace above eastern Ukraine until the attack. Based on data from the European Organization for the Safety of Air Navigation ("EUROCONTROL"), the DSB determined that "a large number of operators continued to use routes over the eastern part of Ukraine."⁸⁶ In June and July 2014, each day an average of 220 flights transited the air traffic zone where Flight MH17 was ultimately shot

⁸³ See Intercepted Conversation between "Krot" and "Zmey" (17 July 2014) (Annex 396); Confirmation of Authenticity, Senior Special Investigator with the Second Branch of the First Pre-Trial Investigations Department at the Main Investigations Directorate of the Security Service of Ukraine (4 June 2018) [hereinafter Confirmation of Authenticity, SSU] (Annex 184); see also 2016 JIT Presentation (with accompanying animation, MH17 Animation regarding the transport route and the launch site, at 7:36–8:02) (Annex 39).

⁸⁴ 2016 JIT Presentation (with accompanying animation, MH17 Animation regarding the transport route and the launch site, at 8:02–8:09) (Annex 39).

⁸⁵ DSB Report MH17 Crash, pp. 195–97 (Annex 38). Ukraine's NOTAM was based on the lack of indication, at the time, that Russia had supplied illegal armed groups with surface-to-air missiles capable of hitting civilian airliners at cruising altitude. This is consistent with the general practice in conflict zones where there is no apparent threat to civil aviation at high altitudes. *See ibid.* pp. 199–205.

⁸⁶ *Ibid.* p. 223.

down.⁸⁷ On 17 July, the day of the attack, 160 flights passed over this area until the airspace closed following the shoot-down.⁸⁸

71. Flight MH17 was following a typical flight pattern. After taking off from Amsterdam en route to Kuala Lumpur, it reached a cruising altitude of 33,000 feet, a standard flight level for civilian aircraft.⁸⁹ Anyone with access to the Internet could have seen this pattern of civilian traffic, and could even have identified Flight MH17 over the airspace of eastern Ukraine in the early afternoon of 17 July. Just one example of a public, free online service providing this capability is Flightradar24, which displays live air traffic.⁹⁰ Flightradar 24 has preserved and shared a live view of Ukrainian airspace shortly before the shoot-down, showing both Flight MH17's altitude and its trajectory toward eastern Ukraine.⁹¹

⁸⁷ *Ibid.*

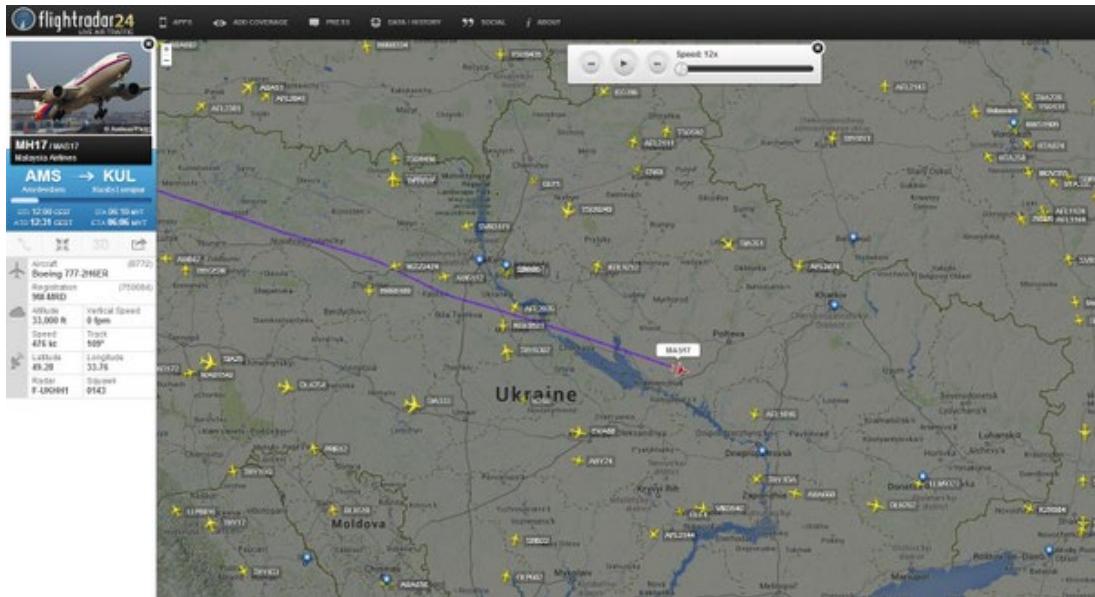
⁸⁸ *Ibid.* p. 224.

⁸⁹ *Ibid.* pp. 23, 36.

⁹⁰ Live Air Traffic, FLIGTHRADAR24 (23 May 2018) (Annex 666).

⁹¹ Social Media Page (Twitter) of Flightradar24, archived on 17 July 2014 (Annex 617).

Figure 3⁹²



Flightradar live view of Ukrainian airspace, 17 July 2014.

72. Despite this pattern of civilian air traffic, Russia's proxies nevertheless deployed a powerful weapon designed to shoot down an aircraft, the Buk TELAR, knowing that it could be a civilian aircraft that fell from the sky.

73. The operation of a Buk missile system, and its TELAR component in particular, is explained in detail in the report of Associate Professor Anatolii Skorik of the Ivan Kozhedub Kharkiv University of the Air Force, an expert in the Buk system, its operation, and training for its use. Dr. Skorik explains that a Buk missile system is intended to be operated with several components: a combat control center, a target locator, three launcher-loader modules, and six TELARs.⁹³ The Buk TELAR can operate in a centralized control mode, in which the combat control center identifies the target and instructs the TELAR to engage it.⁹⁴ A TELAR can also operate more independently, in standalone mode,

⁹² *Ibid.*

⁹³ Expert Report of Anatolii Skorik (6 June 2018), para. 9 [hereinafter Skorik Report] (Annex 12).

⁹⁴ *Ibid.* paras. 18–25.

by identifying targets itself, though still on the basis of orders from, and in coordination with, the combat control center.⁹⁵ In either case, targeting decisions are informed by the combat control center's access to substantial information such as "information about the air space (including civilian air traffic information) received from the Radio-Technical Troops of the Air Force and their radars."⁹⁶ Crew members of the combat control center are trained "to process large arrays of data," and can alert the TELAR when civilian aircraft has been detected on the basis of that information.⁹⁷ Thus, while "[t]he Buk-M1 SAM system is very seldom used in situations where the airspace is open to civilian aircraft," if it "operates in coordination with the combat control center, information from radio-radar forces about civilian air traffic will be brought to the attention of the commander of the Buk-M1 battery in a timely manner, thereby substantially reducing the risk of attacks on civilian aircraft."⁹⁸

74. The DPR took the rare step of deploying a Buk TELAR where the airspace was known to be open to civilian traffic. It did so, however, without critical support; there is no evidence that the TELAR that downed Flight MH17 operated in conjunction with a combat control center.⁹⁹ As Dr. Skorik explains, the "technical capabilities of the Buk-M1 TELAR *do not make it possible* to accurately distinguish a civilian aircraft from a military one"; on the

⁹⁵ *Ibid.* para. 26.

⁹⁶ *Ibid.* para. 21.

⁹⁷ *Ibid.* para. 38.

⁹⁸ *Ibid.* para. 34.

⁹⁹ 16 May Dutch National Police Report, Annexe 1 p. 16 ("In Snizhne the Buk TELAR was offloaded and then drove on, under its own power, to a field west of Pervomaiskyi."); Annexe 3 p. 1 (noting that "[t]he convoy consisted of the following vehicles: a dark-coloured Peugeot 3008, a (light) grey/silver Toyota RAV4, a white Volvo lorry with red flatbed carrying a Buk TELAR, a green UAZ 469, a dark-coloured Volkswagen Transporter and a white Ssanyong Korando" and not mentioning other component parts of the Buk missile system) (Annex 41).

operator's screen, military and civilian aircraft are "practically indistinguishable."¹⁰⁰ These technical constraints are compounded by the intense pressure facing the TELAR operator, who is trained to act "with lightning speed" to engage a target, while relying on the combat control center to assess the broader air situation.¹⁰¹ Dr. Skorik therefore concludes that operating a Buk TELAR on its own, in civilian-trafficked airspace, is "extremely dangerous for civilian aircraft."¹⁰²

75. Yet the DPR, once again displaying its disregard for human life, chose to deploy the Buk TELAR in these conditions. The downing of Flight MH17, with disasterous human consequences, was the result.

C. The Shelling Attacks on Civilians in Donbas

76. After the downing of Flight MH17, the violence did not cease, but only shifted form. In the span of less than a month in January and February 2015, Russia's proxies committed three major shelling attacks against Ukrainian civilians in Volnovakha, Mariupol, and Kramatorsk. Using sophisticated rocket artillery weapons systems, the DPR aimed to sow fear among civilians and to exert pressure on Ukraine's government during active cease-fire negotiations. Russia's proxies engaged in renewed shelling, this time in Avdiivka, in early 2017.

1. The Attack on a Civilian Checkpoint Near Volnovakha

77. One such attack occurred in the middle of the afternoon of 13 January 2015. On that day, the DPR launched a rocket artillery bombardment in the vicinity of a civilian checkpoint (the "Buhas checkpoint") located approximately two kilometers north of the

¹⁰⁰ Skorik Report, paras. 28, 39 (emphasis added) (Annex 12).

¹⁰¹ *Ibid.* para. 36.

¹⁰² *Ibid.* para. 31.

Ukrainian town of Volnovakha. The Buhas checkpoint sits on a well-traveled highway and regularly experiences long queues of civilian vehicles. Having amassed considerable weapons from the Russian Federation, as detailed below, DPR militants used BM-21 Grad multiple-launch rocket systems (“BM-21 Grad” or “Grad”) to shell the civilian checkpoint. The DPR unleashed a hailstorm of at least 88 rocket volleys that struck the area around the checkpoint.¹⁰³ One of the rockets exploded near a civilian passenger bus that was waiting in line to cross the checkpoint, killing 12 civilian passengers and injuring 19 more. In a swift reaction, the U.N. Security Council issued a statement condemning the “shelling of a passenger bus in Volnovakha,”¹⁰⁴ and demanding an investigation to bring the perpetrators to justice. Both Ukrainian law enforcement and the OSCE Special Monitoring Mission to Ukraine (“OSCE”) reached consensus on the key facts, including the timing of the attack, the type of weapons used in the attack, and the area from which the attack originated.

78. The Buhas checkpoint is located on the H-20 highway,¹⁰⁵ the main thoroughfare connecting the two biggest cities in the region — Mariupol, controlled by the Ukrainian government, and the city of Donetsk, controlled by the DPR and other armed

¹⁰³ See, e.g., Witness Statement of Dmytro Volodymyrovych Zyuzia (29 May 2018), para. 16 [hereinafter Zyuzia Statement] (Annex 6); Record of Review, drafted by Captain of Justice V. Romanenko, Senior Investigator at the Internal Affairs Agency of the Investigations Department of the Directorate of the Security Service of Ukraine in the Donetsk Region (16 January 2015), pp. 8–18 (Annex 87); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (13 January 2015), p. 1 (Annex 320); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)*, p. 1 (16 January 2015) (Annex 324).

¹⁰⁴ U.N. Security Council, *Security Council Press Statement on Killing of Bus Passengers in Donetsk Region, Ukraine* (13 January 2015) (Annex 305).

¹⁰⁵ Witness Statement of Maksym Anatoliyovych Shevkoplias (31 May 2018), para. 6 [hereinafter “Shevkoplias Statement”] (Annex 4); Main Military Prosecutor’s Office, Prosecutor General’s Office of Ukraine Letter No. 10/4/1-44-08-15 to the Main Donetsk Regional Administration Office of the National Police (26 February 2016), p. 1 (Annex 146).

groups. Approximately three thousand vehicles travel on the highway per day.¹⁰⁶ On weekdays, at least 15 passenger buses per day run through the Buhas checkpoint.¹⁰⁷

79. There were many practical reasons for this steady flow of traffic. Many Donetsk residents regularly traveled to government-controlled cities to receive their pension and other social benefit payments from the Ukrainian government.¹⁰⁸ According to the bus driver interviewed after the incident, many of the passengers that day were in fact returning to Donetsk with their benefits.¹⁰⁹

80. The Buhas checkpoint has long undertaken general traffic supervision functions, including checking vehicles for law enforcement purposes.¹¹⁰ Since the outbreak of hostilities, the checkpoint took on additional functions as a *de facto* border post, to manage the security risks that arise from civilians traveling into and out of DPR-controlled

¹⁰⁶ National Police, Main Donetsk Regional Administration of the National Police Letter No. 1812/04/18-2016 to the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (18 March 2016), p. 1 (Annex 146).

¹⁰⁷ Shevkoplias Statement, para. 7 (Annex 4).

¹⁰⁸ *Ibid.* In January 2015, people living in territories controlled by the DPR and LPR could only collect their payments from the Ukrainian government at banks located in the territories controlled by the Ukrainian authorities. Volnovakha is one of the closest cities under Ukrainian control and the most convenient place for residents of the city of Donetsk to collect their social benefits. *Ibid.*

¹⁰⁹ Signed Declaration of Sergey Cherepko, Witness Interrogation Protocol (20 January 2015), p. 5 (Annex 208).

¹¹⁰ National Police, Main Donetsk Regional Administration of the National Police Letter No. 1812/04/18-2016 to the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (18 March 2016), p. 1 (Annex 146); Shevkoplias Statement, para. 9 (Annex 4); Signed Declaration of Oleksandr Chekorskyy, Witness Interrogation Protocol (5 April 2016), p. 3 (Annex 248).

territory.¹¹¹ On the day of the attack, members of the police and border guards stationed at the checkpoint were performing passport and security checks of vehicles, buses, and people passing through the checkpoint.¹¹²

81. As the checkpoint is situated on a heavily-trafficked highway and the necessary security checks take time, there is usually a line of cars and buses at the Buhas checkpoint. For example, later OSCE reports document that the checkpoint occasionally had hundreds of civilian vehicles lined up, waiting for clearance.¹¹³ The period between 2:00 and 15:00 on weekdays is particularly busy, in part because passenger buses traveling between Volnovakha and Donetsk regularly arrive at the checkpoint in this time period.¹¹⁴

82. The day before the attack, the Defense Intelligence Department of the Ministry of Defense of Ukraine determined that unmanned aerial vehicles (“UAV”) were

¹¹¹ See Shevkoplias Statement, para. 9 (Annex 4); Signed Declaration of Anton Ovcharenko, Witness Interrogation Protocol (18 January 2015), pp. 3–4 (testifying that, as a member of the Border Guard Service, his “duties at the said checkpoint include checking the passports of persons passing through the checkpoint, as well as checking vehicles, finding weapons, drugs and other prohibited cargo items, and identifying members of the terrorist organizations DPR . . . and LPR . . .”) (Annex 206); Signed Declaration of Anton Fadeev, Witness Interrogation Protocol (16 December 2015), p. 3 (testifying that, as a member of the “Kyiv-2” police special forces battalion, his “duties included checking the vehicles and people passing through the checkpoint”) (Annex 244); Signed Declaration of Artem Kalus, Witness Interrogation Protocol (17 January 2015), p. 2 (testifying that, as the senior police investigator, he “was checking the passport data of people who had passed through the checkpoint”) (Annex 204); Signed Declaration of Yaroslav Maksymov, Witness Interrogation Protocol (17 January 2015), p. 3 (testifying that, as the local police inspector, his “duties included checking vehicles and persons passing through the checkpoint”) (Annex 205).

¹¹² See *supra*, note 111; *ibid.* (indicating that members of the “Kyiv-2” police special forces battalion, five members of the Border Guard Service, local police were stationed at the checkpoint on 13 January 2015).

¹¹³ OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 28 August 2015* (28 August 2015), p. 2 (Annex 336).

¹¹⁴ Shevkoplias Statement, para. 7 (Annex 4).

used near the town of Volnovakha.¹¹⁵ On the day of the attack, there was a line of vehicles traveling in the direction of the city of Donetsk waiting at the Buhas checkpoint when the DPR deployed its Grad missiles. Sergey Cherepko, the driver of the bus hit in the attack, arrived as usual at the Buhas Checkpoint with a fully loaded bus at approximately 14:10.¹¹⁶ He testified that up to three other passenger buses were at the checkpoint ahead of him when he arrived.¹¹⁷ A video recorded by a dashboard camera shortly before the attack (Figure 4) shows several civilian cars waiting to pass through the checkpoint.

¹¹⁵ Witness Statement of Vadym Skibitskyi (5 June 2018), para. 26 [hereinafter Skibitskyi Statement] (Annex 8).

¹¹⁶ Signed Declaration of Sergey Cherepko, Witness Interrogation Protocol (20 January 2015), p. 4 (Annex 208).

¹¹⁷ *Ibid.* p. 4. See also Signed Declaration of Anton Fadeev, Witness Interrogation Protocol (16 December 2015), p. 3 (Annex 244).

Figure 4¹¹⁸



¹¹⁸ Dashboard Camera Footage of Shelling on 13 January 2015 (video) (Annex 696). See also Human Rights Watch, *Ukraine: Rising Civilian Death Toll* (3 February 2015), p. 7 (noting that “a video recorded by a dashboard camera at the time of the attack show[s] civilian cars passing through the checkpoint and several cars waiting in line”) (Annex 1108). Surveillance camera footage from the checkpoint also shows several cars passing through the checkpoint as shells start to fall around and directly onto the road. Footage from a Surveillance Camera at the Checkpoint (10 January 2015) (video) (Annex 695); Shevkoplias Statement, para. 14 (Annex 4).

83. At 14:25 on 13 January 2015, the DPR deployed three Grad systems at the checkpoint, delivering at least 88 high-explosive rockets into the concentration of civilian vehicles and passenger buses.¹¹⁹ Mr. Cherekko described his experience as follows:

[W]hile waiting for my turn to go through passport control at the checkpoint, . . . I suddenly heard a whistling noise approaching from roughly a northerly direction. I did not register exactly where it came from, however, because it happened very fast. And a fraction of a second later, from the right side of the bus (going from Volnovakha in the direction of Donetsk) I heard a loud boom, which sounded like an exploding shell, and the windows of the bus simultaneously shattered, while metal fragments damaged the body of the bus.¹²⁰

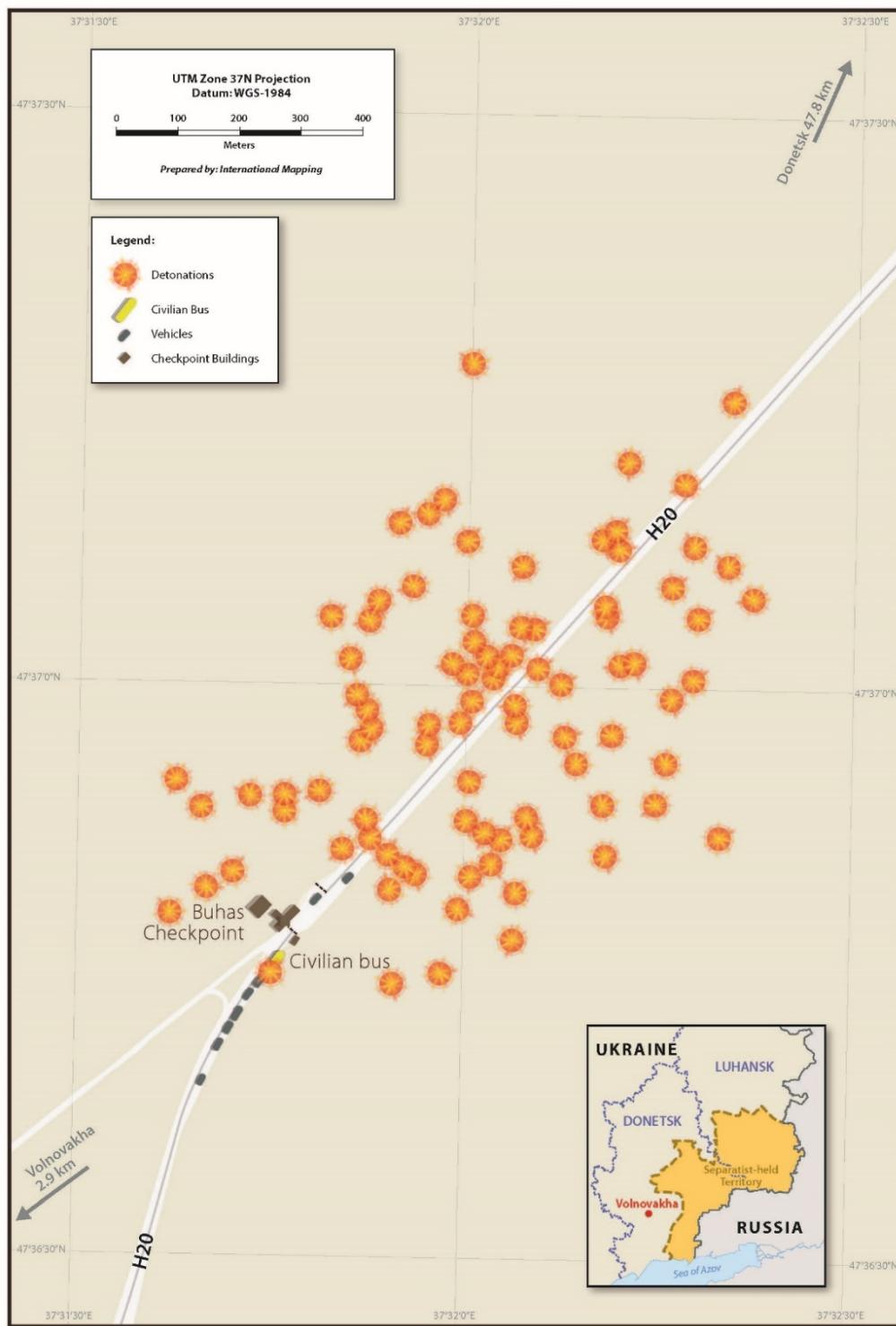
84. Numerous explosions detonated within seconds of each other, spanning hundreds of meters.¹²¹ Map 2 illustrates the 88 crater impacts around the Buhas checkpoint, and Figure 5 is an image from an OSCE unmanned aerial vehicle.

¹¹⁹ Record of Review, drafted by V. Romanenko, Senior Investigator the Security Service of Ukraine (16 January 2015), pp. 8–18 (Annex 87); Record of Site Inspection, drafted by A. G. Albot, Investigations Department of the Volnovakha District Department of the Donetsk Regional Directorate of the Ministry of Internal Affairs of Ukraine (13 January 2015), pp. 2–3 (Annex 85). See also Signed Declaration of Anton Ovcharenko, Witness Interrogation Protocol (18 January 2015), pp. 3–4 (Annex 206).

¹²⁰ Signed Declaration of Sergey Cherekko, Witness Interrogation Protocol (20 January 2015), p. 4 (Annex 208).

¹²¹ Record of Review, drafted by V. Romanenko, Senior Investigator for the Security Service of Ukraine (16 January 2015), pp. 8–18 (Annex 87).

Map 2: Shelling Impacts at the Buhas Checkpoint near Volnovakha¹²²



¹²² The points of detonation depicted in this map use the underlying data of the investigation team, as documented in contemporaneous crime scene inspection reports. See Zyuzia Statement, paras. 14–16 (Annex 6); Annexes 87, 151 (crime scene inspection reports).

Figure 5¹²³



Image of the Buhas checkpoint taken by the OSCE's unmanned aerial vehicle on 14 January 2015

85. No missiles hit the checkpoint.¹²⁴ Two missiles directly hit the road, and an additional seven missiles struck close enough to affect the road and the vehicles on it.¹²⁵ One of the projectiles landed 12 meters from the right side of the bus driven by Mr. Cherepko,¹²⁶

¹²³ OSCE, *OSCE Special Monitoring Mission to Ukraine (SMM), Status Report as of 20 January 2015* (20 January 2015) (Annex 326). Note: this image has been flipped horizontally to reflect a traditional map orientation.

¹²⁴ Record of Review, drafted by V. Romanenko, Senior Investigator the Security Service of Ukraine (16 January 2015), pp. 8–18 (Annex 87).

¹²⁵ *Ibid.*; Map of Crater Impacts (Annex 89). See also Expert Report of Lieutenant General Christopher Brown, para. 31 (5 June 2018) [hereinafter “Brown Report”] (concluding this after examining this report and map) (Annex 11).

¹²⁶ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine, 14 January 2015: 12 Civilians Killed and 17 Wounded When a Rocket Exploded Close to a Civilian Bus Near Volnovakha* (14 January 2015) (Annex 323); Record of Site Inspection, drafted by A. G. Albot, Investigations Department of the Volnovakha District Department of the Donetsk Regional Directorate of the Ministry of Internal Affairs of Ukraine (13 January 2015), p. 2 (Annex 85); Record of Review, drafted by V. Romanenko, Senior Investigator, the Security Service of Ukraine (16 January 2015), p. 8 (Annex 87).

killing 12 civilian passengers and injuring 19 others.¹²⁷ The damage caused to the bus can be seen in Figure 6.

Figure 6¹²⁸



Photographs of the civilian bus hit in the Volnovakha attack.

86. Three days after the attack, OSCE monitors conducted a comprehensive inspection of five shell craters from the attack and concluded that the “craters examined were caused by rockets[.]”¹²⁹ Ukrainian investigators reached a similar conclusion, as did Human Rights Watch experts who concluded from in-person examination of shell craters

¹²⁷ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine, 14 January 2015: 12 Civilians Killed and 17 Wounded When a Rocket Exploded Close to a Civilian Bus Near Volnovakha* (14 January 2015) (Annex 323). The injured included one police officer stationed at the checkpoint. Record of Review, drafted by V. Romanenko, Senior Investigator, the Security Service of Ukraine (16 January 2015), p. 8 (Annex 87).

¹²⁸ Record of Site Inspection, drafted by A. G. Albot, Investigations Department of the Volnovakha District Department of the Donetsk Regional Directorate of the Ministry of Internal Affairs of Ukraine (13 January 2015), p. 5 (Annex 85); Maddie Smith, *Ten Civilians Killed in Ukrainian Bus Attack as Donetsk Airport Control Tower is Destroyed*, VICE (13 January 2015) (Annex 552).

¹²⁹ OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (16 January 2015), p. 1 (Annex 324).

and debris that “the area had been struck by Grad rockets.”¹³⁰ Lieutenant General Christopher Brown, a retired British Army artillery expert with over 36 years’ active duty service, has provided the Court with an expert opinion on the shelling of Ukrainian cities. General Brown likewise concludes that “[t]he Volnovakha shelling was carried out using BM-21 Grad MLRS firing high explosive rockets.”¹³¹

87. While the DPR officially denied involvement in the shelling attack,¹³² forensic analyses of the attack site as well as other evidence confirm that DPR armed groups in fact committed the attack. OSCE monitors concluded based on their analysis of the impact craters that “all craters examined were caused by rockets fired from a north-north-eastern direction.”¹³³ Human Rights Watch likewise explained that “[t]he tube-like shape of the craters clearly indicated that the rockets had come from the northeast. A video recorded by a surveillance camera at the checkpoint shows dozens of explosions to the north of the checkpoint over a short period of time.”¹³⁴ The Ukrainian investigative team also inspected

¹³⁰ Human Rights Watch, *Ukraine: Rising Civilian Death Toll* (3 February 2015), p. 6 (Annex 1108). Zuzia Statement, paras. 13–14 (Annex 6); Expert Opinion No. 63, drafted by Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (18 January 2015), pp. 6–8 (Annex 88); Expert Opinion No. 64/1-30/6, drafted by Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (26 March 2015), p. 7 (Annex 113). See also Expert Opinion No. 16/8, drafted by Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (7 May 2015), pp. 17–18 (Annex 123); Forensic Expert Report No. 38/6, drafted by Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (18 May 2015), pp. 8–9 (Annex 126).

¹³¹ Brown Report, para. 37 (Annex 11).

¹³² Ministry of Foreign Affairs of the DPR, *The Statement on Bus Shelling near Volnovakha* (13 January 2015) (Annex 634).

¹³³ OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (16 January 2015), p. 1 (Annex 324).

¹³⁴ Human Rights Watch, *Ukraine: Rising Civilian Death Toll* (3 February 2015), pp. 6–7 (Annex 1108).

the shell craters and measured their impact angles at 52-55 degrees.¹³⁵ As General Brown explains, such crater analysis is generally reliable, and indicates that the missiles would have been launched from a range of 19.4 to 19.8 kilometers.¹³⁶ The town of Dokuchayevsk, controlled by the DPR, falls squarely within the origin of the Grad attack as determined by this crater analysis.¹³⁷

88. Intercepted phone conversations between DPR members on 13 January 2015 also discuss the attack. At 13:54, approximately 30 minutes before the shelling attack began, DPR member Yuriy Shpakov¹³⁸ received a phone call from his subordinate with the *nom de guerre* “Opasnyi [Dangerous],” who informed Shpakov that he was “loading.”¹³⁹ The location of Opasnyi’s mobile phone was determined to be linked to the cell phone tower servicing the town of Dokuchayevsk.¹⁴⁰ Later that day at around 15:29, Shpakov told his spouse that he “blew a Ukropian checkpoint to hell.”¹⁴¹ No other checkpoint was shelled near Volnovakha

¹³⁵ Record of Review, drafted by V. Romanenko, Senior Investigator the Security Service of Ukraine (16 January 2015), pp. 3–6 (Annex 87); Expert Report, drafted by Serhiy Onikeyenko, Investigations Department at the Main Military Prosecutor’s Office, Prosecutor’s Office of Ukraine, and Viktor Levchenko, Lieutenant Colonel, Missile and Artillery Troops of the Ground Troops Command of the Ukrainian Armed Forces (1 June 2016), p. 2 (Annex 150).

¹³⁶ Brown Report, para. 26 (Annex 11).

¹³⁷ *Ibid.*; Expert Report, drafted by Serhiy Onikeyenko, Investigations Department at the Main Military Prosecutor’s Office, Prosecutor’s Office of Ukraine, and Viktor Levchenko, Lieutenant Colonel, Missile and Artillery Troops of the Ground Troops Command of the Ukrainian Armed Forces (1 June 2016), p. 2 (Annex 150). See also OHCHR, *Report on the Human Rights Situation in Ukraine* (1 December 2014 to 15 February 2015), para. 24 (Annex 309).

¹³⁸ Ukrainian investigators determined that he used the *nom de guerre* (or “call sign”) “Yust.” Zyuzia Statement, paras. 26, 31 (Annex 6).

¹³⁹ *Ibid.* para. 29; Intercepted Conversations of Yuriy Shpakov (16 September 2016) (Annex 430).

¹⁴⁰ *Ibid.*

¹⁴¹ Intercepted Conversations of Yuriy Shpakov (16 September 2016) (Annex 430). The next day on 14 January 2015 at around 10:51, Shpakov directed his subordinate “Opasnyi” to “man the main firing position and open up on the checkpoint that we gave a workout to yesterday.” *Ibid.*

that day.¹⁴² At 16:54, Anatoliy Sinelnikov, a Russian national who has served as a colonel in the Russian Armed Forces and was embedded within DPR armed groups¹⁴³ called Shpakov to discuss the shelling of “Volnovakha from Dokuchayevsk today.”¹⁴⁴

89. There was no military reason for a bombardment of the Buhas checkpoint, whereas someone wishing to harm and intimidate civilians would find the cluster of civilian vehicles lined up to pass through a checkpoint an attractive target. Neither the checkpoint nor personnel stationed at Buhas played any offensive role in Ukraine’s Anti-Terrorist Operation.¹⁴⁵ According to General Brown, the size of the Buhas checkpoint and the number of personnel manning it suggest that the checkpoint could not have conducted any effective defensive role against anything more than attacks by a few individuals.¹⁴⁶ Any military advantage from an attack would be trivial at best, and easily outweighed by the waste of effort and loss of surprise.¹⁴⁷

2. The Attack on the Vostochniy Neighborhood of Mariupol

90. On 24 January 2015, less than two weeks after the attack on the civilian passenger bus near Volnovakha, Russia’s proxies used the same type of weapon against the city of Mariupol, attacking the Vostochniy neighborhood (“Skhidny” in Ukrainian, “Eastern” in English), a densely populated residential neighborhood.¹⁴⁸

¹⁴² Zyuzia Statement, para. 30 (Annex 6); Shevkoplias Statement, para. 12 (Annex 4).

¹⁴³ Zyuzia Statement, paras. 33–34 (Annex 6).

¹⁴⁴ Intercepted Conversations of Yuriy Shpakov (16 September 2016) (Annex 430).

¹⁴⁵ Shevkoplias Statement, paras. 8–9 (Annex 4).

¹⁴⁶ Brown Report, para. 27 (Annex 11).

¹⁴⁷ *Ibid.*

¹⁴⁸ The Vostochniy “microdistrict” is part of the larger Ordzhonikidze district (renamed the Livoberezhnyi district in 2016). The shelling fell not just in the Vostochniy District but also further west, past Olimpiiska Street.

91. DPR militants, acting with substantial Russian support, deployed a barrage of no less than 154 rocket volleys.¹⁴⁹ Thirty civilians died, including one child killed when his home was struck by a projectile, and 118 civilians were injured.¹⁵⁰ In total, the shelling attack damaged at least fifty-three residential buildings, four schools, three day-care centers, eight grocery stores, a post office, two banks, a pharmacy, and two markets.¹⁵¹

92. The U.N. Secretary-General immediately condemned this launching of rockets “indiscriminately into civilian areas.”¹⁵² Two days later, the Under-Secretary-General for Political Affairs concluded that the attackers “knowingly targeted a civilian population” in a city that “lies outside of the immediate conflict zone.”¹⁵³ The Vostochniy neighborhood, and the rockets that fell on it, are depicted in Map 3 below.

¹⁴⁹ See, e.g., Witness Statement of Igor Evhenovych Yanovskyi (31 May 2018), para. 14 [hereinafter, [hereinafter Yanovskyi Statement] (Annex 5); Expert Opinion No. 143, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (3 April 2015), p. 12 (Annex 117).

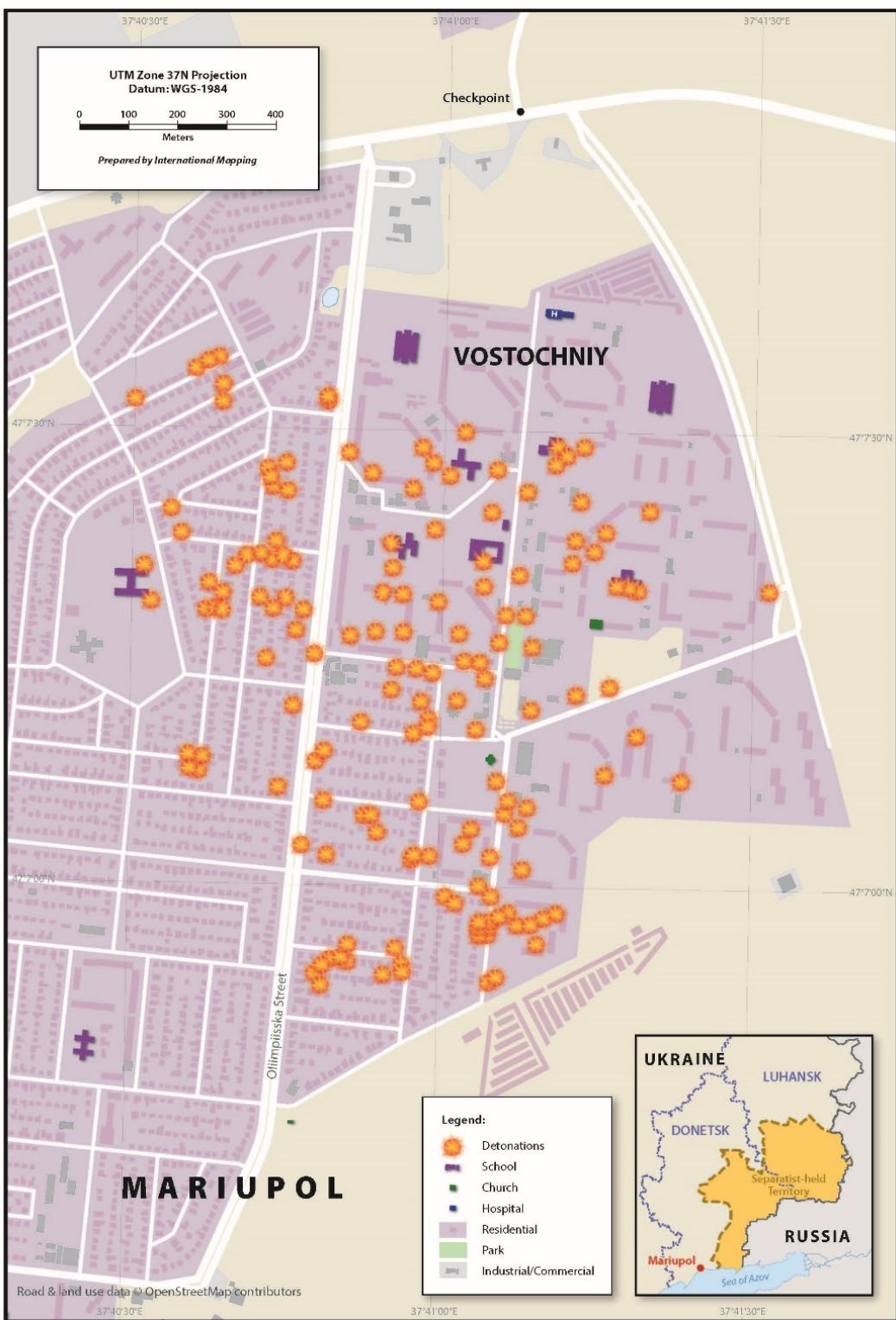
¹⁵⁰ Letter from the Mariupol City Council Healthcare Directorate of Donetsk Region No. 01/133-08-0 to the Deputy Head of the SBU Directorate in Donetsk Region (12 February 2015), p. 15 (Annex 104). OSCE monitors documented multiple impacts on buildings, retail shops, homes and a school. OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015) (Annex 328).

¹⁵¹ Donetsk Region Main Directorate of the Ministry of Internal Affairs of Ukraine, *All Necessary Measures Being Taken to Deal with the Consequences of Militants’ Shelling of Mariupol* (25 January 2015) (Annex 91); Mariupol City Council, *City Mayor Yuri Hotlubey and Donetsk Oblast Public Prosecutor Nikolai Frantovsky Held a Briefing at Which They Described the Current Situation in Mariupol* (video) (24 January 2015) (Annex 553).

¹⁵² U.N. Secretary-General, Statement Attributable to the Spokesman for the Secretary-General on Ukraine (24 January 2015) (Annex 306).

¹⁵³ U.N. Security Council, Official Record, 7368th mtg., U.N. Doc. S/PV.7368 (26 January 2015), p. 2 (statement of Jeffrey Feltman, U.N. Under-Secretary-General for Political Affairs) (Annex 307).

Map 3: Shelling Impacts in the Vostochniy Neighborhood of Mariupol¹⁵⁴



¹⁵⁴ The points of detonation depicted in this map use the underlying data of the investigation team, as documented in contemporaneous crime scene inspection reports. See Yanovsky Statement, para. 14 (Annex 5); Annexes 92, 96-97 (crime scene inspection reports).

93. At 18:00 the day before the attack, DPR member Sergey Ponomarenko (referred to within the DPR by his *nom de guerre* “Terrorist”) told another DPR member, Oleksandr Evdotiy (“Pepel”), another DPR member, to: “F*cking crush it, I f*cking asked you, that one, f*cking Vostochniy.”¹⁵⁵ “Pepel” responded, “I will, I’ll do Vostochniy tonight as well, don’t worry.”¹⁵⁶

94. On 24 January 2015 at approximately 09:15, the attack on the Vostochniy district began with a barrage of Grad rockets.¹⁵⁷ At around 10:36, a DPR lookout named Valeriy Kirsanov reported that the attack hit “on houses, on nine-story buildings, on private residences, the Kievskiy market[.]”¹⁵⁸ Two minutes later at 10:38, Kirsanov gave Ponomarenko a similar report.¹⁵⁹ Less than thirty minutes later at approximately 11:00, another shelling attack struck the Vostochniy neighborhood.¹⁶⁰ Figure 7 depicts a still taken

¹⁵⁵ Yanovsky Statement, para. 16 (Annex 5); Intercepted Conversation between Sergey Ponomarenko and Oleksandr Evdotiy (23 January 2015) (Annex 418).

¹⁵⁶ Intercepted Conversation between Sergey Ponomarenko and Oleksandr Evdotiy (23 January 2015) (Annex 418).

¹⁵⁷ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015) (Annex 328). Many residents who suffered from the shelling attack also testified that the first attack came at around 09:15. See, e.g., Signed Declaration of Olena Demchenko, Witness Interrogation Protocol (24 January 2015), p. 1 (Annex 214); Signed Declaration of Natalya Mutovina, Witness Interrogation Protocol (30 January 2015) (Annex 217).

¹⁵⁸ Intercepted Conversation between Oleksandr Evdotiy and Valeriy Kirsanov (24 January 2015) (Annex 413); Yanovsky Statement, para. 17 (Annex 5).

¹⁵⁹ Intercepted Conversation between Valeriy Kirsanov and Sergey Ponomarenko (24 January 2015) (Annex 414); Yanovsky Statement, para. 17 (Annex 5).

¹⁶⁰ Yanovsky Statement, para. 13 (Annex 5); Video of the shelling of Mariupol (24 January 2015), p. 2 (Annex 697).

from a dashboard camera footage of this 11:00 attack. The OSCE reported additional shelling attacks in the area at 13:02 and 13:21.¹⁶¹

Figure 7¹⁶²



95. OSCE monitors arrived in the Vostochniy neighborhood to investigate this attack, and concluded based on the impact craters that “rockets [used in the attack] originated from a north-easterly direction, in the area of Oktyabr (19 km north-east of Olimpiiska Street),” and “from an easterly direction, in the area of Zaichenko (15 km east of Olimpiiska Street).”¹⁶³ The Ukrainian investigative team also inspected the shell craters and determined based on their impact angles that the attack had been launched from the northeast and east, in the area of Sakhanka and Leninske.¹⁶⁴ Reviewing these analyses,

¹⁶¹ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol (24 January 2015)* (Annex 328).

¹⁶² Yanovskyi Statement, para. 13 (Annex 5); Video of the shelling of Mariupol (24 January 2015), p. 2 (Annex 697).

¹⁶³ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol (24 January 2015)* (Annex 328).

¹⁶⁴ Expert Opinion No. 143, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (3 April 2015), p. 11 (Annex 117); Inspection Report, drafted by Mykhaylo Onyshchenko, Senior Special Investigator at the Investigations Department, Donetsk Regional Directorate of the Security Service of Ukraine (25 January 2015) (Annex 92).

General Brown agrees with their conclusions, and notes that the Ukrainian and OSCE analyses are “consistent.”¹⁶⁵ All the areas identified by the OSCE and the Ukrainian investigators were controlled by the DPR at the time of the attack.¹⁶⁶ Map 4 below depicts the general launch site for the attack.

Map 4: Launch Zone for Attack on the Vostochniy Neighborhood of Mariupol



¹⁶⁵ Brown Report, para. 46 (Annex 11).

¹⁶⁶ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM)*, 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol (24 January 2015) (noting that these areas were “controlled by the ‘Donetsk People’s Republic’ (‘DPR’)” at the time of the attack) (Annex 328); Yanovskyi Statement, para. 15 (Annex 5).

96. The OSCE also determined from its analysis of the shell craters that the attack was committed using multiple launch rocket systems equipped with Grad and Uragan rockets.¹⁶⁷ The Ukrainian investigative team reached the same conclusion based on its analysis of the shell craters and fragments found at the impact sites.¹⁶⁸ General Brown also concludes that “[t]he Mariupol shelling was carried out using BM-21 Grad MLRS firing high explosive rockets.”¹⁶⁹

97. There was no plausible military reason to attack the Vostochniy neighborhood. No Ukrainian Armed Forces (“UAF”) were deployed there at the time of the attack.¹⁷⁰ While a National Guard Battalion had its headquarters in eastern Mariupol, the headquarters was located more than three kilometers south-west of the Eastern district, from the attack.¹⁷¹ The National Guard also had a checkpoint north of the Vostochniy neighborhood, located at the junction of the two main routes running into Mariupol from the east.¹⁷²

¹⁶⁷ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol (24 January 2015)* (Annex 328).

¹⁶⁸ Expert Report No. 143, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (3 April 2015), pp. 10–11 (Annex 117); Expert Opinion No. 142, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (30 March 2015), p. 8 (same) (Annex 115); Brown Report, para. 45 (Annex 11).

¹⁶⁹ Brown Report, para. 56 (Annex 11).

¹⁷⁰ Ministry of Interior of Ukraine, Main Department of the National Guard of Ukraine Letter No. 27/6/2-3553 to the Ministry of Foreign Affairs of Ukraine (31 May 2018), p. 1 (Annex 183).

¹⁷¹ *Ibid.*

¹⁷² *Ibid.* (referring to this checkpoint as chekpoint No. 4014, located at the eastern outskirts of the city of Mariupol, 100 meters east from the intersection of the Olympic Street and the M14 highway). This checkpoint was not damaged in the shelling attack. *Ibid.* p. 2.

98. Soon after the attacks, a resident of Mariupol said that “[o]bviously, everyone in the city is very scared.”¹⁷³ Some were so terrified that they fled the city.¹⁷⁴

99. Yet, DPR members celebrated the terror they had caused. In one call, Kirsanov discussed the shelling attack with Ponomarenko:

Kirsanov: Yeah, Talakovka unleashed a bombardment first thing in the morning.

Ponomarenko: I know.

Kirsanov: And then Vostochniy.

Ponomarenko: Let the f*cking bitches be more afraid.¹⁷⁵

3. The Attack on a Residential Neighborhood in Kramatorsk

100. On 10 February 2015, less than three weeks after the attack on Mariupol, Russia’s proxies used an even more powerful and sophisticated multiple-launch rocket system to bombard a residential neighborhood in the city of Kramatorsk. The DPR attacked Kramatorsk twice, first at 12:30, and again five minutes later at 12:35. Using a BM-30 Smerch system (“Smerch”), the DPR deployed cluster munitions against an area of the city containing apartment buildings, homes, schools, hospitals, and day-care centers, killing seven civilians and seriously injuring twenty-six more, including five children. In the aftermath of the attack, the OSCE Chief Monitor in Ukraine condemned the attack as another instance in which “innocent civilians are bearing the brunt of a violent conflict

¹⁷³ Oleksandr Stashevsky and Dmitry Zaks, *Ukraine Rebels Announce New Offensive as Rockets Kill 30*, AFP (24 January 2015) (Annex 520).

¹⁷⁴ Viktor Savitskaya, *Mariupol Recovers after Shelling*, LB.ua (24 January 2015), p. 4 (reporting that “[s]ince the shelled neighborhood is now without water, gas, electricity and heat, many of its residents have left”) (Annex 556).

¹⁷⁵ Intercepted Conversation between Valeriy Kirsanov and Sergey Ponomarenko (24 January 2015) (emphasis added) (Annex 415); Statement of Authentication, Volodymyr Piven, Senior Investigator, Main Investigation Office, Security Service of Ukraine (5 June 2018) (Annex 185).

characterized by [an] increasing . . . death-toll and indiscriminate shelling.”¹⁷⁶ Both the OSCE and Ukrainian law enforcement reached agreement on the key facts.

101. Kramatorsk is a densely populated city in eastern Ukraine located approximately 50 km northwest of the contact line. Its population was more than 194,000 as of 2015.¹⁷⁷

102. At around 12:30 on 10 February 2015, numerous separate explosive submunitions¹⁷⁸ detonated within seconds of each other.¹⁷⁹ Approximately five minutes later, the DPR launched another attack.¹⁸⁰ The attacks separately hit a residential neighborhood in Kramatorsk as well as the Kramatorsk airport, located two kilometers southeast of the neighborhood. The fifty-eight crater impacts from the cluster submunitions and carrier elements launched in both attacks are depicted in Map 5.¹⁸¹

¹⁷⁶ OSCE, *Statement by OSCE Chief Monitor in Ukraine on Situation in Kramatorsk* (10 February 2015) (Annex 332).

¹⁷⁷ State Statistics Service of Ukraine, Population of Ukraine as of 1 January 2017 (2017), p. 3 (Annex 1110).

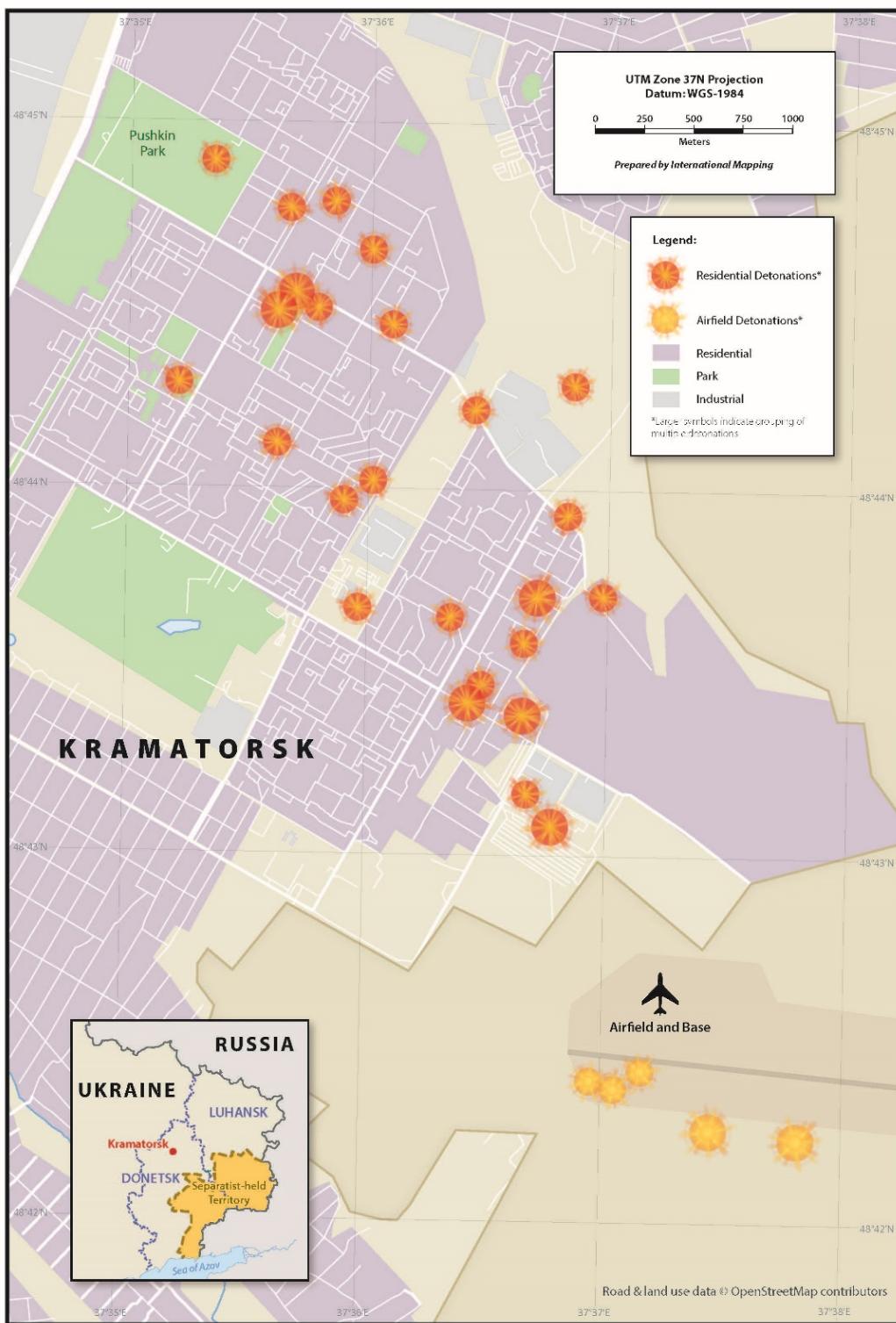
¹⁷⁸ Convention on Cluster Munitions, art. 2(3), 2688 U.N.T.S. 39 (entered into force 1 August 2010) (defining “explosive submunition” as “a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact”).

¹⁷⁹ Record of Site Inspection, drafted by Major of Justice A. Kholin, Senior Investigator with the Operative Unit of the Investigative Department of the Security Service of Ukraine in Donetsk Oblast (12 February 2015) (Annex 105). OSCE monitors, stationed at that time in Kramatorsk, reported that they “heard at [at 12:33] at least four blasts in the surrounding area [and observed] a rocket landing 30 metres from their position behind a building on Kramatorsk Boulevard #50, . . . a second set of unexploded ordnance (UXO) [landing] at Lenin Street #45 . . . [and] a third UXO [landing] on the yard side (north-west) on Dvortsova Street #32.” OSCE, Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Kramatorsk (10 February 2015) (Annex 332).

¹⁸⁰ Witness Statement of Kyrylo Ihorevych Dvorskyi, para. 8 [hereinafter Dvorskyi Statement] (Annex 3).

¹⁸¹ *Ibid.* para. 9; Record of Site Inspection, drafted by Major of Justice A. Kholin, Senior Investigator with the Operative Unit of the Investigative Department of the Security Service of Ukraine in Donetsk Oblast (12 February 2015), pp. 2–21 (Annex 105).

Map 5: Shelling Impacts in Kramatorsk¹⁸²



¹⁸² The points of detonation depicted in this map use the underlying data of the investigation team, as documented in contemporaneous crime scene inspection reports. See Dvorskyi Statement, paras. 6–9 (Annex 3); Annexes 103, 105 (crime scene inspection reports).

103. As in Volnovakha and Mariupol, there was no plausible military reason to attack the residential neighborhood in Kramatorsk. While a police station, military enlistment office, and administrative building of the Border Guard Service were stationed in the neighborhood, none of these government installations were involved in hostilities.¹⁸³ General Brown concludes that these administrative offices are insignificant from a military standpoint, and their presence cannot explain the kind of attack that hit the residential neighborhood in Kramatorsk.¹⁸⁴

104. Some of the rockets targeted the Kramatorsk airport, which did have value as a Ukrainian Armed Forces headquarters.¹⁸⁵ But the airfield was two kilometers away from the residential neighborhood, which was separately attacked.¹⁸⁶ As General Brown concludes, given the sophistication of the Smerch system and the dispersion of the bomblets in the residential neighborhood, it is implausible to suggest that the rockets that struck the residential neighborhood aimed to hit the airfield and missed by two kilometers.¹⁸⁷ Moreover, even if the attack on the airfield simultaneously placed civilians in the line of fire. General Brown explains that when Smerch rockets dispense their bomblets, the “carrier” elements of the rockets (*i.e.*, the pieces that carry the bomblets) continue on their trajectory, falling beyond the target and wreaking “as much, if not more, damage as the sub-munitions.”¹⁸⁸

¹⁸³ Dvorskyi Statement, para. 8 (Annex 3).

¹⁸⁴ Brown Report, para. 67 (Annex 11).

¹⁸⁵ Signed Declaration of Oleksandr Chorniy, Witness Interrogation Protocol (12 February 2015), p. 2 (Annex 219); Signed Declaration of Vitaliy Hrynychuk, Witness Interrogation Protocol (19 August 2015), pp. 1–2 (Annex 237).

¹⁸⁶ Dvorskyi Statement, para. 8 (Annex 3).

¹⁸⁷ Brown Report, paras. 72–73, 76 (Annex 11).

¹⁸⁸ *Ibid.* para. 70.

105. Russia's proxies carried out the attack on Kramatorsk using BM-30 Smerch. OSCE monitors concluded based on their analysis of the impact craters and submunitions that the shelling came from the south-southeast, and that the "strike was fired by one single launcher system - probably a BM-30 Smerch or Tornado" equipped with cluster submunitions.¹⁸⁹ Human Rights Watch and Ukrainian investigators also determined that BM-30 Smerch equipped with cluster munitions were used in the attack, and the Ukrainian investigative team located the launch site as the outskirts of the city of Horlivka, which lies to the south-southeast of Kramatorsk.¹⁹⁰ General Brown likewise concludes that "[t]he Kramatorsk shelling was carried out using BM-30 Smerch MLRS firing high explosive bomblet rockets" based on these forensic analyses, and the long range of BM-30 Smerch¹⁹¹ and concurs that the firing position for the attack was located "within a 10 km radius of the centre of Horlivka."¹⁹² This area was controlled by DPR forces at the time of the attack.¹⁹³

106. The DPR's attack took a heavy toll on civilians. A 13-year old boy who had been playing with two friends in the courtyard of his apartment block at the time of the attack described the chaos in vivid detail:

¹⁸⁹ OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (11 February 2015), p. 1 (Annex 333); OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015* (10 February 2015) (Annex 331).

¹⁹⁰ Expert Opinion No. 193, drafted by Oleksiy Bordunov, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (24 April 2015), pp. 9–10 (finding that "the shells were fired by a Smerch multiple rocket launcher[from] the northeastern outskirts of the town of Horlivka") (Annex 121); Human Rights Watch, *Ukraine: More Civilians Killed in Cluster Munition Attacks* (19 March 2015), p. 7 (noting that its investigators "examined the tail sections of two Smerch rockets, one of which was still standing in the ground, and the remnants of a cargo section from a Smerch cluster munition rocket") (Annex 449).

¹⁹¹ Brown Report, para. 75 (Annex 11).

¹⁹² *Ibid.* para. 65.

¹⁹³ Dvorskyi Statement, para. 11 (Annex 3).

When we heard the first explosion we started running toward the entrance. But then many bombs started exploding all around us. Shrapnel was flying everywhere. I looked back and saw that one of my friends was holding his shoulder. A fragment also pierced my thigh. It wasn't very painful at first, but I felt that my pants became wet from blood. We had to wait for a long time for the ambulance, and my head started spinning.¹⁹⁴

107. The shelling attack hit the downtown of Kramatorsk, causing extensive damage to civilian infrastructure. OSCE monitors documented multiple impacts on apartment buildings,¹⁹⁵ and Human Rights Watch investigated impact areas that included multistory apartment buildings and a hospital.¹⁹⁶ The Ukrainian investigation team recorded explosions near a pharmacy, an apartment building, hair salon, bank, pharmacy, and toy store.¹⁹⁷ In total, the shelling attack damaged fifteen residential buildings, a kindergarten, an art school, and a local hospital.¹⁹⁸

4. Attacks on Civilians in Avdiivka

108. The catastrophic winter of 2015 ended with the Minsk II agreement, just days after the shelling of Kramatorsk. Though Russia's proxies violated the ceasefire, military clashes settled into a more stable pattern. But this did not mean that Ukrainian civilians

¹⁹⁴ Human Rights Watch, *Ukraine: More Civilians Killed in Cluster Munition Attacks* (19 March 2015), p. 6 (Annex 449).

¹⁹⁵ OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015* (10 February 2015) (Annex 331); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (11 February 2015), p. 1 (Annex 333).

¹⁹⁶ Human Rights Watch, *Ukraine: More Civilians Killed in Cluster Munition Attacks* (19 March 2015), p. 6 (Annex 449).

¹⁹⁷ Record of Site Inspection, drafted by Major of Justice A. Kholin, Senior Investigator with the Operative Unit of the Investigative Department of the Security Service of Ukraine in Donetsk Oblast (12 February 2015), pp. 3–4 (Annex 105).

¹⁹⁸ Executive Committee of the Kramatorsk City Council Letter No. F1-28/4812 to the Investigations Department at the Donetsk Regional Directorate of the SBU (26 November 2015), p. 1 (Annex 142).

were safe from attack and intimidation. A striking example is the relentless and indiscriminate shelling of Avdiivka in January and February of 2017.

109. Controlled by the Ukrainian government, and with a population of 35,000, Avdiivka is located close to the contact line, approximately 17 km north-east from DPR-controlled Donetsk.¹⁹⁹ Just as a new U.S. administration took office, Russia's proxies suddenly mounted an all-out offensive on Avdiivka — and on the vulnerable population of that city.²⁰⁰

110. Rather than focus on military objectives, the DPR attacked civilian residences, a kindergarten, a hospital, commercial buildings, and the Avdiivka Coke factory (“Koksokhim”) that provided power to the city. The NGO International Partnership for Human Rights sent an investigation team to Avdiivka, and based on contemporaneous investigations of impact sites, analysis of debris, and interviews of witnesses, identified numerous attacks from DPR-held territory against civilian sites.²⁰¹ Many of these attacks, as well as others, have been documented in OSCE reporting and by Ukrainian investigators, although investigations are at an earlier stage given the relative recency of the attacks. At least five civilians were killed and twelve more were injured in Avdiivka.²⁰²

¹⁹⁹ OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30 (27 January 2017)*, p. 2 (Annex 342).

²⁰⁰ See, e.g., John Wendle, *In Avdiivka, Ukrainians See Surge in Fighting as Putin Testing Trump*, TIME (3 February 2017); see also International Partnership for Human Rights, *Attacks on Civilian Infrastructure in Eastern Ukraine*, (2017) pp. 15, 44–45 [hereinafter IPHR Report] (Annex 454); U.N. Security Council, Official Records, 7876th meeting, U.N. Doc S/PV.7876 (2 February 2017), pp. 2–4 (briefing by Under-Secretary-General Jeffrey Feltman on increased fighting and the humanitarian situation in Avdiivka) (Annex 315).

²⁰¹ IPHR Report, pp. 48–50 (Annex 454).

²⁰² *Ibid.*

111. Throughout this assault, the DPR fired at civilian targets indiscriminately.

For example:

- 27 January: Three civilian residences struck by BM-21 Grad rockets on Zavodska St., in the heart of a residential area far from any arguable military target.²⁰³
- 30 January: Avdiivka Coke Factory (“Koksokhim”), far from any military target, hit by artillery shells, causing power loss throughout the city amid freezing temperatures.²⁰⁴
- 31 January: Civilian apartment building on Komunalna St., near a hospital, struck by Grad rockets, nearly 2 km from any arguable military target.²⁰⁵
- 1 February: One civilian killed, three injured, and 52 civilian residences totally or partially destroyed by Grad rockets, with many of the targets “located over 2km from nearest UAF positions, including (again) Zavodska St.”²⁰⁶

²⁰³ Expert Conclusion No. 77, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Annex 167); Expert Conclusion No. 78, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Annex 168); Expert Conclusion No. 79, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Annex 169); Expert Conclusion No. 80, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Annex 170); Expert Conclusion No. 81, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Annex 171).

²⁰⁴ IPHR Report, p. 48 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (31 January 2017), pp. 3–4 (Annex 343).

²⁰⁵ IPHR Report, p. 48 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (1 February 2017) (Annex 344).

²⁰⁶ IPHR Report, p. 49 (Annex 454); *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30*, p. 2 (2 February 2017) (Annex 1); Extract from Criminal Proceedings No. 12017050140000081 (6 February 2017) (reporting damage to seven buildings on 30 January 2017) (Annex 164); Extract from Criminal Proceedings No. 12017050140000085 (Annex 164); Record of Site Inspection, drafted by N. Protsyk, Senior Investigator (1 February 2017) (Annex 162); Record of Site Inspection, drafted by Y. Ponomarenko, Senior Investigator (1 February 2017) (Annex 163); Record of Site Inspection, drafted by A. Zaychik (1 February 2017) (Annex 161).

- 2 February: Ambulance driver killed at humanitarian aid distribution point, and civilian buildings, residence, a school, and hospital struck by 120 mm mortars.²⁰⁷
 - 3 February: Civilian residence struck by shell, 2.5 km from nearest UAF firing position.²⁰⁸
 - 16 February: One civilian killed and two injured in Grad rocket attack on multiple civilian residences and a commercial building, 1 km from nearest UAF firing position.²⁰⁹
 - 17 February: Two civilians injured and multiple residences struck by eight tank shells, more than 1 km from any arguable military target.²¹⁰
 - 24 February: Civilian residences struck by 122mm mortar shells, more than 1 km from any arguable military target.²¹¹
 - 2 March: Several civilian residences, school, and kindergarten struck by 125mm tank projectiles, more than 1 km from any arguable military target.²¹²
112. Map 6 documents the impact sites of many of these attacks:

²⁰⁷ IPHR Report p. 49 (Annex 454); OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine: Casualties, Damage to Civilian Infrastructure Registered in Donetsk Region Following Fighting* (3 February 2017), p. 1 (Annex 345).

²⁰⁸ IPHR Report, p. 49 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (5 February 2017), p. 4 (Annex 347).

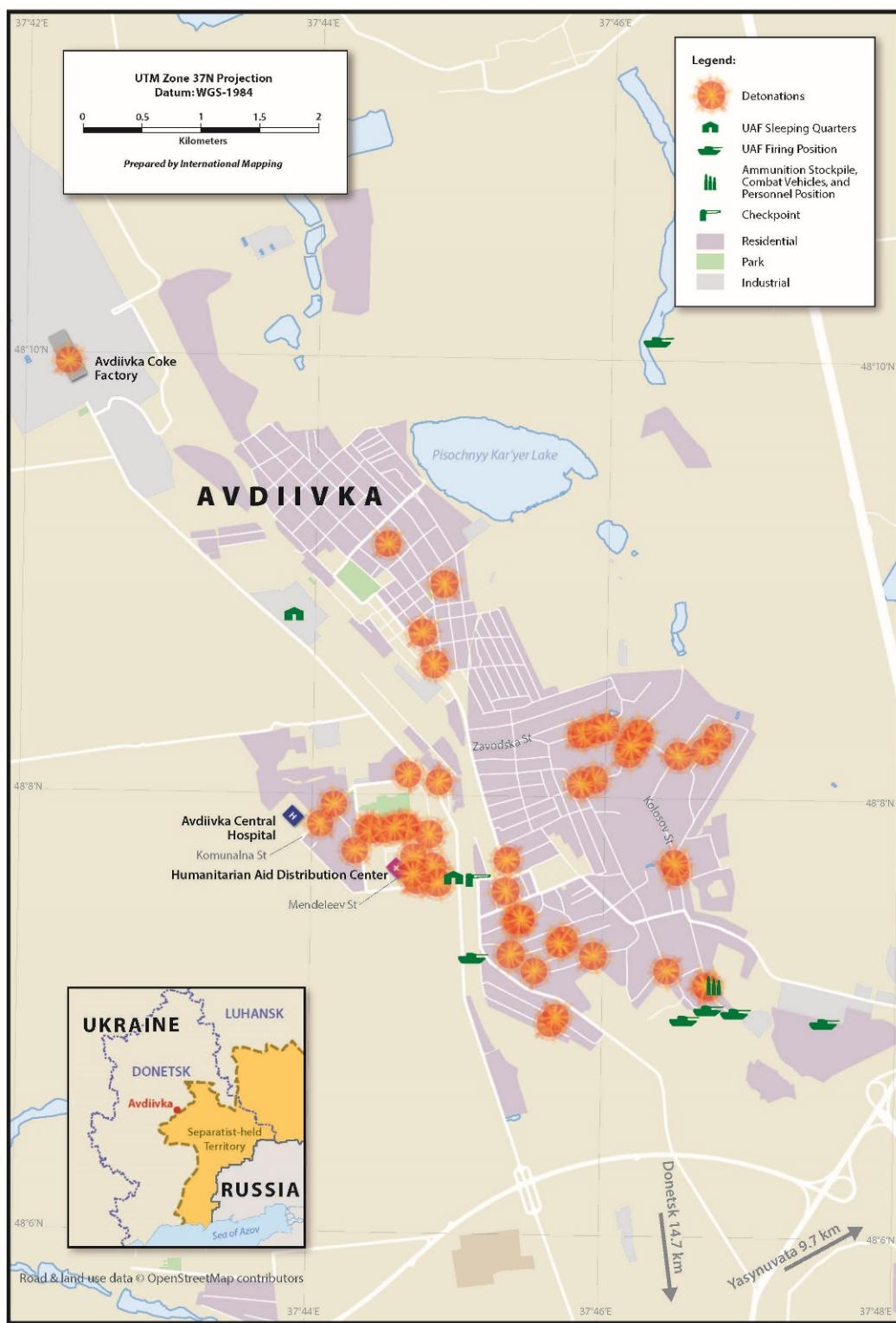
²⁰⁹ IPHR Report, p. 50 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (19 February 2017), p. 3 (Annex 349).

²¹⁰ IPHR Report, p. 50 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (19 February 2017), p. 3 (Annex 349).

²¹¹ IPHR Report, p. 50 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (26 February 2017), p. 3 (Annex 350).

²¹² IPHR Report, p. 50 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (5 March 2017), p. 4 (Annex 351).

Map 6: Shelling Impacts in Avdiivka²¹³



²¹³ The points of detonation and other points of interest depicted in this are based on the investigative reporting of the independent non-governmental organization International Partnership for Human Rights, as well as contemporaneous Ukrainian investigative reports. See IPHR Report, pp. 15, 40–52 (Anex 454); Annexes 167-171 (expert forensic reports).

113. As intended, the relentless and unpredictable pace of these attacks created widespread fear among civilians living in Avdiivka. As Svetlana Zadorozhnyuk, a mother living in Avdiivka put it, “I’m just so tired of all this. . . . The situation now is just terrible, terrible. Right now no one knows what will happen in the next five minutes.”²¹⁴ Hanna Fadeeva, a 76-year-old woman from Avdiivka who was in her apartment when it was struck by a shell at around 04:00 on 31 January, awoke to the sound of glass breaking and the walls of her apartment collapsing. She testified: “After the explosion subsided I saw that I was trapped in my own house and could not get out. The shelling continued and I was very scared when I realized that at that time I could not get out of the building and was trapped.”²¹⁵

114. The terror gripping this city under fire was compounded by the targeting of the Avdiivka Coke Factory in the north of the town, which caused a power outage throughout Avdiivka as it faced -20° Celsius temperatures.²¹⁶ At a briefing to the U.N. Security Council on 2 February, the chief OSCE monitor in Ukraine warned that with the electricity down, “[t]he conditions for civilians who have remained in Avdiivka have reached emergency levels.”²¹⁷ As General Brown concludes, the shelling “was carried out across the city,”

²¹⁴ John Wendle, *Avdiivka, Evacuating Again as Fighting Escalates*, Al Jazeera (8 February 2017) (Annex 594).

²¹⁵ Signed Declaration of Hanna Mykolayva Fadeeva, Witness Interrogation Protocol (15 February 2017), para. 4 (Annex 254).

²¹⁶ IPHR Report, p. 48 (Annex 454); OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30 (31 January 2017)*, pp. 3–4 (Annex 343); Al Jazeera, *Avdiivka Civilians Caught in Crossfire as Clashes Rage* (5 February 2017) (Annex 593).

²¹⁷ U.N. Security Council, Official Records, 7876th meeting, U.N. Doc S/PV.7876 (2 February 2017), p. 4 (Annex 315).

including “many attacks of residential areas located nowhere near military targets.”²¹⁸ In short, the DPR took aim at the entire population of Avdiivka.

D. The Campaign of Bombing Attacks in Ukrainian Cities

115. While Russia’s proxies subjected civilians in Donbas to rocket barrages, other illegal armed groups, including the Kharkiv Partisans, carried out parallel efforts to instill fear in Ukraine’s major cities far from the contact line. In Kharkiv, Ukraine’s second-largest city of 1.4 million people, the “Kharkiv Partisans” and related terror cells orchestrated a campaign of civilian intimidation through bombing attacks, including targeting a patriotic unity march and a crowded nightclub.²¹⁹ Russia’s proxies have sent a strong message that, from Odesa to Kyiv, no one is beyond their reach and civilians who support Ukrainian unity will pay a price.

1. Bombings in Kharkiv

116. A string of bombing attacks in Kharkiv killed at least three civilians, injured nearly 20 more, and also damaged numerous buildings. From July 2014 to May 2015, the OHCHR counted more than 45 separate explosions in the city.²²⁰

117. This string of attacks was carried out under the umbrella of the “Kharkiv Partisans” and similar groups. In reality, these terrorist cells were not united within any coherent organizational structure; the common denominator was simply pro-Russian individuals in direct or indirect contact with Russian government patrons. The main group of extremists styling themselves “Kharkiv Partisans” was founded in the summer of 2014 by

²¹⁸ Brown Report, para. 95 (Annex 11).

²¹⁹ Official Site of Kharkiv City Council, Mayor, Executive Committee, *History of Kharkiv* (27 July 2017) (Annex 653).

²²⁰ OHCHR, *Report on Human Rights Situation in Ukraine* (16 February–15 May 2015), para. 24 (Annex 310).

Oleg Sobchenko and Vadym Monastyrev, both Ukrainian nationals.²²¹ Sobchenko and Monastyrev participated in anti-government protests in Kharkiv in February 2014, and then fled to Belgorod, Russia, just over the Russian border.²²² Once there, they began to receive funding and support from Russian intelligence services.²²³ For example, one Kharkiv Partisan member testified that “Mr. Sobchenko also said that he had people everywhere, and

²²¹ See e.g., Signed Declaration of Aleksandr Bondarenko, Suspect Interrogation Protocol (23 October 2014), pp. 3, 7, 8 (in July 2014, “Oleg” gave him an offer to come to Belgorod to “make some money,” after which he was trained to use explosives, and later in August, “Oleg introduced us as the Kharkiv Partisans”) (Annex 190); Signed Declaration of Yevhen Kaliberda, Suspect Interrogation Protocol (21 October 2014), pp. 4, 6 (in mid-July in Kharkiv, he met “someone called Oleg (Sobchenko, as I subsequently learnt),” who “said that an organization was being set up to protect public order, which would be helping the militia,” and later called them the “Kharkov Partisans”) (Annex 189).

²²² See e.g., Signed Declaration of A. M. Tyshchenko, Suspect Interrogation Protocol (26 December 2015), p. 2 (during the anti-government protests in Kharkiv in February 2014, he “met Mr. Sobchenko,” who “was going and talking to people”) (Annex 17); Signed Declaration of Andrii Baranenko, Suspect Interrogation Protocol (23 October 2014), p. 3 (in August 2014, “Monastyryev told me that it was getting dangerous to be in Kharkov and that I should go to Belgorod”) (Annex 191).

²²³ See e.g., Signed Declaration of A. M. Tyshchenko, Suspect Interrogation Protocol (26 December 2015), p. 2 (during the anti-government protests in Kharkiv in February 2014, he “met Mr. Sobchenko,” who “was going and talking to people”) (Annex 245); Signed Declaration of A. V. Baranenko, Suspect Interrogation Protocol (23 October 2014), p. 3 (in August 2014, “Monastyryev told me that it was getting dangerous to be in Kharkov and that I should go to Belgorod”) (Annex 191).

²²³ See e.g., Signed Declaration of Andrii Baranenko, Suspect Interrogation Protocol (23 October 2014), p. 3 (Monastyrev arranged a meeting for him with “an employee of the Russian FSB”) (Annex 191); Signed Declaration of Yaroslav Zamko, Suspect Interrogation Protocol (26 August 2015), p. 4 (Manastyrev was his “supervisor” of Zamko’s training in a Russian military camp and that Russian military officers also trained him) (Annex 241); Signed Declaration of Vadim Chekhovsky, Suspect Interrogation Protocol (9 May 2015), p. 5 (“Oleg Sobchenko proposed that [he and others] go shooting and on a training exercise . . . being organized officially by the RF authorities”) (Annex 229); Signed Declaration of Kostiantyn Nuzhnenko, Suspect Interrogation Protocol (16 July 2015), p. 2 (after “Monastyrov offered [him] to recruit a group in Ukraine that would engage in sabotage and destabilize the situation in the country,” he “received a call from a man who suggested we meet in Belgorod in the street,” and in that meeting, “presented an ID of a Federal Security Service officer”) (Annex 233); Signed Declaration of Dmytro Kononenko, Suspect Interrogation Protocol (22 February 2016), p. 2 (“Monastyrev, he told me that the financing from the RF special services for subversive activity and other actions aimed at supporting the activities of the ‘Kharkov Partisans’ on the territory of Ukraine had been suspended, and that the handover of weapons through ‘hideouts’ had also been suspended”) (Annex 246).

he himself had FSB handlers[.]”²²⁴ Another testified that “Vadim [Monastyrev] . . . said during our conversation that [a planned bombing] was being monitored by representatives of the Russian special services who could assist me if necessary.”²²⁵ Sobchenko and Manastyrev loosely recruited, arranged training, and supported numerous members to carry out acts of violence in Kharkiv.²²⁶ Six of these significant Kharkiv bombings are shown in the map below.

²²⁴ Signed Declaration of A. M. Tyshchenko, Suspect Interrogation Protocol (26 December 2015), p. 7 (Annex 245).

²²⁵ Signed Declaration of Dmytro Kononenko, Suspect Interrogation Protocol (13 May 2015), p. 2 (Annex 246).

²²⁶ See, e.g., Signed Declaration of Yaroslav Zamko, Suspect Interrogation Protocol (26 August 2015), p. 3 (“Sobchenko and Vadik Monastyryov (senior) offered the six of us to go to a military training camp”) (Annex 241); Signed Declaration of Vadim Chekhovsky, Suspect Interrogation Protocol (9 May 2015), p. 5 (“Oleg Sobchenko proposed that [he and others] go shooting and on a training exercise . . . being organized officially by the RF authorities”) (Annex 229); Signed Declaration of A. M. Tyshchenko, Suspect Interrogation Protocol (26 December 2015), p. 3 (Sobchenko arranged for his training in a Russian military camp) (Annex 245); Signed Declaration of Yevhen Kaliberda, Suspect Interrogation Protocol (21 October 2014), p. 5 (“Sobchenko told me that in addition to the courses that I had arrived for, there were also courses in combat training,” and after which he attended a camp in Russia) (Annex 189).

Map 7: Bombings in Kharkiv



118. One example of this campaign is a string of bombings in November 2014 by Ukrainian national Marina Kovtun. Russian intelligence operatives, who arranged Kovtun's training, introduced her to "Vadim" — Kharkiv Partisans' leader Monastyrev's first name — who "invited [her and her travel companion] to collaborate with them, as they needed our

help and could procure some weapons for us,” to which Kovtun agreed.²²⁷ Once back in Kharkiv, Kovtun told her associates that “weapons had been given to us by ‘Kharkiv Partisans.’”²²⁸ As described further in Chapter 2, Russian officials armed Kovtun with an array of weapons, including three SPM limpet mines, a military weapon developed for use in naval warfare.²²⁹ On the night of 8 November 2014, Kovtun and an accomplice planted the first of these limpet mines in an attempt to destroy the Malyshev Plant, a large factory and major employer in Kharkiv.²³⁰ Kovtun filmed her accomplice planting the mine on her cell phone.²³¹ Though the attack did not achieve its objective of blowing up the plant (the

²²⁷ Signed Declaration of M Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 6–7 (Annex 196). Sworn statements of others working with the Kharkiv Partisans confirm that Kovtun agreed to work with the Kharkiv Partisans. Kharkiv Partisans member Chekhovsky, for example, stated that he attended training in Russia arranged by Sobchenko, and that his colleague had given weapons Chekhovsky had procured to “Marina,” who was “involved in the explosion on the Stena rock pub.” Signed Declaration of V. Chekhovsky, Suspect Interrogation Protocol (9 May 2015), pp. 5–7 (Annex 229).

²²⁸ Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (19 November 2014), p. 2 (Annex 196).

²²⁹ SPM limpet mines are designed to engage and destroy military and transport vehicles, military and industrial equipment, railway cargo trains, and other fortified objects. Expert Conclusion No. 532/2014, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (3 April 2015), p. 34 (“An SPM mine is an anti-object time-fuse incendiary mine intended for destroying movable and stationary items with metal parts, and can be used on land and under water.”) (Annex 116).

²³⁰ Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 8–9 (Annex 196).

²³¹ *Ibid.* p. 9 (“[W]e placed the mine in a cellophane bag and tied a rope to it. Then Vasily pulled out the pin and lowered the mine to the bottom of the pipeline shaft, which was covered with a grill. . . . Meanwhile, I was filming everything on the camera . . .”); Kovtun video of Malyshev Plant bombing (video) (Annex 693). A forensic investigation conformed that fragments collected from the attack site came from an SPM limpet mine. Expert Conclusion No. 557/2014, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (23 March 2015), p. 17 (concluding that “an explosive device, probably a limpet (magnetic) SPM mine (medium limpet mine), equipped as a standard with a VZD-1M fuze, was detonated”) (Annex 112).

pipeline that Kovtun targeted was not, as she believed, running gas into the factory), it did serve as a prelude to more destruction to come.

119. The next evening, 9 November 2014, Kovtun and her accomplice planted the second SPM limpet mine, this time in a crowded nightclub in the city center — the Stena Rock Club, a popular venue for local activists who supported national unity.²³² Kovtun testifies that, at around 21:00, she delivered the armed mine to another Kharkiv Partisan member who placed it in a concealed bag under the counter of the bar at the Stena Rock Club.²³³ The mine exploded at around 21:45, injuring several civilians.²³⁴ Ukrainian forensic experts confirmed that fragments collected from the club came from a SPM limpet mine.²³⁵

²³² Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 8–10 (Annex 196); Signed Declaration of R. Chernenko, Witness Interrogation Protocol (10 November 2014), p. 3 (a bartender at the Stena Rock Club recounting that “an explosion rang out inside the building” that day) (Annex 194); Signed Declaration of M. Ozerov, Witness Interrogation Protocol (10 November 2014), p. (Annex 193); Signed Declaration of Ye. Datsenko, Witness Interrogation Protocol (11 November 2014), p. 2 (stating that the Stena Rock Club was popular with individuals with pro-Ukrainian sentiments) (Annex 195).

²³³ Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 8–10 (Annex 196). One of the victims of the explosion testified he remembered seeing Kovtun’s accomplice sit at the section of the bar where the mine detonated. Signed Declaration of G. Shmorovoz, Witness Interrogation Protocol (17 December 2014), pp. 1–2 (Annex 203); Record of Person Identification from Photographs by Shmoryvoz (17 December 2014) (Annex 81).

²³⁴ Signed Declaration of R. Chernenko, Witness Interrogation Protocol (10 November 2014), p. 3 (recounting the time of the explosion) (Annex 194); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, Based on Information Received as of 18:00 (Kyiv time)* (10 November 2014) (Annex 318).

²³⁵ Expert Opinion No. 532/2014, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (3 April 2015), p. 43 (concluding that “[a]round 21.38 on 11.09.2014, an SPM medium limpet mine with a delayed action VZD-1M fuze was detonated at the Stena bar”) (Annex 116). The next day, Kovtun gave the third SPM limpet mine to the same associate who bombed the Stena Rock Club, who said he intended to bomb the Britannia Hotel. Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 9–10 (Annex 196).

Kovtun admitted that her cell targeted popular pubs in order to “destabilize the situation in Kharkiv.”²³⁶

120. A spate of similar attacks by radical pro-separatist cells likewise advanced the Kharkiv Partisans’ agenda and terrorized the city. For example, three extremists fired a MRO-A rocket-propelled grenade at the regional office of PrivatBank.²³⁷ The same cell went on to fire a MRO-A at a military enlistment office, and detonate an explosive device at the office of “Dia” (“Action”), a pro-unity volunteer organization.²³⁸

121. This wave of violence culminated in the deadly attack on a unity march on 22 February 2015. A cell comprised of Volodymyr Dvornikov, Viktor Tetutskiy, and Sergey Bashlykov — all of whom have confessed to the crime — detonated a military-grade anti-personnel mine in the midst of a peaceful unity march marking the one-year anniversary of the Revolution of Dignity.²³⁹ The day before the march, Dvornikov scouted the downtown march route along Marshal Zhukova Street.²⁴⁰ He returned at 03:00 that night and

²³⁶ Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (16 November 2014), p. 11 (Annex 196).

²³⁷ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), pp. 4–5 (Annex 142); Signed Declaration of M. Rezniakov, Suspect Interrogation Protocol (13 August 2015), p. 6 (Annex 236).

²³⁸ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), pp. 6–7, 11–12 (Annex 142); Signed Declaration of M. Rezniakov, Suspect Interrogation Protocol (13 August 2015), p. 6 (Annex 236); Video published by the Kharkiv Partisans (video) (taking credit for these attacks) (Annex 707).

²³⁹ Signed Declaration of V. Dvornikov, Suspect Interrogation Protocol (26 February 2015), pp. 3–5 (Annex 223); Signed Declaration of S. Bashlykov, Suspect Interrogation Protocol (26 February 2015), pp. 4–5 (Annex 221); Signed Declaration of V. Tetutskiy, Suspect Interrogation Protocol (26 February 2015), pp. 3–6 (Annex 222).

²⁴⁰ Signed Declaration of V. Dvornikov, Suspect Interrogation Protocol (26 February 2015), p. 4 (“During the day on February 21, 2015, I drove my Ford along Prospekt Zhukova in order to scope out the area and find the locations with the largest accumulations of snow, where it would be possible to conceal the mine.”) (Annex 223).

concealed the landmine in a snowbank.²⁴¹ Once the parade began, Dvornikov waited until marchers were near the mine, and then detonated it at approximately 13:15.²⁴² The OSCE, which was monitoring the rally and march, “heard the blast and felt shockwaves from their position 100m away.”²⁴³ OSCE monitors arrived at the scene of the explosion soon after the attack and observed “two dead individuals covered with Ukrainian flags[.]”²⁴⁴ Andriy Sanin, a participant in the rally and march, recounted that “[i]n the first seconds there was panic. Everyone was screaming, running[.]”²⁴⁵ As OSCE and U.N. monitors reported, three civilians were killed, including a 15-year-old boy and a police officer, and 15 more were injured.²⁴⁶

122. The string of bombings committed by the Kharkiv Partisans and other armed groups in 2014 into early 2015 created an atmosphere of fear among civilians. Volodymyr Noskov, a local journalist, reported in February 2015 that “[t]he fear, everyone carries it in

²⁴¹ *Ibid.*; Signed Declaration of S. Bashlykov, Suspect Interrogation Protocol (26 February 2015), pp. 4–5 (Annex 221); Signed Declaration of V. Tetutskiy, Suspect Interrogation Protocol (26 February 2015), pp. 4–5 (Annex 222).

²⁴² Signed Declaration of V. Dvornikov, Suspect Interrogation Protocol (26 February 2015), p. 5 (“I saw people in uniform marching along Prospekt Zhukova, after which I pressed the button to dial the cellphone number 066-887-45-59, thereby setting off the mine that I had planted earlier.”) (Annex 223); Signed Declaration of S. Bashlykov, Suspect Interrogation Protocol (26 February 2015), p. 5 (Annex 221); Signed Declaration of V. Tetutskiy, Suspect Interrogation Protocol (26 February 2015), p. 6 (Annex 222).

²⁴³ OSCE, *Spot Report by Special Monitoring Mission to Ukraine, 22 February 2015: Explosion in Kharkiv at March Commemorating February 2014 pro-Maidan Events* (22 February 2015) (Annex 334).

²⁴⁴ *Ibid.*

²⁴⁵ Simon Shuster, *Meet the Pro-Russian 'Partisans' Waging a Bombing Campaign in Ukraine*, Time (10 April 2015), p. 4 (Annex 571).

²⁴⁶ OHCHR, *Report on the Human Rights Situation in Ukraine* (16 February–15 May 2015), para. 24 (Annex 768); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv time)* (24 February 2015) (Annex 335); OSCE, *Spot Report by Special Monitoring Mission to Ukraine, 22 February 2015: Explosion in Kharkiv at March Commemorating February 2014 Pro-Maidan Events* (22 February 2015) (Annex 334).

their own way. We're getting used to our new conditions. We all understand that this war is not for one year; the physical, moral exhaustion really wears out your body.”²⁴⁷ Other residents of Kharkiv described civilians as constantly on edge, noting that “[p]eople are hiding. They’re sitting and waiting.”²⁴⁸ Vladimir Bondarenko, a furniture restorer, put the toll — and the strategy behind the attacks — perhaps most aptly: “the anxiety raised by the bombings is painful[.] . . . [T]hat’s the whole point of terrorist acts — to bring people to a pitch of fear where they can be easily broken.”²⁴⁹

2. Attempted Assassination of a Ukrainian Member of Parliament in Kyiv

123. Russia’s proxies have taken their campaign to Ukraine’s capital city of Kyiv. In a recent, major plot, Ukrainian nationals working with LPR militants and Russian intelligence operatives planted a car bomb in an attempt to assassinate Anton Gerashchenko, a Ukrainian member of Parliament and outspoken critic of Russian aggression.

124. This plot was led by Andriy Tyhonov, a member of the LPR who worked with Eduard Dobrodeev, an officer of Russia’s military intelligence service (“GRU”).²⁵⁰ Tyhonov

²⁴⁷ Linda Kinstler, *A Ukrainian City Holds Its Breath*, Foreign Policy (20 February 2015), pp. 2–3 (Annex 561).

²⁴⁸ *Ibid.* p. 4.

²⁴⁹ Corey Flintoff, *Bomb Attacks Increase In Ukraine's Second-Largest City, Kharkiv*, NPR (6 April 2015), p. 2 (Annex 570).

²⁵⁰ Witness Statement of Taras Stepanovich Horbatyi (31 May 2018), para. 5 [hereinafter Horbatyi Statement] (Annex 2); Signed Declaration of H. Rizayeva, Witness Interrogation Protocol (14 February 2017), p. 3 (captive of the LPR who saw Tykhonov while in captivity, and stated that “Tykhonov was directly involved in combat operations on the side of the LPR militants as head of a combat unit or one of its leaders”) (Annex 258); Signed Declaration of Oleksiy Andriyenko, Suspect Interrogation Protocol (18 December 2016), pp. 2–3 (Annex 252); Oleksiy Andriyenko Court Testimony (18 December 2016), p. 5 (Annex 261).

recruited three Ukrainian nationals — Oleksiy Andriyenko, Svyatoslav Zhirenko, and Dmytro Jakob — to assassinate Gerashchenko.²⁵¹

125. On 12 December 2016, Andriyenko met with Tyhonov in his apartment in Belgorod, Russia — and recorded their conversation.²⁵² During the meeting, Tyhonov explained that another person “took . . . money” for “the mission [to assassinate Gerashchenko] that . . . the Main Intelligence Directorate is chasing” but had “disappeared,” leaving Tihonov to carry out the mission.²⁵³ In requesting Andriyenko’s assistance, Tyhonov claimed that the assignment was “Putin’s personal wish, for him [Gerashchenko] to quiet down.”²⁵⁴

126. On 19 December 2016, Andrienko’s two accomplices arrived in Kyiv.²⁵⁵ During the following weeks, they surveyed Gerashchenko’s movements in Kyiv and made preparations for the assassination attempt, including by obtaining materials to make a home-made explosive device.²⁵⁶ These conspirators discussed their plans to plant the explosive device in Gerashchenko’s car and detonate it remotely, and then flee to the Russian

²⁵¹ Horbatyi Statement, para. 5 (Annex 2); Signed Declaration of Oleksiy Andriyenko, Suspect Interrogation Protocol (18 December 2016), p. 2 (“When I was in Belgorod, during a conversation which we had while consuming alcoholic beverages, [Tyhonov] told me that he had got an instruction to organize a murder of Anton Gerashchenko.’) (Annex 252); Oleksiy Andriyenko Court Testimony (28 April 2017), pp. 4-5 (Annex 261).

²⁵² Horbatyi Statement, para. 8 (Annex 2); Oleksiy Andriyenko Court Testimony (28 April 2017), p. 15 (Annex 261); Recording of Conversation between Andrienko and Tyhonov (12 December 2016) (Annex 251).

²⁵³ Transcript of Conversation between Andrienko and Tyhonov (12 December 2016), p. 2 (Annex 251); Horbatyi Statement, para. 8 (Annex 2).

²⁵⁴ Transcript of Conversation between Andrienko and Tyhonov (12 December 2016), p. 10 (Annex 251).

²⁵⁵ Horbatyi Statement, para. 7 (Annex 2).

²⁵⁶ *Ibid.*; Security Service of Ukraine Surveillance Video of Zhirenko and Jakob (video) (Annex 706); Record of Incident Scene Inspection, drafted by Major of Justice A. S. Bakhovsky, Senior Special Investigator, Security Service of Ukraine (20 December 2017), p. 3 (Annex 117).

Federation.²⁵⁷ Unbeknownst to his accomplices, however, Andriyenko had reported the assassination plot to the Ukrainian Security Service.²⁵⁸ On 20 January 2017, Ukrainian law enforcement apprehended the would-be assassins when they left their apartment with an explosive device to place in Gerashchenko's car.²⁵⁹

3. Bombings in Odesa

127. Like Kharkiv, Odesa was subjected to a string of bombing attacks against pro-government organizations in 2015.²⁶⁰ But in 2017, pro-separatist operatives targeted pro-Ukrainian individuals for assassination.

128. On 24 July 2017, a car parked in a residential neighborhood in Odesa exploded near the home of Marko Gordiyenko, the head of a pro-Ukrainian unity NGO.²⁶¹ The attack was carried out by two Ukrainian nationals — Myroslav Melnyk and Semen Boytsov — who had been recruited by a man named “Aleksandr” (who also went by “Morpekh”).

129. As Melnyk testified, they were aware that Aleksandr was “a representative of the Russian special services.”²⁶² Aleksandr invited them to attend a military training camp

²⁵⁷ Horbatyi Statement, para. 11 (Annex 2); Intercepted Conversation between Svitaslav Zhirenko and Dmitriy Yakob (20 January 2017) (Annex 706).

²⁵⁸ Signed Declaration of Oleksiy Andriyenko, Suspect Interrogation Protocol (18 December 2016), p. 3 (Annex 252).

²⁵⁹ Horbatyi Statement, paras. 5, 7 (Annex 2); Security Service of Ukraine Surveillance Video of Zhirenko and Jakob (video) (Annex 706).

²⁶⁰ David Stern, *Lethal Divisions Persist in Ukraine's Odessa*, BBC News (2 May 2015) (Annex 573); Corey Flintoff, *Who's Behind a String of Bombings in Ukraine's Black Sea 'Pearl'?*, NPR (1 July 2015) (Annex 706).

²⁶¹ OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30* (24 July 2017), p. 4 (Annex 353); Signed Declaration of Semen Boytsov, Suspect Interrogation Protocol (9 August 2017), pp. 36–37 (Annex 269).

²⁶² Signed Declaration of Myroslav Melnyk, Suspect Interrogation Protocol (9 August 2017), p. 52 (Annex 268).

in Russia.²⁶³ Following their training, Melnyk and Boytsov agreed to “a job in Odesa” in exchange for money.²⁶⁴ Later, Aleksandr “sent [them] a message with the names of the people who had to be assassinated, it was Gordiyenko and another name.”²⁶⁵ On 21 June 2017, the conspirators arrived in Odesa from Donetsk and settled in an apartment that was leased by Aleksandr’s operatives.²⁶⁶ Following Aleksandr’s directions, Melnyk and Boytsov retrieved an antitank mine with attached TNT block charges.²⁶⁷

130. On 24 July 2017, they planted the explosive in a car and parked the car on a street near Gordiyenko’s home.²⁶⁸ At around 10:20, Boytsov detonated the explosive device, just as Gordiyenko was passing by.²⁶⁹ Soon after the explosion, the OSCE visited the scene

²⁶³ Signed Declaration of Semen Boytsov, Suspect Interrogation Protocol (9 August 2017), p. 34 (Annex 269).

²⁶⁴ *Ibid.* pp. 34–36.

²⁶⁵ *Ibid.* pp. 35–36.

²⁶⁶ *Ibid.* p. 36.

²⁶⁷ Expert Conclusion No. 120-B/1818-X, drafted by Odesa Expert Criminal Forensic Research Center, Ministry of Internal Affairs of Ukraine (24 November 2017), p. 5 (Annex 176).

²⁶⁸ Declaration of Semen Boytsov, Suspect Interrogation Protocol (9 August 2017), pp. 36–37 (Annex 269); Signed Declaration of Myroslav Melnyk, Suspect Interrogation Protocol (9 August 2017), p. 55 (Annex 268).

²⁶⁹ Signed Declaration of Semen Boytsov, Suspect Interrogation Protocol (9 August 2017), pp. 36–37 (Annex 269); Signed Declaration of Marko Gordiyenko, Witness Interrogation Protocol (14 September 2017), p. 3 (stating that “[a]t around 10:23” on 24 July 2014, “[a]s I walked past a white VAZ-2101 car parked at the side of the road opposite No 30 vul. Zhukovskogo, Odessa, the said vehicle exploded”) (Annex 270). While Melnyk and Boytsov were supposed to kill Gordienko, they claim that they changed their minds at the last minute, and detonated the explosive when no one was around. Signed Declaration of Myroslav Melnyk, Suspect Interrogation Protocol (9 August 2017), p. 55 (Annex 268); Signed Declaration of Semen Boytsov, Suspect Interrogation Protocol (9 August 2017), p. 37 (Annex 269). This is contradicted by Gordiyenko’s sworn statement. Moreover, Aleksandr (“Morpekh”) did not change his mind to support the bombing attack; Melnyk in fact stated that Aleksandr (“Morpekh”) threatened them when they expressed doubts about the plan: “Morpekh’ clearly told us to plant the bomb regardless of the presence or absence of people, otherwise he threatened that Semen Boytsov and I would turn out to be useless and that no-one would give us assignments, and we may not even be able to return to Donetsk.” Declaration of Myroslav Melnyk, Suspect Interrogation Protocol (9 August 2017), p. 55 (Annex 268).

and observed a destroyed car with parts scattered on both sides of the street, as well as broken windows at a nearby café.²⁷⁰ Gordiyenko fortunately survived, but the message was clear: even in Odesa, and even in 2017, supporters of Ukrainian unity are not safe.

²⁷⁰ OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30 (24 July 2017)*, p. 4 (Annex 353).

Chapter 2. RUSSIAN FINANCING OF TERRORISM IN UKRAINE

131. Russia did not work to stop the acts of terrorism described in Chapter 1. To the contrary, at the same time the United Nations was documenting and reporting on the DPR, LPR, and similar groups' pattern of targeting civilians for violence and intimidation,²⁷¹ the Russian Federation was coordinating a campaign to provide lethal assistance to its proxies. Ignoring the OHCHR's explicit warnings against "transfers of arms and ammunition" given the "substantial risk that they will be used in serious violations or abuses of international human rights or humanitarian law," including through "indiscriminate shelling,"²⁷² powerful weapons capable of causing such civilian harm streamed unabated across the border.

132. This Chapter describes the myriad ways in which the Russian Federation, acting through numerous state officials, not only tolerated but fostered and supported the funding of illegal armed groups in Ukraine, including by providing weapons used for the acts of terrorism recounted in Chapter 1. The most notorious transfer was the delivery to DPR-controlled territory of a Buk TELAR by members of the 53rd Anti-Aircraft Missile Brigade of the Russian Armed Forces ("53rd RAF Brigade") — a transfer which has been painstakingly documented by the Joint Investigation Team. Russian support for terrorism in Ukraine goes much further than a single Buk TELAR, including the supply of the Grad and Smerch multiple-launch rocket systems used to bombard civilian areas, and the explosives used to terrorize Ukrainian cities. This effort includes Russia's establishment of training camps along the Ukraine–Russia border, the extensive direct monetary contributions made to Russia's proxy groups, as well as large-scale fundraising efforts that the Russian Federation has allowed to thrive in its territory.

²⁷¹ See *supra*, Chapter 1, Section A.

²⁷² OHCHR, *Report on the Human Rights Situation in Ukraine: 16 November 2015 to 15 February 2016*, p. 10, para. 24 (Annex 314).

A. The Massive, Russian-Supplied Arsenal of Weapons to Illegal Armed Groups in Ukraine

133. As illegal armed groups in Ukraine began acting in violent opposition to the government, high-level Russian officials orchestrated the supply of weapons and ammunition to these groups. The OHCHR has confirmed the “cross-border inflow of heavy and sophisticated weaponry as well as foreign fighters, including from the Russian Federation.”²⁷³ In 2015, the OHCHR again concluded that “[t]he absence of effective control of the government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups.”²⁷⁴

134. The scale of the “inflow” of weaponry described by the OCHCR is massive. Beginning in the spring of 2014, the UAF began seizing from DPR and LPR armed groups surface-to-air anti-aircraft missiles,²⁷⁵ multiple-launch rocket systems (“MLRS”),²⁷⁶ and

²⁷³ OHCHR, *Report on the Human Rights Situation in Ukraine* (15 December 2014), pp. 3, 17, paras. 1, 86 (Annex 303).

²⁷⁴ OHCHR, *Report on the Human Rights Situation in Ukraine: 16 August to 15 November 2015*, p. 2, para. 2 (Annex 312).

²⁷⁵ On 18 May 2014, the UAF recovered from DPR members a GROM-E2 man-portable, surface-to-air, air-defense missile (which can reach targets up to 11,000 feet) with serial number “1016.” After pictures surfaced of the seized weapon in the press, Georgian authorities notified Ukraine that the weapon had been captured by the RAF from Georgia in 2008, and that it had presumably been in Russian possession since. See Ukrainian Prosecutor’s Office File on GROM-E2 (including Letter of Assistance Request from Georgian Government) (Annex 186). On 6 June 2014, the State Border Service of Ukraine recovered an empty munitions box for a 9M39 Igla man-portable, surface-to-air, air-defense missile in the village of Marynivka, approximately four kilometers from the Russian border. Official Russian-government records found in the container indicated that the missile belonged to the Russian Ministry of Defense, specifically a Russian military base near Rostov-on-Don, Russia. See, e.g., Ukraine State Border Service Letter No. 72/36-994-73 to Ministry of Foreign Affairs, and annexes (dated 10 December 2014) (Annex 406); Interfax Ukraine, *Kyiv Demands Moscow to Explain Use of Igla MANPADs in Donetsk Region*, Kyiv Post (19 June 2014) (Annex 524).

²⁷⁶ See *infra*, Chapter 2, Section C.

main battle tanks, bearing undeniable marks of Russian origin.²⁷⁷ Since the spring of 2014, and even after the shoot-down of Flight MH17 on 17 July 2014, the rate at which Russia has armed these groups has only increased, as corroborated by foreign and international intelligence,²⁷⁸ international organizations,²⁷⁹ non-governmental organizations,²⁸⁰

²⁷⁷ See Tkachenko Statement, paras. 34–36 (Annex 10); Inspection Report by Colonel Roman Stepanovich Kovalchuk, Head of Operational Group of Military Counterintelligence of the Security Service of Ukraine (23 November 2015) (explaining the characteristics of tanks seized from the DPR and LPR that are indicia of Russian origin) (Annex 140); Inspection Report by Colonel Vasyl Vasyliovych Kolodiaznyi, the Deputy Head of Operational Group of Military Counterintelligence of the Security Service of Ukraine (23 November 2015) (same) (Annex 143); Protocol of Inspection by I.V. Nimchenko, Senior Investigator on Special Cases of the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (28 October 2015) (explaining marks indicating Russian origin of BM-21 Grad) (Annex 136).

²⁷⁸ See, e.g., Andrew E. Kramer & Michael R. Gordon, *Russia Sent Tanks to Separatists in Ukraine, U.S. Says*, N.Y. Times (13 June 2014) (Annex 521); NATO Allied Command Operations, *NATO Releases Imagery: Raises Questions on Russia's Role in Providing Tanks to Ukraine* (14 June 2014) (Annex 364); Allied Powers Europe, *New Satellite Imagery Exposes Russian Combat Troops Inside Ukraine* (28 August 2014) (Annex 365).

²⁷⁹ OHCHR, *Report on the Human Rights Situation in Ukraine: 16 August to 15 November 2015*, p. 2, para. 2 (Annex 312).

²⁸⁰ See, e.g., The Atlantic Council, *HIDING IN PLAIN SIGHT* (2015) (Annex 448); International Crisis Group, *EASTERN UKRAINE: A DANGEROUS WINTER*, Europe Report No. 235 (18 December 2014), p. 14 (Annex 447).

investigative journalists,²⁸¹ and photographic and video evidence.²⁸² Eyewitnesses have also observed Russian weapons convoys crossing the Ukraine–Russia border.²⁸³

135. Between September 2014 and December 2015,²⁸⁴ intelligence reports from the Ukrainian Ministry of Defense indicate that Russia supplied the DPR and LPR with hundreds of MLRS, heavy artillery guns, anti-aircraft missile systems, as well as train cars

²⁸¹ Shaun Walker, *Aid Convoy Stops Short of Border as Russian Military Vehicles Enter Ukraine*, The Guardian (15 August 2014) (Annex 538); Roland Oliphant, Kamensk-Shakhtinsky & Tom Parfitt, *Russian Armoured Vehicles And Military Trucks Cross Border Into Ukraine*, The Telegraph (14 August 2014) (Annex 537).

²⁸² See, e.g., 2016 JIT Presentation (Annex 39); The Atlantic Council, HIDING IN PLAIN SIGHT (2015) (Annex 48); James Miller, Pierre Vaux, Catherine A. Fitzpatrick & Michael Weiss, AN INVASION BY ANY OTHER NAME (September 2015) (Annex 450); Security Environment Research Center “Prometheus,” DONBAS IN FLAMES (2017) (Annex 455).

²⁸³ Signed Declaration of Oleksandr Mohilevsky, Witness Interrogation Protocol (22 May 2017) (Annex 264); Signed Declaration of Oleksandr Voytov, Witness Interrogation Protocol (24 April 2017) (Annex 257); Signed Declaration of Roman Melnykov, Witness Interrogation Protocol (27 April 2017) (Annex 260); Signed Declaration of Amonenko Oleksiyovich, Witness Interrogation Protocol (23 April 2017) (Annex 256); Signed Declaration of Yuri Martynovsky, Witness Interrogation Protocol (26 April 2017) (Annex 258); Signed Declaration of Oleksandr Kvartyn, Witness Interrogation Protocol (23 May 2017) (Annex 265); Signed Declaration of Denys Skibin, Witness Interrogation Protocol (21 May 2017) (Annex 262); Signed Declaration of Andriy Yanushevsky, Witness Interrogation Protocol (27 April 2017) (Annex 259).

²⁸⁴ Skubitsky Statement, paras. 22, 39 (Annex 8); Ukrainian Military Intelligence Summary of Cross-Border Weapons Transfers (September 2014 to December 2015) (Annex 74).

and truck loads of ammunition.²⁸⁵ Many of the weapons bore symbols identifying them as property of the Armed Forces of the Russian Federation.²⁸⁶ These Ukrainian government assessments are consistent with the kinds of convoys witnessed by the OSCE in DPR- and

²⁸⁵ Skibitskyi Statement, paras. 22, 39 (Annex 8); Ukrainian Military Intelligence Summary of Cross-Border Weapons Transfers (September 2014 to December 2015) (Annex 74); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/78 (9 January 2015) (Annex 83); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/916 (23 February 2015) (Annex 108); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/712 (13 February 2015) (Annex 106); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/576 (6 February 2015) (Annex 99); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3739 (20 July 2015) (Annex 132); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3588 (10 July 2015) (Annex 131); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3309 (26 June 2015) (Annex 130); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3068 (13 June 2015) (Annex 129); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2917 (5 June 2015) (Annex 128); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2801 (29 May 2015) (Annex 127); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2539 (15 May 2015) (Annex 125); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2430 (9 May 2015) (Annex 124); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2329 (2 May 2015) (Annex 122); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2056 (18 April 2015) (Annex 120); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/1917 (11 April 2015) (Annex 119); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/1640 (28 March 2015) (Annex 114); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/1451 (20 March 2015) (Annex 111); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/1059 (27 February 2015) (Annex 109).

²⁸⁶ Tkachenko Statement, paras. 34–36 (Annex 10); Inspection Report by Colonel Roman Stepanovich Kovalchuk, Head of Operational Group of Military Counterintelligence of the Security Service of Ukraine (23 November 2015) (explaining the characteristics of tanks seized from the DPR and LPR that are indicia of Russian origin) (Annex 140); Inspection Report by Colonel Vasyl Vasyliovych Kolodiazhnyi, the Deputy Head of Operational Group of Military Counterintelligence of the Security Service of Ukraine (23 November 2015) (same) (Annex 143); Protocol of Inspection by I.V. Nimchenko, Senior Investigator on Special Cases of the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (28 October 2015) (explaining marks indicating Russian origin of BM-21 Grad) (Annex 136).

LPR-held territory.²⁸⁷ These weapons included Grad and Smerch MLRS, a TOS-1 Buratino thermobaric heavy flamethrower MLRS,²⁸⁸ and a Buk surface-to-air anti-aircraft missile system.²⁸⁹

136. The Russian Federation has gone to great lengths to conceal these weapons transfers to the DPR and LPR. Russian servicemen and former DPR and LPR members have described how they sanitized Russian weapons and military equipment to destroy RAF markings and other indicia of original Russian ownership, and sometimes even forged UAF markings.²⁹⁰ Russia has not, however, succeeded in concealing its supply of weapons to the DPR and LPR from the world. And as explained in more detail below, these Russian-supplied weapons have been used for horrific acts of terrorism against civilians.

²⁸⁷ OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time)* (22 January 2015), p. 1 (Annex 327); OSCE, *Latest from OSCE Special Monitoring Mission to Ukraine (SMM) based on information received as of 18:00 (Kyiv time)* (30 November 2014), p. 1 (Annex 319); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time)* (9 September 2014), p. 2 (Annex 317).

²⁸⁸ The OSCE confirmed that the DPR acquired a TOS-1 MLRS. See OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 27 September 2015*, p. 4 (Annex 337); Anton Zverev, *OSCE says spots deadly Russian rocket system in Ukraine for first time*, Reuters (2 October 2015) (Annex 581); BBC News, *Ukraine Rebels Have Powerful New Russian-Made Rockets - OSCE* (2 October 2015) (Annex 582).

²⁸⁹ The Joint Investigation Team confirmed that the Russians supplied a Buk surface-to-air anti-aircraft missile on at least one other occasion. See 2016 JIT Presentation (Annex 39).

²⁹⁰ Signed Declaration of Konstantin Kutikov, Suspect Interrogation Protocol (16 March 2016), p. 9 (Annex 247); Signed Declaration of Oleksandr Sachava, Suspect Interrogation Protocol (30 January 2015), pp. 1–3 (Annex 218); Roland Oliphant, *Russian Paratroopers Captured in Ukraine ‘Accidentally Crossed Border’*, The Telegraph (26 August 2014) (Annex 540); Transcript of Video Declaration of Petr Khokhlov, Suspect Interrogation (published 27 August 2014) (Annex 188); The Interpreter Magazine, *We All Knew What We Were Going For and What Could Happen* (English translation of an interview in Novaya Gazeta by Elena Kostyuchenko dated 2 March 2015) (Annex 564); Zoya Lukyanova, *Translator for the DPR: “This is a Performance for the Whole World,”* LB.ua (21 April 2015) (Annex 572); *The Russian Secret Behind Ukraine’s Self-Declared ‘Donetsk Republic’*, France 24 (15 October 2015) (video), mm 00:02:54 (Annex 583).

B. The Russian Buk Anti-Aircraft Missile Used to Destroy Malaysia Airlines Flight 17

137. In the spring and summer of 2014, the Russian Federation escalated this supply of weapons to its proxies in Ukraine, including the transfer of a powerful Buk TELAR. Within hours of the Buk crossing the border into Ukraine, it was used to destroy civilian aircraft Flight MH17. Official reports submitted to this Court by a representative of the Dutch National Police confirm: “The investigation has . . . shown that the Buk TELAR is from the Russian Federation and that it returned to the Russian Federation in the night of 17-18 July 2014.”²⁹¹ Moreover, “there is sufficient evidence that the Buk TELAR in question came from the 53rd Anti-Aircraft Missile Brigade [], which is based in Kursk in the Russian Federation.”²⁹²

138. Between 23 and 25 June 2014, a convoy of the 53rd RAF Brigade transported several military systems, including six Buk TELARs, through western Russia from Kursk to the Millerovo military airbase in Rostov Oblast.²⁹³ The convoy attracted significant local attention.²⁹⁴ Many residents took photographs and videos of the event, and some posted what they witnessed on the Internet.²⁹⁵

²⁹¹ 16 May Dutch National Police Report, p. 1 (Annex 41).

²⁹² Official Report of the Dutch National Police, p. 1 (24 May 2018) (original in Dutch) [hereinafter 24 May Dutch National Police Report] (Annex 42); *see also* Joint Investigation Team, *Narrative conference 24 May 2018*, Openbaar Ministerie (24 May 2018) [hereinafter 2018 JIT Presentation] (Annex 40).

²⁹³ 2018 JIT Presentation (with accompanying video, JIT MH17 Witness Appeal About 53rd Brigade, mm 00:00:40–00:01:00) (Annex 40).

²⁹⁴ See, e.g., Max Vit, *Military Equipment in Stary Oskol*, KaviCom.ru (24 June 2014) (Annex 525).

²⁹⁵ 2018 JIT Presentation (with accompanying video, JIT MH17 Witness Appeal About 53rd Brigade) (Annex 40).

Figure 8²⁹⁶



Image of Buk seen in Russia in the 23–25 June Convoy.

139. Likewise, Russian servicemen published photographs on the Internet. The Joint Investigation Team and Eliot Higgins, Director of the Bellingcat investigative collective, have independently linked the Buk TELAR to the 53rd RAF Brigade through these soldiers.²⁹⁷

140. In addition to confirming the presence of Buk anti-aircraft systems in the convoy, the videos and photos posted contemporaneously by local residents help establish the route of the convoy toward the border. The Joint Investigation Team “compared number plates and other relevant characteristics of the vehicles in the convoy,” analyzed “all visible characteristics of the surroundings of the places that the convoy passed,” and compared the

²⁹⁶ Annex 77; Witness Statement of Eliot Higgins (5 June 2018), paras. 112–14 [hereinafter Higgins Statement] (Annex 9); *see also* 2018 JIT Presentation (with accompanying video, JIT MH17 Witness Appeal About 53rd Brigade, mm 00:02:20–00:02:45) (Annex 40).

²⁹⁷ 24 May Dutch National Police Report, p. 3 (“Soldiers who could be linked to the 53rd [Anti-Aircraft Missile Brigade] through open-source investigation posted messages during and about the convoy. The photos and videos of the convoy show soldiers wearing the uniform of the 53rd [Anti-Aircraft Missile Brigade].”) (Annex 42).

objects to Google Street View in order to “validate every location.”²⁹⁸ Mr. Higgins further elaborates how each of these videos can be “geolocated” (i.e., their location on the map can be pinpointed).²⁹⁹ The route of the convoy through western Russia toward the border can thus be recreated:

²⁹⁸ 24 May Dutch National Police Report, pp. 2–3 (Annex 42).

²⁹⁹ See generally Higgins Statement (Annex 9).

Map 8: Route of the Buk Convoy



141. As local residents and members of the 53rd RAF Brigade were documenting the Buk convoy, others in the international community were monitoring Russia's collection of weapons for illicit transfer into Ukraine. Dutch military intelligence, for example,

reported on 8 April 2015 the arrival of advanced anti-aircraft systems to a collection site in the west of the Russian Federation.³⁰⁰

142. With the Buk positioned near the border, the Russian Federation was ready when its DPR proxies requested more assistance. That call came from Igor Girkin — the former Russian intelligence officer turned DPR leader who had already committed notorious acts of terrorism against Ukrainian civilians.³⁰¹ In a telephone conversation, Girkin requested “air defense” from his Russian patrons.³⁰² Then on 16 July, another DPR member specifically requested to “receive a Buk in the morning.”³⁰³

143. That night, Russians clandestinely transported a Buk from the territory of the Russian Federation into Luhansk oblast in Ukraine.³⁰⁴ An intercepted conversation from 09:22 on 17 July 2014 indicates that the Buk had already crossed “the line” — *i.e.*, the border — by that time:

Caller 1: Did it come in self-propelled mode? Or on a lowbed semitrailer?

Caller 2: It crossed, crossed the line.

Caller 1: Aaaah, and now you brought it on a lowbed semitrailer, yes?

Caller 2: Yes, yes, yes.

³⁰⁰ DSB Report MH17 Crash, Appendix T, p. 138 (attaching as Appendix T the Dutch Review Committee on the Intelligence and Security Services, *Review Report* (8 April 2015)) (Annex 38).

³⁰¹ See *supra* Chapter 1, Section A.

³⁰² See Intercepted Conversation between Igor Girkin, Viktor Anosov, and Mykhaylo Sheremet (8 June 2014) (Annex 391); Confirmation of Authenticity, SSU (Annex 184).

³⁰³ See Intercepted Conversation between “Khmuryi” and “Sanych” (16 June 2014) (Annex 394); Confirmation of Authenticity, SSU (Annex 184); 2016 JIT Presentation (with accompanying video, MH17 Intercepted Call on 16 July 2014 at 19:09 Hours, mm 00:00:27–00:00:30,00:01:05–00:01:07) (Annex 39).

³⁰⁴ Politie, *MH17* (30 March 2015) (video), mm 00:02:00–00:02:25 (Annex 703).

[. . .]

Caller 1: I'll say now where it should go. It will go together with the Vostok tanks.³⁰⁵

144. Another intercepted call from 17 July confirms the delivery of the Buk:

Caller 1: I'm listening to you, Buriatik.

Caller 2: Hello, . . . And where should we unload this beauty, . . . ?

Caller 1: Which one? This one?

Caller 2: Yes, yes, the one I brought with me. I'm already in Donetsk.

Caller 1: The one that I thought about, yes? The one is M?

Caller 2: Yes.

Caller 1: DM.

Caller 2: Yes, yes, yes, yes. Buk.

Caller 1: Oops, BM. Yes, yes, yes. I got it.

Caller 2: Buk, buk, buk.

Caller 1: So, so, so. And is it on whatsit a truck?

Caller 2: Yes, it's on whatsit . . . it needs to be unloaded somewhere in order to hide it.

Caller 1: Is it with a crew?

Caller 2: Yes, it's with a crew.

Caller 1: You don't need to hide it anywhere. It will go there now. Did you understand where?

³⁰⁵ See Intercepted Conversation between "Khmuryi" and "Bibliotekar" (17 July 2014) (Annex 397); Confirmation of Authenticity, SSU (Annex 184); see also 2016 JIT Presentation (with accompanying video, MH17 Animation Regarding the Transport Route and the Launch Site, mm 00:01:30–00:02:20) (Annex 39).

*Caller 2: I understood, but they need at least . . . time so that they had a look at it . . .*³⁰⁶

145. As with its journey within Russia toward the border, the Buk was caught on video and photographed several times as it was transported from Luhansk to the launch site, as documented by the Joint Investigation Team. The Buk was seen multiple times on a Volvo low-loader truck and escorted by a Volkswagen transporter and a UAZ jeep, carrying four missiles under a camouflage net.³⁰⁷

146. At around 08:00 local time on 17 July 2014, the Buk arrived in Yenakiieve, Ukraine.³⁰⁸ The Buk then moved on to Donetsk, where witnesses saw the Buk and posted comments, pictures, and videos on the Internet.³⁰⁹ A still image from one of these videos was published by the magazine *Paris Match*, and the video itself has been analyzed by the Joint Investigation Team.³¹⁰

³⁰⁶ See Intercepted Conversation between “Khmury” and “Buriatik” (17 July 2014) (Annex 398); Confirmation of Authenticity, SSU (Annex 184); Politie, *MH17* (30 March 2015) (video), mm 00:02:39–00:03:35 (Annex 703).

³⁰⁷ 16 May Dutch National Police Report, Annexe 1 pp. 1–3, 4 (number of missiles), 7 (number of missiles), 16 (Dutch investigation conclusions); Annexe 2; Annexe 3 p. 1 (kinds of vehicles in the convoy) (Annex 41); Higgins Statement, paras. 14–86 (Annex 9).

³⁰⁸ 16 May Dutch National Police Report, p. 1 (Annex 41); 2016 JIT Presentation (with accompanying video, *MH17 Animation Regarding the Transport Route and the Launch Site*, mm 00:01:20–00:01:36) (Annex 39).

³⁰⁹ 16 May Dutch National Police Report, p. 1; Annexe 1 pp. 1–3; Annexe 2 (Annex 41); Higgins Statement, paras. 23–27 (Annex 9).

³¹⁰ 16 May Dutch National Police Report, Annexe 2 (Annex 41); Higgins Statement, para. 23–27 (Annex 9).

Figure 9³¹¹



147. Starting at around 11:00 the convoy traveled from Donetsk to Snizhne, passing Makeevka, Zuhres, and Torez.³¹² Several more photographs and videos showed the Buk in these locations.³¹³ For example, a photograph analyzed and validated by the Joint Investigation Team depicted the Buk in Torez at around 12:00 or 12:30.³¹⁴

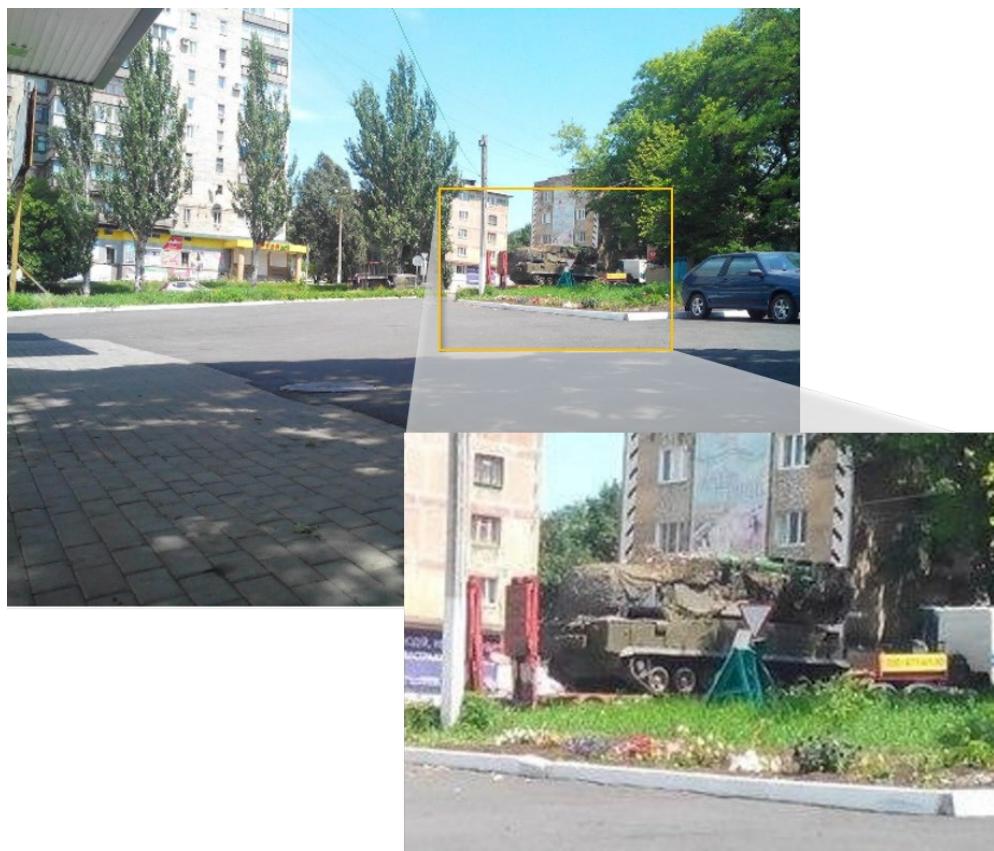
³¹¹ Annexes 534, 692; 16 May Dutch National Police Report, Annexe 2 (photo in original Dutch version, p. 2) (Annex 41); Higgins Statement, paras. 24–27 (Annex 9).

³¹² 16 May Dutch National Police Report, p. 1; Annexe 1 pp. 3–6; Annexes 3–4 (Annex 41); Higgins Statement, paras. 28–54 (Annex 9).

³¹³ 16 May Dutch National Police Report, Annexe 1 pp. 3–6; Annexes 3–4 (Annex 41); Higgins Statement, para. 28–54 (Annex 9).

³¹⁴ The location of that photograph can be confirmed by identifying the landmarks in the picture, including the yellow edifice. See 16 May Dutch National Police Report, Annexe 4 (photo in original Dutch version, pp. 1–2) (Annex 41).

Figure 10³¹⁵



Photograph of the Buk missile launcher in Torez, Ukraine, 17 July 2014 with an enlargement of the Buk seen in the photo.

148. Around 13:00, the Buk arrived in Snizhne, Ukraine.³¹⁶ It then drove on its own to the launch site.³¹⁷ Shortly thereafter, the Buk deployed a missile and shot down Flight MH17, killing 298 civilians, as recounted in Chapter 1, Section B.

149. After the deadly attack on Flight MH17, the Buk was promptly returned to Russia. The Buk went from Snizhne to the Russian border in Luhansk Oblast, passing

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*, Annexe 1 pp. 6–16; Annexe 5–6; Higgins Statement, paras. 48–54 (Annex 9).

³¹⁷ 16 May Dutch National Police Report, p. 1; Annexe 1 pp. 8–9, 16 (Dutch investigation conclusions) (Annex 41); Higgins Statement, paras. 49–54 (Annex 9).

Krasniy Lutch and Debaltsevo.³¹⁸ An intercepted conversation indicates that, at 21:32 on 17 July, the Buk passed a checkpoint in Snizhne in Ukraine³¹⁹

150. On 18 July, at around 04:00 or 05:00, the Volvo truck transporting the Buk was witnessed in Luhansk, Ukraine, heading in the direction of Krasnodon/Sjeverne and to the Russian border.³²⁰ A video shows the Buk in Luhansk, missing a missile.³²¹ Despite Russian claims — based on a doctored version of the video — both the Joint Investigation Team and Bellingcat have demonstrated the video's location in Luhansk.³²²

³¹⁸ 16 May Dutch National Police Report, p. 1 (Annex 41).

³¹⁹ Intercepted Conversation between “Krot” and “Ryazan” (17 July 2014) (Annex 395); Confirmation of Authenticity, SSU (Annex 184); Politie, *MH17* (30 Mar. 2015) (video), mm 00:05:55–00:06:25 (Annex 703).

³²⁰ 16 May Dutch National Police Report, p. 1 (Annex 41); 2016 JIT Presentation (with accompanying video, *MH17 Animation Regarding the Transport Route and the Launch Site*, mm 00:10:15–00:10:26) (Annex 39); Higgins Statement, paras. 64–86 (Annex 9).

³²¹ 16 May Dutch National Police Report, Annexe 7 (Annex 41); 2016 JIT Presentation (with accompanying video, *MH17 Animation Regarding the Transport Route and the Launch Site*, mm 00:10:15–00:10:32) (Annex 39); Higgins Statement, paras. 64–86 (Annex 9).

³²² 16 May Dutch National Police Report, Annexe 7 (photo in original Dutch version, p. 2) (Annex 41); 2016 JIT Presentation (with accompanying video, *MH17 Animation Regarding the Transport Route and the Launch Site*, mm 00:10:15–00:10:32) (Annex 39); Higgins Statement, paras. 64–86 (Annex 9).

Figure 11³²³



151. At around 08:00, another intercepted conversation shows that the Buk left Ukraine and crossed the border into Russia:

Caller 1: They brought the vehicle up to the crossroad, left it there, the lads went on themselves. . . So the vehicle has left in the correct direction and arrived successfully. . . The vehicle is in Russia.³²⁴

152. The Joint Investigation Team has “compared several images made along the way this BUK-TELAR traveled on 23, 24 and 25 June 2014” in Russia, to the “footage of 17 and 18 July 2014” of the Buk in Ukraine. Based on this comparison, checked against numerous other images of different Buk missile systems, the investigators conclusively established that the Buk in Russia and the one in Ukraine share the same “fingerprint.”³²⁵ Specifically, investigators identified seven distinct common features on the images:

1. On the left side of the Buk TELAR, in the middle section: a white mark consisting of a circle with a cross in the middle. This is presumed to be a centre-of-gravity marking, which is applied on these types of vehicles when they are transported.

³²³ Annex 621; 16 May Dutch National Police Report, Annexe 7 (photo in original Dutch version, pp. 1–2) (Annex 41); Higgins Statement, paras. 64–86 (Annex 9).

³²⁴ Intercepted Conversation between “Khmuryi” and “Krot” (18 July 2014) (Annex 399); Confirmation of Authenticity, SSU (Annex 184); see also 2016 JIT Presentation (with accompanying video, MH17 Animation Regarding the Transport Route and the Launch Site, mm 00:10:45–00:12:11) (Annex 39).

³²⁵ 24 May Dutch National Police Report, p. 1 (“The Buk TELAR that was filmed and photographed on 17 and 18 July 2014 was found to have the same unique combination of distinctive characteristics as a specific Buk TELAR that was part of a convoy of the 53rd [Anti-Aircraft Missile Brigade] on 23, 24 and 25 June 2014 in the Russian Federation.”) (Annex 42); 2018 JIT Presentation (with accompanying video, JIT MH17 Witness Appeal About 53rd Brigade, mm 00:05:40–00:06:30) (Annex 40).

2. On the left side of the Buk TELAR, in the middle section: a white marking consisting of a series of characters, starting with an 'H' (the Cyrillic 'N') and followed by, at least, the numeral 2 (twice) and then two illegible digits. This mark is applied on these types of vehicle when they are transported by train and refers to the degree of overloading of the vehicle in relation to the wagon that it is on.
3. On the left side of the Buk TELAR, in the middle section: parts and contours of the tactical vehicle number. This number, which normally consists of 3 digits, indicates the position of the vehicle within the brigade.
4. On the left side of the Buk TELAR, on the rubber side skirt: a white spot.
5. On the right side of the undercarriage of the Buk TELAR: a combination of wheels, where all the wheels except the second one have spokes.
6. On the right side of the Buk TELAR, in the middle section: a space between the various parts of the rubber side skirt.
7. On the right side of the Buk TELAR, on the rubber side skirt: a white mark.³²⁶

153. A video released by the Joint Investigation Team vividly illustrates that the Buk that was seen in Russia in June 2014, and the Buk that was seen in Ukraine in July 2014 on its way to down Flight MH17, are one and the same. That video is provided as Annex 40.

³²⁶ 24 May Dutch National Police Report, p. 2 (Annex 42); 2018 JIT Presentation (Annex 40). The only difference between the Buk TELAR seen in Ukraine on 17–18 July and the Buk TELAR seen in Russia on 23–25 June was the tactical vehicle number. As the official report of the Dutch National Police explains: “The photos and video from Ukraine depict only traces of this number. But these traces are perfectly consistent with the marks from the tactical vehicle number, which are mostly legible in the footage of the ‘3X2’ from the Russian Federation. It is common practice to remove or paint over a tactical vehicle number when a Buk TELAR is operationally deployed.” 24 May Dutch National Police Report, p. 2 (Annex 42).

Figure 12³²⁷



Stills from Joint Investigation Team Video. Right: Image of the *Buk* seen in Alekseyevka, Russia in the 23–25 June convoy, with distinct markings highlighted. **Left:** Image of the *Buk* seen in Makeevka, Ukraine in the 17–18 July convoy, with the same distinct markings highlighted.

154. The conclusion is inescapable: the *Buk* TELAR that shot down Flight MH17 came from Russia, specifically the 53rd Anti-Aircraft Missile Brigade of the Russian Armed Forces.

C. The Russian “Grad” and “Smerch” Multiple-Launch Rocket Systems Used to Shell Ukrainian Civilians

155. One of the most potent weapons Russia’s proxies have used in their campaign of terrorism in Ukraine has been multiple-launch rocket systems, a type of weapon that can be used — and has been used by the DPR — to indiscriminately bombard civilian targets and sow fear among civilian populations.

156. Russian military officials began supplying the DPR and LPR with multiple-launch rocket systems at least as early as June 2014, and these transfers continued throughout the remainder of 2014 and into summer 2015. Multiple DPR and LPR fighters

³²⁷ 2018 JIT Presentation, mm 00:07:45–00:08:00 (Annex 40).

have admitted that they received or witnessed the receipt of these weapons systems from Russia.³²⁸ Ukraine has also documented numerous specific transfers, including:

- On 13 June 2014, the UAF captured a BM-21 Grad near the town of Dobropillia in the Donetsk Oblast.³²⁹ The weapon exhibited numerous indicia of originating from the 18th Separate Motorized Rifle Brigade of the 58th Army of the South Military District of the Russian Federation.³³⁰ For example, the doors of the MLRS were emblazoned with that Brigade's tactical symbol (a rhombus inside of a rectangle).³³¹
- On 5 July 2014, a Lieutenant Colonel of the Ukrainian Security Service observed a convoy including Grads cross into Ukrainian territory in Izvaryne.³³²
- On 15 July 2014, outside of the border village of Koshrne, Ukraine government agents witnessed five Grad MLRS arrive from the Russian Federation under the cover of darkness.³³³ One week later, on 22 July 2014, agents saw fourteen Grad MLRS arrive from Russia in the same area.³³⁴

³²⁸ See, e.g., Signed Declaration of Oleg Stemasov, Suspect Interrogation Protocol (9 December 2014), p. 8 (Annex 207); Signed Declaration of Igor Koval, Suspect Interrogation Testimony (9 June 2015), p. 3 (Annex 231).

³²⁹ Tkachenko Statement, paras. 27–29 (Annex 10); Protocol of Inspection by I.V. Nimchenko, Senior Investigator on Special Cases of the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (28 October 2015) (explaining marks indicating Russian origin of BM-21 Grad) (Annex 136).

³³⁰ Tkachenko Statement, paras. 27–29 (Annex 10); Protocol of Inspection by I.V. Nimchenko, Senior Investigator on Special Cases of the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (28 October 2015) (explaining marks indicating Russian origin of BM-21 Grad) (Annex 136).

³³¹ The Grad also contained a shelling chart with a seal of the military unit "27777 58 A" (the unit number of the 18th Separate Motorized Rifle Brigade of the 58th Army of the South Military District of the Russian Federation) and various other indicia of Russian origin. Tkachenko Statement, paras. 27–29 (Annex 10); Protocol of Inspection by I.V. Nimchenko, Senior Investigator on Special Cases of the Main Military Prosecutor's Office, Prosecutor General's Office of Ukraine (28 October 2015) (explaining marks indicating Russian origin of BM-21 Grad) (Annex 136).

³³² Krasnodon Municipal District Office of the Luhansk Oblast Directorate of the Security Service of Ukraine Letter No. 63/32/233 (24 July 2014) (Annex 65).

³³³ Administration of the State Border Guard Service of Ukraine Letter No. 55/2208 (10 December 2014), p. 3 (Annex 80).

³³⁴ *Ibid.*, p. 4.

- In August 2014, a detained Ukrainian servicemen witnessed the supply of Grads to LPR forces in the weeks following his capture.³³⁵
 - In September 2014, 12 Grads were transferred from Russia to near the border villages of Dibrivka and Novoazovs'k.³³⁶ A former DPR member, Oleg Stemasov, acknowledged that at the same time, his battalion received from Russia at least six Grads and four BM-27 Uragan systems.³³⁷
 - At the end of October 2014, Ukrainian agents observed the delivery of 58 more Grads from Russia to the DPR in the towns of Uspenka, Gukova, Izvaryne, and Dibrivky.³³⁸
 - By January 2015, the DPR and LPR possessed advanced MLRS that the UAF does not possess (and could only have come from Russia), such as the 2B26 "Grad-K."³³⁹
 - On 23–24 January 2015, Ukrainian intelligence verified that 40 Grads entered Ukrainian territory in Kusnitsy in the direction of Novoazovsk, originating from a MLRS regiment of the Russian army.³⁴⁰
 - From February 2015 through the end of July 2015, more than one hundred additional MLRS arrived from Russia.³⁴¹
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³³⁵ Signed Declaration of Roman Cheremsky, Witness Interrogation Protocol (undated), pp. 3–4 (Annex 271).

³³⁶ Skibitskyi Statement, para. 39 (Annex 8); Ukrainian Military Intelligence Summary of Cross-Border Weapons Transfers (September 2014 to December 2015) (Annex 74).

³³⁷ Signed Declaration of Oleg Stemasov, Suspect Interrogation Protocol (9 December 2014), p. 8 (Annex 207).

³³⁸ Skibitskyi Statement, para. 39 (Annex 8); Ukrainian Military Intelligence Summary of Cross-Border Weapons Transfers (September 2014 to December 2015) (Annex 74). Eyewitness residents in local border villages confirm that Grad MLRS continued arriving from Russian territory through the end of the 2014. Signed Declaration of Oleksandr Mohilevsky, Witness Interrogation Protocol (22 May 2017) (Annex 264); Signed Declaration of Andriy Yanushevsky, Witness Interrogation Protocol (27 April 2017) (Annex 259).

³³⁹ Atlantic Council, HIDING IN PLAIN SIGHT, p. 21 (Annex 448); Witness Statement of Ivan Gavryliuk (2 June 2018), paras. 22–23 [hereinafter Gavryliuk Statement] (Annex 1).

³⁴⁰ Skibitskyi Statement, para. 27 (Annex 8); Intelligence Briefing from the Main Intelligence Directorate of the Ukrainian Ministry of Defense No. 222/3D/9010203 (25 January 2015 09:00) (Annex 93).

³⁴¹ See Annexes 83, 99, 106, 108, 109, 111, 114, 119, 120, 122, 124, 125, 127, 120–132.

157. By summer 2016, the DPR and LPR had amassed a significant arsenal of MLRS. In August 2016 alone, the OSCE observed at least sixty-eight MLRS under DPR or LPR control.³⁴² In all likelihood, this vastly underestimates the number of MLRS that the DPR and LPR controlled at that time, as both groups have blocked OSCE monitors and hidden weapons from inspection.³⁴³ Between September 2016 and December 2016, Russia delivered dozens of additional MLRS to the armed groups in eastern Ukraine, and into 2018 continued to provide thousands of units of Grad and Smerch rockets to the DPR and LPR.³⁴⁴

158. This pattern of Russian supply of multiple-launch rocket systems includes examples tied to acts of terrorism against Ukrainian civilians.

³⁴² OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 9 August 2016* (two Grads in Luhansk) (Annex 338); Statement of Alexander Hug, Deputy Chief Monitor of the OSCE SMM (19 August 2016), 00:03:02 (video) (47 MLRS in Muisyk) (Annex 341); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 12 August 2016* (four Grads in Khrustalnyi, formerly Krasnyi Luch) (Annex 339); OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 14 August 2016* (15 Grads in Donetsk) (Annex 340).

³⁴³ OSCE, THEMATIC REPORT: RESTRICTION OF SMM'S FREEDOM OF MOVEMENT AND OTHER IMPEDIMENTS TO FULFILMENT OF ITS MANDATE (January to June 2017) (Annex 352); Intercepted Conversations of Maxim Vlasov (23–24 January 2015), p. 26 (Annex 408); Yanovskyi Statement, para. 36 (Annex 5). The DPR and LPR continued to receive substantial numbers of MLRS after this point.

³⁴⁴ Skibitskyi Statement, para. 20, 39 (Annex 8); Ukrainian Military Intelligence Summary of Cross-Border Weapons Transfers (September 2017 to December 2017) (Annex 175); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/2917 (5 June 2015) (Annex 128); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3068 (13 June 2015) (Annex 129); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3309 (26 June 2015) (Annex 130); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3588 (10 July 2015) (Annex 131); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/3739 (20 July 2015) (Annex 132); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/576 (6 February 2015) (Annex 99); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/712 (13 February 2015) (Annex 106); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/78 (9 January 2015) (Annex 83); Administrative Directorate of the General Staff of the Armed Forces of Ukraine Letter No. 300/1/C/916 (23 February 2015) (Annex 108).

159. In the days immediately leading up to the 13 January 2015 attack against Volnovakha, for example, there was a documented increase of cross-border MLRS transfers from Russia to Ukraine.³⁴⁵ By 11 January, the DPR had deployed concentrated battalions to the area.³⁴⁶ One eyewitness testified that on 13 January, the day of the attack, he saw three BM-21 Grads with insignia of the DPR's Oplot battalion enter the village of Elenovka through a DPR checkpoint at around 12:00, and then travel towards Dokuchayevsk, the launch site of the attack.³⁴⁷

160. There is also compelling evidence that *after* the shelling of civilians on Volnovakha, members of the Russian Armed Forces supplied more BM-21 Grads, which were used to shell Mariupol. Early in the morning of 24 January 2015, a DPR member was dispatched to the border to meet the "guests."³⁴⁸ In a series of conversations, DPR members reported on the path of the convoy from the border, specifically mentioning the border town of Kuznetsy and, at 08:10, their arrival in Bezimenne, just a few kilometers from the launch area.³⁴⁹ The route of the Grad convoy can be recreated based on the intercepted conversations tracking its progress:

³⁴⁵ Skibitskyi Statement, paras. 23–25 (Annex 8).

³⁴⁶ *Ibid.*

³⁴⁷ Signed Declaration of Oleksandr Pavlenko, Witness Interrogation Protocol (23 January 2015) (Annex 209).

³⁴⁸ Intercepted Conversations of Maxim Vlasov (23–24 January 2015), p. 6 (Annex 408); Yanovskyi Statement, paras. 26-27 (Annex 5).

³⁴⁹ Intercepted Conversations of Maxim Vlasov (23–24 January 2015), p. 8 (Annex 408); Yanovskyi Statement, para. 29 (Annex 5).

Map 9: Route of the BM-21 Grad Convoy³⁵⁰



161. The operation to supply Grad systems for use against Mariupol involved Major-General Stepan Yaroshchuk, the Commander-In-Chief of the Rocket Forces and Artillery of the Russian Armed Forces Southern Military District. Around 14:00, after the shelling, Major-General Yaroschuk called a Russian colonel who was advising the DPR with a warning to “[l]et them leave somewhere.”³⁵¹ Just eight minutes after that call, DPR members discussed “hid[ing] all the vehicles” because “the OSCE mission is coming.”³⁵² By the early

³⁵⁰ The underlying data points for Map 9 are based on the intercepted conversations referenced above and the calculated launch zone described in the report of General Brown. See Intercepted Conversations of Maxim Vlasov (23–24 January 2015), pp. 6–8 (Annex 408); Yanovskyi Statement, paras. 28–31 (Annex 5); Brown Report, para. 65 (Annex 11).

³⁵¹ Intercepted Conversation Between Maxim Vlasov and DPR Advisor Tsapliuk (24 January 2015) (Annex 408); Yanovskyi Statement, para. 36 (Annex 5).

³⁵² Intercepted Conversations of Maxim Vlasov (23–24 January 2015), p. 17 (Annex 408); Yanovskyi Statement, para. 36 (Annex 5).

evening of 24 January, the Grad convoy arrived back at the border town of Kuznetsy for its return to Russia.³⁵³ Russian military officials also supplied the more sophisticated MLRS — the BM-30 9K58 Smerch — that its proxies deployed against a residential neighborhood in Kramatorsk.³⁵⁴ Satellite imagery shows a collection site for Smerch systems in Rostov oblast just 6 kilometers from the Ukraine-Russian border.³⁵⁵ These images reveal a noticeable, temporary reduction in Smerch systems in February 2015, coinciding with the Kramatorsk shelling.³⁵⁶ Moreover, undercover agents reported on the transfers of Smerch systems to Ukrainian territory, including shortly before the attack.³⁵⁷

D. The Russian Explosives Used to Bomb Ukrainian Cities

162. Russian military and intelligence operatives also provided pro-separatist individuals and groups with explosives, far away from any conflict zone. These explosives were used in a campaign of terrorist acts, both completed and attempted, against innocent civilians and infrastructure.

163. From Kharkiv to Kyiv to Odesa, Russian involvement in these bombing attacks fit a striking pattern. The perpetrators communicated with Russian intelligence agents based in Russia, most in Belgorod. Then they would confirm their willingness to

³⁵³ Intercepted Conversations of Maxim Vlasov (23–24 January 2015), p. 26 (Annex 408); Yanovskyi Statement, paras. 37-40 (Annex 5).

³⁵⁴ See Chapter 1, Section C(2) (discussing the expert crater analysis that determined the attack used Smerch MLRS).

³⁵⁵ Skibitskyi Statement, paras. 29–33 (Annex 8).

³⁵⁶ *Ibid.* Ukraine Main Directorate of Intelligence Letter No. 222/4D/535 (17 May 2018) (attaching Intelligence Briefing from the Main Intelligence Directorate of the Ukrainian Ministry of Defense No. 222/3D/90/09 (2 January 2015 at 9:00)) (Annex 182).

³⁵⁷ Skibitskyi Statement, paras. 34–37 (Annex 8). It is also impossible for the Smerch used to attack Kramatorsk to have come from anywhere but Russia; Ukraine has not lost any of these valuable systems to any illegal groups operating in Ukraine. All of its Smerch systems are accounted for. Gavryliuk Statement, paras. 19–21 (Annex 1).

carry out bombing attacks in Ukraine. And the Russian intelligence officers would arrange for the perpetrators to receive explosives, money, or both. Several witnesses, for example, confirm the Kharkiv Partisans' relationship with Russian intelligence, including its "FSB handlers,"³⁵⁸ and the practice of "RF special services" arranging the "handover of weapons through 'hideouts.'"³⁵⁹

164. This pattern is visible in the specific terrorist acts recounted in Chapter 1. Volodymyr Dvornikov, the perpetrator of the Kharkiv unity march bombing, told Russian intelligence officers in Belgorod he was willing to carry out bombings in Kharkiv.³⁶⁰ Dvornikov's Russian collaborators offered to help, and FSB officers arranged for a MON-100 antipersonnel mine to be placed at a "dead drop" location in Kharkiv.³⁶¹ Once Dvornikov learned of the planned unity march, he emailed the FSB officers and asked how much they would pay him to bomb the march.³⁶² They agreed to pay him 10,000 USD.³⁶³

165. Russian intelligence officers similarly supplied the weapons that Marina Kovtun used in her bombing spree, including the attack on the crowded Stena Rock Club. After training at a Russian camp, Kovtun was introduced to Vadym Monystarev, a leader of the Kharkiv Partisans with close ties to Russian intelligence agents, who offered to "procure

³⁵⁸ Signed Declaration of A. M. Tyshchenko, Suspect Interrogation Protocol (26 December 2015), p. 7 (Annex 17).

³⁵⁹ Signed Declaration of Dmytro Kononenko, Suspect Interrogation Protocol (22 February 2016), p. 2 ("Monastyrev, he told me that the financing from the RF special services for subversive activity and other actions aimed at supporting the activities of the 'Kharkov Partisans' on the territory of Ukraine had been suspended, and that the handover of weapons through 'hideouts' had also been suspended") (Annex 246).

³⁶⁰ Signed Declaration of Volodymyr Dvornikov, Suspect Interrogation Protocol (26 February 2015), pp. 2–3 (Annex 223).

³⁶¹ *Ibid.* p. 3.

³⁶² *Ibid.*

³⁶³ *Ibid.*

[her] weapons.”³⁶⁴ The assault rifle seized from Kovtun had specific markings allowing it to be traced to Crimea, and thus taken by Russia after its invasion.³⁶⁵ And while the serial number on Kovtun’s SPM mines were no longer visible after detonation, just weeks later Ukrainian authorities recovered an SPM mine near Kharkiv with Russian markings.³⁶⁶

166. Russian intelligence officers also provided weapons to the terrorists that bombed PrivatBank offices and a military enlistment office.³⁶⁷ One of the perpetrators testified that his Russian collaborators offered to provide weapons,³⁶⁸ including rocket-propelled flamethrowers, and deliver them to a meeting point at the Ukraine–Russia border near Belgorod.³⁶⁹ Maksym Mykolaichyk, the Ukrainian man who arranged for the

³⁶⁴ Signed Declaration of Marina Kovtun, Suspect Interrogation Protocol (16 November 2014), p 7 (Annex 196); Signed Declaration of M. Kovtun, Suspect Interrogation Protocol (19 November 2014), p. 2 (stating that “the weapons had been given to us by ‘Kharkiv Partisans’”) (Annex 196).

³⁶⁵ Central Missile and Artillery Directorate Of the Armed Forces of Ukraine Letter No. 342/2/3618 (11 March 2015) (Annex 110).

³⁶⁶ Specifically, the mine had a lot number showing it was manufactured in 1990; Ukraine does not have units of this Russian-made weapon manufactured after 1987. Extract from Criminal Proceedings No. 22017220000000060 (22 November 2014) (Annex 79); Gavrlyuk Statement, paras. 38–40 (Annex 1).

³⁶⁷ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015) (Annex 242). The flamethrowers received by Pushkarev and left at the scene of his crimes, as determined by the serial numbers on those weapons, were never supplied to the Ukrainian Armed Forces and were never possessed by the Ukrainian Armed Forces. Indictment in the criminal case against Vasyl Vitaliyovych Pushkariov Registered in the Uniform Register of Pretrial Investigations Under No. 22015220000000431 on 22 December 2015 (Annex 145); Gavryliuk Statement, paras. 33–35 (Annex 1).

³⁶⁸ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), pp. 5–6 (Annex 242).

³⁶⁹ Signed Declaration of Sergey Stlitenco, Suspect Interrogation Protocol (10 August 2015) p. 3. (testifying that during his meeting with Dmitriy in Belgorod he asked him “to provide him and his group with firearms and that Dmitriy agreed that “it would not present any difficulties”; later Stlitenco met with Dmitriy near the boundary marker at the Ukrainian–Russian border and received the weapons) (Annex 235).

delivery,³⁷⁰ identified the Russian collaborators as “officers of the Federal Security Service of the Russian Federation,” who had “organized a channel for illegal smuggling of weapons and explosives.”³⁷¹

167. Russian intelligence operatives also provided support to the terrorists who bombed the leader of a pro-Ukrainian NGO in Odesa. The perpetrators testified that they met with a Russian intelligence operative in the Smolensk region of Russia, agreed to carry out a bombing attack in Odesa, and retrieved the powerful explosive they used in the attack — an anti-tank mine with six attached block charges — from a location given to them by that operative.³⁷² A participant in the plot to assassinate Ukrainian politician Anton Geraschenko in Kyiv testified that he met with an LPR member working closely with Russian intelligence in Belgorod, discussed the assassination plot, received 3,000 USD for expenses, and then was promised a large sum — 50,000 USD — for his participation.³⁷³

168. From this evidence, a clear pattern can be discerned. First, Russian intelligence officers would identify and make use of middlemen who travelled between the Russian Federation and Ukraine to recruit would-be terrorists. Sobchenko and Monastyrev

³⁷⁰ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), pp. 8–11 (Annex 242).

³⁷¹ Declarations of Maksim Mykolaichyk, Suspect Interrogation Protocol (15 April 2015), p. 2 (Annex 227).

³⁷² Signed Declaration of Myroslav Melnik, Suspect Interrogation Protocol (26 July 2017) (Annex 268); Signed Declaration of Semen Boitsov, Suspect Interrogation Protocol (9 August 2017), p. 36 (Annex 269).

³⁷³ Transcript of Oleksiy Andriyenko Court Testimony (28 April 2017), p. 5 (Annex 261); Signed Declaration of Oleksiy Andriyenko, Witness Interrogation Protocol (18 December 2016), p. 3 (Annex 252).

openly boasted about this arrangement to no less than seven people,³⁷⁴ Mykolaichyk admitted it outright,³⁷⁵ and the practice repeated itself in Odesa and Kyiv. Then, after securing those middlemen, the Russian intelligence officers would fund them with money and explosives to distribute to recruits. This has been independently confirmed by several perpetrators who have admitted to receiving money and explosives from these men.³⁷⁶ Together, the pattern demonstrates a scheme coordinated by Russian intelligence officials to place explosives in the hands of radicalized Ukrainians intent on bombing civilian targets in Ukrainian cities.

³⁷⁴ See *supra*, Chapter 1, Section D (citing Signed Declaration of Andrii Baranenko, Suspect Interrogation Protocol (23 October 2014), p.3 (testifying that Monastyrev set up interviews with FSB operatives)) (Annex 191); Signed Declaration of Yaroslav Zamko, Suspect Interrogation Protocol (26 August 2015), pp. 3–5 (testifying that Manastyrev supervised of Zamko's training in a Russian military camp and Russian active duty officers trained Zamko) (Annex 241); Signed Declaration of Vadim Chekhovsky, Suspect Interrogation Protocol (9 May 2015), p.5 (testifying that Sobchenko offered Chekhovsky to go to a military training camp in Russia organized officially by Russian authorities) (Annex 229); Signed Declaration of Andrii Tishenko, Suspect Interrogation Protocol (26 December 2015), p.6 (testifying that Sobchenko is supervised by Russian FSB agents) (Annex 245); Signed Declaration of Kostiantyn Nuzhnenko, Suspect Interrogation Protocol (16 July 2015), pp. 2–3 (testifying that Monastyrev introduced him to Russian FSB operatives in Belgorod) (Annex 233); Signed Declaration of Dmytro Kononenko, Suspect Interrogation Protocol (13 May 2015), pp. 2–3 (testifying that Monastyrev informed him that Russian intelligence representatives will follow the execution of a terrorist act and will provide help if needed) (Annex 230).

³⁷⁵ Signed Declaration of Maksim Mykolaichyk, Suspect Interrogation Protocol (15 April 2015), p. 2 (Annex 221).

³⁷⁶ Signed Declaration of Volodymyr Dvornikov, Suspect Interrogation Protocol (26 February 2015), p. 3 (admitting that he received explosives through an arrangement orchestrated by FSB officers) (Annex 223); Signed Declaration of Marina Kovtun, Suspect Interrogation Protocol (19 November 2014), p. 2 (stating that “the weapons had been given to us by Kharkiv Partisans”) (Annex 196); Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015) (admitting that he received explosives through Mykolaichyk), p. 8 (Annex 242); Signed Declaration of Oleg Doroshenko (21 April 2015), p. 7 (admitting that he received explosives through Mykolaichyk) (Annex 228); Signed Declaration of Oleg Mikulenko, Suspect Interrogation Protocol (22 February 2015), p. 6 (admitting that he received explosives from Sobchenko) (Annex 220).

E. The Russian Training Camps For Members of the DPR, LPR, Kharkiv Partisans, and Other Armed Groups

169. Russia has supplied other valuable support, equipment, and provisions to the DPR, LPR, and other armed groups that have enhanced their ability to carry out acts of terrorism. This support includes, significantly, comprehensive training on Russian territory.

170. At their creation in early 2014, the DPR and LPR were a collection of disorganized mercenaries with relatively little military or covert experience. So, too, were the pro-separatist extremists in Kharkiv. Over the spring and summer of 2014, Russian operatives deployed considerable resources on or near the border with Ukraine to develop and staff guerilla training camps to dramatically enhance the capabilities of DPR, LPR, and other pro-separatist recruits.³⁷⁷

³⁷⁷ See *supra* Chapter 2; see also Signed Declaration of Konstantin Kutikov, Suspect Interrogation Protocol (16 March 2016), p. 7 (Annex 247); Signed Declaration of Oleg Serachov, Suspect Interrogation Protocol (5 November 2014), pp. 6–11 (Annex 192); Signed Declaration of Igor Koval, Suspect Interrogation Testimony (9 June 2015), pp. 5–6 (Annex 207); Signed Declaration of Maxim Pislar, Suspect Interrogation Protocol (4 March 2015), pp. 2–3 (Annex 224); Signed Declaration of Olexi Lvov, Suspect Interrogation Protocol (4 March 2015), pp. 2–3 (Annex 225); Signed Declaration of Mykola Varva, Suspect Interrogation Protocol (18 November 2014), pp. 2–4 (Annex 198); Signed Declaration of Konstantin Morev, Suspect Interrogation Protocol (18 November 2014), pp. 2–3 (Annex 197); Signed Declaration of Pavlo Korostyshevskiy, Suspect Interrogation Protocol (18 November 2014), pp. 138–39 (Annex 199); Signed Declaration of Vadim Chekhovsky, Suspect Interrogation Protocol (9 May 2015), pp. 5–6 (Annex 229); Signed Declaration of Andrey Bozhko, Suspect Interrogation Protocol (19 November 2014), pp. 4–6 (Annex 201); Signed Declaration of Andreii Bessarabov, Suspect Interrogation Protocol (19 November 2014), pp. 153–55 (Annex 200); Signed Declaration of Marina Kovtun, Suspect Interrogation Protocol (16 November 2014), pp. 4–5 (Annex 196); Signed Declaration of Stanislav Kudrin, Suspect Interrogation Protocol (19 November 2014), pp. 5–7 (Annex 202); HIDING IN PLAIN SIGHT, pp. 7, 23 (Annex 448); AN INVASION BY ANY OTHER NAME, pp. 43, 54, 74 (Annex 450); *Large Military Staging Ground Detected in Russia*, The Interpreter Magazine (7 January 7 2015) (Annex 550); Mumin Shakirov, *I Was a Separatist Fighter in Ukraine*, The Atlantic (14 July 2014) (Annex 528); Thomas Grove & Warren Strobel, Special Report: *Where Ukraine's Separatists Get Their Weapons*, Reuters (29 July 2014) (Annex 535).

171. These training camps instruct DPR and LPR recruits, Russian servicemen that later joined the DPR and LPR, and members of other violent groups based in Ukraine.³⁷⁸ The training and equipment provided at these camps cover a wide range of activities, including the operation and assembly of explosive devices;³⁷⁹ the use of sophisticated heavy

³⁷⁸ Signed Declaration of Konstantin Kutikov, Suspect Interrogation Protocol (16 March 2016), p. 7 (Annex 247); Signed Declaration of Oleg Serachov, Suspect Interrogation Protocol (5 November 2014), pp. 6–11 (Annex 192); Signed Declaration of Igor Koval, Suspect Interrogation Testimony (9 June 2015), pp. 5–6 (Annex 207); HIDING IN PLAIN SIGHT, pp. 7, 23 (Annex 448); AN INVASION BY ANY OTHER NAME, pp. 43, 54, 74 (Annex 450); *Large Military Staging Ground Detected in Russia*, The Interpreter Magazine (7 January 2015) (Annex 550); Mumin Shakirov, *I was An Opposition Fighter in Ukraine*, The Atlantic (14 July 2014) (Annex 528); *Deadly Bomb Blast Hits Rally In Ukraine*, Al Jazeera (22 February 2015) (Annex 562); Victoria Butenko & Sergei L. Loiko, *Bomb Blast at Pro-Ukraine Rally in Kharkiv Kills 2; Kiev Blames Russia*, L.A. Times (22 February 2015) (Annex 598); Thomas Grove & Warren Strobel, Special Report: *Where Ukraine's Separatists Get Their Weapons*, Reuters (29 July 2014) (Annex 535).

³⁷⁹ Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), p. 8 (Annex 242); *see also* Signed Declaration of Maksim Mykolaichyk, Suspect Interrogation Protocol (15 April 2015) (Annex 227); Signed Declaration of Oleg Doroshenko, Suspect Interrogation Protocol (21 April 2015) (Annex 228).

weaponry, including Grads;³⁸⁰ and weapons smuggling.³⁸¹ After being trained at these camps, individuals report directly to illegal armed groups fighting in Ukraine.³⁸²

172. The existence of these camps has been admitted. Alexander Zakharchenko, for example — the self-proclaimed “prime minister” of the DPR — stated as early as August 2014 that DPR soldiers benefitted from Russian training.³⁸³ Many individuals have also recounted their training in these camps. For example:

- Oleg Serachov, a former member of the DPR, discussed his training at a camp outside of Rostov-on Don, Russia in June and July 2014 where Russian

³⁸⁰ Signed Declaration of Tornike Dzhincharadze, Suspect Interrogation Protocol (21 May 2017), p. 4 (Annex 263); Signed Declaration of Igor Koval, Suspect Interrogation Testimony (9 June 2015), pp. 5–6 (Annex 207); Mumin Shakirov, *I Was an Opposition Fighter in Ukraine*, The Atlantic (14 July 2014) (Annex 528).

³⁸¹ Signed Declaration of Konstantin Kutikov, Suspect Interrogation Protocol (16 March 2016), p. 9 (Annex 247); Signed Declaration of Oleksandr Sachava, Suspect Interrogation Protocol (30 January 2015), pp. 1–3 (Annex 218); Roland Oliphant, *Russian Paratroopers Captured in Ukraine ‘Accidentally Crossed Border’*, The Telegraph (26 August 2014) (Annex 540); Transcript of Video Declaration of Petr Khokhlov, Suspect Interrogation (published 27 August 2014) (Annex 188); Maria Tsvetkova, *Special Report: Russian Fighters, Caught in Ukraine, Cast Adrift by Moscow*, Reuters (29 May 2015) (Annex 576); Maxim Tucker, *Russia Launches Next Deadly Phase of Hybrid War on Ukraine*, Newsweek (31 March 2015) (Annex 568); Robert Hackwill, *Caught Red-Handed: the Russian Major Fighting in Ukraine*, EuroNews (8 December 2015) (Annex 584).

³⁸² Signed Declaration of Konstantin Kutikov, Suspect Interrogation Protocol (16 March 2016), p. 9 (Annex 247); Signed Declaration of Oleg Serachov, Suspect Interrogation Protocol (5 November 2014), p. 11 (Annex 192); Signed Declaration of Igor Koval, Suspect Interrogation Testimony (9 June 2015) (Annex 207); Mumin Shakirov, *I Was an Opposition Fighter in Ukraine*, The Atlantic (14 July 2014) (Annex 528); The Interpreter Magazine, *We All Knew What We Were Going For and What Could Happen* (English translation of an interview in *Novaya Gazeta* by Elena Kostyuchenko, dated 2 March 2015) (Annex 564); Zoya Lukyanova, *Translator for the DPR: “This is a Performance for the Whole World”*, LB.ua (21 April 2015) (Annex 572); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); James Rupert, *How Russians are Sent to Fight in Ukraine*, Newsweek (6 January 2015) (Annex 549); *Desire to Break Free from Ukraine Keeps Devastated Donetsk Fighting*, PBS Newshour (5 July 2016) (Annex 589); DONBAS IN FLAMES, pp. 58–60 (Annex 455); Maria Tsvetkova, *Special Report: Russian Soldiers Quit Over Ukraine*, Reuters (10 May 2015) (Annex 574); Tomasz Piechal, *The War Republics In The Donbas One Year After The Outbreak Of The Conflict*, Ośrodek Studiów Wschodnich (17 June 2015) (Annex 578).

³⁸³ Shaun Walker, *Ukraine Rebel Leader Says He Has 1,200 Fighters ‘Trained in Russia’ Under His Command*, The Guardian (16 August 2014) (Annex 539).

instructors taught him to handle and operate weapons, camouflage them, and generally conduct “sabotage.”³⁸⁴

- On 2 March 2015, the Russian newspaper *Novaya Gazeta* published an interview with an active Russian soldier injured on Ukrainian territory, Dorzhi Batomunkuev.³⁸⁵ Batomunkuev stated that he had been re-stationed to a Rostov military camp in Russian territory, where he was trained to destroy Russian markings on military equipment before being ordered to move those sanitized weapons into Ukraine.³⁸⁶
- Vladimir Starkov, a Russian soldier captured in Ukraine driving a truck full of ammunition, told *Euronews* (and later a Ukrainian court)³⁸⁷ that he was an active RAF soldier recruited to assist the DPR by training their soldiers at Russian military camps.³⁸⁸

173. Bombers operating in Kharkiv and Odesa were also trained in Russian camps outside of Belgorod, Kursk, Rostov, and Tambov:

- Myroslav Melnik and Semen Boitsov, the men who detonated a car bomb in Odesa,³⁸⁹ were trained by Russian officers in a military camp in Rostov to use and handle explosives.³⁹⁰
- Marina Kovtun, who planted military-grade mines at a crowded nightclub and other targets in Kharkiv, trained in Tambov, Russia to use “magnetic mines,

³⁸⁴ Signed Declaration of Oleg Serachov, Suspect Interrogation Protocol (5 November 2014), pp. 10–11 (Annex 192).

³⁸⁵ The Interpreter Magazine, *We All Knew What We Were Going For and What Could Happen* (English translation of an interview in *Novaya Gazeta* by Elena Kostyuchenko, dated 2 March 2015) (Annex 564).

³⁸⁶ *Ibid.* Similarly, On 31 March 2015, *BBC Russia* published an interview with Dmitry Sapozhnikov, a commander in the DPR special forces, confirming that DPR forces were trained by Russian generals and other military leaders and provided with Russian arms. Olga Ivshyna, *Commander of the “Special Forces of the DPR”: Russia’s Help was Decisive*, *BBC Russia* (31 March 2015) (Annex 569).

³⁸⁷ Signed Declaration of Vladimir Starkov (27 July 2015), p. 7 (Annex 234).

³⁸⁸ Robert Hackwill, *Caught Red-Handed: the Russian Major Fighting in Ukraine*, EuroNews (8 December 2015) (Annex 584).

³⁸⁹ See Chapter 1, Section D(2).

³⁹⁰ Signed Declaration of Myroslav Melnik, Suspect Interrogation Protocol (9 August 2017), p. 43 (Annex 268); Signed Declaration of Semen Boitsov, Suspect Interrogation Protocol (9 August 2017), p. 34 (Annex 269).

MON anti-personnel mines, and ‘bouncing mines,’ as well as TNT sticks, detonators, and fuses.”³⁹¹

- The PrivatBank bombers attended a military training camp in Russia where they learned to handle and operate explosives.³⁹²
- A number of other participants in the Kharkiv Partisans and similar groups have admitted to receiving training from Russian FSB officials outside of Tambov, Russia, learning how to store, handle, arm, and detonate various explosives.³⁹³

This training was a valuable form of support designed in part to assist perpetrators on Ukrainian soil in committing a range of terrorist acts.

F. Russian Fundraising for Illegal Armed Groups in Ukraine

174. In addition to providing weapons and training, the Russian Federation has allowed and facilitated vast amounts of monetary support to illegal armed groups in eastern Ukraine. Donbas has been flooded with Russian currency, effectively replacing the

³⁹¹ Signed Declaration of Marina Kovtun, Suspect Interrogation Protocol (16 November 2014) (Annex 196).

³⁹² Signed Declaration of Vasily Pushkarev, Suspect Interrogation Protocol (31 August 2015), p. 10 (Annex 242); Signed Declaration of Mykhaylo Reznikov, Suspect Interrogation Protocol (13 August 2015), pp. 4–5 (Annex 236).

³⁹³ See *supra* Chapter 1, Section D; Chapter 2, Section E. Signed Declaration of Stanislav Kudrin, Suspect Interrogation Protocol (19 November 2014), p. 4 (Annex 202); Signed Declaration of Konstantin Morev, Suspect Interrogation Protocol (18 November 2014), pp. 2–3 (Annex 197); Signed Declaration of Oleg Doroshenko, Suspect Interrogation Protocol (21 April 2015), p. 6 (Annex 228); Signed Declaration of Yaroslav Zamko, Suspect Interrogation Protocol (26 August 2015), pp. 4–5 (Annex 241); Signed Declaration of Alexander Bondarenko, Suspect Interrogation Protocol (23 October 2014), pp. 6–7 (Annex 190); Signed Declaration of Andrii Tishenko, Suspect Interrogation Protocol (26 December 2015), pp. 3–4 (Annex 245); Signed Declaration of Andrii Baranenko, Suspect Interrogation Protocol (23 October 2014), pp. 3–4 (Annex 191); Signed Declaration of Mykhaylo Reznikov, Suspect Interrogation Protocol (13 August 2015), pp. 4–5 (Annex 236); Signed Declaration of Mykola Varva, Suspect Interrogation Protocol (18 November 2014), pp. 3–5 (Annex 198); Signed Declaration of Pavlo Korostyshevskiy, Suspect Interrogation Protocol (18 November 2014), pp. 139–142 (Annex 199); Signed Declaration of Andreii Bessarabov, Suspect Interrogation Protocol (19 November 2014), pp. 154–156 (Annex 200); Signed Declaration of Vasily Bunchkov, Suspect Interrogation Protocol (4 March 2015), 2–3 (Annex 226).

Ukrainian hryvnia as the *de facto* currency in the region. As the so-called Supreme Council of the DPR put it, “we would not have survived without support” from Russia.³⁹⁴

175. One prominent financier is wealthy Russian businessman Konstantin Malofeev, who is internationally known as “one of the main sources of financing for Russians promoting separatism.”³⁹⁵ As a Putin adviser has explained, Malofeev “suits Russian authorities because they don’t want to take responsibility for certain things.”³⁹⁶ In this instance, that has meant providing “financial, material, or technological support” for the DPR, including his former employees – Alexendar Boredai, the so-called “Prime Minister” of the DPR, and the notorious militant Igor Girkin.³⁹⁷

176. Malofeev is just one example; fundraising in Russia for illegal armed groups in Ukraine is rampant, with individuals and legal entities sending millions of rubles and weapons to Ukraine. For example:

- The “Coordination Center for Assistance to Novorossia,” raised well over three million rubles in support of the DPR and LPR between September 2014 and

³⁹⁴ *The Russian Secret Behind Ukraine’s Self-Declared ‘Donetsk Republic’*, France 24 (15 October 2015) (video), mm 00:03:00–00:04:00; 00:12:00 (Annex 583).

³⁹⁵ Press Release, U.S. Treasury, Treasury Targets Additional Ukrainian Separatists and Russian Individuals and Entities (19 December 2014) (Annex 478). See also Press Release, Council of the European Union, List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine (14 September 2017), p. 37 (Annex 358); Swiss State Secretariat for Economic Affairs, SECO Bilateral Economic Relations Sanctions, Programs (Situation in Ukraine: Ordinance of 27 August 2014), Individual Malofeev Konstantin Valerevich (23 May 2018) (Annex 481); Australian Government: Department of Foreign Affairs and Trade, *Ukraine Sanctions: Review of Australia’s Autonomous Sanctions Imposed on 84 Individuals and Entities in Relation to Ukraine* (2 September 2017) (Annex 479).

³⁹⁶ Ilya Arkhipov, Irina Reznik & Henry Meyer, *Putin’s ‘Soros’ Dreams of Empires as Allies Wage Ukraine Revolt*, Bloomberg (16 June 2014) (Annex 522).

³⁹⁷ Press Release, U.S. Treasury, Treasury Targets Additional Ukrainian Separatists and Russian Individuals and Entities (19 December 2014) (Annex 478).

January 2015, using Sberbank and Yandex.Money (“Yandex”) accounts.^{398, 399} These funds were used to purchase weapons components and other military equipment on the black market to be delivered to the DPR and LPR.⁴⁰⁰

- The “Sverdlovsk Oblast Fund for Special Forces Veterans,” informed the Russian government sometime in 2014 that it was actively raising money to train, equip, and transport “volunteers” to the DPR and LPR who would then follow orders and receive salaries from those groups.⁴⁰¹ According to the leader of that organization, by early January 2015, the group had raised at least 50 million rubles, trained and provisioned at least 150 individuals, and transported them to eastern Ukraine to receive instruction from the DPR and LPR.⁴⁰²
- Alexander Zhuchkovsky publicly boasted about raising millions of rubles and purchasing armored combat vehicles and weapons to benefit the DPR and LPR.⁴⁰³ He used a Russian Internet domain and Sberbank accounts to accomplish this.⁴⁰⁴ The website maintained by Zhuchkovsky —“Strelkov-Info.ru” — solicited funds through August 2017, and generally reported

³⁹⁸ Report of the CCNR on the Results of 2014, COORDINATION CENTER FOR NEW RUSSIA (12 January 2015) (Annex 633).

³⁹⁹ Sberbank is a State-owned bank headquartered in Russia, and Yandex.Money is joint venture between Sberbank and Yandex, a Russian-headquartered technology company. See *About Us*, SBERBANK (last visited 25 April 2018) (Annex 664); Press Release, Yandex Money, Yandex and Sberbank of Russia Finalize Yandex.Money Joint Venture, (4 July 2013) (Annex 600).

⁴⁰⁰ As the group’s website shows, the “humanitarian” assistance it provided to the DPR and LPR came in the form of, among other things, rifles, grenades, handguns, and ammunition. See, e.g., *Report on Past Deliveries*, COORDINATION CENTER FOR NEW RUSSIA (19 August 2014) (Annex 626); *Communist Party for the DKO (Volunteer Communist Detachment)*, COORDINATION CENTER FOR NEW RUSSIA (30 December 2014) (Annex 631); *Regular Dispatch Is Not Humanitarian Aid*, COORDINATION CENTER FOR NEW RUSSIA (19 November 2014) (Annex 629).

⁴⁰¹ James Rupert, *How Russians are Sent to Fight in Ukraine*, Newsweek (6 January 2015) (Annex 549).

⁴⁰² *Ibid.*

⁴⁰³ See, e.g., Alexander Zhuchkovsky, *On the Advisability of Purchasing Armored Vehicles*, STRELKOVINFO (4 September 2014) (Annex 628).

⁴⁰⁴ See, e.g., *Actual Requests for Assistance to the Militia of Novorossia*, STRELKOVINFO (as archived on 10 August) (noting also that Yandex and WebMoney accounts are available through inquiry, but not publicly posted because the owners keep blocking the accounts; “WebMoney” is a method of electronic money transfer using Yandex services, see *WebMoney Purse Linking*, YANDEX (last visited 21 March 2018) (Annex 688)).

collections in the hundreds of thousands of rubles per month.⁴⁰⁵ The organization continues to raise funds to this day, now using the Russian social network VKontakte.⁴⁰⁶

- Similar organizations such as the EU-sanctioned front for Igor Strelkov's "New Russia Movement,"⁴⁰⁷ the "Novorossia Humanitarian Battalion,"⁴⁰⁸ "Save the Donbas,"⁴⁰⁹ "Help the Russians,"⁴¹⁰ and "Help Donbas,"⁴¹¹ have publicly raised funds for the DPR and LPR, and continue to do so. Together, they have likely raised in the hundreds of millions of rubles to benefit the "militias" or "armies" of the DPR and LPR.⁴¹² Each organization uses Sberbank or Yandex accounts to collect and transfer their funds once raised.

177. As noted in a report in the *New York Times* documenting the fundraising goals of these groups, some went so far as to "advertise" their organization on mortar shells, using the image of a lethal weapon to solicit donations.⁴¹³ Fundraising appeals stated that

⁴⁰⁵ See, e.g., *Report on Expenditures and Purchases for the Militia of Novorussia*, STRELKOVINFO (22 July 2017) (Annex 651); *Report on Expenditures and Purchases for the Militia of Novorussia*, STRELKOVINFO (30 May 2017) (Annex 650); *Report on Expenditures and Purchases for the Militia of Novorussia*, STRELKOVINFO (14 April 2017) (Annex 649); *Report on Expenditures and Purchases for the Militia of Novorussia*, STRELKOVINFO (24 February 2017) (Annex 648).

⁴⁰⁶ See *Summaries from the Militia of Novorussia*, VKONTAKTE (last accessed 21 March 2018) (including a donations option on every page) (Annex 662).

⁴⁰⁷ THE MANAGING COMPANY OD "NOVOROSSIYA" - ANO "KNB": TRANSFER OF MONEY FOR OD "NOVOROSSIA" II. STRELKOV (last visited 21 March 2018) (Annex 663); Council Implementing Regulation (EU) 2015/240 of 9 February 2015, Official Journal of the European Union L40/7 (16 February 2015), p. L/40/ 13 (Annex 356).

⁴⁰⁸ NOVOROSSIA HUMANITARIAN BATTALION, gumbat.ru (last visited 21 March 2018) (Annex 661).

⁴⁰⁹ SAVE THE DONBAS (last visited 21 March 2018) (Annex 654).

⁴¹⁰ HELP THE RUSSIANS (last visited 21 March 2018) (Annex 659).

⁴¹¹ HELP-DONBAS (last visited 21 March 2018) (Annex 660).

⁴¹² NOVOROSSIA HUMANITARIAN BATTALION, gumbat.ru (last visited 21 March 2018) (raised 11,837,304 rubles as of 21 March 2018) (Annex 661); SAVE THE DONBAS (last archived on 12 September 2017), (raised 82,215,174 rubles as of 21 March 2018) (Annex 654); *Financial Reports*, THE MANAGING COMPANY OD "NOVOROSSIYA" - ANO "KNB": TRANSFER OF MONEY FOR OD "NOVOROSSIA" II. STRELKOV (last visited 21 March 2018) (latest reporting shows 2,242,000 rubles raised in six months pre-dating 11 September) (Annex 658).

⁴¹³ Jo Beckler & Steven Lee Myers, *Russian Groups CrowdFund the War in Ukraine*, N.Y. Times (11 June 2015) (Annex 577).

funds were to provide weapons and other military equipment for “the militia of New Russia” and the “Donbas Militias,” weapons – not *bona fide* “humanitarian” assistance.⁴¹⁴

178. Prominent members of the Duma, Russia’s Parliament, also have publicly raised funds for DPR and LPR. For example:

- Vice Chairman of the State Duma Vladimir Zhirinovsky donated an armored fighting vehicle to the LPR in May 2014, inviting the Russian press to the announcement.⁴¹⁵ Between September 2014 and 2017, Zhirinovsky organized the donation of at least six more military vehicles.⁴¹⁶
- Duma members Sergey Mironov and Gennadiy Zyuganov, actively and publicly solicited funds and donations for the benefit of the DPR and LPR in both their personal and official capacities. Mironov used his government position to rally support among the public for the DPR and LPR, and worked to allocate government funds to the DPR and LPR.⁴¹⁷ Zyuganov appealed to his constituents to donate to the DPR and LPR, even providing banking and routing information for such donations.⁴¹⁸

179. More covert, but no less significant, is the creation and use of a shadow banking system to launder funds originating in Russian territory. Ukrainian investigation and independent reporting confirm that a newly-created bank with branches in the Abkhazia

⁴¹⁴ See, e.g., Alexander Zhuchkovsky, *On the Advisability of Purchasing Armored Vehicles*, STRELKOINFO (4 September 2014) (Annex 628); *Report on Past Deliveries*, COORDINATION CENTER FOR NEW RUSSIA (19 August 2014) (Annex 626); *Communist Party for the DKO (Volunteer Communist Detachment*, COORDINATION CENTER FOR NEW RUSSIA (30 December 2014) (Annex 631); *Regular Dispatch Is Not Humanitarian Aid*, COORDINATION CENTER FOR NEW RUSSIA (19 November 2014) (Annex 629).

⁴¹⁵ *Zhirinovsky Gave a Military Vehicle to the Ukrainian Militiamen*, 161.RU (6 May 2014), (video and text) (Annex 512).

⁴¹⁶ Prosecutor General’s Office Put Zhirinovsky in Suspicion of Financing Terrorism, *Front New International* (23 August 2017) (Annex 597).

⁴¹⁷ Ministry of Foreign Affairs of the Donetsk People’s Republic, *Press Conference with Aleksandr Kofman and Sergei Mironov in Donetsk* (28 December 2015) (Annex 646); *Mironov Promises Draft Bill “On the Status of the Donbas Militias,”* RIA.ru (14 September 2016) (Annex 590).

⁴¹⁸ See, e.g., *Fundraising for the Rendering of Humanitarian Assistance to the Residents of the Southeast of Ukraine*, THE COMMUNIST PARTY OF THE RUSSIAN FEDERATION (17 June 2014) (linking to a bank deposit slip with account numbers for the LPR); *Lugansk Terrorists Are Financed by the Communist Party of Russia*, DETAILS (26 June 2014) (Annex 605).

and South Ossetia regions of Georgia — regions that are internationally recognized as under Russian occupation and control — serve as clearing houses to funnel billions of rubles from accounts in Russian-State-owned banks to the account of the LPR “Ministry of Finance.”⁴¹⁹ Intercepted emails and bank records show that since May 2015, the newly-created “Mezhdunarodny Rashchytotny Bank” (“MRB”) has hosted, processed, and kept secret these transactions.⁴²⁰ In Russia, various donors deposit funds into MRB Account Number 301018110100000000105, belonging to a so-called “Fund of Support for International Humanitarian Projects” (the “Fund”).⁴²¹ From the Fund’s account, money is then transferred to accounts that the LPR leadership maintain at MRB, and ultimately winds up in the accounts of the “State Banks” of the LPR.⁴²² Bank records indicate that the “Foundation” funded the DPR and LPR leadership with approximately seven billion rubles (approximately 100 million Euro) during just part of 2017.⁴²³ All of this money originated from the Russian-State-owned bank Vneshtorgbank (“VTB”).⁴²⁴

180. In sum, a large-scale fundraising apparatus, both overt and covert, has been allowed to flourish on Russian territory. This is just one more way in which Russia has

⁴¹⁹ Witness Statement of Oleksii Oleksiyovich Bushnyi (5 June 2018), paras. 7 – 14 [hereinafter Bushnyi Statement] (Annex 7); Information About the Commercial Banks of RSO, NATIONAL BANK: REPUBLIC OF SOUTH OSSETIA (last visited 2 May 2018) (Annex 665); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); Nikolaus von Twickel, *South Ossetia: A ‘Little Switzerland’ for Donbas?*, EURASIANET.org (31 May 2017) (Annex 596).

⁴²⁰ Bushnyi Statement, para. 11 (Annex 7); Consolidated Banking Records of Transfer Between the Fund and the State Bank of the LPR (various dates) [hereinafter Bank Records] (Annex 434); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); Nikolaus von Twickel, *South Ossetia: A ‘Little Switzerland’ for Donbas?*, EURASIANET.org (31 May 2017) (Annex 596).

⁴²¹ Bushnyi Statement, para. 11 (Annex 7); Bank Records (Annex 434); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); Nikolaus von Twickel, *South Ossetia: A ‘Little Switzerland’ for Donbas?*, EURASIANET.org (31 May 2017) (Annex 596).

⁴²² Bushnyi Statement, para 12 (Annex 7); Bank Records (Annex 434); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); Nikolaus von Twickel, *South Ossetia: A ‘Little Switzerland’ for Donbas?*, EURASIANET.org (31 May 2017) (Annex 596).

⁴²³ Bushnyi Statement, para. 12 (Annex 7); Bank Records (Annex 434); Julian Röpcke, *How Russia Finances the Ukrainian Rebel Territories*, Bild (16 January 2016) (Annex 586); Nikolaus von Twickel, *South Ossetia: A ‘Little Switzerland’ for Donbas?*, EURASIANET.org (31 May 2017) (Annex 596).

⁴²⁴ Bushnyi Statement, para. 11 (Annex 7).

enabled, rather than prevented and suppressed, the financing of organizations engaged in terrorism in Ukraine.

Chapter 3. THE RUSSIAN FEDERATION’S FAILURE TO ASSIST UKRAINE IN PREVENTING AND PUNISHING THE FINANCING OF TERRORISM

181. As massive amounts of weapons and rubles flowed across the Russia–Ukraine border, with the Ukrainian people enduring a series of terrorist acts as a consequence, Ukraine made repeated requests to Russia to fulfill its legal responsibilities to prevent the financing of terrorism — as it is required to do under the ICSFT. Yet rather than cooperate with Ukraine and take steps to stop the funding of terrorism, Russia repeatedly refused Ukraine’s appeals for cooperation and assistance and instead promoted terrorism financing.

182. Russia’s refusal to cooperate has taken many forms. Russia has failed to police its border with Ukraine to stop the flow of weapons and other funds to groups engaged in terrorism. Russia has ignored express Ukrainian warnings about terrorism fundraising and requests to freeze or seize assets used for that fundraising. And Russia has repeatedly failed to provide meaningful assistance to Ukraine in connection with criminal investigations into the financing of terrorism.

A. Russia Has Failed to Take Measures to Prevent Weapons Transfers Across the Ukraine–Russia Border

183. As U.N. monitors have repeatedly stated, the lack of a controlled border permits the flow of weapons into Ukraine, which, as OHCHR concludes, has resulted in devastating consequences for civilians.⁴²⁵ While Ukraine’s access to the border is temporarily blocked by illegal armed groups, Russia’s side of the border remains under its

⁴²⁵ See, e.g., OHCHR, *Report on the Human Rights Situation in Ukraine: 16 November 2015 to 15 February 2016*, pp. 49–50, 10, paras. 24, 207 (“The Government of Ukraine did not have effective control over considerable parts of the border with the Russian Federation The continued occurrences of indiscriminate shelling and presence of anti-personnel mines that cause civilian casualties in the conflict affected area raise concerns about the inflow of weapons. . . . [A]rms should not be transferred in situations where there is a substantial risk that they will be used in serious violations or abuses of international human rights or humanitarian law.”) (Annex 314).

control. Yet Russia has done nothing to ensure that powerful weapons — a Buk TELAR, countless Grad and Smerch multiple-launch rocket systems, and many others — do not flow from its territory to the territory of Ukraine and into the hands of illegal armed groups.

184. The Ukrainian State Border Guard Service has consistently informed the Russian Border Service of impending transfers of weapons, ammunition, and money from Russian territory into Ukrainian territory to the DPR, LPR, and others, and requested Russia's assistance and cooperation in preventing these attempts.⁴²⁶ Those requests have fallen on deaf ears. The Ukrainian Border Guard has also requested joint meetings with the Russian Border Service in order to cooperate on the prevention of illegal border crossings and weapons supply convoys, at times repeating these requests daily.⁴²⁷ Yet again Russia chose to take no action; no joint meetings or meaningful coordination ever happened, Russia took no steps to police its border, and the well-documented flow of weapons continued unabated.

185. Russia tentatively agreed to a joint meeting in October 2014 — approximately five months after Ukraine's first, urgent request — but that meeting never occurred. Instead, Russia determined that such a meeting was "premature" because the Russian Border Service "decided to conduct further legal due diligence" on the issue of joint border control.⁴²⁸ A

⁴²⁶ Ukraine State Border Guard Letter No. 0.22-3958/0/6 to the Russian Border Directorate of the FSB, dated 22 May 2014 (Annex 387); Ukraine State Border Guard Letter No. 0.42-4016/0/16-14 to the Russian Border Directorate of the FSB, dated 24 May 2014 (Annex 388); Ukraine State Border Guard Letter No. 0.42-4289/0/6 to the Russian Border Directorate of the FSB, dated 3 June 2014 (Annex 389); Ukraine State Border Guard Letter No. F/42-3243 to the Russian Border Directorate of the FSB, dated 5 June 2014 (Annex 390); Ukraine State Border Guard Letter No. 0.42-5504/0/6-14 to the Russian Border Directorate of the FSB, dated 13 July 2014 (Annex 393).

⁴²⁷ Ukraine State Border Guard Letter No. 0.22-3958/0/6 to the Russian Border Directorate of the FSB, dated 22 May 2014 (Annex 387); (Annexes 55-73) (various Ukrainian Border Guard letters requesting Russian assistance).

⁴²⁸ Russian Border Directorate of the FSB Letter No. 0.42-8801/0/6-14 to the Ukrainian State Border Guard, delivered 11 October 2014 (Annex 402).

month later, the Head of the Border Directorate of the FSB declared that it was beyond his agency's authority to "clear the passage of vehicles transporting cargo" to Ukraine.⁴²⁹ Yet there are numerous Russian-manned check points that do routinely monitor the flow of traffic across the border and check the passports of those coming and going.⁴³⁰ And the question of which Russian agency has the necessary authority is beside the point; the Russian Federation has a responsibility to police its border, and it cannot shirk that duty by declining to identify the appropriate government agency.

186. To this day, four years after Ukraine's initial request to Russia, Russia still refuses to cooperate with Ukraine or to exercise any control over its border to stop the flow of weapons to Ukraine. Russia's deliberate refusal to cooperate has led to dangerous weapons being delivered into the hands of groups engaged in terrorism against Ukrainian civilians.

B. Russia Has Failed to Cooperate with Ukraine's Requests to Freeze Bank Accounts Used for Terrorism Financing and Investigate Individuals Linked to Terrorism Financing

187. Ukraine has repeatedly notified the Russian Federation that specific Russian nationals or entities have taken part in fundraising efforts for the support of groups engaged in terrorism in Ukraine. Ukraine expressly requested the Russian Federation's cooperation and assistance by (1) freezing or seizing all identified assets collected for the support of terrorism and (2) investigating the facts of the allegations as detailed by Ukraine. Despite Ukraine's requests, Russia did not freeze or seize any assets, it did not thoroughly investigate

⁴²⁹ Russian Border Directorate of the FSB Letter No. 26-1209 to the Ukrainian State Border Guard, dated 7 November 2014 (Annex 403).

⁴³⁰ Signed Declaration of Yevhen Bokhanevych, Suspect Interrogation Protocol (26 May 2017), p. 8 (Annex 266); Declaration of Serhiy Semenchenko, Witness Interrogation Protocol (10 July 2017), p. 1 (Annex 267).

the facts brought to its attention, and it did not take any other measures to suppress financing of the DPR, LPR, Kharkiv Partisans, and other violent groups in Ukraine.

188. First, Ukraine provided Russia with dozens of individuals' and organizations' names, along with their corresponding Russian bank accounts, Russian bankcard numbers, Russian tax-payer identification numbers, Russian tax-registration codes, and other identifying administrative numbers.⁴³¹ For example, Ukraine notified Russia of the following:

- Melkov Olexiy Valeriyovych, Pyleska Olga Volodymyrivna, Kutyumova Tetyana Mykhailivna, Yaralov Dmytro Olehiyovych, and Ovsyannikova Ganna Volodymyrivna used the Russian-based Kolibri and Zolota Korona Payment Systems to transfer more than 150 million rubles to two Russian banks accounts maintained by Saralpova Laura, namely specified accounts at Kredyt Dnipro and Terra bank, respectively.⁴³²
- The "Liberation Movement Russian Sector — Ukraine" established and used accounts with Sberbank, identifying the beneficiary as Sergey Igorevich Khyzhnyak and the account number.⁴³³
- Tatiana Mykhailovna Azarova actively raised funds in Russian territory to be deposited into her accounts or onto her cards (identifying Sberbank account and card numbers) for groups engaged in terrorism in Ukraine.⁴³⁴
- Andrei Gennadiyevich Lazarchuk used Sberbank Bank Card (number identified) and its corresponding account to finance groups engaged in terrorism in Ukraine.⁴³⁵

⁴³¹ Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

⁴³² Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369).

⁴³³ *Ibid.*

⁴³⁴ Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

⁴³⁵ *Ibid.*

- Accounts related to DPR and LPR activities were funded by electronic wallets or bank cards from Yandex and Sberbank (account and card numbers identified).⁴³⁶

189. In each of those instances, Ukraine notified Russia that the identified individuals and organizations had purposefully and knowingly used those accounts to collect and transfer money to finance terrorist activities in Ukraine.⁴³⁷ Ukraine then requested Russia's assistance under the ICSFT to freeze or seize the identified funds and other assets.⁴³⁸ Russia, however, has never provided any indication that it complied.

190. Second, Russia has failed to provide substantive responses to many of Ukraine's requests to investigate those individuals it suspected of financing terrorism or, when Russia produced findings from purported investigations into terrorism financiers identified by Ukraine, the results betrayed a lack of good faith cooperation.⁴³⁹ For example:

- After being informed that Ukraine believed that Konstantin Malofeev had knowingly financed terrorism, Russia's response almost a year later was that "it was not possible to identify the location of Mr. K.V. Malofeev."⁴⁴⁰ Malofeev, however, is one of the most prominent businessmen in Russia, has close ties to President Putin, and was known to have been regularly working

⁴³⁶ Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

⁴³⁷ Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

⁴³⁸ See, e.g., Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

⁴³⁹ See, e.g., Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371); Russian Federation Note Verbale No. 10448 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

⁴⁴⁰ Russian Federation Note Verbale No. 10448 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

at his offices throughout the first six months of 2015.⁴⁴¹ Claiming to be unable to locate one of the most prominent individuals in Russia is plainly not a good-faith response to a request for cooperation.

- Ukraine requested that Russia investigate Oleksander Zhuchovsky, who in public interviews had stated that he was fundraising for the DPR⁴⁴² — a group that by that point had been publicly implicated in a series of terrorist acts against civilians.⁴⁴³ On 3 November 2014, Ukraine followed up its original request by informing Russia of additional terrorism financing offenses committed by Zhuckovsky, and provided further identifying information and information regarding his complicity in specific crimes.⁴⁴⁴ On 31 July 2015, Russia inexplicably responded that “[i]n the course of the investigative and operational proceedings it was found that a citizen with personal data related to Mr. Olexandr Grigorievych Zhuckovsky does not exist in the Russian Federation.”⁴⁴⁵ Yet on Zhuckovsky’s social media page — about which Ukraine alerted Russia — he is shown in Russia hosting a fundraiser for the DPR.⁴⁴⁶ And in public interviews, Zhukovsky both stated that he was a Russian national and admitted to financing the DPR.⁴⁴⁷
- Ukraine requested that Russia investigate terrorism financing activity connected to Andrei Gennadiyevich Lazarchuk, Nina Igorevna Lotysh, Vadim Yuryevich Kunayev, and Tatiana Mykhailovna Azarovna, providing Russia with the individuals’ respective dates of birth and their exact bank account numbers.⁴⁴⁸ Almost one year later, on 31 July 2015, all Russia could say was

⁴⁴¹ John Thornhill, *Fear Vladimir Putin’s Weakness Not His Strength*, The Financial Times (17 August 2015) (Annex 580).

⁴⁴² See Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369). The evidence provided by Ukraine consisted of a link to Khukovsky’s “Vkontakte” social media profile which, at that time and still today, showed indisputable evidence that Zhukovsky had raised funds for and provided weapons to the DPR. For example, one post boasts of paying for a BTR (armored fighting vehicle) with cash, and then giving it to the militias of “New Russia.” Cf. Alexander Zhuchkovsky, *On the Advisability of Purchasing Armored Vehicles*, StrelkovInfo (4 September 2014) (Annex 628).

⁴⁴³ See *supra*, Chapter 2, Section A.

⁴⁴⁴ Ukrainian Note Verbale No. 72/22-620-2717 to the Russian Ministry of Foreign Affairs (3 November 2014) (Annex 374).

⁴⁴⁵ Russian Federation Note Verbale No. 10448 to Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

⁴⁴⁶ Social Media Page (VKontakte) of Oleksandr Zhukovsky (post of 15 March 2015) (Annex 635).

⁴⁴⁷ See, e.g., Alexander Zhuchkovsky’s “Militia” of the DPR: *The Only Support is in the Russian Media*, ZAKS (10 June 2014) (Annex 520).

⁴⁴⁸ Ukrainian Note Verbale No. 72/22-620-2221 to Russian Federation Ministry of Foreign Affairs (29 August 2014) (Annex 371).

that “[t]he investigative and operational work to identify the persons mentioned in the note . . . , as well as the details of their bank accounts is being processed at current time.”⁴⁴⁹

- On 12 August 2014, Ukraine requested that Russia investigate terrorism financing activity connected with the Coordination Center for Assistance to Novorussia.⁴⁵⁰ Almost a year later, on 31 July 2015, Russia responded with the results of its investigation, claiming that the Coordination Center for Assistance to Novorussia “does not have electronic accounts” and that “military items are not acquired” by the group.⁴⁵¹ Had Russia merely consulted the group’s publicly-available website, however, it would have discovered that the Coordination Center for Assistance to Novorussia not only links to its established electronic bank accounts for donations, but it also boasts of donating weapons.⁴⁵²

191. As these examples demonstrate, Russia has taken no interest in suppressing the financing of terrorism in Ukraine. Russia never froze accounts or seized assets linked to the financing of terrorism. Nor did Russia investigate claims of terrorism financing in good faith, as the examples above vividly illustrate.

C. Russia Has Failed to Assist with Ongoing Criminal Investigations Concerning Terrorism Financing or to Extradite Suspected Perpetrators

192. As weapons and money has poured across the Russian border and into the hands of armed groups engaged in terrorism, Ukraine has sought to investigate and prosecute the perpetrators of this terrorism financing. As the ICSFT anticipates, such law enforcement actions often require cooperation, particularly with the government in whose

⁴⁴⁹ Russian Federation Note Verbale No. 10448 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

⁴⁵⁰ Ukrainian Note Verbale No. 72/22-620-2087 to the Russian Ministry of Foreign Affairs (12 August 2014) (Annex 369).

⁴⁵¹ Russian Federation Note Verbale No. 10488 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

⁴⁵² See, e.g., *Report on Past Deliveries*, COORDINATION CENTER FOR ASSISTANCE TO NEW RUSSIA (19 August 2014) (Annex 626); *Communist Party for the DKO (Volunteer Communist Detachment)*, COORDINATION CENTER FOR ASSISTANCE TO NOVOROSSIA (30 December 2014) (Annex 631); *Regular Dispatch Is Not Humanitarian Aid*, COORDINATION CENTER FOR ASSISTANCE TO NOVOROSSIA (19 November 2014) (Annex 629).

territory the suspects are located.⁴⁵³ Far from assisting, however, Russia has rebuffed even the most basic requests for cooperation, and has avoided taking steps to support prosecution or extradition contemplated under the ICSFT.

193. Ukraine has requested Russian aid in the ongoing criminal investigations of accused terrorist financiers in numerous diplomatic notes and more than twenty requests under mutual legal assistance treaties (“MLAT requests”).⁴⁵⁴ At every turn, the Russian Federation has frustrated Ukraine’s efforts to prosecute terrorism financiers by delaying responses, invoking unreasonable technical objections, and even refusing outright to assist.

194. For example, beginning as early as 12 August 2014, Ukraine requested Russian assistance and other information in connection with the investigation of terrorism financing crimes committed by O. Kulygina, a Russian citizen.⁴⁵⁵ Kulygina was charged with facilitating the operation of a terrorist group by supplying it with weapons.⁴⁵⁶ Ukraine requested discrete assistance from Russia, including the collection of certain personal data on Kulygina; documents relating to her membership in illegal armed groups; information on any illegal possession of firearms in Russia; information on whether Kulygina crossed the Ukraine–Russia border; and help identifying and questioning relatives of Kulygina.⁴⁵⁷

⁴⁵³ ICSFT, art. 12(1).

⁴⁵⁴ See, e.g., Annexes 400–405, 419–423, 431, 433 (relevant Ukrainian notes verbale and MLAT requests, spanning June 2014 to March 2017)

⁴⁵⁵ See, e.g., Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukrainian Request for Legal Assistance Concerning Case No. 22014050000000015 (30 September 2014) (Annex 401).

⁴⁵⁶ See Ukrainian Request for Legal Assistance Concerning Case No. 22014050000000015 (30 September 2014), p. 1 (Annex 401).

⁴⁵⁷ *Ibid.*; see also Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369).

195. The Russian Prosecutor's Office did not respond for more than a year. Then it claimed that Ukraine's request for border-crossing records was "a procedural formality that is irrelevant to the subject matter of the pretrial investigation being conducted by the Central Investigative Directorate of the Security Service of Ukraine," even though Kulygina was being investigated for a crime that *involved crossing the Ukraine–Russia border* with weapons.⁴⁵⁸ The Russian Prosecutors also claimed without basis that the request for documents concerning Kulygina's involvement with illegal paramilitary groups "fail[ed] to state which procedural or other formalities should be carried out in order to provide legal assistance."⁴⁵⁹ As to many other remaining requests, the Russian prosecutors erroneously claimed that Ukraine failed to invoke proper formalities, and thus refused those requests as well.⁴⁶⁰

196. In another case, Russia simply did not respond for more than a year.⁴⁶¹ In others, Russia just denied the facts about its proxies in Ukraine. For example, in one instance in which Ukraine sought assistance concerning financing of the LPR, Russia refused on the basis that Ukraine had not supplied "information regarding the specific finding on which the declaration of the 'Luhansk Peoples Republic' as a terrorist organization is

⁴⁵⁸ Prosecutor General's Office of the Russian Federation Letter No. No. 82/1-5444-14 (dated 23 October 2015, sent 6 November 2015) (Annex 428).

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.* Kulygina was ultimately convicted in an Ukrainian court, and the MLAT request withdrawn on this basis, notwithstanding Russia's refusal to assist the investigation.

⁴⁶¹ Ukrainian Request for Legal Assistance Concerning Case No. 22015050000000021 (23 March 2017) (Annex 431).

based.”⁴⁶² Yet as established above, it was well known, especially to Russia, that the LPR engaged in terrorism, including its role in “a reign of intimidation and terror to maintain [its] position of control.”⁴⁶³

197. Ukraine has lodged similar requests for assistance in ongoing criminal cases regarding specific Russian military personnel and officers,⁴⁶⁴ and Russian nationals under the jurisdiction of the Russian Federation,⁴⁶⁵ concerning terrorism financing offenses. Many have been refused outright or are still pending years later.

198. Of particular note, on 10 October 2014, Ukraine informed the Russian Federation that it had initiated criminal terrorism-financing investigations into four Russian officials: Sergey Kuzhegetovich Shoigu, Minister of Defense of the Russian Federation; Vladimir Volfovich Zhirinovsky, Vice-Chairman of the State Duma, the Federal Assembly of the Russian Federation; Sergey Mikhailovich Mironov, member of the State Duma; and

⁴⁶² See Prosecutor General’s Office of the Russian Federation Letter No. 82/1-759-16 (14 September 2016) (“Information provided by the Prosecutor General’s Office of Ukraine on July 8, 2016 regarding No. 14/3-25775-16 indicates that the procedure for declaring a terrorist organization is established by the Ukrainian Law ‘On Combating Terrorism.’ In pursuance of the requirements of this law, the ‘Luhansk Peoples Republic’ was declared a terrorist organization based on court decisions. According to the information received, electronic copies of the court decisions are contained in the Unified State Register of Judicial Decisions of Ukraine.”) (Annex 429).

⁴⁶³ OHCHR, *Report on Human Rights Situation in Ukraine*, 15 July 2014, p. 7, para. 26 (Annex 296).

⁴⁶⁴ See, e.g., Ukrainian Request for Legal Assistance Concerning Case No. 42014000000000457 (28 July 2015) (concerning Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation, and other various Russian soldiers); Ukrainian Request for Legal Assistance Concerning Case No. 42014000000000457 (15 September 2015) (concerning Vladimir Startkov) (Annex 423).

⁴⁶⁵ See, e.g., Ukrainian Request for Legal Assistance Concerning Case No. 22014000000000286 (3 July 2015) (concerning Igor Girkin) (Annex 422); Ukrainian Request for Legal Assistance Concerning Case No. 22014000000000283 (3 July 2015) (concerning Igor Bezler) (Annex 421); Ukrainian Request for Legal Assistance Concerning Case No. 22014000000000266 (2 July 2015) (concerning Alexander Mozhaev) (Annex 419); Ukrainian Request for Legal Assistance Concerning Case No. 22014000000000245 (3 July 2015) (concerning Alexander Borodai) (Annex 420); Ukrainian Request for Legal Assistance Concerning Case No. 22015000000000001 (14 November 2017) (concerning Gleb Kornilov) (Annex 433).

Gennadiy Andreyevich Zyuganov, member of the State Duma.⁴⁶⁶ In relation to these criminal investigations, Ukraine requested Russia's assistance pursuant to the ICSFT.⁴⁶⁷ Ukraine followed its diplomatic cable with three separate MLAT requests, each requesting prosecutorial assistance and cooperation.⁴⁶⁸ Russia, however, flatly rejected the specific MLAT requests on the purported basis that cooperation would jeopardize its sovereign and national security interests, without further explanation of why its officials' participation in the financing of terrorism implicated Russia's sovereignty or security interests.⁴⁶⁹

199. Again, this pattern of refusal fits into Russia's general *modus operandi*. Russia has used smokescreens, delay, inaction, wilful blindness, and outright falsehoods to avoid cooperating with Ukraine to prevent, investigate, and punish acts of terrorism financing.

⁴⁶⁶ See Ukrainian Note Verbale No. 72/22-620-2529 to Russian Federation Ministry of Foreign Affairs (10 October 2014) (Annex 372).

⁴⁶⁷ See *ibid*.

⁴⁶⁸ See, e.g., Ukrainian Request for Legal Assistance Concerning Case No. 12014000000000293 (11 November 2014) (concerning Mironov) (Annex 404); Ukrainian Request for Legal Assistance Concerning Case No. 12014000000000292 (4 September 2014) (concerning Zhironovsky) (Annex 400); Ukrainian Request for Legal Assistance Concerning Case No. 12014000000000291 (3 December 2014) (concering Zyuganov) (Annex 405).

⁴⁶⁹ Prosecutor General's Office of the Russian Federation Letter No. 87-159-2015 (17 August 2015) (Annex 426); Prosecutor General's Office of the Russian Federation Letter No. 87-158-2015 (17 August 2015) (Annex 425); Prosecutor General's Office of the Russian Federation Letter No. 87-157-2015 (17 August 2015) (Annex 424).

Section B: The Russian Federation Has Breached Its Obligations Under the International Convention for the Suppression of the Financing of Terrorism

200. The Russian Federation has committed serious, repeated, and continuing violations of the ICSFT. This Section explains these violations in three steps. First, as set forth in Chapter 1, Russia's proxies in Ukraine have engaged in a consistent pattern of terrorist acts within the meaning of Articles 2(1)(a) and 2(1)(b) of the ICSFT. Second, as established in Chapter 2, Russian state officials, as well as private actors located in Russia, knowingly financed this campaign of terrorism within the meaning of Article 2(1) of the ICSFT. Third, as demonstrated in Chapter 3, Russia has refused to cooperate in relation to these documented acts of terrorism financing.

201. As a result, Russia has brazenly violated its numerous obligations under the ICSFT. Most comprehensively, this includes Russia's obligation under ICSFT Article 18 to take all practicable measures to prevent the financing of terrorism by "any person," including state officials. Russia has further failed to identify, detect, freeze, and seize funds allocated for use in terrorism financing in violation of ICSFT Article 8; it has failed to investigate and extradite or prosecute acts of terrorism financing as required by ICSFT Articles 9 and 10; and it has violated its duty under ICSFT Article 12 to afford Ukraine the greatest measure of assistance in connection with criminal investigations concerning acts of terrorism financing.

Chapter 4. RUSSIA'S PROXIES COMMITTED NUMEROUS ACTS OF TERRORISM IN UKRAINE WITHIN THE MEANING OF ICSFT ARTICLE 2

A. The ICSFT Has a Broad and Comprehensive Definition of Terrorism

202. Unlike the terrorism conventions that preceded it, the ICSFT does not focus on one particular type or method of terrorism. Its more ambitious objective was to eliminate

the support that enables all manner of terrorist acts.⁴⁷⁰ To effect this goal, the ICSFT broadly defines the kinds of acts that may not be financed, including an enumerated list of acts recognized by previous treaties, as well as a broad, general category of terrorist acts.

203. Article 2(1)(a) identifies specific acts prohibited by prior terrorism conventions.⁴⁷¹ The incorporated treaties include, as relevant to the flagrant shoot-down of Flight MH17, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (“the Montreal Convention”), which prohibits the intentional destruction of an aircraft in service.⁴⁷² The list also includes the International Convention for the Suppression of Terrorist Bombings (“the ICSTB”), which prohibits the use of explosives in places of public use and similar locations, and is relevant to the spate of bombings and attempted bombings in Kharkiv, Kyiv, and Odesa.⁴⁷³

204. In addition to these enumerated acts, Article 2(1)(b) creates a broad, general definition of terrorist acts that may not be financed.⁴⁷⁴ An act is covered by Article 2(1)(b) if it is (1) “intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict,” and (2) the

⁴⁷⁰ Marja Lehto, *Indirect Responsibility for Terrorist Acts* 258 (2009) (“The focus of the Convention is broadly preventive, and it has been designed to effectively cut off the financial flows in a network of terrorist financing . . .”) (Annex 490).

⁴⁷¹ ICSFT, art. 2(1)(a) (prohibiting the supply of funds to “[a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex”).

⁴⁷² Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, art. 1(1)(b), September 23, 1971, 974 U.N.T.S. 178 [hereinafter Montreal Convention].

⁴⁷³ International Convention for the Suppression of Terrorist Bombings, art. 2(1), 15 December 1997, 2149 U.N.T.S. 284 [hereinafter “ICSTB”].

⁴⁷⁴ ICSFT, art. 2(1)(b).

“purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”⁴⁷⁵

205. The first element of Article 2(1)(b) makes plain that covered acts may occur in “situations of armed conflict,” so long as the act is intended to cause harm to civilians as opposed to combatants taking active part in hostilities.⁴⁷⁶ Thus, an attack by an armed group targeting civilians in the course of an armed conflict may simultaneously be a war crime and an act of terrorism within the meaning of Article 2(1)(b) of the ICSFT.⁴⁷⁷

206. “Intent” is not defined in the ICSFT, and it is appropriate, therefore, to look to common usage in international law to discern its meaning.⁴⁷⁸ “Intent” in international law does not have a singular definition but instead is a general term that describes various *mens rea*. Intent encompasses a desire to achieve the consequence of one’s conduct (*dolus directus*), an awareness or knowledge that the consequence will occur in the ordinary course

⁴⁷⁵ *Ibid.*

⁴⁷⁶ See, e.g., *Prosecutor v. Ayyash et al.*, Case No. STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, pp. 70–71, para. 108 (Special Trib. for Lebanon 16 February 2011) (“[R]atifying the Convention for the Suppression of the Financing of Terrorism without making any reservation, thereby accept[s] the notion that the financing of persons or groups attacking innocent civilians in time of armed conflict, as well as, in consequence, the perpetration of such attacks, may be categorised as ‘terrorism.’”).

⁴⁷⁷ See, e.g., *Liberation Tigers of Tamil Eelam (LTTE) v. Council of the European Union*, Judgment of the General Court (Sixth Chamber, Extended Composition), T-208/11, p. 5 (16 October 2014) (noting that Article 2(1)(b) of the ICSFT “expressly envisages the commission of terrorist acts in the context of an armed conflict within the meaning of international law,” and “confirms that, even in an armed conflict within the meaning of international humanitarian law, there may be terrorist acts liable to be punished as such and not only as war crimes”) (Annex 471).

⁴⁷⁸ See *Kasikili/Sedudu Island (Botswana v. Namibia)*, Judgment of 13 December 1999, 1999 I.C.J. Rep. 1045, pp. 1062–63, para. 27 (relying on common international legal use to determine ordinary meaning of treaty term).

of events (*dolus indirectus*),⁴⁷⁹ or where one sees his action is likely to produce the consequence and nevertheless he willingly takes the risk of so acting (*dolus eventualis*).⁴⁸⁰ This reading conforms with the authentic French version of the ICSFT — “[t]out autre *acte destiné à tuer ou blesser grièvement un civil . . .*” — which points toward *the normal destination of an act as such*, not a specific desire of its author.

207. Reading “intent” in context and in light of the broad and comprehensive object and purpose of the ICSFT to suppress financing of the widest possible range of terrorist acts against civilians,⁴⁸¹ the most appropriate reading of intent in Article 2(1)(b) encompasses all of these *mens rea*. Thus, as an example, the Italian Supreme Court of Cassation interprets Article 2(1)(b) of the ICSFT to cover “an attack using explosives against a military vehicle in a crowded market,” because the “factual circumstances of the event show that serious harm to life and the physical integrity of civilians is certain and

⁴⁷⁹ Rome Statute for the International Criminal Court, art. 30, 17 July 1998, UN Doc. A/CONF.183/9 (defining “intent” to include situations where the person “is aware that [a consequence] will occur in the ordinary course of events”) (Annex 749).

⁴⁸⁰ See, e.g., Kai Ambos and Steffen Wirth, *The Current Law of Crimes Against Humanity: An Analysis of UNTAET Regulation 15/2000*, 13 Criminal Law Forum (2002), pp. 36–37 (“With regard to the commission of international crimes mere negligence is in most cases insufficient. These crimes require a state of mind which in civil law jurisdictions is referred to as *dolus* or intent. *Dolus* exists in the following forms: *dolus directus* first degree (also called *dolus directus*), *dolus directus* second degree (or *dolus indirectus*) and *dolus eventualis*.”) (Annex 486); Rome Statute for the International Criminal Court, art. 30, 17 July 1998, U.N. Doc. A/CONF.183/9 (defining “intent”) (Annex 749); *Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeals Chamber Judgment, p. 99, para. 220 (15 July 1999) (“What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required (also called ‘advertent recklessness’ in some national legal systems.”) (Annex 463); see also *infra* Chapter 4, Part D(1).

⁴⁸¹ ICSFT, pmb. (emphasis added) (“[r]ecalling also all the relevant General Assembly resolutions . . . in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed”) (emphasis added).

unavoidable.”⁴⁸² As explained in more detail below, however, Russia’s proxies have acted with the strongest degree of intent (*dolus directus*) to harm civilians, including in situations where there was no plausible military target at all.

208. The second element of an Article 2(1)(b) offense is that the act’s purpose is to intimidate civilians or coerce a government or international organization. The drafters included this element “so as to exclude ordinary crimes” from the definition of terrorism.⁴⁸³ The ICSFT recognizes that direct evidence of the attacker’s specific agenda will often be unavailable, and so provides that purpose to intimidate or compel is to be inferred from the “nature or context” of the act.⁴⁸⁴

209. As the practice of States Parties make clear, attacks on civilian areas will, by their nature or context, generally be regarded as having the requisite purpose. Notably, the Russian Supreme Court treats an “armed attack on populated localities” as indicating a

⁴⁸² *Italy v. Abdelaziz and ors*, Final Appeal Judgment, No. 1072, 2007, 17 Guida al Diritto 90, ILDC 559, Supreme Court of Cassation, Italy, 17 January 2007, para. 4.1 (Annex 473). This interpretation accords with the view of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) that “[i]ndiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks on civilians ICTY.” *Prosecutor v. Galic*, Case No. IT-98-29-T, Trial Chamber Judgment, para. 57 (5 December 2003) (Annex 464); *see also Prosecutor v. Martić*, Case No. IT-95-11-T, Trial Chamber Judgment, paras. 4 n.4, 472 (12 June 2007) (Martić fired indiscriminately at an area with both civilians and military targets; because he “knew of the effects of [his] weapon,” he “willfully made the civilian population of Zagreb the object of his attack”) (Annex 465).

⁴⁸³ Annex III, *Informal Summary of the Discussions in the Working Group, prepared by the Chairman, in Measures to Eliminate International Terrorism: Report of the Working Group*, U.N. Doc. A/C.6/54.L2, p. 62, para. 87 (26 October 1999) (Annex 277).

⁴⁸⁴ ICFST, art. 2(1)(b). This language was included in the final version of the Convention specifically to ensure that “proof of the perpetrator’s subjective state of mind” would not be required. Annex III, *Informal Summary of the Discussions in the Working Group, prepared by the Chairman, in Measures to Eliminate International Terrorism: Report of the Working Group*, U.N. Doc. A/C.6/54.L2, p. 62, para. 88 (26 October 1999) (Annex 277).

purpose to intimidate.⁴⁸⁵ The Italian Supreme Court of Cassation likewise has stated, interpreting Article 2(1)(b) of the ICSFT, that attacks on civilian areas will generally “creat[e] fear and panic among the local people,” thereby “achiev[ing] the particular results that constitute terrorist purposes.”⁴⁸⁶ Similarly, the Supreme Court of Denmark has held that the use of “imprecise mortar shells in civilian areas” constitutes a terrorist attack under its ICSFT implementing legislation.⁴⁸⁷ And considering the analogous war crime of terrorism, the ICTY infers a purpose to spread terror from “both the actual infliction of terror and the indiscriminate nature of the attack.”⁴⁸⁸

B. Since the Spring of 2014, the DPR and LPR Have Openly Engaged in Attacks Against Ukrainian Civilians that Constitute Terrorist Acts Under ICSFT Article 2(1)(b)

210. As set forth in Chapter 1, Section A, the United Nations and other independent bodies have extensively documented Russia’s proxies’ practice of attacking civilians who play no role in the armed conflict in eastern Ukraine. These attacks, which

⁴⁸⁵ Resolution of the Plenum of the Supreme Court of the Russian Federation, No. 1 of 9 February 2012, “On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature,” para. 3 (“Other actions frightening to the population . . . should be understood as actions with the consequences comparable to an explosion or arson, for example . . . armed attack on populated localities”) (Annex 438). Russian legislation implementing the ICSFT defines a “terrorist act” to require a connection to “frightening the population.” Federal Law “On Combating Terrorism,” art. 3 (6 March 2006) (Annex 440).

⁴⁸⁶ *Italy v. Abdelaziz and ors*, Final Appeal Judgment, No. 1072, 17 Guida al Diritto 90, Supreme Court of Cassation, Italy, 17 January 2007, para. 4.1 (Annex 473).

⁴⁸⁷ “Fighters and Lovers Case,” Case 399/2008 (Sup. Ct., Den., 25 March 2009) (Annex 476). Implementing Article 2(1)(b), section 114(1) of the Danish Criminal Code defines a terrorist attack as one that is committed “with the intent to frighten a population to a serious degree or to unlawfully coerce Danish or foreign public authorities or an international organisation to carry out or omit to carry out an act” Criminal Code of Denmark, section 114(1).

⁴⁸⁸ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Appeals Chamber Judgment, para. 37 (12 November 2009) (holding that “both the actual infliction of terror and the indiscriminate nature of the attack were reasonable factors for the Trial Chamber to consider in determining the specific intent of the accused”) (Annex 467).

have included the murder and torture of civilians — and which were expressly found by U.N. monitors to have been undertaken to intimidate the population — constitute terrorist acts under ICSFT Article 2(1)(b).

211. The DPR, LPR, and other armed groups targeted countless civilians for murder and torture throughout the spring and summer of 2014. One of the most notorious acts was the kidnapping, torture, and murder of Horlivka town councilor Volodymr Rybak, a known supporter of Ukrainian unity, on 17 April 2014.⁴⁸⁹ But the DPR and LPR also killed and tortured countless other civilians who opposed their agenda. On 18 May 2014, for example, DPR members killed an elderly farmer from a village near Slovyansk who was accused of bringing food to the Ukrainian troops.⁴⁹⁰ And on 29 August 2014, LPR members murdered Mr. Hennadii Khitrenko, a retired policeman and a member of the Krymske village council who was an outspoken proponent of Ukrainian unity.⁴⁹¹

212. These and the many other murders documented in Chapter 1, Section A, were plainly “intended to cause death . . . to [] civilian[s].”⁴⁹² The pattern of torture was just as clearly “intended to cause . . . serious bodily injury to [] civilians.”⁴⁹³

213. An examination of the “nature or context” of these attacks reveals that their purpose “is to intimidate a population,” in this case Ukrainian civilians.⁴⁹⁴ As U.N. Human

⁴⁸⁹ See *supra* Chapter 3, Section A.

⁴⁹⁰ See *supra* Chapter 3, Section A.

⁴⁹¹ See *supra* Chapter 3, Section A.

⁴⁹² ICSFT, art. 2(1)(b).

⁴⁹³ *Ibid.* By definition, torture is an “act by which *severe pain or suffering*, whether physical or mental, is *intentionally inflicted* on a person” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1(1), 10 December 1984, 1465 U.N.T.S. 85 (emphases added).

⁴⁹⁴ ICSFT, art. 2(1)(b).

Rights Chief Pillay described, at least one DPR leader has admitted to the objective of “immers[ing] [civilians] in horror.”⁴⁹⁵ The OHCHR and OSCE also repeatedly concluded that civilians were terrorized by DPR and LPR attacks. In July 2014, for example, the OHCHR reported that “armed groups fighting in the east . . . have taken control of Ukrainian territory and inflicted on the populations *a reign of intimidation and terror* to maintain their position of control.”⁴⁹⁶ OSCE interviews with internally-displaced persons from areas under DPR and LPR control reveal that many fled these regions because of “[d]irect experience or the witnessing of acts of violence . . . as well as the perception by people that these acts of violence could affect also them personally[.]”⁴⁹⁷ The experience of terror by victims is powerful confirmation of the DPR and LPR attackers’ intent to intimidate.⁴⁹⁸

214. According to the OHCHR, the DPR and LPR “target[ed] ‘ordinary’ people who support Ukrainian unity or who openly oppose the either of the two ‘people’s republics.’”⁴⁹⁹ The circumstances of Mr. Rybak’s abduction, for example — in public, hours after he tried to

⁴⁹⁵ OHCHR, *Intensified Fighting Putting at Risk Lives of People in Donetsk and Luhansk — Pillay* (4 July 2014) (quoting “the website of one leader of the self-proclaimed ‘Donetsk People’s Republic’”) (Annex 295).

⁴⁹⁶ OHCHR, *Report on Human Rights Situation in Ukraine*, 15 July 2014, p. 7, para. 26 (emphasis added) (Annex 296); see also OHCHR, *Report on Human Rights Situation in Ukraine*, 15 June 2014, p. 3, para. 4 (reporting that armed groups’ attacks on civilians had created “an atmosphere of intimidation and consequent fear” affecting the civilian population in Donetsk and Luhansk) (Annex 46); OHCHR, *Report on Human Rights Situation in Ukraine*, 19 September 2014, p. 6, para. 16 (“The reign of fear and intimidation by the armed groups has been well-documented in the reports of the Human Rights Monitoring Mission in Ukraine. Forced mobilization and threats of the death penalty were additional means to terrorize the population in the territory under the control of the armed groups.”) (Annex 47).

⁴⁹⁷ OSCE, Thematic Report: Internal Displacement in Ukraine, pp. 5–6 (12 August 2014) (Annex 316).

⁴⁹⁸ Cf. *Prosecutor v. Dragomir Milošević*, Case No. IT-02-54, Appeals Chamber Judgment, p. 18, para. 37 (19 November 2009) (considering “the actual infliction of terror” as evidence that the “primary purpose” of attacks was to “spread terror among the civilian population,” as required in the elements of the war crime of terror) (Annex 467).

⁴⁹⁹ OHCHR, *Report on Human Rights Situation in Ukraine*, 15 June 2014, para. 207 (Annex 46).

replace the DPR flag with the Ukrainian flag in front of a crowd of onlookers — sent a clear message of intimidation to civilians in Horlivka and throughout eastern Ukraine that resistance would be punished.

215. The context of these hostile acts against civilians is also significant as it reveals a purpose “to compel a government . . . to do or abstain from doing any act.”⁵⁰⁰ These acts occurred as the DPR and LPR demanded greater autonomy from Ukraine’s central authorities. Targeting supporters of Ukrainian unity signaled to the Ukrainian government that the armed groups were prepared to kill innocent Ukrainian civilians as long as their political demands, including changes to the constitutional structure of Ukraine, were not met.

216. The well-documented pattern of attacks on individual civilians perpetrated by the DPR and LPR thus satisfies both elements of the ICSFT’s general definition of terrorist acts under Article 2(1)(b).

C. The DPR’s Downing of Flight MH17 Constitutes a Terrorist Act Under ICSFT Article 2(1)(a)

217. With additional assistance from the Russian Federation, the DPR was soon able to commit acts of terror on a larger scale and with deadlier consequences. As set forth in greater detail in Chapter 1, Section B, on 17 July 2014, the DPR downed Flight MH17, a civilian airliner, with a Buk missile supplied by the Russian Federation. The consequences of this attack were both tragic and horrific. The attack also violated Article 1 of the Montreal Convention, and was thus a covered act under Article 2(1)(a) of the ICSFT.

218. Article 1(1)(b) of the Montreal Convention provides:

Any person commits an offence if he unlawfully and intentionally: . . .

⁵⁰⁰ ICSFT, art. 2(1)(b).

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight . . .”⁵⁰¹

219. Article 4(1) of the Montreal Convention separately provides that the treaty “shall not apply to aircraft used in military, customs or police services.”⁵⁰² Thus, to commit an offense under Montreal Convention Article 1(1)(b), a person must (1) intend to destroy or damage an aircraft in service, (2) act unlawfully, and (3) destroy or cause damage to a civilian aircraft. Each of these elements is met in the case of the DPR’s destruction of Flight MH17.

220. First, it is beyond debate that the DPR intended to destroy an aircraft in service.⁵⁰³ The weapon used — a Buk TELAR, one component of a sophisticated anti-aircraft missile system — is highly effective and accurate at destroying its target.”⁵⁰⁴

221. Second, the DPR’s downing of Flight MH17 was “unlawful,” as it was not “done with legal authority or as a measure of self-defence or with other legal justification.”⁵⁰⁵ Armed groups operating illegally in Ukraine had no valid legal justification, under Ukrainian law or international law, for firing weapons at aircraft.

222. Finally, the Article 4 exclusion of military aircraft from coverage by the Convention has no relevance because Flight MH17 was indisputably a civilian aircraft. Under the ordinary meaning of Articles 1 and 4, in the context of the Montreal Convention’s overall structure, the civilian or military status of the aircraft is a jurisdictional element of

⁵⁰¹ Montreal Convention, art. 1(1)(b).

⁵⁰² *Ibid.* art. 4(1).

⁵⁰³ Article 2 of the Montreal Convention defines an “aircraft in service” to include when the aircraft is “in flight.” *Ibid.*, art. 2(b). It is undisputed that MH17 was in flight when it was destroyed.

⁵⁰⁴ See generally Skorik Report (Annex 12).

⁵⁰⁵ International Civil Aviation Organization, International Conference on Air Law, Montreal, September 1971, Volume II: Documents, p. 30, para. 5.3 (1973).

the offense. Article 1(1)(b) states that a person commits an offense if he/she “intentionally . . . destroys *an aircraft* in service or causes damage to such *an aircraft*.⁵⁰⁶ It requires no intention as to the status of the aircraft. This neutral approach to the status of the victim is not unusual. For example, under the treaty governing attacks on “internationally protected persons” (which, like the Montreal Convention, is incorporated in Article 2(1)(a) of the ICSFT), an offense exists if the victim has a particular status (e.g., a diplomat), but does not require the attacker to *know* the victim’s status.⁵⁰⁷ Likewise, under the Montreal Convention, if the elements of Article 1 are met (intent to destroy an aircraft, and unlawful destruction of an aircraft), and Article 4 is not separately triggered (because a civilian, not a military, aircraft is destroyed), a violation is established. It is no defense to assert that the perpetrator meant only to destroy (unlawfully) a military, rather than civilian, aircraft.

223. Moreover, even if intention as to the civilian status of an aircraft were required, the DPR did know that it was deploying a powerful anti-aircraft system in heavily-trafficked civilian airspace.⁵⁰⁸ And as Dr. Skorik explains, “the technical capabilities of the Buk M-1 TELAR do not make it possible to accurately tell civilian aircraft from military targets.”⁵⁰⁹ Operating a Buk TELAR without guidance from a combat control center, and in a high-pressure environment with just seconds to make targeting decisions, is “extremely

⁵⁰⁶ Montreal Convention, art. 1(1)(b) (emphases added).

⁵⁰⁷ Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 14 December 1973, 1035 U.N.T.S. 167; see UNODC, Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols 12–13 (2008); see also *Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeals Chamber Judgment, p. 112, para. 249 (15 July 1999) (“The Prosecution is, moreover, correct in asserting that the armed conflict requirement is a *jurisdictional* element, not ‘a substantive element of the *mens rea* of crimes against humanity’ (i.e., not a legal ingredient of the subjective elements of the crime).”) (Annex 463).

⁵⁰⁸ See *supra* Chapter 1, Section B.

⁵⁰⁹ Skorik Report, para. 28 (Annex 12).

dangerous for civilian aircraft.”⁵¹⁰ Destruction of such an aircraft was the natural consequence of deploying a Buk TELAR with civilian aircraft present.⁵¹¹

224. The destruction of Flight MH17 thus meets all the elements of an offense under Article 1(1)(b) of the Montreal Convention, and constitutes a covered act under ICSFT Article 2(1)(a).⁵¹²

D. The DPR’s Shelling Attacks of Civilian Areas Constitute Terrorist Acts Under ICSFT Article 2(1)(b)

225. Undeterred by the widespread international condemnation of their attack on Flight MH17, six months later Russia’s proxies committed three more major terrorist acts — shelling populated civilian areas in eastern Ukraine — in a span of 30 days coinciding with a period of tense diplomatic engagement. These attacks killed more than 50 civilians and wounded at least 170 more. Each of them was a covered act of terrorism under Article 2(1)(b) of the ICSFT.

1. The DPR’s Shelling Attack on a Civilian Bus in Volnovakha is a Covered Terrorist Act Under ICSFT Article 2(1)(b)

226. As explained in Chapter 1, Section C, on 13 January 2015, the DPR shelled a civilian checkpoint in Volnovakha. One shell exploded near a civilian passenger bus, killing 12 civilians on board and wounding 19 others. This is a covered act of terrorism under ICSFT Article 2(1)(b).

⁵¹⁰ *Ibid.* para. 31.

⁵¹¹ *Cf. Prosecutor v. Galic*, Case No. IT-98-29-T, Trial Chamber Judgment, paras. 415–16 (5 December 2003) (finding that “SRK soldiers shot without knowing whether the movements they saw on the runway were caused by civilians or by soldiers dressed as civilians,” and noting that these “episodes of indiscriminate firing against people crossing the runway [are] relevant to establishing that indiscriminate fire against civilians by SRK forces was an accepted and known fact”) (Annex 464).

⁵¹² While it is sufficient to establish the downing of Flight MH17 as a covered act under the ICSFT by way of the Montreal Convention, the downing of Flight MH17 also constitutes a covered act under ICSFT Article 2(1)(b).

227. In shelling the checkpoint, the DPR fighters intended to cause death or serious bodily harm to civilians. The Buhas checkpoint did not play a role in the ongoing conflict, and there was no military reason to attack it. Rather, the checkpoint's function was to monitor, and search as necessary, *civilian* vehicles coming and going from government-controlled territory, just as border and customs officials do at an actual border.⁵¹³ It played no offensive role in the military conflict, and based on the small number of personnel stationed there, it could not have conducted any effective defensive role against an organized attack.⁵¹⁴ Lieutenant General Christopher Brown, a retired British Army artillery expert with over 36 years' active duty service, has provided the Court with an expert opinion on the shelling of Ukrainian cities. Based on these circumstances, General Brown "cannot identify any military justification for attacking the checkpoint."⁵¹⁵ General Brown explains:

It is difficult to argue that the checkpoint was taking an active part in the hostilities, or that its destruction gave the DPR any military advantage. The function of the Volnovakha checkpoint appears to have been a continuation of its long-standing civilian role of checking vehicles, albeit reinforced by armed personnel in order both to provide a greater degree of protection to the police forces manning the checkpoint and also to extend the role of the checkpoint to include checks for the movement of weapons and separatist personnel. There is no evidence to suggest that the checkpoint played any offensive role; indeed, its size and the number of personnel manning it suggest it could not even have conducted any effective defensive role against anything more than attacks by individuals with small arms. While the checkpoint could undoubtedly warn Ukrainian Armed Forces of any impending attack along the road to Volnovakha, any advantage of a conventional military attack on the checkpoint, either by direct assault or by indirect fire, would in my opinion be outweighed

⁵¹³ See *supra* Chapter 1, Section C(1).

⁵¹⁴ See *supra* Chapter 1, Section C(1); Brown Report, para. 27 (Annex 11).

⁵¹⁵ Brown Report, para. 27 (Annex 11).

by its waste of resources and a loss of surprise if it were a precursor to a larger attack.⁵¹⁶

228. While the attack had no apparent logic when viewed through a military lens, it does make sense when viewed through the lens of harming civilians. As everyone familiar with the area knew, the checkpoint was positioned on a well-trafficked highway and attracted a long line of stopped civilian vehicles, both in general and on the day of the attack.⁵¹⁷ For an attacker that wished to harm civilians, the checkpoint provided an attractive, and logical, target. The inescapable conclusion is that the DPR militants intended to harm the long line of civilian vehicles they knew would be present.⁵¹⁸

229. At the very least, the DPR knew that great harm to civilians would occur in the ordinary course of events. Employing a BM-21 Grad against a small target such as a checkpoint in the midst of heavy civilian vehicle traffic at a minimum qualifies as an indiscriminate attack, where serious harm to civilians was a certain outcome. As General Brown explains, this type of weapon system is designed to target an area, rather than small targets such as a checkpoint.⁵¹⁹ Even if the checkpoint had been the true objective and had been accurately targeted, and there is no evidence of that, “[t]he choice of weapon system and its method of targeting were incapable of damaging the checkpoint without hitting the road and civilian traffic on it; indeed, the attackers would have known that their actions would impact the road and any civilian traffic more than the checkpoint.”⁵²⁰ The DPR could not have aimed Grad rockets at a crowded civilian checkpoint — with the apparent assistance of unmanned aerial vehicles to scout the area the day before the attack⁵²¹ — in the

⁵¹⁶ *Ibid.* (internal citations omitted).

⁵¹⁷ See *supra* Chapter 1, Section C(1).

⁵¹⁸ Cf. *Prosecutor v. Strugar*, Case No. IT-01-42-T, Trial Chamber Judgment, paras. 193, 288 (31 January 2005) (concluding from the fact that there were no “firing positions or heavy weapons” that the intent was “to target civilians”).

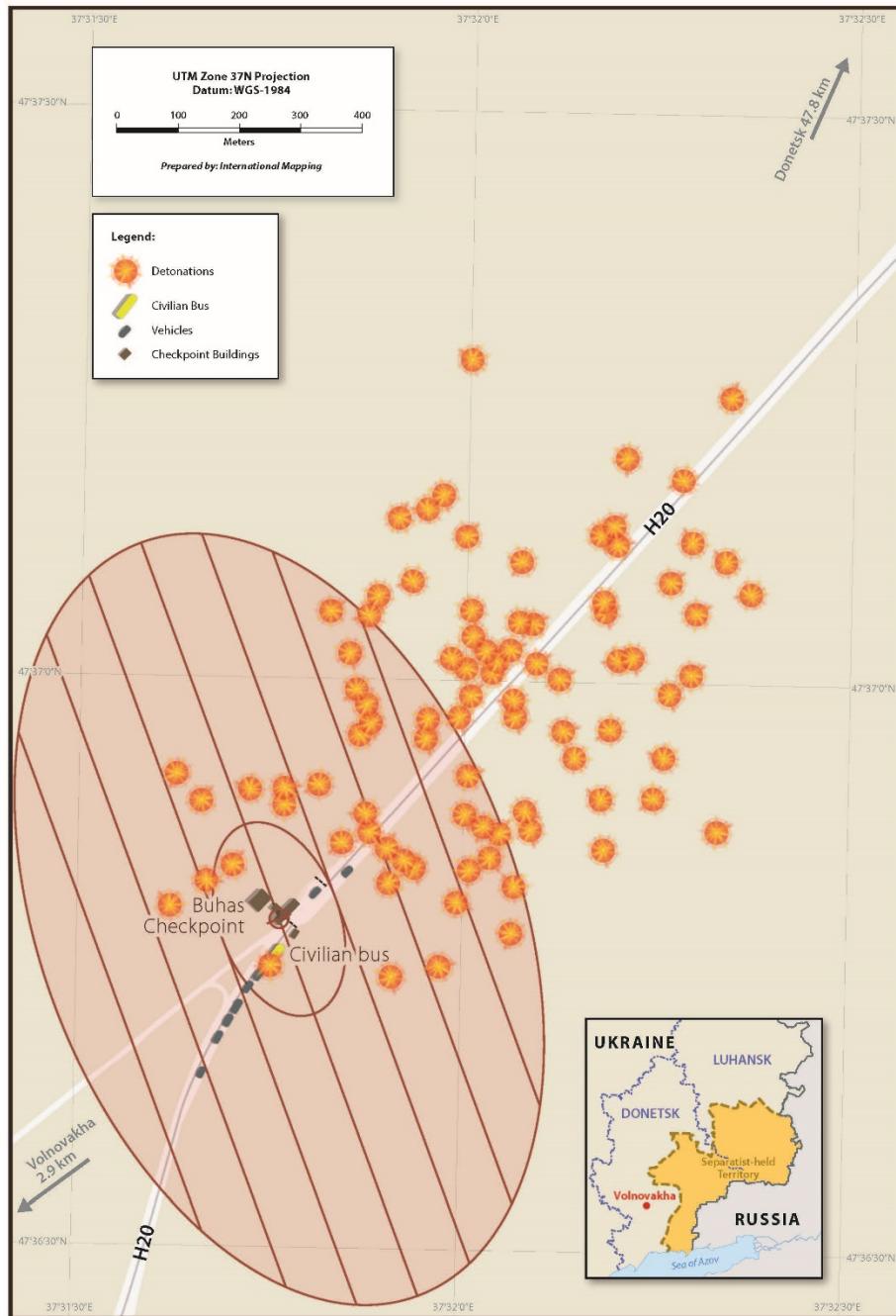
⁵¹⁹ Brown Report, para. 14 (Annex 11).

⁵²⁰ *Ibid.* para. 39.

⁵²¹ See *supra*, Chapter 1, Section C(1).

middle of the day without knowing what would happen to civilians as a virtually certain consequence.

Map 10: Expected Area of Impacts if Buhas Checkpoint Targeted⁵²²



⁵²² Shaded grid (drawn to scale) reflects the expected spread of fire around the checkpoint. See Brown Report, paras. 29, 30 and Figure 1 (Annex 11).

230. The nature or context of the attack also demonstrates that the DPR's purpose in shelling the checkpoint was to intimidate civilians. The fact that the DPR intentionally shelled a civilian checkpoint during the middle of the day establishes a purpose to intimidate civilians.⁵²³ That they did so using Grad MLRS — a weapon whose name means "Hail" — only bolsters that conclusion. General Brown explains:

Unannounced MLRS fire has the effect of shocking and surprising any military personnel in the target area, even if they are not killed or physically injured. As an area weapon from which it is impossible to run or drive, unannounced MLRS fire tends to cause fear, confusion and panic. Its unannounced saturation of an area combined with the noise of multiple explosions is highly frightening and creates a sense of helplessness. It has a similar, potentially greater psychological effect on civilians."⁵²⁴

231. Moreover, targeting "sites well-known to be frequented by [civilians] during their daily activities, such as . . . public transport," can be particularly intimidating to civilians.⁵²⁵ The Buhas checkpoint is a quintessentially civilian site; civilians needed to pass through it to carry on their daily activities, including to pick up benefits payments from Ukrainian government offices.⁵²⁶ Attacking such a target conveys the unmistakable message that no aspect of civilians' lives are safe from the ever-present threat of attack.

⁵²³ See *supra*, Chapter 4, Section A.

⁵²⁴ Brown Report, para. 17 (internal citation omitted) (Annex).

⁵²⁵ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Trial Chamber Judgment, pp. 290–91, para. 881 (12 December 2007) (Annex 466); see also Resolution of the Plenum of the Supreme Court of the Russian Federation, No. 1 of 9 February 2012, "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature," para. 3 (emphasizing that "shelling . . . houses, schools, hospitals, [and] administrative buildings" frightens the civilian population) (Annex 438).

⁵²⁶ See *supra*, Chapter 1, Section C(1).

232. The DPR and LPR's pattern of intimidation over the course of the spring and summer of 2014 is also relevant context for the Buhas checkpoint attack. One noteworthy parallel between the 2014 and 2015 attacks is that the DPR has consistently targeted those it sees as collaborators with the Ukrainian government. The Buhas checkpoint allowed Ukrainian civilians to cross from DPR-held territory to government-controlled territory, and was often a waypoint for Ukrainians to collect pension and social benefit payments from their government.⁵²⁷ Just as the assassination of Mr. Rybak sent a message to all who would show respect to the Ukrainian flag, the destruction of a bus filled with pensioners near Volnovakha sent a message to all who would cross into government territory to accept benefits from the Ukrainian government.

233. The intimidatory purpose of the attack is thus sufficient to meet the second element of Article 2(1)(b), but that element is also satisfied for the independent reason that the attack was, by its nature or context, intended to compel a government to act or refrain from acting. The DPR's attack on civilians was in service of its political goals of greater autonomy from Kyiv, and its demand of fundamental changes to the constitutional structure of Ukraine.⁵²⁸

234. The DPR did not just have abstract political goals; it was actively seeking concessions from the Ukrainian government during the same time period as the attack. The Trilateral Contact Group, comprised of representatives of Ukraine, the Russian Federation, and the OSCE assembled to pursue diplomatic resolution of the situation in Donbas, held a meeting on 31 January 2015 in Minsk to discuss options for a cease-fire.⁵²⁹ Attacking

⁵²⁷ See *supra* Chapter 1, Section C(1).

⁵²⁸ See *supra*, Introduction, Section A.

⁵²⁹ OSCE, Statement by the Chairmanship on the Trilateral Contact Group Consultations in Minsk on 31 January 2015 (1 February 2015) (Annex 330).

civilians in close proximity to peace efforts is a classic terrorist strategy designed to maximize leverage at the bargaining table.⁵³⁰ This political context of the Volnovakha attack further supports the conclusion that the attackers aimed to coerce the government of Ukraine into acceding to the DPR's demands.

2. The DPR's Shelling Attack of a Residential Neighborhood in Mariupol is a Covered Terrorist Act Under ICSFT Article 2(1)(b)

235. On 24 January 2015, less than two weeks after the attack in Volnovakha, the DPR carried out another large-scale attack on civilians, this time bombarding the Vostochniy residential neighborhood of Mariupol, as well as other residential areas to its west. As in Volnovakha, the DPR used BM-21 Grads. Thirty civilians, including children, were killed, and 118 civilians were injured.⁵³¹ In committing this atrocity, DPR militants again committed an act of terrorism under Article 2(1)(b).

236. First, the DPR intended to cause death or serious bodily harm to civilians in shelling this residential area of Mariupol. The Vostochniy neighborhood is densely populated, yet it was attacked with at least four separate BM-21 Grads firing at least 154 rockets, causing damage across that residential area and further west.⁵³² The U.N. Under-

⁵³⁰ See, e.g., Michael G. Findley and Joseph K. Young, *Terrorism, Spoiling, and the Resolution of Civil Wars*, 77 J. of Politics 115, 1119 (2015) ("Terrorist violence can occur anytime during the entire process, and it is one means by which groups try to achieve their goals. Throughout the peace process, groups might only seek a temporary interruption to gain more leverage over future negotiations or implementation.") (Annex 495).

⁵³¹ See *supra*, Chapter 1, Section C(2).

⁵³² Brown Report, para. 43 (Annex 11).

Secretary-General for Political Affairs drew the most obvious conclusion from such an attack: that the DPR targeted a residential neighborhood outside the zone of conflict.⁵³³

237. The attackers themselves discussed this objective in an intercepted conversation the night before the attack. DPR member Ponomarenko (“Terrorist”) asked his comrade Evdotiy (“Pepel”) to “F*cking crush it, I f*cking asked you, that one, f*cking Vostochniy.” Evdotiy responded that “I will, I’ll do Vostochniy tonight as well, don’t worry.”⁵³⁴ The next morning, at approximately 09:15, the DPR did hit Vostochniy, as well as the area west of it past Olimpiiska Street. A DPR lookout reported at 10:36 that the attack hit “on houses, on nine-story buildings, on private residences, the Kievskiy market,”⁵³⁵ and then a half an hour later a new barrage of Grad rockets struck the Vostochniy neighborhood.⁵³⁶

238. General Brown concludes that the overall circumstances of the attack support the same conclusion that the Vostochniy area was the target. At the time of the attack, the National Guard was responsible for the protection of Mariupol. But as General Brown explains, “[t]he distance of any of the Ukrainian National Guard sites from the residential areas shelled in the attack is too great for those National Guard sites to be considered a plausible target of the attack.”⁵³⁷ The nearest such site was a National Guard checkpoint at the northern edge of the city, far from the mean point of impact; given the distance and the

⁵³³ U.N. Security Council Official Record, 7368th mtg. U.N. Doc. S/PV.7368 (26 January 2015), p. 2 (statement of Jeffrey Feltman, U.N. Under-Secretary-General for Political Affairs) (stating that the attackers of Mariupol “knowingly targeted a civilian population” in a city that “lies outside of the immediate conflict zone”) (Annex 307).

⁵³⁴ See *supra*, Chapter 1, Section C(2).

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

⁵³⁷ Brown Report, para. 57 (Annex 11).

wide “spread of fire achieved,” General Brown concludes that “the northern checkpoint was not the actual target of the attack.”⁵³⁸ Moreover, given the size and functions of the checkpoint, there was “no apparent military advantage” in attacking unless as a prelude to a ground assault, which was not forthcoming.⁵³⁹ When “distance and lack of military advantage are taken into account,” General Brown concludes that it is “highly implausible” that neutralizing the checkpoint was the objective of the attack.⁵⁴⁰

239. Moreover, even if all four BM-21 Grads had for some reason been aimed at a single small target (despite the obvious overkill), such an attack would still reflect an intent to harm civilians. General Brown explains that “[t]he weapons system used in the attack and its method of targeting were incapable of damaging the northern checkpoint without hitting the residential area,” meaning the “[t]he attackers would have known that their actions would impact the residential area.”⁵⁴¹

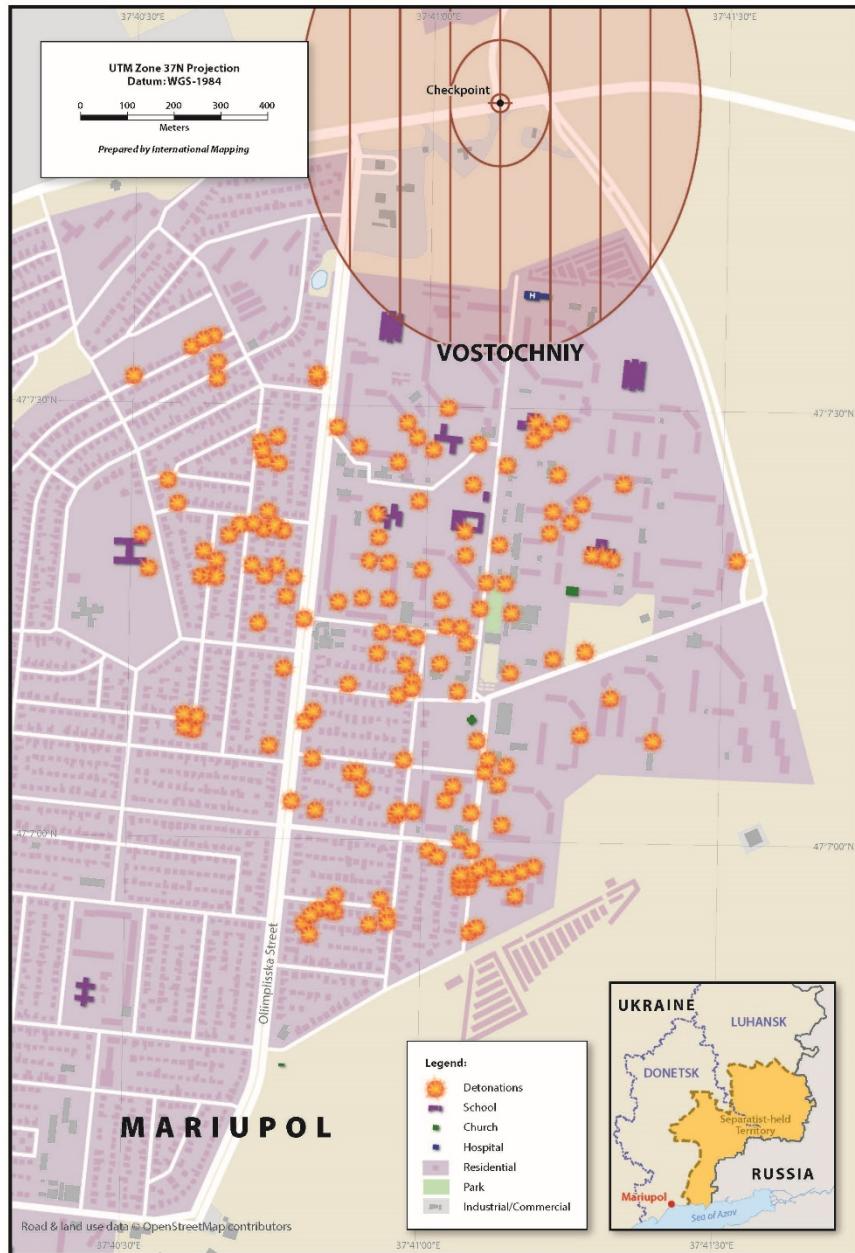
⁵³⁸ *Ibid.* para. 48.

⁵³⁹ *Ibid.* para. 58.

⁵⁴⁰ *Ibid.* para. 48.

⁵⁴¹ *Ibid.* para. 59.

Map 11: Expected Area of Impacts if Northern Checkpoint Targeted⁵⁴²



240. Second, the nature or context of the attack makes clear that the DPR's purpose in shelling Mariupol was to intimidate civilians and to coerce the Ukrainian

⁵⁴² Shaded grid (drawn to scale) reflects the expected spread of fire under the parameters of the Mariupol attack, if the target had been the northern checkpoint. See *ibid.* paras. 51, 52, and Figure 2.

government. As with the attack in Volnovakha, the nature of the DPR's attack — an intentional shelling, using a weapon nicknamed “Hail,” against a densely populated civilian area — establishes that the DPR's purpose was to intimidate civilians. The natural purpose of such an attack, in the words of the Italian Supreme Court of Cassation interpreting the ICSFT, is to “creat[e] fear and panic among the local people.”⁵⁴³ The DPR's prior, well-documented pattern and practice of targeting civilians for intimidatory purposes throughout the spring and summer of 2014, and its attack against civilians in Volnovakha less than two weeks earlier, only strengthens that conclusion.

241. DPR members even celebrated the terror they had caused. Ponamerenko, the DPR member who had asked for the attack the night before, said about “Vostochniy” after the first barrage: “Let the f*cking bitches be more afraid.”⁵⁴⁴

242. The DPR also carried out the shelling attack on Mariupol in a manner that maximized its intimidating effects. The attack hit all types of civilian sites essential to daily life.⁵⁴⁵ In total, fifty-three residential buildings, four schools, three day-cares, eight stores, a post office, two banks, a pharmacy, and two markets were hit and damaged during the shelling attack.⁵⁴⁶ The timing of the attack also heightened its terrorizing effects. The DPR chose to launch its first volley on a Saturday morning, when many civilians were likely either to be at home with their families, or outside conducting their errands for the day. And then, as Ukrainian authorities were responding to the attack, Vostochniy was struck again.⁵⁴⁷

⁵⁴³ See, e.g., *Italy v. Abdelaziz and ors*, Final Appeal Judgment, No. 1072, 2007, 17 Guida al Diritto 90, ILDC 559, Supreme Court of Cassation, Italy, 17 January 2007, para. 4.1 (Annex 473).

⁵⁴⁴ See *supra*, Chapter 1, Section C(2).

⁵⁴⁵ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Trial Chamber Judgment, pp. 290–91, para. 881 (12 December 2007) (Annex 466).

⁵⁴⁶ See *supra*, Chapter 1, Section C(2).

⁵⁴⁷ See *ibid.*

243. A message was sent to Ukrainian civilians in Mariupol: no place was safe, and further attacks could occur at any time. Unsurprisingly, residents were in fact terrorized and some fled Mariupol altogether.⁵⁴⁸ The actual experience of terror that residents of Mariupol experienced reinforces the DPR's purpose to intimidate.⁵⁴⁹

244. As with the Volnovakha attack, Article 2(1)(b)'s purpose requirement is also met for an independent reason. By shelling Mariupol, the DPR sought to pressure the Ukrainian government to meet its political demands including modifications to Ukraine's constitutional structure to achieve greater autonomy.⁵⁵⁰ The DPR shelled Mariupol only a week before the planned meeting of the Trilateral Contact Group, and on the heels of the DPR's attack on civilians in Volnovakha less than two weeks earlier. The nature or context of the attack shows that the DPR's purpose was to ratchet up the pressure on the Ukrainian government as this meeting rapidly approached, in the hope that the Ukrainian government would bend to its demands, rather than risk further harm to innocent civilians.

3. The DPR's Shelling Attack of a Residential Neighborhood in Kramatorsk is a Covered Terrorist Act under ICSFT Article 2(1)(b)

245. Undeterred by the international outcry over its attacks on Volnovakha and Mariupol, the DPR again attacked civilians in eastern Ukraine. On 10 February 2015, less than ten days after the Trilateral Contact Group meeting, and one day before additional peace talks were scheduled with Germany and France, the DPR shelled a residential neighborhood in Kramatorsk. Seven civilians were killed, and twenty-six more, including

⁵⁴⁸ See *ibid.*

⁵⁴⁹ Cf. *Prosecutor v. Dragomir Milošević*, Case No. IT-02-54, Appeals Chamber Judgment, para. 37 (19 November 2009) (Annex 468).

⁵⁵⁰ See *Prosecutor v. Ayyash et al.*, Case No. STL-11-01, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, para. 106 (Special Trib. for Lebanon, 16 February 2011) (Annex 469).

five children, were injured. This attack also was an act of terrorism under ICSFT Article 2(1)(b).

246. First, the DPR intended to cause death or serious bodily harm to civilians. As General Brown explains, “there is no evidence of any military targets in the residential area of Kramatorsk that would justify targeting it with a BM-30 salvo.”⁵⁵¹ While there was a legitimate military target of an airfield approximately two kilometers away from the residential neighborhood, General Brown concludes from the dispersion of bomblets that “[i]t is implausible that the bomblets which landed in the residential area were targeted at the airfield.”⁵⁵²

247. As General Brown explains, the weapon used to shell Kramatorsk was a BM-30 Smerch, a highly accurate system that includes features specifically designed to decrease errors in targeting, including autonomous determination of the bearing of fire.⁵⁵³ There were also reports of UAV in the area at the time of the attack, which further improve reliability.⁵⁵⁴ Given the BM-30 Smerch’s accuracy, General Brown concludes that “[i]t is highly unlikely that even poorly trained and supervised firers could commit an error of this magnitude inadvertently, let alone well-trained operators with access to UAV observation.”⁵⁵⁵

⁵⁵¹ Brown Report, para. 67 (Annex 11).

⁵⁵² *Ibid.*, paras. 73, 76. The airfield, which housed the ATO headquarters, also was struck that same day, and caused grave injury to civilians. The pattern of impacts on the airfield further supports General Brown’s conclusions that the bomblets that landed in the residential area were not aimed at the airfield. *Ibid.*

⁵⁵³ *Ibid.* para. 62.

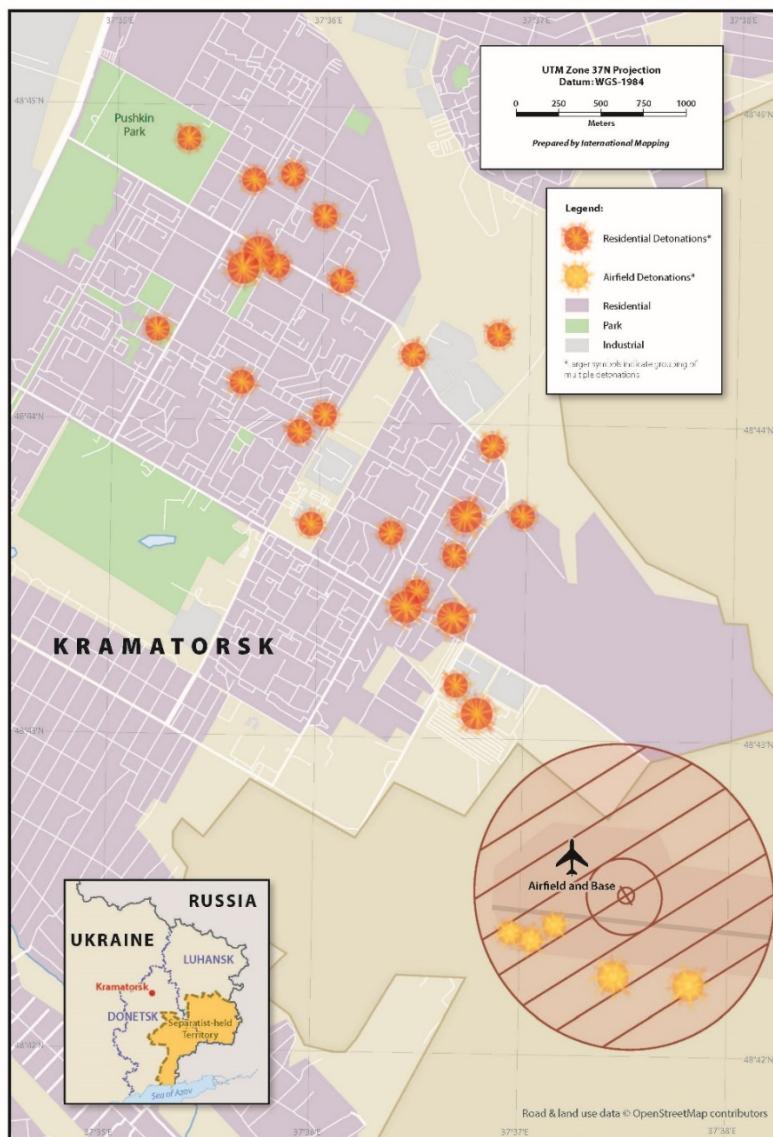
⁵⁵⁴ See *supra* Chapter 1, Section C(3).

⁵⁵⁵ Brown Report, para. 73 (Annex 11).

248. This conclusion is further supported by the fact that many bomblets landed squarely in the middle of the residential neighborhood in Kramatorsk. As General Brown continues, “the coincidence of the missiles erroneously landing in a civilian area, as opposed to the fields around the airfield target, further indicates that any suggestion that this was an error would have to be viewed with extreme scepticism.”⁵⁵⁶ The simpler explanation is the real one: the DPR intended to target the residential neighborhood and to harm the civilians it knew lived there.

⁵⁵⁶ *Ibid.*

Map 12: Expected Area of Impacts if Airfield Targeted⁵⁵⁷



249. A separate volley of rockets did target an airfield. The DPR nonetheless would have known that those rockets, too, also would cause injury to civilians not engaged in armed

⁵⁵⁷ Shaded grid (drawn to scale) reflects the expected spread of fire in an attack on the airfield under the parameters of the Kramatorsk attack. See *ibid.*, paras. 69, 70, and Figure 3.

conflict. As General Brown explains, the “carrier” elements of the rockets (*i.e.*, the pieces that carry the bomblets) would be expected to sail beyond the airfield and hit the residential neighborhood, harming civilians.⁵⁵⁸

250. Second, the nature or context of this attack demonstrates that the DPR’s purpose was once again to intimidate and coerce. The BM-30 Smerch is a powerful multiple-launch rocket system, and thus its use against civilians establishes that the DPR’s purpose was to terrorize civilians. The DPR’s past practice of targeting civilians to intimidate them — including the two egregious shelling attacks in the weeks prior — bolsters this conclusion.

251. The sites struck and the timing of the attack further suggest that the purpose of this shelling attack was to intimidate Ukrainian civilians. Similar to the Mariupol shelling, multiple quintessentially civilian sites were struck in the shelling attack in Kramatorsk, including sixteen residential buildings, a kindergarten, an art school, and a local hospital.⁵⁵⁹ The shelling attacks were launched at a time — around noon — when civilians were likely to be outside, and thus more likely to be hurt in the attack.

252. The DPR’s chosen launch site for the attack also supports the conclusion that the DPR committed the attack with the aim of intimidating civilians. As General Brown notes, there were alternative launch sites nearby Horlivka from which the DPR still could have targeted the airfield while also ensuring that no carrier elements from the rockets would fall into residential neighborhoods in Kramatorsk:

Even if only the airfield had been targeted and that had been done accurately, the choice of weapon system and the launch

⁵⁵⁸ *Ibid.* para. 77 (“Even if all the rockets had been targeted exclusively at the airfield, and done so accurately, the carrier elements would still have been expected to land in the residential area. Given that the carrier elements are as much a part of the missile as the sub-munitions, the firers would have known that the carrier elements would fall several kilometres beyond the bomblets’ impact points, with harm to civilians guaranteed.”).

⁵⁵⁹ See *supra* Chapter 1, Section C(3).

position in the Horlivka area made it inevitable that carrier elements would fall on civilian residential areas of Kramatorsk. This fatal decision could have been mitigated by selecting a launch position to the south-west of Horlivka. This would have minimized the chances of carrier elements landing on civilian areas of Kramatorsk. If the launch position had been in the area of Yasynuvata, the bearing from the launch position to the target at Kramatorsk airfield would have been 345°; as a result, the majority of carrier elements would have landed harmlessly in the open ground to the north of the airfield.⁵⁶⁰

In sum, as General Brown explains, “once the choice of weapon system and launch position had been made, it was inevitable that carrier elements would fall on civilian residential areas. The attackers would have known that their actions would impact the civilian areas.”⁵⁶¹

253. That the DPR nevertheless chose to launch the attack from Horlivka reinforces that at least one purpose of the attack was to intimidate the civilians living in Kramatorsk. By attacking Kramatorsk from Horlivka, which is around 70 kilometers from Kramatorsk, the DPR signaled to civilians in the area — who may have thought they were safely out of range — that they were, in fact, at risk of losing their lives and suffering serious injury due to missiles and debris raining down on their neighborhood, without warning, in the middle of the day. And civilians heeded this warning; after the attack on Kramatorsk, the city’s population decreased by approximately 1,500 by the end of 2015.⁵⁶²

254. Finally, as with the Volnovakha and Mariupol attacks, the timing of this attack in relation to the political negotiations taking place reveals that the DPR attacked civilians in Kramatorsk in an effort to strengthen its negotiating position with the Ukrainian government to achieve its political goals. At the 31 January 2015 Trilateral Contact Group meeting, little progress was made as “the signatories of [the Minsk Protocol and

⁵⁶⁰ Brown Report, para. 74 (Annex 11).

⁵⁶¹ *Ibid.* para. 78.

⁵⁶² See *supra*, Chapter 1, Section C(3).

Memorandum] from Donetsk and Luhansk did not participate,” and “[t]heir representatives who were present . . . called for revision of the Protocol and Memorandum.”⁵⁶³ In the wake of these failed talks, international pressure mounted for a cease-fire and peaceful settlement to the dispute. On 7 February 2015, France and Germany put forward a new peace plan,⁵⁶⁴ and a summit involving the leaders of Russia, Ukraine, France, and Germany was scheduled for 11 February 2015 to discuss it.⁵⁶⁵ The day before that scheduled meeting bombs rained down on Kramatorsk. This broader context strongly suggests that the DPR attacked civilians in Kramatorsk far from the contact line to pressure the Ukrainian government to give in to the DPR’s political demands.

4. The DPR’s Repeated Shelling and Artillery Attacks on Civilians in Avdiivka Are Covered Terrorist Acts under Article 2(1)(b)

255. The weeks-long indiscriminate shelling of residential neighborhoods in Avdiivka also constitutes a series of terrorist acts under Article 2(1)(b).

256. First, these attacks were intended to cause death or seriously bodily harm to civilians. Although Ukrainian military positions were operating along the south of the city, military objectives do not explain the many rocket and mortar attacks far from those military zones. For example, DPR fighters deployed Grad rockets and killed a civilian on Zavodska Street, a residential location “over 2km from [the] nearest UAF positions.”⁵⁶⁶ Russia’s proxies also relied heavily on gun artillery and mortars, which General Brown explains are

⁵⁶³ OSCE, Statement by the Chairmanship on the Trilateral Contact Group Consultations in Minsk on 31 January 2015 (1 February 2015) (Annex 330).

⁵⁶⁴ Stephen Brown and Noah Barkin, *Merkel Rules Out Arming Ukraine Government But Unsure Peace Push Will Work*, REUTERS (7 February 2015) (Annex 557).

⁵⁶⁵ Vladimir Soldatkin and Pavel Polityuk, *“Glimmer of Hope” for Ukraine After New Ceasefire Deal*, REUTERS (12 February 2015) (Annex 560).

⁵⁶⁶ IPHR Report, p. 49 (Annex 454).

much more accurate than Grads,⁵⁶⁷ and yet the DPR repeatedly hit targets that “were too far away from any UAF site to be plausibly considered to have been directed at military targets.”⁵⁶⁸ In striking civilian areas far from any military targets, the DPR intended to harm civilians.

257. The DPR also must have known that serious harm to civilians would occur if they deployed numerous Grad rockets and artillery shells throughout the city. The use of Grad rockets in residential areas is especially striking, since military targets in Avdiivka were well within range of more accurate artillery (which the DPR in fact used in other instances).⁵⁶⁹ As General Brown concludes, “[t]he use of BM-21 in an urban area was guaranteed to cause civilian damage. The attackers would have known that their actions would harm civilians.”⁵⁷⁰ The DPR embraced that outcome, continuing to use Grad systems against the city of Avdiivka with full awareness of the civilian harm these attacks would cause.

258. Second, the nature or context of the attacks demonstrates that the DPR sought to intimidate civilians in shelling Avdiivka. The indiscriminate use of Grad rockets and artillery, the DPR’s prior record of using such weapons to intimidate civilians and the DPR’s decision to hit civilian targets reinforce this conclusion. Numerous civilian homes were struck in the shelling attacks, as was a kindergarten, hospital, and civilian commercial buildings.⁵⁷¹ So too were critical civilian infrastructure facilities, including a power plant that supplied heat for the entire city amid sub-freezing temperatures. As General Brown

⁵⁶⁷ Brown Report, paras. 88–93 (Annex 11).

⁵⁶⁸ *Ibid.* para. 95; *see also supra* Chapter 1, Section C(4).

⁵⁶⁹ Brown Report, paras. 80, 85–86, 95 (Annex 11).

⁵⁷⁰ *Ibid.* para. 96.

⁵⁷¹ *See supra* Chapter 1, Section C(4).

concludes, it is “difficult to imagine” a military reason for striking the Avdiivka Coke factory.⁵⁷² What this attack did do was contribute to a humanitarian emergency for civilians in Avdiivka, as the chief OSCE monitor informed the U.N. Security Council.⁵⁷³ This targeting decision, together with the DPR’s pattern of indiscriminate firing, reflects a purpose of intimidating the entire population of the city.

259. That the shellings and other attacks struck at apparently random times over the course of more than a month also heightened their intimidatory effect. The ICTY has relied on evidence of repeated, random attacks against civilian areas to establish intent to terrorize civilians, and that is precisely what the DPR did in Avdiivka.⁵⁷⁴ Finally, the fact that civilians in Avdiivka were in fact terrorized by the attack heightens the inference that the DPR sought to intimidate civilians.⁵⁷⁵ Many were so scared that they fled the city.⁵⁷⁶

260. The broader context also demonstrates that the DPR’s attacks on civilians in Avdiivka were intended to extract further political concessions from the Ukrainian government. Roughly a week before the attacks began, a new U.S. administration took power, creating political uncertainty for Ukraine, Russia, and Russia’s proxies. Just as it had done in the tense political environment two years before, the DPR seized on a moment of geopolitical uncertainty to heighten the pressure on the Ukrainian government to recognize the DPR’s political demands.

⁵⁷² Brown Report, para. 84 (Annex 11).

⁵⁷³ U.N. Security Council, Official Records, 7876th meeting, U.N. Doc S/PV.7876 (2 February 2017), p. 4 (Annex 315).

⁵⁷⁴ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Trial Chamber Judgment, p. 291, para. 881 (12 December 2007) (identifying “long term and persistent attacks on civilians . . . as indicia of the intent to spread terror”) (Annex 466); cf. *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, Esad Landzo*, Case No. IT-96-21-T, Trial Chamber Judgment, p. 372, para. 109 (16 November 1998) (“[T]he Trial Chamber finds that the detainees in the Celibici prison-camp were exposed to conditions in which they lived in constant anguish and fear of being subjected to physical abuse. Through the frequent cruel and violent deeds committed in the prison-camp, aggravated by the random nature of these acts and threats made by guards, the detainees were thus subject to an immense psychological pressure which may accurately be described as an ‘atmosphere of terror’.”) (Annex 462).

⁵⁷⁵ See *supra* Chapter 1, Section C(4).

⁵⁷⁶ *Ibid.*

E. The Bombing Attacks in Ukrainian Cities Constitute Terrorist Acts Under ICSFT Article 2(1)(a)

261. Russia's proxies did not limit their campaign of terror to the Donbas region. As the DPR, LPR, and other armed groups were attacking civilians in Donetsk and Luhansk, the Kharkiv Partisans and others engaged in a series of bombing attacks in Kharkiv, Kyiv, and Odesa. From July 2014 through May 2015 in Kharkiv, and again in 2017 in both Kyiv and Odesa, a series of attacks were carried out targeting civilians and places of public use.

262. Several of these bombings and attempted bombings constitute acts of terrorism under Article 2(1)(b) of the ICSFT. In the first instance, these attacks were intended to cause death or serious bodily injury to civilians. For example, detonating an anti-personnel mine at a unity march in Kharkiv, triggering a limpet mine in one of Kharkiv's popular nightclubs, blowing up a car as a civic leader in Odesa nears, and planting a bomb to assassinate a member of the Ukrainian Parliament, are all acts designed to kill and wound civilians.⁵⁷⁷

263. Additionally, the nature or context of these attacks demonstrates that their purpose was to intimidate civilians and compel the Ukrainian government to change its policies. The Kharkiv march was a celebration of Ukrainian unity and a commemoration of the Revolution of Dignity; targeting this event sent the chilling message that if you support the Revolution of Dignity, you are not safe anywhere in Ukraine, even in a city far from any fighting. Detonating a bomb at the busy Stena Rock Club, a venue frequented by supporters of Ukrainian unity, sent the same unambiguous message. Unsurprisingly, civilians in

⁵⁷⁷ See *supra*, Chapter 1, Section D.

Kharkiv in fact were terrorized by these attacks. As a journalist aptly summarized the effect of this string of bombings, “the physical, moral exhaustion really wears out your body.”⁵⁷⁸

264. In 2017 in Kyiv and Odesa, Russia’s proxies were again determined to send the same message, this time targeting high-profile individuals for their political activities. Anton Gereschenko is a member of Parliament and an outspoken critic of Russia’s illegal actions against Ukraine.⁵⁷⁹ Marko Gordienko leads an Odesa non-governmental organization that supports Ukrainian unity.⁵⁸⁰ By their nature, targeted attacks on such individuals reflect a purpose to intimidate and compel, warning Ukrainian civil society that there is a price for activism, and warning government officials that opposing Russian aggression can be deadly.

265. These attacks and others set forth in Chapter 1, Section D also constitute offenses under the International Convention for the Suppression of Terrorist Bombings (“ICSTB”), and are therefore covered acts under ICSFT Article 2(1)(a). Article 2(1) of the ICSTB provides:

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

⁵⁷⁸ Linda Kinstler, *A Ukrainian City Holds Its Breath*, FOREIGN POLICY (20 February 2015) (Annex 561).

⁵⁷⁹ See *supra*, Chapter 1, Section D.

⁵⁸⁰ *Ibid.*

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.⁵⁸¹

266. The Kharkiv unity march bombing, the Stena Rock Club bombing, and the assassination attempts in both Kyiv and Odesa, all constitute offenses under Article 2(1)(a) of the ICSTB. Each of these attacks involved explosives, were intended to cause death or serious bodily harm (as explained above), and were done in “place[s] of public use” (a crowded street, a nightclub, and on the streets of residential neighborhoods).⁵⁸²

267. In addition, the night before the Stena Rock Club bombing, the Kharkiv Partisans also attacked the Malyshev Plant (a “business” that is a “place of public use”),⁵⁸³ with the intent of disabling the factory (thus causing “extensive destruction” that is “likely to result in major economic loss”).⁵⁸⁴ Likewise, the regional headquarters of PrivatBank, a commercial center and “place of public use,” was attacked with a rocket-propelled grenade designed to cause “extensive destruction” and “major economic loss.”

268. These and other bombing attacks constitute terrorist acts under ICSFT Article 2(1). Across major Ukrainian cities, seemingly safe from the hail of Grad rockets, a different type of terrorist act was being used to unsettle the public’s sense of calm and instill fear.

⁵⁸¹ International Convention for the Suppression of Terrorist Bombing art. 2, 15 December 1997, 2149 U.N.T.S 256 [hereinafter ICSTB].

⁵⁸² See *supra*, Chapter 1, Section D; ICSTB, art. 1(5).

⁵⁸³ ICSTB, art. 1(5).

⁵⁸⁴ *Ibid.* art. 2(1)(b).

Chapter 5. RUSSIAN OFFICIALS AND OTHER RUSSIAN NATIONALS KNOWINGLY FINANCED TERRORISM IN UKRAINE

269. Article 2(1) of the ICSFT provides that “[a]ny person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” covered acts of terrorism as set forth in Articles 2(1)(a) or 2(1)(b).⁵⁸⁵ Article 2(5) further provides that “[a]ny person also commits an offence if that person . . . [o]rganizes or directs others to commit an offence as set forth in” in Article 2(1).⁵⁸⁶

270. Offenses under Article 2 may be committed by “any person.” As Anthony Aust, former Deputy Legal Adviser of the United Kingdom Foreign and Commonwealth Office, observed shortly after the ICSFT was drafted, the phrase “any person” “encompasses anyone, whether private individuals or public or government officials.”⁵⁸⁷ This is consistent, as Aust notes, with “existing counter-terrorism conventions.”⁵⁸⁸ Such treaties use the phrase “any person” to cover officials acting on behalf of a government, including the International

⁵⁸⁵ ICSFT, art. 2(1).

⁵⁸⁶ *Ibid.* art. 2(5).

⁵⁸⁷ Anthony Aust, *Counter-Terrorism—A New Approach: The International Convention for the Suppression of the Financing of Terrorism*, 5 Max Planck Y.B. U.N. L. 285, 294 (2001) (Annex 485); see also Lehto, at 17 (“A textual analysis suggests that the UN anti-terrorist conventions and protocols apply to any natural persons with no distinction between representatives and agents of a state, on the one hand, and private individuals, on the other.”) (Annex 490).

⁵⁸⁸ Aust, at 294 (Annex 485).

Convention Against the Taking of Hostages,⁵⁸⁹ the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,⁵⁹⁰ and the International Convention for the Suppression of Terrorist Bombings.⁵⁹¹ And like all of these treaties, the ICSFT uses the phrase “any person” without qualification.

271. It is thus an offense under ICSFT Article 2(1) for Russian officials, as well as private individuals and legal entities, to provide funds with the intention or knowledge that they are to be used, in full or in part, to carry out covered acts of terrorism, and under Article 2(5) for Russian officials to “organize[] or direct[]” such acts. The previous Chapter established that Russia’s proxies in Ukraine committed numerous, deadly covered acts of terrorism. This Chapter shows that Russian officials and private actors alike knowingly funded these acts of terrorism, committing an array of offences under Article 2 of the ICSFT.

A. Numerous Russian Officials and Private Actors Have Provided Funds to Groups Engaged in Terrorism in Ukraine

272. Article 1 of the ISCFT defines “funds” broadly to mean:

[A]ssets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques,

⁵⁸⁹ Ben Saul, *International Convention Against the Taking of Hostages*, UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW, at 3 (2014) (“It remains an offence for ‘any’ person to commit hostage-taking under article 1 of the Convention and there is no exception for any actor (State or non-State) . . .”) (Annex 493).

⁵⁹⁰ The drafters “expressed support for the basic principle” that the Convention would “apply to a person who commits an offence acting on behalf of a Government,” and considered this accomplished by the text that “clearly referred to ‘any person’ without qualification.” International Maritime Organization, Report of the Ad Hoc Preparatory Committee on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2nd Session, 18–22 May 1987, IMO Doc. PCUA 2/5, paras. 65–66 (Annex 361).

⁵⁹¹ ICSTB Article 19 excludes “the activities undertaken by military forces of a State in the exercise of their official duties” — an exclusion that would have been entirely unnecessary if State officials were not otherwise covered by the phrase “any person.” ICSTB, arts. 2, 19.

money orders, shares, securities, bonds, drafts, letters of credit.⁵⁹²

273. The ordinary meaning of “assets of every kind” covers all forms of property, whether monetary instruments or tangible items, such as weapons. The drafters of the ICSFT drew from the broad definition of “property” in the Narcotics Convention, which like “funds” in the ICSFT is defined to mean “assets of every kind.”⁵⁹³ Aust explains that the term “funds” was “drawn deliberately wide.”⁵⁹⁴ Similarly, Roberto Lavalle, Minister-Counsellor of the Permanent Mission of Guatemala to the United Nations and a member of the Sixth Committee when it considered the draft text of the ICSFT in 1999, has observed that the definition of funds includes “animals, buildings or vehicles,” and “virtually anything under the sun,” such that the treaty covers all “material assistance” to those who commit terrorism.⁵⁹⁵ The travaux préparatoires confirm that the ICSFT’s definition of “funds” “was intended to refer to all property.”⁵⁹⁶

274. As elaborated in Chapter 2, from the spring of 2014 onward, Russian state officials, as well as private actors and legal entities under Russia’s jurisdiction, supplied illegal armed groups in Ukraine with various types of funds, including weapons and money,

⁵⁹² ICSFT, art. 1(1).

⁵⁹³ Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 1(q), 20 December 1988, 1582 U.N.T.S 95; see Annex III, Report of the Working Group on Measures to Eliminate International Terrorism, 54th Session, U.N. Doc. No. A/C.6/54/L.2, at 59 (26 October 1999) (“A preference was also expressed for the formulation contained in document A/A.252/1999/WP.60, as well as for the definition of ‘property’ contained in article 1, paragraph (q), of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.”) (Annex 277).

⁵⁹⁴ Anthony Aust, *Counter-Terrorism—A New Approach: The International Convention for the Suppression of the Financing of Terrorism*, 5 Max Planck Y.B. U.N. L. 285, 287 (2001) (Annex 485).

⁵⁹⁵ Roberto Lavalle, *The International Convention for the Suppression of the Financing of Terrorism*, 60 Zao RV 491, 496–97 (2000) (Annex 484).

⁵⁹⁶ Annex III, Report of the Working Group on Measures to Eliminate International Terrorism, 54th Session, U.N. Doc. No. A/C.6/54/L.2, at 58 (26 October 1999) (Annex 277).

that (among other consequences) enhanced these groups' ability to commit acts of terrorism. The sheer scope of these groups' arsenals is evidence of Russian support, as is these groups' possession of weapons that could only have come from Russia. Indeed, members of the DPR and similar groups have admitted that they are supplied by Russia; Ukrainian authorities and others witnessed these weapons transfers; and the weapons themselves often bore distinctive Russian markings, despite attempts to obscure them. Confirming all of this evidence, U.N. monitors with the OHCHR have reported on the massive inflow of weapons across the Russian border into Ukraine.

275. This massive supply of funds could not have occurred without the participation, organization, and direction of high-ranking Russian officials. For example, Russian Minister of Defence Sergey Shoigu is responsible for the armaments of the Russian Armed Forces;⁵⁹⁷ weapons belonging to the Russian military could not have been systematically distributed to illegal armed groups in Ukraine without his participation, organization, and direction. Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation, and Igor Sergun, Director of the Main Intelligence Directorate ("GRU"), likewise organized and participated in the supply of funds to Russia's proxies through the armed forces and military intelligence agents; in fact both were sanctioned by the European Union for their actions concerning eastern Ukraine.⁵⁹⁸

276. Many other Russian officials participated in specific weapons and money transfers, including:

⁵⁹⁷ *Powers of the Russian Minister of Defense*, MINISTRY OF DEFENSE OF THE RUSSIAN FEDERATION (19 January 2011) (Annex 439).

⁵⁹⁸ Official Journal of the European Union, Council Implementing Decision 2014/238/CFSP (28 April 2014) (Annex 355).

- Members of the 53rd Brigade of the Russian Armed Forces delivered the Buk TELAR that was used to destroy Flight MH17.⁵⁹⁹
- Major-General Stepan Yaroshchuk, the Commander-In-Chief of the Rocket Forces and Artillery of the Russian Armed Forces Southern Military District in Rostov oblast, together with individuals under his command, was responsible for Grad and Smerch systems being transferred to Ukraine, including those used against Volnovakha, Mariupol, Kramatorsk, and Avdiivka. One Grad system recovered in Ukraine had the markings of a brigade of the Southern Military District, and thus was under Major-General Yaroschuk's command.⁶⁰⁰ There is also direct evidence of Major-General Yaroschuk's personal participation in the operation to supply Grad systems for the attack on Mariupol.⁶⁰¹
- Various military intelligence operatives supplied explosives and weapons to the perpetrators of bombings in Kharkiv, Kyiv, and Odesa. Russian intelligence officers provided, for example, the anti-personnel mine used against the Kharkiv unity march, and the SPM limpet mine used against the Stena Rock Club.⁶⁰² Eduard Dobrodeev, a GRU officer, financed the attempted assassination of Anton Geraschenko.⁶⁰³
- Vice Chairman of the Russian State Duma, Vladimir Zhirinovsky, openly donated military equipment and money to the LPR.⁶⁰⁴
- Russian soldiers, including Dorzhi Batomunkuev and Vladimir Starkov, admitted to smuggling weapons and ammunition into Ukrainian territory for delivery to the DPR.⁶⁰⁵

277. At the same time, many private Russian nationals and legal persons were openly providing funds to the illegal armed groups in Ukraine, including:

- Konstantin Malofeyev, a prominent billionaire and close Putin associate, "funds separatist activities in eastern Ukraine and is closely linked with Aleksandr Borodai, Igor Girkin (a.k.a. Igor Strelkov), and the so-called

⁵⁹⁹ See *supra* Chapter 2, Section B.

⁶⁰⁰ See *supra* Chapter 2, Section C.

⁶⁰¹ *Ibid.*

⁶⁰² See *supra* Chapter 2, Section D.

⁶⁰³ See *supra* Chapter 1, Section D(2).

⁶⁰⁴ See *supra* Chapter 2, Section F.

⁶⁰⁵ See *supra* Chapter 2, Section E.

Donetsk People's Republic.”⁶⁰⁶ The U.S. Treasury Department determined that he “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of the so-called Donetsk People's Republic.”⁶⁰⁷ Malofeyev is accordingly sanctioned by the United States, the European Union, Switzerland, and Australia, among others.⁶⁰⁸

- Alexander Zhuchkovsky is a major fundraiser for the DPR and LPR, publicly boasting about raising millions of rubles and purchasing weapons.⁶⁰⁹
- Sberbank, a large financial institution that is majority state-owned, has used its infrastructure to facilitate billions of rubles' worth of transfers to the DPR and LPR.⁶¹⁰
- Various non-governmental organizations, including the “Coordination Center for Assistance to Novorussia,” the “Sverdlosk Oblast Fund for Special Forces Veterans,” Girkin’s “New Russia Movement,” and the “Novorossia Humanitarian Battalion” have delivered millions of rubles as well as weapons and ammunition to the DPR and LPR.⁶¹¹

278. In addition to all of these individuals and entities who have been identified, by name or position, many others have been concealed by the Russian Federation, in its determination not to cooperate in the prevention and punishment of terrorism financing offences. But identified or concealed, it is beyond doubt that innumerable Russian persons, acting on behalf of the Russian government, with its tacit blessing, and otherwise, provided “funds” within the meaning of the Convention to illegal groups in Ukraine.

⁶⁰⁶ Press Release, U.S. Department of the Treasury, Treasury Targets Additional Ukrainian Separatists and Russian Individuals and Entities (19 December 2014) (Annex 478).

⁶⁰⁷ *Ibid.*

⁶⁰⁸ *Ibid.*; Press Release, Council of the European Union, List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine (14 September 2017), p. 37 (Annex 357); Swiss State Secretariat for Economic Affairs, SECO Bilateral Economic Relations Sanctions, Programs (Situation in Ukraine: Ordinance of 27 August 2014), Individual Malofeev Konstantin Valerevich (23 May 2018) (Annex 481); Australian Government: Department of Foreign Affairs and Trade, *Ukraine Sanctions: Review of Australia's Autonomous Sanctions Imposed on 84 Individuals and Entities in Relation to Ukraine* (2 September 2017) (Annex 479).

⁶⁰⁹ Alexander Zhuchkovsky, *On the Advisability of Purchasing Armored Vehicles*, StrelkovInfo (4 September 2014) (Annex 628); Social Media Page (VKontakte) of Oleksandr Zhukovsky (post of 15 March 2015) (Annex 635).

⁶¹⁰ See *supra*, Chapter 2, Section F.

⁶¹¹ See *ibid.*

B. The Financiers Knew That the Funds They Provided Were to Be Used, in Full or in Part, for Carrying Out Acts Covered by ICSFT Articles 2(1)(a) and (b)

279. Since early in the conflict, it was apparent that these illegal armed groups in Ukraine had committed, and were willing to continue to commit, terrorist acts. Despite the DPR and LPR’s early and open embrace of terrorism, followed by a series of significant acts of terrorism, Russian state officials repeatedly provided these groups with additional funds. These facts alone — that Russia’s proxies openly engaged in terrorism and Russia armed them nonetheless — establish that those persons who supplied funds to these groups knowingly financed terrorism within the meaning of Article 2(1). And while it is not necessary to prove more, the facts also establish that Russia and its officials knew specific types of funds were to be used to commit particular terrorist acts.

280. Article 2(1) of the ICSFT provides that, to commit a violation, a financier must have “knowledge” that the funds provided “are to be used, in full or in part, in order to carry out” a covered act of terrorism.⁶¹² This requires knowledge that the financier is providing funds to groups or individuals *known to commit terrorist acts*, because doing so necessarily facilitates the recipient’s ability to engage in further acts of terrorism. This is the only good-faith interpretation that advances the ICSFT’s object and purpose of addressing the “urgent need” to prevent and deter the financing of terrorism.⁶¹³ If instead Article 2(1) were read to require knowledge that *particular* funds provided will be used for *particular* terrorist acts, it would be “very difficult if not impossible to establish a precise link between items provided to terrorists and a particular act or acts of terrorism,” particularly where the recipient also “carries out activities, lawful or unlawful, other than terrorist acts.”⁶¹⁴ The text of Article 2(1) itself anticipates this scenario by requiring knowledge that the funds are to be used “in full or in part, in order to carry out” terrorism. So does Article 2(3), which specifies that “it shall

⁶¹² ICSFT, art. 2(1).

⁶¹³ *Ibid.* pmb., recital 12.

⁶¹⁴ Roberto Lavalle, *The International Convention for the Suppression of the Financing of Terrorism*, 60 Zao RV 491, 503 (2000) (Annex 484).

not be necessary that the funds were actually used to carry out” an act of terrorism. It is thus no defense to say that the recipient meant only to support a group’s non-terrorist activity, or that the funds provided were ultimately used for such activity.

281. Lavalle, in his contemporaneous commentary on the ICSFT, agrees that in light of the treaty’s “object and purpose,” an offense is established by proof “that the recipient or recipients, actual or intended, of the ‘funds’ are terrorists, that that person was aware of this, and that accordingly he or she had to know that the ‘funds’ would probably be used (or could be used) to commit” a covered act of terrorism.⁶¹⁵ Marja Lehto, who led Finland’s delegation during the treaty negotiations, similarly writes that “[t]he perpetrator in terrorist financing does not have to be aware of any specific crime being planned or prepared, and no actual terrorist acts need to be committed as a result of his or her financial contribution”; all that must be proved is that the financier “is aware of the possibility, sometimes even the probability, that the funds may be used for the commission of terrorist acts,” and “willingly took the risk that they would be so used.”⁶¹⁶ It therefore “must be assumed that the financing of a group which has notoriously committed terrorist acts would meet the requirements of paragraph 1” of Article 2.⁶¹⁷

282. Guidance on the ICSFT issued by the Financial Action Task Force (“FATF”) and the United Nations Office on Drugs and Crime (“UNODC”)⁶¹⁸ reinforces this

⁶¹⁵ *Ibid.* p. 504.

⁶¹⁶ Lehto, pp. 293, 298 (Annex 490).

⁶¹⁷ *Ibid.* p. 289.

⁶¹⁸ The U.N. General Assembly mandated the UNODC to strengthen the ability of Member States to implement the ICSFT.

interpretation.⁶¹⁹ The FATF instructs that “[t]errorist financing offences should not require that the funds or other assets . . . be linked to a specific terrorist act(s).”⁶²⁰ UNODC’s legislative guidance likewise explains that the ICSFT covers the financier who provides funds to an organization that is known to engage in terrorist activities, even if that organization also engages in humanitarian activities that the financier wishes to support.⁶²¹ As UNODC observes, “the offence implementing the Convention must also punish provision or collection of funds with the knowledge and willing acceptance of the *possibility* that they may be used for terrorist acts.”⁶²²

283. States Parties also have interpreted the knowledge requirement of Article 2 as satisfied where the financier provides funds to groups known to commit acts of terrorism. The Supreme Court of Denmark held that it was sufficient, for purposes of a terrorism financing offense, to establish that individuals provided money to the FARC, knowing that the FARC generally committed terrorist acts.⁶²³ U.S. courts have held that “[a]nyone who knowingly contributes [even] to the nonviolent wing of an organization that he knows to engage in terrorism is knowingly contributing to the organization’s terrorist activities.”⁶²⁴

⁶¹⁹ See, e.g., U.N. G.A. Res. 57/173, U.N. Doc. A/RES/57/173, *Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in Particular its Technical Cooperation Capacity*, para. 2 (21 January 2003) (Annex 282).

⁶²⁰ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FAFT Recommendations*, p. 35 (2012) (Annex 359).

⁶²¹ UNODC, Legislative Guide to the Universal Legal Regime Against Terrorism 30–31 (2008) (Annex 285).

⁶²² *Ibid.* (emphasis added).

⁶²³ “Fighters and Lovers Case,” Case 399/2008 (Sup. Ct., Den., 25 March 2009) (Annex 476).

⁶²⁴ *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 698 (7th Cir. 2008) (Annex 474). The statute interpreted in *Boim*, 18 U.S.C. § 2339A, tracks the language of Article 2(1) of the ICSFT, criminalizing the provision of material support “knowing or intending that they are to be used” for covered acts of terrorism. 18 U.S.C. § 2339A (2009) (Annex 475).

The French *Cour de Cassation* considers it sufficient to demonstrate that the financier knowingly contributed to an organization classified as terrorist.⁶²⁵ And Canadian courts consider that “when a group has been identified as a terrorist entity,” it is “difficult to argue that a financier was unaware that the amounts he has allocated to this group would be used, in full or in part to carry out terrorist actions.”⁶²⁶

284. The travaux préparatoires confirm this approach. A working document prepared by France explained that the Convention is aimed at financiers “who are aware of the use of the funds,” *and* those “who are aware of the terrorist nature of the aims and objectives of the whole or part of the association which they support.”⁶²⁷ According to Lehto, negotiators repeatedly agreed that the required knowledge under Article 2 would be met by “the funding of an organisation that carries out multiple activities of a political and social as

⁶²⁵ French Cour de cassation, Judgement of May 21st 2014, No. 13-83758: (“Attendu qu'en l'état de ces motifs reproduits partiellement aux moyens, qui établissent que *l'association Centre culturel kurde Ahmet Kaya a apporté, en connaissance de cause*, par ses organes ou ses représentants, en l'espèce par les dirigeants de fait identifiés ci-dessus, ayant agi pour son compte, *un soutien logistique et financier effectif à une organisation classée comme terroriste*, la cour d'appel a caractérisé en tous leurs éléments les infractions dont elle l'a déclarée coupable.”) (emphasis added) (Annex 477); see also French Cour de cassation, Judgement of April 12th, 2005, No. 04-84264 (Annex 472); Tribunal correctionnel de Paris, 28 September 2017 (Annex 480). France’s implementing statute of the ICSFT, Article 421-2-2 of the Code pénal, closely tracks the Convention’s knowledge requirement (“en sachant qu’ils sont destinés à être utilisés, en tout ou partie, en vue de commettre l’un quelconque des actes de terrorisme prévus au présent chapitre. . .”).

⁶²⁶ See Bertrand Perrin, “L’incrimination du financement du terrorisme en droits canadien et suisse,” 42 Revue générale de droit 1, p. 237 (“Cependant, lorsqu'un groupe a été inscrit comme entité terroriste, il est plus difficile pour un prévenu d'arguer qu'il ignorait que les montants qu'il lui a alloués seraient utilisés, partiellement ou totalement, en faveur du terrorisme.”) (Annex 492).

⁶²⁷ France, *Working Document: Why an International Convention Against the Financing of Terrorism?*, later reproduced as U.N. Doc. A/AC.252/L.7/Add.1, (March 11, 1999), para. 5 (Annex 275).

well as military nature, and where it may not be possible for the financier to make a distinction between the different possible end uses.”⁶²⁸

285. By the spring and summer of 2014, the whole world was aware of the terrorist nature of the aims and activities of the DPR and LPR. These groups were openly seeking to compel the Ukrainian government to grant them political autonomy, which would have required changes to Ukraine’s constitutional order. In service of that objective, they were engaged in a pattern of violence against civilians, targeting political opponents with the unmistakable purpose of intimidation. In April 2014, for example, U.N. monitors reported on the murder of Volodymyr Rybak, and leading DPR militant Bezler was publicly linked to that crime.⁶²⁹ In June 2014, U.N. monitors publicly reported that the DPR and related groups were committing “an increasing number of acts and intimidation and violence . . . targeting ‘ordinary’ people who support Ukrainian unity.”⁶³⁰ And in early July 2014 — before members of the 53rd RAF Brigade delivered a Buk to Ukraine — the same U.N. monitors condemned the DPR and LPR’s “reign of intimidation and terror,”⁶³¹ and High Commissioner Pillay warned of a DPR leader’s admitted intention to “immerse [children] in

⁶²⁸ Lehto, p. 293 (Annex 490). Reflecting this agreement, the delegates rejected several proposed amendments to Article 1 that would have exempted the provision of property “also used for humanitarian purposes by the beneficiary person or organization” or even property meant “exclusively to be used for humanitarian purposes.” U.N.G.A. Ad Hoc Comm. established by G.A. Res. 51/210 of 17 Dec. 1996, Rep. on its 3d session, 15–16 March 1999, U.N. Doc. A/54/37 (5 May 1999), Annex III, para. 1, Annex VI, para. 9 (Annex 276). In response to the first amendment, delegates “objected to its inclusion on the grounds that it would unnecessarily limit the scope of the convention and diminish its effectiveness.” *Ibid.* Annex IV, para. 9.

⁶²⁹ See *supra* Chapter 1, Section A.

⁶³⁰ OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 207 (Annex 293).

⁶³¹ OHCHR, *Report on Human Rights Situation in Ukraine* (15 July 2014), para. 26 (Annex 296).

horror.”⁶³² OHCHR would later expressly warn that the transfer of weapons into Donbas created a “substantial risk that they will be used in” indiscriminate attacks on civilians.⁶³³

286. At the same time, Russia and its officials had inside knowledge of the DPR’s and LPR’s strategies and plans, including the importance of terrorism to their agenda. Key leaders of the DPR and LPR in 2014 into early 2015 had connections to the Russian government.⁶³⁴ Russian nationals who have served in the Russian military also have embedded within or advised the DPR and LPR, providing these groups with operational advice and support, and serving as an additional conduit of information to the Russian government.⁶³⁵ In light of the contemporaneous reporting about the DPR and LPR’s activities, bolstered by Russia’s close ties to those groups, the Russian Federation cannot credibly deny that its officials knew of these groups’ pattern of terrorist acts against civilians.

287. Yet despite knowing these organizations’ callous approach to civilian life, Russian military officials provided the DPR with a Buk TELAR, knowing that the airspace above eastern Ukraine was still open and heavily trafficked by civilian aircraft.⁶³⁶ In doing so, Russia and its officials knew that their proxies’ indifference to human life would continue. In fact, the Buk had been requested by Igor Girkin himself — who by that time was already targeting civilians in Donbas and known for his ruthless tactics.⁶³⁷ Even a responsible fighting force, which the illegal armed groups operating in Ukraine plainly were not, could not have safely operated a Buk TELAR in civilian skies. As Dr. Skorik explains, coordination

⁶³² OHCHR, *Intensified Fighting Putting at Risk Lives of People in Donetsk and Luhansk — Pillay* (4 July 2014) (Annex 295).

⁶³³ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine: 16 November 2015 to 15 February 2016*, p. 10, para. 24 (Annex 314).

⁶³⁴ See *supra*, Chapter 3, Section A(1); see also Anton Zverev, *Ex-Rebel Leaders Detail Role Played by Putin Aide in East Ukraine*, REUTERS (11 May 2017) (“Five sources, including one close to the presidential administration and another who worked with Surkov in the Kremlin, said Surkov has regular meetings with separatist leaders, both in the breakaway territory and in Russia.”) (Annex 595).

⁶³⁵ See *supra*, Introduction; Yanovskiy Statement, paras. 41-46 (Annex 5); Zyuzia Statement, paras. 32-34 (Annex 6).

⁶³⁶ See *supra*, Chapter 1, Section B; Chapter 2, Section B.

⁶³⁷ See *supra*, Chapter 1, Section A.

with a combat control center is vital in such a situation, because the TELAR’s “technical capabilities . . . do not make it possible to distinguish a civilian aircraft from a military one,” and a TELAR operator acting under intense time pressure would not be able to make sophisticated judgments about the air situation.

288. The 53rd Anti-Aircraft Missile Brigade undoubtedly understands how a Buk missile system works, and the grave danger of deploying a TELAR against open skies. Yet members of the brigade supplied the TELAR without a combat control center, which could have at least mitigated the extreme risk. In short, the Russian officials who provided the Buk TELAR knew that it could not be used in a manner distinguishing civilian from military targets, and even declined to supply additional equipment that would have lessened the danger to civil aviation.

289. The Russian Federation’s actions concerning its own airspace further confirm its knowledge of the grave risk that its proxies would shoot down a civilian plane. A day before the attack, as Russian military officials were preparing to send the Buk into Ukraine, Russian aviation authorities restricted access to parts of Russian airspace bordering Donbas up to 53,000 feet (higher than existing Ukrainian restrictions), effectively closing civilian airspace.⁶³⁸ By closing Russia’s own airspace to civilians at the same moment the Russian military was providing a Buk to the DPR, Russian officials manifested their own guilty knowledge of the dangers of operating a Buk in civilian-trafficked skies.

290. In light of all of these circumstances, particularly when viewed against the backdrop of the DPR’s established track record of targeting civilians for violence, Russia and the officials acting on its behalf knew that the Buk would be used, in full or in part, to commit violations of the Montreal Convention (*i.e.*, intentional and unlawful destruction of an aircraft in service).

291. If U.N. reporting on a “reign of terror” against civilians were somehow not enough, the DPR’s approach to civilian life was surely common knowledge in the aftermath

⁶³⁸ DSB Report MH17 Crash, p. 180 (Annex 38).

of the downing of Flight MH17. Yet Russia hindered international efforts to hold the perpetrators of the shoot-down of Flight MH17 accountable, all the while continuing to support and arm those perpetrators. It did so in part through its officials' provision of numerous multiple-launch rocket systems into Ukraine, systems that can cause tremendous civilian harm — particularly in the hands of those with a track record of indifference to civilian life. The Volnovakha attack, using a Grad system against a busy civilian checkpoint with no apparent military value, fit this pattern.⁶³⁹ Less than two weeks later, members of the Russian military supplied *the same type of weapon*, this time to be deployed against the population of Mariupol.⁶⁴⁰ Russian military officials also delivered to illegal armed groups in Ukraine an advanced Smerch system, resulting in the deadly attack on Kramatorsk.

292. Russian military officials advised the DPR as it committed these Article 2(1)(b) offenses in January and February 2015.⁶⁴¹ The involvement of these Russian military advisors adds to the evidence that high-level Russian officials knew of the terroristic methods the DPR would employ, and thus knew that funds supplied to DPR were to be used in part to commit terrorist acts.

293. The Russian intelligence operatives that provided explosives to terrorists in Kharkiv and elsewhere in Ukraine likewise knew they were to be used to commit terrorist acts. As documented in Chapter 2, Section D, Russian military intelligence officers follow a consistent pattern in providing explosives and money for use in bombing attacks in Ukrainian cities. The explosives that these Russian agents provided — SPM limpet, anti-tank, and anti-personnel mines — are designed to cause large-scale destruction, and have no

⁶³⁹ See *supra*, Chapter 1, Section C(1).

⁶⁴⁰ See *supra*, Chapter 2, Section D.

⁶⁴¹ See *supra*, Chapter 1, Section C.

legitimate purpose in the heart of a city like Kharkiv. One Russian intelligence officer agreed to supply 10,000 USD to a bomber even *after* being told of the plan to attack the Kharkiv unity march.⁶⁴² Another Russian intelligence officer arranged the financing of an assassination attempt on an outspoken member of Ukraine's parliament.⁶⁴³

294. In sum, the Russian persons who financed terrorism in Ukraine — including Russian officials — acted with knowledge within the meaning of Article 2(1).

⁶⁴² See *supra*, Chapter 2, Section D.

⁶⁴³ *Ibid.*

Chapter 6. THE RUSSIAN FEDERATION BEARS STATE RESPONSIBILITY FOR VIOLATIONS OF THE ICSFT

295. The inescapable conclusion is that Russia is violating its obligations under the ICSFT. Chapter 4 established that Russia's proxies have committed numerous acts of terrorism in Ukraine within the meaning of Article 2(1)(a) and 2(1)(b) of the ICSFT. Chapter 5 explained how Russian officials' and Russian citizens' provision of funds to these groups constituted knowing financing of terrorism within the meaning of Article 2(1). This Chapter demonstrates the ways in which this campaign of terrorism financing has led to numerous violations of the ICSFT, for which the Russian Federation is responsible.

A. The Russian Federation Is in Breach of Article 18

296. Article 18 of the ICSFT requires States to "cooperate in the prevention of the [terrorism financing] offenses set forth in article 2." That obligation includes "taking all practicable measures . . . to prevent and counter preparations in their respective territories for the commission of those offenses within or outside their territories."⁶⁴⁴

297. This case concerns acts of terrorism financing both by private actors and public officials. Russia has taken the position that it only has a duty to prevent acts of terrorism financing "committed by private actors."⁶⁴⁵ That ignores the words of the treaty. The Article 18 duty to prevent relates to "the offences set forth in article 2."⁶⁴⁶ The offenses set forth in Article 2, in turn, may be committed by "any person"⁶⁴⁷ — not "private actors" only, as explained above.

⁶⁴⁴ ICSFT, art. 18(1).

⁶⁴⁵ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Verbatim Record (7 March 2017), p. 36 (Zimmermann).

⁶⁴⁶ ICSFT, art. 18(1).

⁶⁴⁷ *Ibid.* art. 2(1).

298. Russia thus has a clear obligation to prevent acts of terrorism financing from its territory by “any person,” whether a private Russian national or a state official, and whether or not acting pursuant to Russian government policy. Russia has manifestly failed both these facets of that obligation. There are at least four “practicable measures” Russia could have taken, but did not take, to prevent the commission of Article 2 terrorism financing offenses by any person.

1. The Russian Federation Has Failed to Take the Practicable Measure of Preventing State Officials from Financing Terrorism

299. When a State allows or encourages its own officials to finance terrorism, it necessarily fails to take all “practicable measures” to prevent the financing of terrorism. This is clear from the ordinary meaning of Articles 2 and 18, interpreted in good faith and in light of their context and object and purpose.⁶⁴⁸

300. As explained above, an Article 2 terrorism financing offence may be committed by “any person,” including a person that acts on behalf of a State’s government. Article 18 then obliges States to “cooperate in the *prevention of the offenses set forth in Article 2* by taking *all practicable measures*.⁶⁴⁹ Reading Articles 2 and 18 together, Russia must take all practicable measures to prevent its own officials from committing Article 2 offenses. When a State instead *permits* terrorism financing from its territory, including acts of terrorism financing committed by state officials, it fails in that obligation. No measure could be more practicable than a State directing officials under its control not to finance terrorism. This straightforward application of Articles 2 and 18 reflects the principle that “[w]here crimes against international law are committed by state officials, it will often be the

⁶⁴⁸ VCLT, art. 31(1).

⁶⁴⁹ ICSFT, art. 18(1) (emphasis added).

case that the State itself is responsible for the acts in question *or for failure to prevent or punish them.*⁶⁵⁰

301. This interpretation effectuates the object and purpose of the Convention, as reflected in its preamble. The ICSFT recognizes that “the financing of terrorism is a matter of grave concern to the international community as a whole,” and has as its ambition a “comprehensive legal framework” to address “the prevention, repression and elimination of terrorism in all its forms and manifestations.”⁶⁵¹ The ICSFT’s comprehensive framework is premised on the understanding that “the number and seriousness of acts of international terrorism” “depend on the financing that terrorists may obtain.”⁶⁵² It is plain that many acts of terrorism “depend” on State financing. Moreover, the preamble recalls the U.N. Declaration on Measures to Eliminate International Terrorism, which recognizes that the problem of international terrorism “include[s] those [acts] in which States are directly or indirectly involved.”⁶⁵³ And the preamble to the ICSFT further recalls General Assembly

⁶⁵⁰ Report of the International Law Commission on the Work of Its Fifty-Third Session, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 53rd. Sess., U.N. Doc. No. A/56/10 (23 April–1 June, 2 July–10 August 2001), art. 58 & commentary, pp. 142–143, para. 3, reproduced in Yearbook of the International Law Commission 2001, vol. II(2) (Annex 279). As another example, the Convention Against Torture requires States to “take effective . . . measures to prevent acts of torture.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85. It is well-established that on the basis of this obligation, “States bear international responsibility” when public officials commit acts of torture. Committee Against Torture, General Comment No. 2, para. 15 (Annex 286).

⁶⁵¹ ICSFT, pmbl., recitals 5 & 9.

⁶⁵² *Ibid.*, recital 10.

⁶⁵³ U.N. General Assembly Resolution 49/60, U.N. Doc. A/RES/49/60, *Declaration on Measures to Eliminate International Terrorism* (9 December 1994) (Annex 273).

Resolution 51/210,⁶⁵⁴ which similarly calls on “States to *refrain from financing*, encouraging, providing training for or otherwise supporting terrorist activities.”⁶⁵⁵

302. In light of its object and purpose, the Convention would be left with an unacceptable lacuna if interpreted to leave financing of terrorism by State actors untouched. That Article 18 does not leave this major gap is further supported by context. Article 20 of the Convention provides:

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.⁶⁵⁶

303. Thus, in “carrying out their obligations” to cooperate in the prevention of Article 2 offenses, Russia must act consistent with the principles of sovereignty, territorial integrity, and non-intervention. Contributing to the funding of terrorist acts in the territory of another State is not consistent with these principles.

304. This interpretation is further consistent with “relevant rules of international law applicable in the relations between the parties.”⁶⁵⁷ In 2005, the Security Council unanimously (and with Russia’s support) expressed concern at the “evidence pointing at the involvement of . . . Syrian officials in” the terrorist bombing of Lebanese Prime Minister Rafiq Hariri.⁶⁵⁸ In light of this, the Security Council “determine[d] that the involvement of any State in this terrorist act would constitute a serious violation by that State of its obligations to work to *prevent and refrain* from supporting terrorism, in

⁶⁵⁴ ICSFT pmb., recital 6.

⁶⁵⁵ U.N. General Assembly Resolution 51/210, U.N. Doc. A/RES/51/210, *Measures to Eliminate International Terrorism* (17 December 1999) (emphasis added) (Annex 278).

⁶⁵⁶ ICSFT, art. 20.

⁶⁵⁷ VCLT, art. 31(3)(c).

⁶⁵⁸ U.N. Security Council Resolution 1636, U.N. Doc. S/RES/1636 (31 October 2005) (Annex 283).

accordance with [Resolutions 1373 and 1566].”⁶⁵⁹ The Council, including Russia, thus recognized that where a State’s officials are implicated in a terrorist act, that State has failed in its duty to prevent support for terrorism.

305. Finally, interpreting Article 18 of the ICSFT to require a State to prevent its officials from committing Article 2 terrorism financing offenses is the only good faith reading of the Convention. It is simply not in good faith for the Russian Federation to commit to preventing the financing of terrorism by any person, yet insist on its own prerogative to finance terrorism – that is, to direct, encourage, or allow state officials to supply funds to groups that are known to engage in terrorist violence against civilians.

306. This conclusion is further supported by this Court’s interpretation of a different treaty in the *Bosnia Genocide* case. The core obligation on states under the Genocide Convention is “to prevent and to punish” genocide.⁶⁶⁰ In *Bosnia Genocide*, this Court held that the obligation to prevent necessarily prohibits states from committing genocide themselves, even though “such an obligation is not expressly imposed by the actual terms of the [Genocide] Convention.”⁶⁶¹ As the Court observed:

It would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of genocide by persons over whom they have a certain influence, but were not forbidden to commit such acts through their own organs, or persons over whom they

⁶⁵⁹ *Ibid.* (emphasis added). See also U.N. Security Council Resolution 1373, U.N. Doc. S/RES/1373 (28 September 2001) (deciding that “all States shall” “[p]revent and suppress the financing of terrorist acts,” and “[p]revent those who finance . . . terrorist acts from using their respective territories for those purposes against other States or their citizens”) (Annex 280).

⁶⁶⁰ Convention on the Prevention and Punishment of the Crime of Genocide art. 1, 9 Dec. 1948, 78 U.N.T.S. 277 (“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”).

⁶⁶¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, *I.C.J. Reports 2007*, p. 113, para. 166 [hereinafter *Bosnia Genocide*].

have such firm control that their conduct is attributable to the State concerned under international law. In short, the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide.⁶⁶²

307. It would be an equally paradoxical reading of the ICSFT if States were obligated to prevent acts of financing terrorism by “any person,” yet “were not forbidden to commit such acts through their own organs, or persons over whom they have [control].”

308. The Russian Federation has flagrantly violated its obligation to take all practicable measures to prevent the financing of terrorism by “any person,” including state officials, as required by Article 18. Chapters 1 and 4 of this Memorial established that Russia’s proxies in Ukraine engaged in a consistent pattern of terrorism against civilians within the meaning of the ICSFT. Chapters 2 and 5 established that persons acting on behalf of the Russian government provided funds to groups known to engage in terrorism against civilians, and who in fact used that support to engage in further acts of terrorism within the meaning of the Convention. These acts of terrorism financing violated Article 2(1) of the ICSFT, and the organization and direction of these acts violated Article 2(5). By failing to prevent — and instead fostering —these Article 2 offences by state officials, the Russian Federation violated Article 18.

2. The Russian Federation Has Failed to Take the Practicable Measure of Not Encouraging Third Parties to Finance Terrorism

309. Another practicable measure a State can take, and thus under Article 18 must take, is discouraging others to commit Article 2 terrorism financing offenses. It is not conceivable that, having bound itself to take all practicable measures to prevent acts of terrorism financing, a State may nonetheless *encourage* third parties to finance terrorism.

⁶⁶² *Ibid.*

310. Directly financing terrorism is not compatible with this obligation not to encourage. In Russia's view of the Convention, it is obliged only to prevent "the financing of terrorist acts committed by private actors,"⁶⁶³ which it may do while also financing terrorist acts itself. But it is impossible to do both: a State that directly finances terrorism cannot credibly discourage, and thus "prevent," its nationals from doing the same. The unequivocal message of engaging in conduct is that it is in fact encouraged.

311. Russia's financing of terrorism in Ukraine thus leads to an Article 18 violation in a further respect. A simple and practicable measure a State can take to prevent Article 2 terrorism financing offenses is to discourage its nationals from perpetrating such offenses — and not encourage those offenses by its own participation in terrorism financing.

3. The Russian Federation Has Failed to Take the Practicable Measure of Policing its Border with Ukraine to Stop the Financing of Terrorism

312. It was also well within the Russian Federation's power to police its border with Ukraine to stop the flow of funds — from "any person," including public officials and private actors — that enabled terrorist acts in eastern Ukraine. Russia has not taken this entirely practicable measure, either.

313. As detailed in Chapter 2, from the spring of 2014 onward, Russian officials and other Russian nationals have supplied the DPR, LPR, Kharkiv Partisans, and other groups with weapons, money, and training resources that, among other consequences, enhanced these groups' ability to commit acts of terrorism on a larger scale.

314. But the Russian Federation has failed to take any steps to prevent the transfer of these funds, including weapons, into Ukrainian territory. As detailed in Chapter 3, Ukraine has repeatedly informed Russia about impending transfers of funds from Russian to Ukrainian territory. Russia ignored these continuous warnings and took no steps to stop the flow of funds, including weapons. Indeed, Russia's Border Service informed Ukraine's

⁶⁶³ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Verbatim Record (7 March 2017), p.36 (Zimmermann).

Border Service that it would need an order from those at higher levels if it was to actively police its border to prevent weapons and other funds from crossing the border into Ukraine. That order never came.

315. States can and must police their own borders. Russia can practicably do so in a manner that ensures that funds — including large pieces of heavy weaponry — do not leave its territory and cross into the territory of a neighboring State. Specifically, in the case of the Ukraine-Russia border, Russia is capable of monitoring its border, which it controls in full. By failing to take the practicable measure of policing its border with Ukraine to stop acts of terrorism financing by any person, Russia violates Article 18.

4. The Russian Federation Has Failed to Take Practicable Measures to Stop the Open Fundraising on its Territory in Support of the DPR and LPR

316. Another practicable measure that the Russian Federation could have taken to prevent the financing of terrorism in its territory is to monitor banking activity and other open fundraising activities undertaken by Russian nationals or non-governmental organizations for the benefit of the DPR, LPR, or other illegal groups engaged in terrorism in Ukraine. Russia could have taken steps to shut down these networks. To facilitate law enforcement efforts against such financing, the Russian Federation could have designated the DPR and LPR on its list of known extremist and terrorist groups maintained by the Federal Financial Monitoring Service (“Rosfinmonitoring”). Russia took none of these measures, and as a result dozens of Russian non-governmental organizations and individuals have openly supplied weapons and raised billions of rubles for the DPR, LPR, and other extremist groups in eastern Ukraine, as detailed in Chapter 2, Part F.

317. In other contexts, when the Russian government identifies a group known to engage in terrorism, Rosfinmonitoring takes affirmative steps to “monitor legal entities and individuals’ compliance with Russia’s . . . terrorist financing legislation, and prosecut[e]

violators.”⁶⁶⁴ Rosfinmonitoring then “suspend[s] transactions with monetary funds or other assets” of those terrorist groups, effectively freezing all assets of those groups or assets destined for those groups.⁶⁶⁵ As made clear by the director of Rosfinmonitoring, Yuri A. Chikhanchin, it is not difficult for Russia to take these measures, and it has done so more than 3,500 times.⁶⁶⁶

318. Russia did not, however, take what it admits by its conduct is a practicable measure to prevent the financing of terrorism: “monitor legal entities’ and individuals” transactions with the DPR or LPR. As discussed in Chapter 3, Ukraine identified numerous groups actively engaged in fundraising for the DPR and LPR by simply combing the Internet.⁶⁶⁷ These unlawful activities are in plain sight. The *New York Times* identified others, also using publicly-available sources.⁶⁶⁸ These groups purport to have raised, collectively, billions of rubles for the DPR and LPR. Ukraine has further provided evidence that a Russian non-profit organization, “Fund of Support for International Humanitarian Projects,” has directly deposited billions more rubles into the “state-run” accounts for the LPR — something Rosfinmonitoring surely should have been able identify if it had been looking.⁶⁶⁹ Because Russia did not take simple, practicable measures to monitor and block

⁶⁶⁴ Rosfinmonitoring Functions, FEDERAL FINANCIAL MONITORING SERVICE (19 September 2017) (Annex 436).

⁶⁶⁵ *Ibid.*

⁶⁶⁶ ROSFINMONITORING ACTIVITY PUBLIC REPORT (2016), pp. 35–36 (Annex 437); see also Jo Becker & Steven Lee Myers, *Russian Groups CrowdFund the Wars in Ukraine*, N.Y. Times (11 June 2015) (Annex 577).

⁶⁶⁷ See *supra*, Chapter 2, Section F.

⁶⁶⁸ Jo Becker & Steven Lee Myers, *Russian Groups CrowdFund the Wars in Ukraine*, N.Y. Times (11 June 2015) (Annex 577).

⁶⁶⁹ See *supra*, Chapter 2, Section F.

assets of or destined for the DPR and LPR, those groups received financing, enhancing their ability to engage in further acts of terrorism.

B. The Russian Federation Is in Breach of Article 8

319. Articles 8(1) and (2) of the ICSFT provide that:

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.⁶⁷⁰

320. The obligation to detect, identify, freeze, seize, and ultimately forfeit funds allocated for use in the financing of terrorism is mandatory — “shall,” not “may.” And while the ultimate forfeiture of private property may require more extensive procedures, the freezing of assets was intended to be prompt. As the U.N. Counter-Terrorism Committee concluded, on consideration of both the ICSFT and related Security Council resolutions, “where the authorities of a country have evidence supporting a *reasonable suspicion* that a person or group . . . is actually engaged in activities in support of terrorism,” “there is no time to be lost” and the relevant assets must be frozen.⁶⁷¹ Similarly, guidance from the FATF states that there should be “measures to freeze *without delay* funds or other assets of

⁶⁷⁰ ICSFT, arts. 8(1) & (2).

⁶⁷¹ Letter from J.W. Wainwright, Expert Adviser, to the Chairman of the Counter-Terrorism Committee, para. 7 (12 November 2002), endorsed by the Counter-Terrorism Committee on 24 November 2002 (Annex 281). The panel of experts viewed language in Security Council Resolution 1373 expressly alluding to the ICSFT as especially relevant to the interpretation of paragraph 1 of Article 8 of the ICSFT regarding the freezing of assets. *Ibid.* para. 4.

terrorists, those who finance terrorism or terrorist organisations in accordance with . . . the prevention and suppression of the financing of terrorist acts” “based on *reasonable grounds, or a reasonable basis, to suspect or believe* that such funds or other assets could be used to finance terrorist activity.”⁶⁷²

321. The Russian Federation has entirely defaulted on its obligations under Article 8. It has plainly not attempted in good faith to “identif[y]” and “detect[]” funds used or allocated for use in acts of terrorism financing. As explained in Chapter 2, Part F, fundraising for the DPR and LPR was open and prevalent in Russia, including on the Internet and through the banking system. Any State serious about its commitments under the ICSFT could have identified and detected this fundraising, but the Russian Federation made no effort to do so.

322. Likewise, even when the use of funds for terrorism financing was made apparent to Russia, it did nothing to “freeze” or “seize” those funds. As described in Chapter 3, Ukraine brought numerous instances of terrorism financing to the attention of Russian authorities. These requests, together with the publicly known facts of the DPR’s and LPR’s activities, at a minimum raised a reasonable suspicion of terrorism financing that obliged Russia to freeze the assets concerned. Yet the Russian Federation did nothing, in violation of Article 8 of the ICSFT.

C. The Russian Federation Is in Breach of Articles 9 and 10

323. Together, Articles 9 and 10 of the ICSFT require States Parties to investigate, locate and ensure the presence in its territory of, and then prosecute or extradite as warranted, all individuals whom it has reason to believe may have committed an offense under Article 2 of the ICSFT. The text reads:

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set

⁶⁷² Financial Action Task Force, *Special Recommendation III: Freezing and Confiscating Terrorist Assets (Text of the Special Recommendation and Interpretative Note)* (October 2001, as updated, adopted, and published February 2012) (emphasis added) (Annex 360).

forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person[']s presence for the purpose of prosecution or extradition.

...

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.⁶⁷³

324. The nature of the obligation to investigate in Article 9 is broad and straightforward: if a State receives “information” that a person who “may” be in its territory is “alleged to have committed” a terrorism financing offence, the State receiving this information must investigate. And this investigation must begin “as soon as the suspect is identified in the territory of the State,” as this Court has held interpreting a comparable obligation to investigate under the Convention Against Torture.⁶⁷⁴ Article 10 is a similarly straightforward *aut dedere aut judicare* clause.

325. As catalogued in Chapter 3, the Russian Federation received abundant information showing that alleged perpetrators of terrorism financing were on its territory. Ukraine asked Russia to investigate more than 50 named individuals for offenses related to

⁶⁷³ ICSFT, arts. 9 & 10.

⁶⁷⁴ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, I.C.J. Reports 2012, p. 454, para. 86 [hereinafter *Belgium/Senegal*]; International Law Commission, *The Obligation to Extradite or Prosecute (aut dedere aut judicare): Final Report of the International Law Commission* (2014), p. 9 (Annex 288).

terrorism financing. But far from initiating an investigation “as soon as the suspect is identified,” Russia delayed at every turn. For example, after being notified in August 2014 that a number of individuals were using Russian entities and State-owned banks to finance terrorism, Russia waited almost a year to begin to “establish the full personal data” of those individuals.⁶⁷⁵ Almost four years after Ukraine’s request, the Russian Federation has provided no evidence that it took any action to investigate these cases.

326. When Russia has responded to Ukraine’s requests, the results betray a lack of any good-faith investigation. For example, in purportedly “investigating” terrorism financing by the Coordination Center for Assistance to Novorussia, Russia claims to have discovered that the Center “does not have electronic accounts,” and that “military items are not acquired” by the group.⁶⁷⁶ Yet the Center’s own website provides links to its electronic bank accounts, and boasts of sending weapons to the DPR and LPR.⁶⁷⁷ Similarly, when Ukraine presented evidence that Oleksander Zhukovsky was financing terrorism — including a video he posted to the Internet showing himself in Russia fundraising for the DPR — Russia simply claimed that Mr. Zhukovsky “does not exist in the Russian Federation.”⁶⁷⁸ And when Ukraine informed Russia of Konstantin Malofeev’s involvement in terrorism financing, Russia provided the remarkable response that “it was not possible to identify the

⁶⁷⁵ See *supra*, Chapter 3.

⁶⁷⁶ Russian Federation Note Verbale No. 10448 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 376).

⁶⁷⁷ See Ukrainian Note Verbale No. 72/22-620-2087 to Russian Federation Ministry of Foreign Affairs (12 August 2014) (Annex 369); *see also* Communist Party for the DKO (Volunteer Communist Detachment), Coordination Center for Assistance to New Russia (30 December 2014) (Annex 631); Regular Dispatch Is Not Humanitarian Aid, Coordination Center for Assistance to New Russia (19 November 2014) (Annex 629); Report on Past Deliveries, Coordination Center for Assistance to New Russia (19 August 2014) (Annex 626).

⁶⁷⁸ Russian Federation Note Verbale No. 10448 to the Ukrainian Ministry of Foreign Affairs (31 July 2015) (Annex 626).

location of” this prominent businessman with close ties to President Putin.⁶⁷⁹ These were not “investigations” under any good-faith interpretation of Russia’s treaty obligation.⁶⁸⁰

D. The Russian Federation Is in Breach of Article 12

327. The text of Article 12(1) of the ICSFT provides that “States Parties shall afford one another the *greatest measure of assistance* in connection with criminal investigations or criminal or extradition proceedings in respect of the offenses set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.”⁶⁸¹ Far from giving assistance to that mandated level, time after time, the Russian Federation has refused to provide any assistance to Ukraine’s investigations of terrorism financing.

328. For example, Russia has cited the failure of Ukraine to translate documents into the Russian language as a reason to withhold assistance, even though it admitted that the documents in question fulfilled Ukraine’s obligations.⁶⁸² Russia has also claimed that Ukrainian requests material to the prosecution of a crime are “irrelevant” to the pre-trial investigation conducted by Ukraine.⁶⁸³ The bases for Russia’s refusals have, time and again, invoked unnamed and non-existent “procedural formalities.”⁶⁸⁴ The overarching pattern of delay and obfuscation by the Russian Federation falls substantially short of “the greatest measure” of assistance. In all of Russia’s refusals, it never cited any reason that would make

⁶⁷⁹ *Ibid.*

⁶⁸⁰ See *Belgium/Senegal*, pp. 453-454, para. 85 (duty to investigate not satisfied where the State does not make “any inquiry into the charges”).

⁶⁸¹ ICSFT, art. 12(1) (emphasis added).

⁶⁸² See *supra*, Chapter 3, Section C; Prosecutor General’s Office of the Russian Federation Letter No. 82/1-759-16 (14 September 2016) (Annex 429).

⁶⁸³ See *supra*, Chapter 3, Section C; Prosecutor General’s Office of the Russian Federation Letter No. 82/1-5444-14 (dated 23 October 2015, sent 6 November 2015) (Annex 428).

⁶⁸⁴ See *supra*, Chapter 3, Section C.

it impossible — or even more difficult — for Russia to carry out Ukraine’s requests.

Searching for technicalities to avoid cooperation is not good-faith performance of Russia’s obligation to provide the greatest measure of assistance to Ukraine.

329. Even more fundamentally, Russia routinely delays its responses to Ukraine’s MLAT requests for more than a year, when it responds at all.⁶⁸⁵ In other instances, Russia has denied assistance altogether, not by citing pre-textual technical deficiencies, but with a bare invocation of its sovereignty and security interests, pursuant to Article 2(b) of the European Convention on Mutual Assistance in Criminal Matters of 1959⁶⁸⁶ and Article 19 of the Minsk Convention on Legal Aid and Legal Relations on Civil, Family and Criminal Matters of 1993.⁶⁸⁷ This Court has stressed, however, that a State’s discretion to invoke such exemptions “is still subject to the obligation of good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties.”⁶⁸⁸ As such, a State must “show[] that the reasons for refusal to execute the [request] fell within those allowed for in [the agreement].”⁶⁸⁹ A “bare reference” to the exception allowing refusal is insufficient; “[s]ome brief further explanation [is] called for,” not just as “a matter of courtesy” but to

⁶⁸⁵ See *ibid.*

⁶⁸⁶ European Convention on Mutual Assistance in Criminal Matters, art. 2(b) (12 June 1962) (“Assistance may be refused . . . if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country.”) (Annex 460).

⁶⁸⁷ Minsk Convention on Legal Aid and Legal Relations on Civil, Family and Criminal Matters of 1993, art. 19 (22 January 1993) (“The request about granting legal aid may be rejected, if granting such aid may inflict damage to the sovereignty or security, or contradicts the legislation of the requested Contracting Party.”) (Annex 461).

⁶⁸⁸ *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment of 4 June 2008, I.C.J. Reports 2008, p. 229, para. 145 [hereinafter *Case on Mutual Assistance*] (stating that while mutual assistance treaties “provide a State to which a request for assistance has been made with a very considerable discretion, this exercise of discretion is still subject to the obligation of good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties”).

⁶⁸⁹ *Ibid.*

“substantiate [the requested State’s] good faith” and permit the requesting State to make appropriate modifications.⁶⁹⁰

330. Pursuant to Article 12(5) of the ICSFT, Russia was obligated to afford Ukraine the greatest measure of assistance concerning the investigation and prosecution of terrorism financing offenses through legal assistance.⁶⁹¹ To validly refuse assistance under Article 12, Russia must have validly refused assistance *consistent with* the obligation of good faith this Court has found informs such agreements. A blanket set of refusals with a “bare reference” to sovereignty or security concerns is not in good faith, as such violates Russia’s MLAT obligations, and so further violates Article 12 of the ICSFT.

⁶⁹⁰ *Ibid.* p. 231, para. 152.

⁶⁹¹ ICSFT, art. 12(5).

Section C: Jurisdiction

Chapter 7. THE COURT HAS JURISDICTION OVER THE PARTIES' DISPUTE CONCERNING THE ICSFT

331. Article 36(1) of the Statute of the Court provides this Court with jurisdiction over “all cases which the parties refer to it and matters specially provided for in . . . treaties and conventions in force.”⁶⁹² Ukraine invokes this Court’s jurisdiction with respect to its terrorism financing claims under Article 24(1) of the ICSFT, to which both Ukraine and the Russian Federation are parties. Article 24(1) provides:

Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.⁶⁹³

332. Ukraine and the Russian Federation have therefore agreed to submit disputes concerning the interpretation or application of the ICSFT to this Court, provided that three preconditions are satisfied: (1) the existence of a dispute; (2) failure of settlement through negotiation within a reasonable time; and (3) lack of agreement on the organization of arbitration within six months from a request for arbitration. All three preconditions are met.

A. There Exists a Dispute Between Ukraine and the Russian Federation with Respect to the Interpretation or Application of the ICSFT

333. As this Court has explained, “[a] dispute between States exists where they ‘hold clearly opposite views concerning the question of the performance or non-performance

⁶⁹² Statute of the Court, art. 36(1).

⁶⁹³ ICSFT, art. 24(1).

of certain' international obligations."⁶⁹⁴ Based on the record in this case, the Court has already found that a dispute exists.⁶⁹⁵ In particular, the Court summarized the competing positions of both States: "Ukraine contends that the Russian Federation has failed to respect its obligations" under the ICSFT, whereas "[t]he Russian Federation positively denies that it has committed any of the violations set out above."⁶⁹⁶

334. Since 2014 and for nearly two years thereafter, Ukraine sent more than thirty diplomatic notes to the Russian Federation detailing numerous specific violations of the ICSFT. For example, in Ukraine's first explicit correspondence on the Convention, Ukraine asserted that the Russian Federation had committed acts in violation of the ICSFT.⁶⁹⁷ The Russian Federation, in turn, made it clear that it rejects Ukraine's claims, even while refusing to acknowledge the existence of a dispute.⁶⁹⁸ As this Court has explained, "[t]he mere denial

⁶⁹⁴ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order of 19 April 2017*, p. 11, para. 22 (citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 26, para. 50, and *Interpretation of Peace treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74) (hereinafter *Ukraine v. Russian Federation*).

⁶⁹⁵ *Ibid.*, pp. 13–14, paras. 29–31.

⁶⁹⁶ *Ibid.*, p. 13, para. 29.

⁶⁹⁷ Ukraine Note Verbale No. 72/22-484-1964 to Russian Federation Ministry of Foreign Affairs (28 July 2014) ("The Ukrainian Side states that . . . facts available [] demonstrate that the actions by the Russian Side, including by citizens of the Russian Federation, are directly or indirectly, unlawfully and willfully aimed at provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorism as prohibited according to the said Convention.") (Annex 368).

⁶⁹⁸ See, e.g., Russian Federation Note Verbale No. 14587 to Ukrainian Ministry of Foreign Affairs (24 November 2014) (summarily dismissing Ukraine's claims as "imaginary facts and groundless accusations") (Annex 375); Russian Federation Note Verbale No. 13457 to Ukrainian Ministry of Foreign Affairs (15 October 2015) (referring to Ukraine's claims as "fictitious information," "unsubstantiated accusations," and "patently false") (Annex 377).

of the existence of a dispute does not prove its non-existence.”⁶⁹⁹ Instead, “[w]hether there is a dispute in a given case is a matter for ‘objective determination’ by the Court.”⁷⁰⁰ The objective facts of this case demonstrate that the Parties hold “clearly opposite views” concerning the question of the performance or non-performance of certain ICSFT obligations. The first precondition under Article 24(1) of the Convention is therefore satisfied.

B. The Dispute Between Ukraine and the Russian Federation Could Not Be Settled Through Negotiation Within a Reasonable Time

335. In its Order on Provisional Measures, this Court already found that the dispute between Ukraine and the Russian Federation “could not . . . be resolved by negotiation.”⁷⁰¹ The record shows that Ukraine made extensive efforts to negotiate bilaterally with the Russian Federation over the course of two years and during four in-person negotiating sessions.⁷⁰² The time and effort Ukraine has invested in these negotiations has been well beyond what could be considered reasonable, and certainly more robust than those negotiation attempts which this Court has seen in the past. For instance, in *Belgium v. Senegal*, this Court concluded that the dispute at issue could not be settled by negotiation where Belgium and Senegal exchanged correspondence over a period of only

⁶⁹⁹ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion of 30 March 1950*, I.C.J. Reports 1950, p. 74.

⁷⁰⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment of 1 April 2011*, I.C.J. Reports 2011, p. 84, para. 30 (citing *Interpretation of Peace treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion of 30 March 1950*, I.C.J. Reports 1950, p. 74) (hereinafter *Georgia/Russian Federation*).

⁷⁰¹ *Ukraine v. Russian Federation*, pp. 18–19, para. 52.

⁷⁰² The four in-person sessions took place on 22 January 2015, 2 July 2015, 29 October 2015, and 17 March 2016.

eight months and never held any detailed, in-person negotiations.⁷⁰³ There is no comparison between an eight-month written exchange and Ukraine’s two years of extensive, though fruitless, negotiations in person and in writing with the Russian Federation.

336. This Court has explained that where negotiations are deadlocked and continued negotiations would be futile, the precondition for the seisin of the Court is satisfied.⁷⁰⁴ And as this Court’s predecessor put it in *Mavrommatis Palestine Concessions*, when a party “refuses[] to give way,” there can be “no doubt that the dispute cannot be settled by diplomatic negotiation.”⁷⁰⁵

337. In this case, Ukraine detailed in Note after Note and meeting after meeting actions by the Russian Federation’s violations of the ICSFT.⁷⁰⁶ However, through the end of 2016, the Russian Federation continued to deny the existence of a dispute, let alone address

⁷⁰³ *Belgium/Senegal*, pp. 433–36, 446, paras. 24–28, 58–59.

⁷⁰⁴ *Georgia/Russian Federation*, p. 133, para. 159 (citing *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 13; *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, pp. 345–346; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, I.C.J. Reports 1980, p. 27, para. 51; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, I.C.J. Reports 1988, p. 33, para. 55; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 122, para. 20).

⁷⁰⁵ *Mavrommatis Palestine Concessions*, Objection to the Jurisdiction of the Court, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 13 (emphasis omitted).

⁷⁰⁶ See, e.g., Ukraine Note Verbale No. 72/22-620-2087 to the Russian Ministry of Foreign Affairs (12 August 2014) (Annex 369); Ukraine Note Verbale No. 72/22-620-2185 to the Russian Ministry of Foreign Affairs (22 August 2014) (Annex 270); Ukraine Note Verbale No. 72/22-620-2221 to the Russian Ministry of Foreign Affairs (29 August 2014) (Annex 371).

the substantive claims raised by Ukraine.⁷⁰⁷ As the record demonstrates, in more than two years, there was no evolution of the Russian Federation’s position with respect to Ukraine’s substantive claims. The Russian Federation refused to “give way.” Since the ICSFT does not impose an obligation to negotiate past the point of futility, the second precondition under Article 24(1) of the Convention has been met.

C. Ukraine and the Russian Federation Were Unable to Agree on the Organization of the Arbitration Within Six Months from the Date of Ukraine’s Request for Arbitration

338. As with the other preconditions, this Court has found that Ukraine submitted a request for arbitration to the Russian Federation, and that “within six months from the date of the arbitration request, the Parties were unable to reach an agreement on its organization.”⁷⁰⁸ In considering a similar precondition for the Court’s jurisdiction, this Court has explained that a “direct request to resort to arbitration” or “an explicit offer . . . to have recourse to arbitration” satisfies the requirement of a request for arbitration.⁷⁰⁹ Here, Ukraine submitted a direct request to the Russian Federation to proceed to arbitration in its Note Verbale of 19 April 2016.⁷¹⁰ By the plain terms of Article 24(1), Ukraine could have submitted this dispute to the Court on 21 October 2016, six months after the date of its

⁷⁰⁷ See, e.g., Russian Federation Note Verbale No. 13355 to Ukrainian Ministry of Foreign Affairs (14 October 2014) (expressing a need for “factual data on the issues” instead of responding substantively) (Annex 373); Russian Federation Note Verbale No. 14284 to Ukrainian Ministry of Foreign Affairs (11 November 2016) (stating “the fact of the discussion of any issues during the consultations as well as in the diplomatic correspondence between the Parties can predetermine neither the issue of their regulation by the ICSFT, nor the existence of a dispute on interpretation and application of the ICSFT”) (Annex 373).

⁷⁰⁸ *Ukraine v. Russian Federation*, para. 53.

⁷⁰⁹ *Belgium/Senegal*, pp. 446–48, paras. 60–62.

⁷¹⁰ Ukraine Note Verbale No. 72/22-610-954 to the Russian Federation Ministry of Foreign Affairs (19 April 2016) (“Accordingly, pursuant to Article 24, paragraph 1 of the Financing Terrorism Convention, Ukraine requests the Russian Federation to submit the dispute to arbitration under terms to be agreed by mutual consent.”) (Annex 378).

request. However, Ukraine continued to attempt to bridge its differences with the Russian Federation as to the organization of the arbitration for nearly nine months.⁷¹¹

339. More than two months after Ukraine’s request for arbitration, the Russian Federation finally responded, expressing readiness to “discuss issues concerning setting up arbitration,” and proposing a fifth in-person negotiation to take place the following month.⁷¹² Ukraine proceeded in good faith to present its views on the organization of the arbitration during the Parties’ meeting on 4 August, and followed up with a written proposal later that month.⁷¹³ The Russian Federation did not provide its views on Ukraine’s proposal until early October, when it rejected Ukraine’s suggestion for the settlement of dispute by an *ad hoc* Chamber of this Court and offered its own proposals for the organization of arbitral proceedings.⁷¹⁴ Ukraine and the Russian Federation continued to discuss their respective proposals through the end of 2016.⁷¹⁵

340. In the context of a similar treaty provision, this Court has held that “the lack of agreement between the parties as to the organization of an arbitration . . . can follow . . . from a proposal for arbitration by the applicant, to which the respondent . . . has expressed its intention not to accept.”⁷¹⁶ Through the end of 2016, the Russian Federation made clear

⁷¹¹ Ukraine Note Verbale No. 72/22-663-82 to the Russian Federation Ministry of Foreign Affairs (13 January 2017) (informing the Russian Federation that Ukraine intended to refer their dispute to this Court) (Annex 385).

⁷¹² Russian Federation Note Verbale No. 8808 to the Ukrainian Ministry of Foreign Affairs (23 June 2016) (Annex 379).

⁷¹³ Ukraine Note Verbale No. 72/22-620-2049 to the Russian Ministry of Foreign Affairs (31 August 2016) (Annex 380).

⁷¹⁴ Russian Federation Note Verbale No. 14426 to the Ukrainian Ministry of Foreign Affairs (3 October 2016) (Annex 381).

⁷¹⁵ See Ukraine Note Verbale No. 72/22-194/510-2518 to the Russian Ministry of Foreign Affairs (2 November 2016) (proposing “core principles concerning the organization of the arbitration”) (Annex 382); Russian Federation Note Verbale No. 16886 to the Ukrainian Ministry of Foreign Affairs (30 December 2016) (responding to Ukraine’s proposals “on the organization of arbitration”) (Annex 384).

⁷¹⁶ *Belgium/Senegal*, pp. 447–48, para. 61 (quoting *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 41, para. 92).

its intent not to accept a number of Ukraine's proposals on the organization of the arbitration. The Parties therefore were unable to agree on the organization of the arbitration within the time period specified by Article 24(1). Accordingly, the final precondition for this Court's jurisdiction under the ICSFT is satisfied.

PART III: THE RUSSIAN FEDERATION'S VIOLATIONS OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

341. The Russian Federation's sponsorship and financing of terrorism in eastern Ukraine, described in the preceding Part, demonstrates the lengths to which it will go when neighboring countries seek to escape its hegemony. The systematic campaign of racial discrimination that Russia has pursued in Crimea, described in this Part, illustrates the extent of its disregard for basic human rights in territory where it is able to exercise dominance.

342. That campaign is an affront to the ideals that inspired the drafters of the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). At the adoption of the CERD by the General Assembly in 1965, the United Nations Secretary General noted that the treaty was "a most valuable instrument" which would allow the United Nations to "carry forward its efforts to eradicate the vestiges of racial discrimination."⁷¹⁷ The Secretary General welcomed the adoption of the CERD, not only because it called for an end to discrimination, but also because it "establish[ed] the international machinery which is essential to achieve that aim."⁷¹⁸ The text of the CERD reflects the parties' "[r]esolve[] to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations."⁷¹⁹

343. Specifically, Article 1 of the CERD broadly sets forth the impermissible grounds for discrimination under the CERD, including discrimination on grounds of ethnic origin, and specifies that conduct will violate the CERD if it has either the purpose or effect of discrimination. Article 2 of the CERD requires States Parties to pursue a policy of eliminating discrimination in all its forms. Article 2(1)(a) prohibits States Parties from

⁷¹⁷ U.N. General Assembly, 20th Session 1406th Plenary Meeting, Official Records, U.N. Doc. A/PB.1406, para. 135 (21 December 1965) (Annex 782).

⁷¹⁸ *Ibid.* para. 138.

⁷¹⁹ CERD, pml. (Annex 738)

engaging in any acts or practices of racial discrimination, and requires them to ensure that all public authorities and public institutions act in conformity with this obligation. At Article 2(1)(b), the CERD forbids States Parties from sponsoring, defending, or supporting racial discrimination by any person or organization.

344. Thereafter, the CERD sets forth more specific prohibitions of discriminatory conduct. At Article 4, the CERD obligates States Parties not to promote or incite discrimination, and requires them to condemn propaganda and organizations that are based on, or which attempt to justify, racial superiority. CERD Article 5 requires States Parties to guarantee equality before the law with respect to, among other things, freedom from bodily harm, equal treatment by the organs of justice, freedom of movement, freedom of opinion and expression, freedom of peaceful assembly and association, and the right to education and training. Article 6 requires States Parties to assure everyone within their jurisdiction the right to effective protection and remedies, through national tribunals and other state institutions, against any acts of racial discrimination. And Article 7 requires States Parties to take effective measures in the fields of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination.

345. By its treatment of the Crimean Tatar and Ukrainian communities in Crimea, the Russian Federation has violated every one of the aforementioned articles. Worse, not only has it failed to live up to its affirmative obligations under the CERD; it has put in place a policy and practice of racial discrimination that is the exact opposite of what the CERD calls for.

346. Following its unlawful occupation of Crimea, the Russian Federation now seeks to entrench Russian dominance there and to erase the competing cultural claims of the Crimean Tatar and Ukrainian communities. To achieve that goal, it has pursued a two-part strategy. First, Russia has brought the full weight of its authoritarian security machinery into force in Crimea and has applied it selectively to crush political dissent from the Crimean Tatar and Ukrainian communities. Second, it has abused its position as an occupying power to promote its own culture, while choking off the means available to the Crimean Tatar and

Ukrainian communities to preserve their own separate identities, whether through cultural gatherings, mass media, education or otherwise. The desired end result is as transparent as it is abhorrent to the multi-ethnic heritage of Crimea: the cultural erasure of the Crimean Tatar and Ukrainian communities on the peninsula.

347. Section A describes the background to and various components of Russia's campaign of racial discrimination in Crimea. Chapter 8 provides the historical context for the Russian Federation's conduct and describes how Russia's occupation and annexation of the peninsula in February and March 2014 laid the foundation for it. Chapter 9 describes in more detail the first prong of the campaign, directed at stripping the Crimean Tatar and Ukrainian communities of their political and civil rights. Chapter 10 describes the second prong of the campaign, targeting the cultural life of these communities. Section B addresses the legal consequences of Russia's actions under the CERD. Chapter 11 describes the core principles embodied by the CERD and establishes that the Crimean Tatars and Ukrainians in Crimea are protected groups under the Convention. Chapter 12 explains how Russia's conduct comprehensively violates its obligations under the CERD. Finally in this Part, Section C, comprising Chapter 13, explains why the Court has jurisdiction to decide the Parties' dispute.

Section A: Evidence Showing Russia's Policy and Practice of Racial Discrimination in Crimea

Chapter 8. THE RUSSIAN FEDERATION'S CAMPAIGN OF CULTURAL ERASURE IN CRIMEA

348. Russia's current campaign of racial discrimination in Crimea can only be fully understood in a historical context. That context includes both the formation over many centuries of a richly multi-ethnic society in Crimea and the immediate events surrounding Russia's military occupation and purported annexation of the peninsula in February and March 2014. This chapter examines each of these dimensions in turn.

A. The Historical and Social Context for Russia's Campaign of Cultural Erasure

349. Over at least the last 2,500 years, numerous successive cultures have flourished in Crimea, creating rich ethnic diversity within the population. Especially within the last century, however, relations between the different communities have not always been harmonious. From 1991 onwards, the newly independent Ukraine confronted the challenge of reintegrating into Crimean society whole peoples returning from exile following Stalin's mass deportations of 1944 (known to the Crimean Tatars as the Sürgün). Since 2014, Russia's campaign of cultural erasure against communities that oppose its unlawful occupation of Crimea has reawakened memories of those dark days.

1. The Development of Crimea's Multi-Ethnic Culture

350. As Professor Paul Magocsi, Chair of Ukrainian Studies at the University of Toronto, explains, Crimea's historical development has been shaped by its role as a "contact and transit zone for sea and land routes that have connected the steppelands of eastern Europe and central Asia to the Black Sea and beyond via the Bosphorus to the Aegean and

Mediterranean Seas.”⁷²⁰ The strategic importance of Crimea as a commercial crossroads between Asia and Europe was what first drew ancient Greek colonists to the shores of the peninsula in approximately 600 BCE.⁷²¹ Since then, numerous civilizations have left their mark on the peninsula, helping to create the richly multi-ethnic population that characterized Crimea prior to the events described in this Memorial. In the approximately two thousand years separating the arrival of the first Greek colonists and the annexation of Crimea by the Russian Empire in 1783, the peninsula was governed or settled by, among others, the Roman and Byzantine empires, numerous Germanic and Turkic tribes, medieval Italian city states including Venice and Genoa, Armenian and Jewish merchants, the Crimean Khanate established by the successors to the Golden Horde, and the Ottoman Empire.⁷²² By the end of the eighteenth century, this amalgam of nations and cultures had fused into the people that today self-identifies as Crimean Tatar.

⁷²⁰ Expert Report of Professor Paul Magocsi (4 June 2018)), para. 7 [hereinafter Magocsi Report] (Annex 21).

⁷²¹ See *ibid.*, para. 8.

⁷²² *Ibid.*, paras. 8–12.

Map 13: Geography of Crimea



351. The predominance of Slavic peoples in Crimea's population is a relatively recent phenomenon. Slavs have lived in smaller numbers on the peninsula for much of its recorded history. The more northern and steppe-like parts of the peninsula were settled by Slavs from Kyivian Rus' well before the arrival of the Mongols in Crimea.⁷²³ Over the following centuries, Mongol raids into what is now Ukrainian territory resulted in more Slavs joining the population of Crimea. But it was only with the establishment of Russian imperial rule in Crimea at the end of the eighteenth century that the demographic balance tipped decisively in favor of the Slavic community.⁷²⁴ As Professor Magocsi describes, this was the result of a deliberate policy by the Russian Empire to encourage "voluntary" emigration by the Crimean Tatar inhabitants of the peninsula.⁷²⁵ Over the course of the nineteenth century, Crimean Tatars decreased progressively as a proportion of Crimea's population, ultimately becoming a minority in the second half of that century.⁷²⁶ Many thousands of Crimean Tatars left the peninsula, moving to territory occupied by the Ottoman Empire.⁷²⁷ Turkey remains home to an important Crimean Tatar diaspora to this day.

352. Over the centuries, the central authorities in Moscow have periodically sought to "russify" Crimea. Especially under Stalin, the period of Soviet rule, with Crimea now part of the Russian Soviet Federative Socialist Republic ("RSFSR"), saw a further concerted attempt in that direction. In 1944, the Crimean Tatar people were brutally deported en masse, together with several other nationalities, on the pretext that they had collaborated

⁷²³ *Ibid.*, para. 9.

⁷²⁴ *Ibid.*, para. 13.

⁷²⁵ *Ibid.*, para. 31.

⁷²⁶ *Ibid.*, para. 32.

⁷²⁷ *Ibid.*, paras. 31–32.

with the Nazi occupation.⁷²⁸ Thousands died on the way to their new Central Asian homes (principally in Uzbekistan), many more upon arrival at their destination.⁷²⁹ For the next 50 years, the displaced Crimean Tatars sought to preserve their distinct language and culture and the bravest among them campaigned to be allowed to return to their Crimean homeland.⁷³⁰ Meanwhile, in Crimea, the local Russian authorities did their best to eliminate all traces of the Crimean Tatar past, renaming towns and villages and encouraging Slavic immigration from both the RSFSR and the Ukrainian Soviet Socialist Republic (“Ukrainian SSR”).⁷³¹

353. The distinction within Crimea's Slavic population between Russians and Ukrainians is also a relatively recent development, assuming its modern form only in the second half of the nineteenth century, as the Ukrainian national movement gained momentum.⁷³² From the first Russian census in 1897 onwards, residents of Crimea were asked to identify themselves as Ukrainian (or “Little Russian,” the term used in the 1897 census to designate Ukrainians) or one of several other nationalities pre-designated by the authorities.⁷³³ Although census respondents likely regarded this nationality question as an invitation to disclose their dominant ancestral heritage rather than how they currently self-identified, the resulting statistics provide at least a rough approximation of the proportions

⁷²⁸ *Ibid.*, para. 33; see also State Defense Committee of the Soviet Union Decree No. 589ss “On the Crimean Tatars” (11 May 1944) (chapeau) (Annex 871).

⁷²⁹ Magocsi Report, para. 34.

⁷³⁰ *Ibid.*, para. 36.

⁷³¹ Greta Uehling, Genocide’s Aftermath: Neostalinism in Contemporary Crimea, *Genocide Studies and Prevention* 3 (2015) (Annex 1021); Witness Statement of Mustafa Dzhemilev [hereinafter Dzhemilev Statement], para. 4 (Annex 16).

⁷³² Magocsi Report, para. 50 (Annex 21).

⁷³³ See *ibid.*, paras. 46–48, 52.

of the Crimea population describing themselves as Russian and Ukrainian from 1897 onwards. As Table 2 to Professor Magocsi's report shows, the percentage of Ukrainians counted by successive censuses by the Russian Empire and subsequently the Soviet Union rose steadily throughout the twentieth century, reaching approximately a quarter of the population by the time Ukraine became an independent country in 1991.⁷³⁴ That fraction of the population included Ukrainians whose first language was Ukrainian and others who preferred to converse in Russian.⁷³⁵

354. The decision of the Presidium of the Supreme Soviet to transfer Crimea from the RSFSR to the Ukrainian SSR in 1954 did not have any significant durable impact on the cultural balance in Crimea.⁷³⁶ While the Soviet Union remained in existence, with Moscow at its center, Russian remained the language of self-advancement and was generally preferred for instructional purposes by Crimean Slavs, whether of Russian or Ukrainian ancestry.⁷³⁷

355. With Ukrainian independence in 1991, Crimea came to present a multi-faceted challenge for the authorities in Kyiv. Even before the dissolution of the Soviet Union in December 1991, the Supreme Soviet of the Ukrainian SSR had granted Crimea the status of an autonomous republic within Soviet Ukraine.⁷³⁸ Upon independence, however, a vocal minority called for the peninsula to be reunited with the Russian Federation and was encouraged in its demands by nationalist Russian legislators in Moscow. Under President Yeltsin, the Russian government repeatedly confirmed that Crimea was part of Ukraine, and signed several treaties committing the Russian Federation to respect Ukraine's territorial sovereignty on that basis.⁷³⁹ After 1994, the secessionist movement largely disappeared

⁷³⁴ *Ibid.*, para. 46, table 2.

⁷³⁵ See *ibid.*, para. 52.

⁷³⁶ *Ibid.*, paras. 53–57.

⁷³⁷ *Ibid.*

⁷³⁸ *Ibid.*, para. 28.

⁷³⁹ *Ibid.*, para. 17.

until stoked back into life by the Russian Federation as cover for its military invasion of Crimea in February and March 2014. As a new generation of post-Soviet Crimeans grew up on the peninsula, the idea of Crimea as part of independent Ukraine became progressively less controversial, and for many younger people being Ukrainian became an accepted part of their self-identity.

356. Meanwhile, the government of newly independent Ukraine was confronted with the challenge of reintegrating hundreds of thousands of returning Crimean Tatars into the economy and society of the peninsula. A few pioneering Crimean Tatars, including Mustafa Dzhemilev and Refat Chubarov, had managed to return to Crimea from exile in Uzbekistan even before the end of the Soviet Union.⁷⁴⁰ After 1991, the trickle turned into a flood, as the Crimean Tatar masses followed this example, with encouragement from the Ukrainian authorities. By the time of the 2001 census, some 250,000 Crimean Tatars were back on Crimean soil, up from zero as recently as 1959.⁷⁴¹ In 2013, a needs assessment for the OSCE's High Commissioner for National Minorities praised the Ukrainian government for its efforts to reintegrate the Crimean Tatar and other formerly deported peoples, while noting that much work remained to be done.⁷⁴²

2. The Crimean Tatar and Ukrainian Communities in Contemporary Crimea

357. As Professor Magocsi explains, the Crimean Tatar people did not allow their forced exile in Central Asia to diminish their sense of separate identity. To the contrary, the community formed its own civic organizations, including a newspaper, journals and a

⁷⁴⁰ *Ibid.*, para. 17.

⁷⁴¹ *Ibid.*, para. 39.

⁷⁴² Organization for Security and Co-operation in Europe High Commissioner for National Minorities, The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment (August 2013) (hereinafter "HCNM Needs Assessment"), p. 2 (Annex 805).

publishing house, to keep its traditions alive.⁷⁴³ Among the new civic organizations formed in this period was the Union of Crimean Tatar Youth, co-founded by Mustafa Dzhemilev, which played an important role in the coming years advocating for the right to return to Crimea.⁷⁴⁴ Adherence to a moderate form of Islam continued to be a defining feature of the Crimean Tatar people during this period.⁷⁴⁵ The chief casualty of life in exile may have been the Crimean Tatar language, which in many families was replaced as the chief mode of communication by the Russian taught in local schools.⁷⁴⁶

358. The large number of Crimean Tatars who have returned since the late 1980s have continued this tradition of civic activism and have overlaid it with the establishment of elected institutions charged with representing the interests of Crimean Tatar people as a whole. In June 1991, the Crimean Tatars organized the election of the Qurultay, akin to a National Congress of 250 delegates.⁷⁴⁷ This democratic body, whose name recalls an ancient institution of the Crimean Khanate that governed Crimea from the fifteenth to the eighteenth centuries, adopted a Declaration of National Sovereignty of the Crimean Tatar People.⁷⁴⁸ The Qurultay of 1991 also elected a Mejlis, an executive body to be the legitimate representative voice of the Crimean Tatar community when the Qurultay is out of session. Mr. Dzhemilev served as the chair of the Mejlis from 1991 until 27 October 2013, when he was replaced by the current chair, Mr. Chubarov.⁷⁴⁹

⁷⁴³ Magocsi Report, para. 36 (Annex 21).

⁷⁴⁴ See Statement of Mustafa Dzhemilev, para. 2 (Annex 16).

⁷⁴⁵ Magocsi Report, para. 82 (Annex 21).

⁷⁴⁶ Magocsi Report, paras. 73–74 (Annex 21).

⁷⁴⁷ *Ibid.*, para. 5.

⁷⁴⁸ Andrew Wilson, The Crimean Tatars: A Quarter of a Century After Their Return, Security and Human Rights 24 (2013), pp. 418, 423–24 (Annex 1018).

⁷⁴⁹ Black Sea News, *Chubarov Elected Chairman of Mejlis of Crimean Tatar People* (28 Oct. 2013), at <http://www.blackseanews.net/en/read/72236>.

359. The practical concerns of the Crimean Tatar people and their representative institutions during this period have been conditioned by the after-effects of the Sürgün. Stalin's order deporting the Crimean Tatars in 1944 required that their land and other real estate be taken over by the local authorities.⁷⁵⁰ Returning Crimean Tatars therefore had nowhere to live. As a result, "land, housing and property [were] by far the most sensitive issues and the most likely to cause tensions"⁷⁵¹ prior to the Russian occupation. In view of the impact of exile on usage of their native language, Crimean Tatars also pressed for greater opportunities for their children to be educated in the Crimean Tatar language.⁷⁵² At the political level, the Mejlis worked hard to obtain recognition of the Crimean Tatars as one of the indigenous peoples of Crimea, as a means of entrenching their rights in modern Crimea.⁷⁵³

360. The Ukrainian community in contemporary Crimea encompasses both those who speak Ukrainian as their primary means of communication and who follow overtly Ukrainian customs, as well as a significant number of Russian-speakers who identify as Ukrainian. The census taken by the Ukrainian authorities in 2001 recorded some 492,000

⁷⁵⁰ State Defense Committee Decree No. 5859ss (11 May 1944), para. (a) (Annex 871).

⁷⁵¹ HCNM Needs Assessment, *supra* note 742, p. 9 (Annex 805).

⁷⁵² Magocsi Report, para. 71 (Annex 21).

⁷⁵³ See *Crimean Tatars Demand Recognition as Indigenous People*, Kharkiv Human Rights Protection Group (18 September 2013) (noting that "[o]ne of the key characteristics of indigenous peoples is that regardless of their legal status, they preserve some or all social, economic, cultural and political institutions") (Annex 936).

Ukrainians, approximately 24 percent of Crimea's population.⁷⁵⁴ Only 40.4 percent of these, approximately 199,000 people, described Ukrainian as their native language.⁷⁵⁵

361. Prior to the Russian intervention, the Ukrainian-speaking portion of the Ukrainian community in Crimea was well-served by Ukrainian-language TV and radio broadcasts originating in other parts of Ukraine.⁷⁵⁶ Additionally, a number of non-governmental organizations worked to increase the reach of Ukrainian language and culture in Crimea. The witness statement of Andrii Shchekun, a Ukrainian cultural and educational activist, for example, describes his work through a variety of NGOs to increase access to education in the Ukrainian language in Crimea and to promote Ukrainian-language print and broadcast media on the peninsula.⁷⁵⁷

362. Russian speakers who identified as Ukrainian had access to a wide variety of independent Crimean-based media, broadcasting or publishing in the Russian-language but from a Ukrainian or Crimean perspective. For example, the most popular Crimea-based TV channel was ATR, a Crimean Tatar-owned station that produced programs of local interest in Crimean Tatar, Ukrainian and Russian.⁷⁵⁸ Enterprises such as the Center for Journalist Investigations reported on local news from an independent perspective, covering such sensitive issues as corruption within local government.⁷⁵⁹

363. While the Ukrainian community was not politically and culturally mobilized to the same extent as the Crimean Tatars, there were Ukrainian-language based educational

⁷⁵⁴ All-Ukrainian Population Census National Composition of Population, Autonomous Republic of Crimea (2001) (Annex 731).

⁷⁵⁵ All-Ukrainian Population Census Linguistic Composition of Population, Autonomous Republic of Crimea (2001) (Annex 730).

⁷⁵⁶ See, e.g., Michael Kofman et al., *Lessons from Russia's Operations in Crimea and Eastern Ukraine*, RAND Corporation (2017), p. 13 (noting that Russian forces turned off signals from nine Ukrainian television channels on 9 March 2014) (Annex 1025).

⁷⁵⁷ See Witness Statement of Andriy Shchekun (12 June 2018), paras. 4–8 [hereinafter Shchekun Statement] (Annex 13).

⁷⁵⁸ Witness Statement of Lenur Islyamov, paras. 2–3 [hereinafter Islyamov Statement] (Annex 18).

⁷⁵⁹ Witness Statement of Anna Andriyevska (4 June 2018), para. 6 [hereinafter Andriyevska Statement] (Annex 14).

and cultural opportunities available for those who wanted them. And the relatively liberal media environment allowed the majority of Ukrainians in Crimea who were predominantly Russian-speaking to participate in Ukrainian social and political life more generally. In short, before the current Russian campaign began, a genuinely multi-ethnic society of Ukrainians, Russians, and Crimean Tatars, as well as other groups had taken hold in Crimea.

B. Origins of Russia's Campaign of Cultural Erasure Against the Crimean Tatar and Ukrainian Peoples in Crimea

364. The progress made to reintegrate the Crimean Tatars into Crimean society within independent Ukraine has been abruptly reversed following Russia's unlawful invasion of the peninsula in February 2014. Today, 70 years after they were first deported by Stalin, the Crimean Tatar community once again finds itself singled out for its perceived disloyalty to Moscow. This time the Crimean Tatars' alleged crime is to dare to utter what the rest of the world already knows and openly declares: that Crimea is part of Ukraine's sovereign territory and Russia's unlawful aggression does not change that fact.

365. The Crimean Tatars find themselves joined in Moscow's bad graces by the Ukrainian community in Crimea. For a Russian regime that will brook no opposition to its territorial expansionism, the Ukrainian community – a key part of whose identity rests on the conception of Crimea as part of Ukraine – is an obvious and necessary target.

1. Russia's Unlawful Invasion and Purported Annexation of Crimea

366. As described in Part I, the Russian Federation now admits that the unlawful secession of Crimea from Ukraine was engineered in Moscow.⁷⁶⁰ In his witness statement, Mustafa Dzhemilev describes being asked to speak to Putin about the future of Crimea as

⁷⁶⁰ See *supra* Chapter 8, Section B.

early as 15 February 2014.⁷⁶¹ President Putin says that he resolved to intervene militarily in Crimea during a meeting of 22-23 February.⁷⁶²

367. In any event, on the ground it was clear by the evening of 25 February 2014 that a military intervention was underway and that Russia's next move would be to engineer a declaration of independence by the Crimean Parliament.⁷⁶³ Representatives of the Crimean Tatar and Ukrainian communities mobilized in an attempt to prevent this from happening. The Mejlis organized a rally to take place the following morning, 26 February, in the square in front of the Crimean Parliament building in Simferopol, in opposition to Crimea's accession to the Russian Federation.⁷⁶⁴ According to the notification filed by the Mejlis, the rally was for preservation of Ukraine's territorial integrity and resistance to the Crimean Parliament's decisions aimed at destabilizing the autonomy of Crimea.⁷⁶⁵ As Mr. Andrii Shchekun recalls in his witness statement, the Mejlis invited representatives of the Ukrainian community to join them in the protest.⁷⁶⁶

⁷⁶¹ Dzhemilev Statement, paras. 10–11 (Annex 16); *see also* Back into Exile, The Economist (18 June 2015) (Annex 1057).

⁷⁶² See, e.g., BBC News, *Putin Reveals Secrets of Russia's Crimea Takeover Plot* (9 March 2015) (Annex 52); DW, *Putin reveals details of decision to annex Crimea*, (9 March 2015) (Annex 1051).

⁷⁶³ Thomas D. Grant, *Aggression against Ukraine: Territory, Responsibility, and International Law* 5 (2015) (Annex 1023).

⁷⁶⁴ Office of the United Nations High Commissioner for Human Rights, *Accountability for killings in Ukraine from January 2014 to May 2016*, Annex I, para. 2 (Annex 49). For detailed reconstruction of the rally of 26 February 2014, see Ukrainian Helsinki Human Rights Union, *Report of the International Expert Group: 26 February Criminal Case* (2017) (Annex 958).

⁷⁶⁵ Mejlis of the Crimean Tatar People, *Notification to Simferopol City Council* (inserted in Ukrainian Helsinki Human Rights Union, *Report of the International Expert Group: February 26 Criminal Case* (2017), p. 12 (original), p. 98 (English translated) (Annex 960)).

⁷⁶⁶ Shchekun Statement, para. 13 (Annex 13).

Figure 13



Demonstrators stand opposite each other near the parliament building in Simferopol
(Artur Shvarts / European Pressphoto Agency)

368. As the pro-Ukrainian demonstrators gathered in the square the following morning, a large number of young men carrying Russian flags began forming up opposite them. A large contingent from the pro-Russian Self-Defense Forces was also present.⁷⁶⁷ An intense standoff between the groups lasted for hours.⁷⁶⁸ Over the course of the day, the two sides sought to push each other's supporters out of the forecourt of the Parliament building, into which the crowd had spilled. Two people died in the crush and some 70 people were injured.⁷⁶⁹

⁷⁶⁷ Ukrainian Helsinki Human Rights Union, Report of the International Expert Group: 26 February Criminal Case (2017), p. 17 (Annex 958).

⁷⁶⁸ *Ibid.*, pp. 26–62.

⁷⁶⁹ *Ibid.*, p. 12; Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 23 (Annex 759).

369. Early in the morning of 27 February 2014, a group of heavily armed men wearing uniforms without insignia seized the building of the Parliament and raised the Russian flag.⁷⁷⁰ While occupied by these armed forces, the Crimean Parliament convened an extraordinary closed session, dismissed the existing government, and elected Sergey Aksyonov—leader of the radical Russian Unity Party—as the new Prime Minister of Crimea.⁷⁷¹ At the time this vote was held, the Russian Unity Party held a mere three seats out of 100 in the Crimean Parliament.⁷⁷²

370. On 6 March 2014, the Crimean Parliament resolved that a referendum would be held ten days later, in which Crimean voters could choose (1) reunification with Russia, or (2) restoration of Crimea's prior status as part of Ukraine.⁷⁷³ On 11 March 2014, the Parliaments of Crimea and Sevastopol adopted a joint Declaration of Independence stating

⁷⁷⁰ See, e.g., Harriet Salem et al., *Crimean Parliament Seized by Unknown Pro-Russian Gunmen*, The Guardian (27 February 2014) (Annex 1037).

⁷⁷¹ See Parliamentary Assembly of the Council of Europe, Committee on Honouring of Obligations and Commitments by Member States of the Council of Europe, *Recent developments in Ukraine: threats to the functioning of democratic institutions* (8 April 2014), at 16-17 (hereinafter “PACE Recent Developments in Ukraine”) (Annex 820); Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)* (22 February 2014 to 12 September 2017), paras. 5 & 23 (“On 27 February, members of the Parliament of Crimea, in the presence of gunmen, dismissed the local Government and elected Sergey Aksyonov as the Head of Crimea”) (Annex 759).

⁷⁷² Simon Shuster, *Putin's Man in Crimea Is Ukraine's Worst Nightmare*, Time (10 March 2014) (Annex 1041).

⁷⁷³ See PACE Recent Developments in Ukraine, p. 17 (Annex 820); Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)* (22 February 2014 to 12 September 2017), para. 5, n.7 (Annex 759); *Crimean Parliament Votes to Become Part of Russian Federation, Referendum to be Held in 10 Days*, ABC News (6 March 2014) (Annex 1038).

that Crimea and Sevastopol would form an independent state called the “Republic of Crimea” and seek integration into the Russian Federation based on the result of the referendum.⁷⁷⁴

371. The Russian Federation tried and failed at the most senior levels to induce the Crimean Tatars to support annexation in advance of the referendum. Mustafa Dzhemilev testifies to a telephone call with President Putin on 12 March, engineered by the Russian side.⁷⁷⁵ During the conversation, Putin sought the Crimean Tatar community's support for union with Russia in return for unspecified favorable treatment in the future. He was firmly rebuffed by Mr. Dzhemilev who continued to insist that Crimea was part of Ukraine.⁷⁷⁶

372. Putin's offer of favorable treatment was belied by events on the ground in Crimea where pro-Russian forces were creating as intimidating an environment as possible for the Crimean Tatar and Ukrainian communities. In Simferopol, a Crimean Tatar activist protesting in front of the Cabinet of Ministers building was kidnapped on 3 March 2014 in broad daylight by men wearing the uniforms of the Self-Defense Forces.⁷⁷⁷ The victim's murdered body was discovered two weeks later, bearing signs of torture.⁷⁷⁸ Ukrainian activists were abducted, illegally detained and subjected to torture, only being released once

⁷⁷⁴ Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 5 (Annex 759).

⁷⁷⁵ Dzhemilev Statement, paras. 16–27 (Annex 16); *see also* Back into Exile, The Economist (18 June 2015) (Annex 1057).

⁷⁷⁶ Dzhemilev Statement, paras. 16–27 (Annex 16).

⁷⁷⁷ Office of the United Nations High Commissioner for Human Rights, *Accountability for Killings in Ukraine from January 2014 to May 2016*, paras. 119–20 (Annex 49).

⁷⁷⁸ See *infra* Chapter 9. Office of the United Nations High Commissioner for Human Rights, *Accountability for Killings in Ukraine from January 2014 to May 2016*, para. 121 (Annex 49); Human Rights Watch, *Crimea: Disappeared Man Found Killed* (18 March 2014) (Annex 939).

the referendum had taken place.⁷⁷⁹ The walls and gates of Crimean Tatar houses were marked with crosses on their doors,⁷⁸⁰ a chilling reminder of a practice used by the Soviet authorities in 1944 to round up members of that people for deportation.⁷⁸¹ Unidentified, uniformed men had begun appearing in Crimean Tatar settlements, claiming rights to Crimean Tatar properties.⁷⁸²

373. On 16 March 2014, the pro-Russian authorities in Crimea announced that 96.77 percent of participants had voted for union with the Russian Federation, on a turnout of 83.1 percent.⁷⁸³ Similarly, it was announced that 89.5 percent of participants in the city of Sevastopol had cast their ballots, of whom 95.6 percent had voted to join the Russian Federation.⁷⁸⁴ Opponents, including the vast majority of the Crimean Tatar community,

⁷⁷⁹ See *infra* Chapter 9, Section A; see, e.g., Sergey Zayets et al., *The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea* (2016), pp. 58–74 (Annex 976); *see also* Human Rights Watch, *Crimea: Attacks, ‘Disappearances’ by Illegal Forces* (14 March 2014) (Annex 939); see also Shchekun Statement, paras. 19–25 (Annex 13).

⁷⁸⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on Minority Issues on Her Mission to Ukraine (7–14 April 2014)*, U.N. Doc. A/HRC/28/64/Add.1 (26 August 2014), para. 51 (Annex 760).

⁷⁸¹ Natalia Antelava, *Who Will Protect the Crimean Tatars*, The NEW YORKER (6 March 2014) (Annex 1039).

⁷⁸² Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 April 2014), para. 88 (Annex 44); United Nations Human Rights Council, *Report of the Special Rapporteur on Minority Issues on Her Mission to Ukraine (7–14 April 2014)*, U.N. Doc. A/HRC/28/64/Add.1 (26 August 2014), para. 51 (Annex 760).

⁷⁸³ State Council of Crimea, *Announcement of the Results of the Crimea-wide Referendum Held in Autonomous Republic of Crimea (16 March 2014)* (Annex 886).

⁷⁸⁴ Media Relations Department of Sevastopol City Council, *Results of the Crimea-wide Referendum of March 16, 2014 Ratified at the Session of the City Council (17 March 2014)* (Annex 1086).

boycotte the poll.⁷⁸⁵ The United Nations General Assembly,⁷⁸⁶ the Council of Europe's Venice Commission,⁷⁸⁷ and many others in the international community⁷⁸⁸ condemned the referendum as unlawful. Numerous international observers have questioned the referendum results reported by the Crimean authorities, finding other figures mistakenly released by the Russian government more credible.⁷⁸⁹ On 17 March 2014, the Crimean Parliament illegally declared the Republic of Crimea as a state independent of Ukraine.

⁷⁸⁵ Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine (15 April 2014), at 4, n.2 (noting that observers reported that no more than 1,000 members of the Crimean Tatar community cast ballots in the referendum, out of a total population of 290,000 – 300,000) (Annex 45).

⁷⁸⁶In Resolution 68/262, adopted on 27 March 2014, the U.N. General Assembly underscored that “the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol” and called “upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.” U.N. General Assembly Resolution 68/262, U.N. Doc. A/RES/68/262, paras. 5–6, *Territorial Integrity of Ukraine* (27 March 2014) (Annex 43).

⁷⁸⁷ See Council of Europe, 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 Organize a Referendum on Becoming a Constituent Territory of the Russian Federation or Restoring Crimea’s 1992 Constitution is Compatible with Constitutional Principles”* (hereinafter “Venice Commission Opinion”), CDL-AD(2014)002 (21–22 March 2014) (Annex 354).

⁷⁸⁸ See, e.g., Parliamentary Assembly of the Council of Europe, Recent Developments in Ukraine: Threats to the Functioning of Democratic Institutions, Resolution 1988 (2014)1 (9 April 2014) (Annex 821); European Commission, Statement, Joint statement by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso on Crimea (Brussels, 16 March 2014) (Annex 828); Harper blasts Crimea referendum, protesters express solidarity with Ukraine, CBC (16 March 2014) (Annex 1042); Merkel: Crimea grab ‘against international law’ The Local (18 March 2014) (Annex 1044); U.S., NATO Allies Condemn Russian ‘Land Grab’ In Ukraine, RFE/RL (18 March 2014) (Annex 1045).

⁷⁸⁹ For example, Luzius Wildhaber, former President of the European Court of Human Rights, has called Russia’s purported official results implausible, and observed that Russia’s Human Rights Council later communicated much more credible figures, i.e., that some 30–50% had taken part in the vote, and out of these, some 50–60% (roughly 22% of potential voters) favored annexation. See Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, *Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities* (26 September 2016), p. 23, n.130 (Annex 826).

374. Despite the international community's rejection of the referendum, on 18 March 2014, the Russia Federation entered into a purported treaty with the so-called Republic of Crimea, incorporating Crimea and the City of Sevastopol into the territory of the Russian Federation.⁷⁹⁰ On 21 March 2014, President Putin signed a law rushed through the Duma and Federation Council over the previous two days, formalizing the annexation as a matter of Russian law.⁷⁹¹

2. Russia's Use of Hate Speech to Polarize Crimea's Multi-Ethnic Population Before and After the Referendum

375. The referendum was preceded by a vigorous disinformation campaign in which the Russian Federation and its agents sought to undermine the multi-ethnic underpinnings of Crimean society by creating a climate of fear among the Russian speaking majority there. The goal of this campaign was to convince its audience that fascists had seized power in Kyiv and that they intended next to come to Crimea to punish ethnic Russians there. With the assistance of leaked documents, the Washington Post has documented how a concerted campaign by the Russian military intelligence service, the GRU, resulted in posts appearing across social media from 22 February 2014 onwards claiming that Crimea was under threat from Nazis.⁷⁹² To reinforce this message, Russia also took advantage of the fact that Russian speakers in Crimea generally received their news

⁷⁹⁰ Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)* (2017), para. 5 (Annex 759).

⁷⁹¹ Federal Constitutional Law No. 6-FKZ of March 21, 2014 "On the Admission of the Republic of Crimea into the Russian Federation and the Formation of New Constituent Entities of the Russian Federation: The Republic of Crimea and the Federal City of Sevastopol" (21 March 2014) (the "Law on Admission") (Annex 888).

⁷⁹² Ellen Nakashima, *Inside a Russian Disinformation Campaign in Ukraine in 2014*, Washington Post (25 December 2017) (Annex 1072).

from Russian-based TV channels. As one detailed account of the Russian military operation in Crimea notes:

On February 26, Russia began aggressively promoting its message that regime change in Ukraine was illegitimate. ...This message was advanced by several Russian figures and elites; for example, Sergei Mironov, leader of Russian political party Spravedlivaya Rossiya, on the Russia 24 news channel, and Ramzan Kadyrov, head of the Chechen Republic, on the LifeNews Channel contended that Russians were under threat in Crimea and required protection and that Russia needed to act to secure their safety. The message was straightforward: “[N]ationalists and fascists took power in Kyiv, they will force Russians to abandon the Russian language and present a general threat.”⁷⁹³

376. The message was reinforced on the ground in Crimea by pro-Russian sympathizers. As reported in a contemporary press article:

“We don’t want what happened in Kiev to happen here. Nazis and bandits have seized power there. And if we have to fight, we’ll fight with everything we can get our hands on,” said a member of the local chapter of the Night Wolves biker gang.

The bikers – part of a gang with strong ties to Russia and who have ridden with Vladimir Putin in the past – are far from alone.⁷⁹⁴

The newly-installed Mayor of Sevastopol, Alexei Chaliy, exploited the resulting tensions to drive recruitment to self-defense units in the city, inviting volunteers to sign up for the new units at the town hall.⁷⁹⁵ Two days later in Simferopol, similar sentiments were being voiced outside the Crimean Parliament, this time demonizing Crimean Tatars: “Yesterday Russian people were attacked and murdered by Tatar extremists. We will not allow this fascism from Kiev to happen here, said 43 year-old construction worker, Spartak.”⁷⁹⁶

⁷⁹³ Michael Kofman et al., *Lessons from Russia’s Operations in Crimea and Eastern Ukraine*, RAND Corporation (2017), pp. 13–14 (Annex 1025).

⁷⁹⁴ Roland Oliphant, Vigilante Units to Defend Crimea City Against ‘Fascist’ Threat from Kiev, *The Telegraph* (25 February 2014) (Annex 1036).

⁷⁹⁵ *Ibid.*

⁷⁹⁶ Harriet Salem et al., *Crimean Parliament Seized by Unknown Pro-Russian Gunment*, *The Guardian* (27 February 2014) (Annex 1037).

377. Much has been written about Russia's use of disinformation and propaganda as part of its integrated military campaign to seize control of Crimea and simultaneously stir up unrest in other parts of Ukraine. As one commentator observed:

The Russian occupation of Crimea and the war against Ukraine in Donbas was an apogee in terms of propaganda use, media manipulations, fake news stories, and forgeries propounded by the Kremlin. These are just part of the active measures conducted by Russia, which then amends its military capacity and diplomatic actions to conceal the deception. These actions are part of an overall strategy that has been termed hybrid war.⁷⁹⁷

378. There was, of course, no truth to the rumors spread by Russian media and more covertly by its intelligence services. But the coordinated and constant repetition of untrue stories across a variety of media had a corrosive effect on relations between the various ethnic groups in Crimea, undermining the years of work undertaken during Ukrainian rule to promote multiculturalism on the peninsula.⁷⁹⁸

379. In the run-up to the referendum the following month, the efforts to depict Ukrainians as fascists and the forthcoming vote as a choice between union with Russia and submission to Nazism continued, including in divisive campaign posters.

⁷⁹⁷ Yevhen Fedchenko, *Kremlin Propaganda: Soviet Active Measures by Other Means*, Sõjateadlane (Estonian Journal of Military Studies), Volume 2, 2016, pp. 141–42.

⁷⁹⁸ See Witness Statement of Yulia Tyshchenko [hereinafter Tyshchenko Statement], paras. 4–17 (describing a series of initiatives in the field of multicultural education undertaken in the years prior to 2014) (Annex 17).

Figure 14⁷⁹⁹



Campaign Poster for Crimean Referendum

380. The same crude characterizations were still being used by senior Russian figures immediately following the referendum. Addressing the Russian legislature on 18 March 2014, President Putin claimed that:

[T]hose who stood behind the latest events in Ukraine ... were preparing yet another government takeover; they wanted to seize power and would stop short of nothing. They resorted to terror, murder and riots. Nationalists, neo-Nazis, Russophobes and anti-Semites executed this coup. They continue to set the tone in Ukraine to this day.⁸⁰⁰

381. The Crimean Human Rights Group has undertaken a comprehensive analysis of the use of hate speech in the Crimean media between March 2014 and July 2017. It found a total of 718 examples of hate speech on Russian TV channels broadcasting in Crimea,

⁷⁹⁹ Paul Roderick Gregory, Putin's Destabilization of Ukraine Overshadows Today's Crimean Vote, *Forbes* (16 Mar. 2014) (Annex 1043).

⁸⁰⁰ Address by President of the Russian Federation, 18 March 2014, The Kremlin, Moscow, at <http://en.kremlin.ru/events/president/news/20603> (Annex 887).

websites run by the Russian occupation authorities, and websites of mass media outlets operating in Crimea with Russian permission.

The study established several ethnic, religious and social groups that hatred was incited towards in the media landscape of Crimea. These are Ukrainians (as an ethnos and/or civic community), Crimean Tatars, members and supporters of the Mejlis of the Crimean Tatar people, Euromaidan activists, Muslims and migrants.⁸⁰¹

3. Russia Lays the Foundation for Its Discriminatory Campaign Against the Crimean Tatar and Ukrainian Communities

382. If the seeds of Russia's campaign of cultural erasure against the Crimean Tatar and Ukrainians in Crimea were sown in the events surrounding the Russian occupation and the referendum, the Law on Admission, incorporating the peninsula into Russian territory following the referendum and 18 March Annexation Treaty, provided the fraudulent foundation for its implementation. The very act of annexation placed the Russian authorities on a collision course with the Crimean Tatar and Ukrainian communities. A defining characteristic of both communities at this time was their loyalty to the principle of Crimea as part of independent Ukraine. By treating Crimea as part of its own sovereign territory, rather than as occupied territory as international law dictates, the Russian Federation set itself on a collision course with these two ethnic groups.

383. The Law on Admission provided some important foundation stones for Russia's subsequent discriminatory campaign. Article 4 of the law provided that:

From the date of admission of the Republic of Crimea to the Russian Federation ... citizens of Ukraine and stateless persons permanently residing in the territory of the Republic of Crimea or the federal city of Sevastopol on that day shall be recognized as citizens of the Russian Federation, with the exception of persons who within one month from that date declare their desire to keep the other citizenship that they and/or their underage children have, or to remain stateless.⁸⁰²

⁸⁰¹ Crimea Human Rights Group, Hate Speech in the Media Landscape of Crimea (2018) (Annex 967).

As will be further described in Chapter 9, this provision would have a profound discriminatory effect on Crimean Tatars and Ukrainians. Those who accepted Russian citizenship were put in the position of having to swear allegiance to a foreign sovereign that had unlawfully seized their homeland from the country to which the vast majority of these communities remained loyal. The practical consequences of this act included potentially making oneself susceptible to conscription into a hostile army. But those who took advantage of the opt-out to avoid accepting Russian citizenship were choosing the status of a foreigner in their own country. Under Russian law, that status meant being denied many of the civic and economic benefits enjoyed by Russian citizens. The discriminatory consequences of Russia's policy of "forced citizenship" will be examined in more detail below.

384. Article 23(1) of the Law on Admission would prove no less important in Russia's discriminatory campaign:

Legislative and other normative legal acts of the Russian Federation shall be valid in the territories of the Republic of Crimea and the federal city of Sevastopol from the date of admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities of the Russian Federation, unless otherwise provided for by this Federal Constitutional Law.

This provision opened the door to the application of Russia's full suite of criminal and other laws in occupied Crimea. Just weeks later a further federal law confirmed that the Criminal Code and Criminal Procedure Code of the Russian Federation would have full force in Crimea.⁸⁰³

⁸⁰³ Federal Law No. 91-FZ, "On Application of the Provisions of the Criminal Code of the Russian Federation and Criminal Procedure Code of the Russian Federation in the Territories of the Republic of Crimea and City of Federal Importance Sevastopol (5 May 2014) (Annex 889).

385. The Russian Federation used the opening created by Article 23 of the Law of Admission to apply to Crimea a battery of repressive laws that could then be used selectively to deny the Crimean Tatar and Ukrainian communities equal enjoyment of their civic, cultural and other human rights. Chief among these was the corpus of legislation and Criminal Code provisions constituting Russia's anti-extremism laws.⁸⁰⁴ Federal Law No. 114-FZ on Combating Extremist Activities of 25 July 2002, for instance, lists as "extremist activity" a wide array of vaguely defined actions, such as "stirring up of social, racial, ethnic or religious discord."⁸⁰⁵ Notably, the definition does not require violence as an element.⁸⁰⁶ A similarly broad definition of "extremist materials" covers not only those documents aimed at "calling for" an extremist activity, but also those "substantiating or justifying the necessity of such activity."⁸⁰⁷ Further, Article 280.1 of Russia's Criminal Code, amended on 28 December 2013, makes "public calls for implementation of actions aimed at violation of territorial integrity of the Russian Federation" a criminal offense, punishable by up to five years in prison.⁸⁰⁸

386. These laws have been severely criticized by the Venice Commission and others as giving the Russian authorities the ability to arbitrarily interfere with freedom of

⁸⁰⁴ Federal Law No. 114-FZ on Combating Extremist Activities of 25 July 2002 (Annex 876).

⁸⁰⁵ *Ibid.*, art. 1(1).

⁸⁰⁶ See, e.g., European Commission for Democracy Through Law (Venice Commission), Opinion No. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, CDL-AD(2012)016 (20 June 2012), para. 35 (noting that in the 2002 version of the legislation, the conduct was defined as having to be "associated with violence or calls to violence") (Annex 817).

⁸⁰⁷ Federal Law No. 114-FZ on Combating Extremist Activities of 25 July 2002, art. 1(3) (Annex 876).

⁸⁰⁸ Criminal Code of the Russian Federation, article 280.1 (Annex 874).

expression.⁸⁰⁹ The Commission concluded that Russia's Extremism Law "has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights . . . and infringe the principles of legality, necessity and proportionality."⁸¹⁰ These findings by the Commission are consistent with other international human rights opinions on the Extremism Law.⁸¹¹ Indeed, in the Concluding Observations to its last review of the Russian Federation, the CERD Committee observed:

The Committee is concerned that the definition of extremist activity as contained in the Federal Law on Combating Extremist Activity remains vague and broad, which is further exacerbated by the new Criminal Code provisions with similar contents, and that no clear and precise criteria on how materials may be classified as extremist are provided in the law. The Committee is particularly concerned that such broad definitions can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens.⁸¹²

⁸⁰⁹ European Commission for Democracy Through Law (Venice Commission), Opinion No. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, CDL-AD(2012)016 (20 June 2012), para. 74 (Annex 817).

⁸¹⁰ *Ibid.*, para. 77.

⁸¹¹ Human Rights Committee, Concluding Observations Report Regarding Russia's Compliance with the ICCPR, Russian Federation, 1.CCPR/C/RUS/CO/6 (24 November 2009), para. 24 ([T]he State party should revise the Federal Law on Combating Extremist Activity with a view to making the definition of "extremist activity" more precise so as to exclude any possibility of arbitrary application...Moreover, in determining whether written material constitutes "extremist literature", the State party should take all measures to ensure the independence of experts upon whose opinion court decisions are based and guarantee the right of the defendant to counter-expertise by an alternative expert.") (Annex 756); For comprehensive analysis of Russia's sweeping and arbitrary application of its anti-extremism laws from 2012 to 2017, see, e.g., Human Rights Watch, Online and on All Fronts: Russia's Assaults on Freedom of Expression (July 2017) (Annex 962).

⁸¹² CERD Committee, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Russian Federation, CERD/C/RUS/CO/23-24 (20 September 2017), para. 11 (Annex 804).

387. As will be explained in more detail below, the anti-extremism laws ironically support extremist behavior by Russian authorities. They are only the most visible and notorious of a multitude of Russian laws introduced in Crimea in violation of international humanitarian law (“IHL”) as a means of repressing the Crimean Tatar and Ukrainian communities.⁸¹³

388. The Russian Federation has used these and other powers at its disposal to systematically discriminate against Crimean Tatars and Ukrainians in Crimea in numerous aspects of public life, ranging from public safety, through political expression and police searches and detentions, to the right to gather in public, freedom of media, cultural preservation and education. Russia has tried to secure Russian dominance first by quashing the political participation and expression of ethnic Ukrainians and Crimean Tatars, and then by expunging their ethnic cultural identity. These two prongs of Russia’s campaign of racial discrimination in Crimea are described in Chapters 9 and 10 respectively.

⁸¹³From the Hague Regulations onwards, it has been an established rule of customary international law that occupying powers must respect "unless absolutely prevented" the laws previously in force in occupied territories. Laws of War: Laws and Customs of War on Land (Hague IV) (October 18, 1907), art. 43 ("[T]he occupant . . . 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.") (Annex 979).

Chapter 9. THE RUSSIAN FEDERATION’S POLICY OF DISCRIMINATION IN POLITICAL AND CIVIL AFFAIRS

389. In the first prong of its campaign of discrimination against the Crimean Tatar and Ukrainian communities, the Russian Federation has undertaken a systematic assault on their political and civil rights.

390. In the weeks leading up to the illegal referendum, Crimean Tatar and Ukrainian activists in Crimea were the targets of a series of disappearances, murders, and torture. After the referendum, these disappearances and murders continued, and were compounded by a campaign of banishment and persecution aimed at the Crimean Tatar leadership, most notably the members of the Mejlis. This campaign culminated with Russian courts declaring the Mejlis — as described above, a crucial institution for representing Crimean Tatar interests — an extremist organization and banning its activities altogether.

391. The Russian Federation has also attacked the political and civil rights of the Crimean Tatar and Ukrainian populations more broadly. The FSB and police have targeted the Crimean Tatar community in particular for arbitrary search and detentions at homes and businesses, often under the guise of looking for religious extremist materials. In this discriminatory campaign, the Russian authorities have blockaded and searched entire towns which are predominantly populated by Crimean Tatars. Further, after imposing its own citizenship on the residents of Crimea, the Russian Federation has enforced a series of restrictions on the rights of non-citizens that disproportionately affect members of the Crimean Tatar and Ukrainian communities.

A. Disappearances, Murders, Abductions and Torture

392. As described in Chapter 8, the Russian Federation’s systematic violations of the CERD began almost as soon as its military forces commenced their operation to take control of the peninsula. Knowing in advance that its plan to annex Crimea would face opposition from those who self-identified as Crimean Tatar and Ukrainian, Russia and its agents targeted activists from those communities with extreme violence, including

abduction, torture, disappearance and murder. The apparent purpose and certain effect of these heinous offenses against Crimean Tatars and Ukrainians was to intimidate and silence inconvenient critics and to warn others in those communities not to resist the Russian takeover. While the worst wave of this violence occurred in the three months following the launch of Russian operations in Crimea, prominent Crimean Tatar individuals have continued to be abducted since.⁸¹⁴

393. As described below, the Russian Federation has either directly engaged in acts of physical violence against Crimean Tatars and Ukrainians, or it has encouraged and tolerated such acts carried out by its agents. These acts of violence and the physical harm that has resulted were based on a racial or ethnic distinction, in that they targeted members of the two communities known to oppose Russia's annexation of Crimea, with the purpose and/or effect of intimidating those communities into submission.

1. Disappearances of Crimean Tatar and ethnic Ukrainian activists

394. For more than three years, numerous international observers have reported a pattern of disappearances and murders directed against members of the Crimean Tatar and

⁸¹⁴ The instances of disappearance, murder, abduction and torture described in this section are not exhaustive. For details of similar crimes carried out against members of the Crimean Tatar and Ukrainian communities, see, for example, Sergey Zayets et al., THE PENINSULA OF FEAR: CHRONICLE OF OCCUPATION AND VIOLATION OF HUMAN RIGHTS IN CRIMEA (2016) pp. 38-44, 55-74 (Annex 976); and RFE/RL, Crimea: Political Activists Who Were Killed, Kidnapped, or Went Missing (30 August 2017), <https://www.rferl.org/a/ukraine-crimea/28707006.html> (Annex 1068); Crimean Human Rights Group, *The Victims of Enforced Disappearance in Crimea as a Result of the Illegal Establishment of the Russian Federation Control (2014-2016)* (Annex 952).

Ukrainian communities. The Crimean Tatar community has been particularly hard hit, as noted in a September 2017 report of the United Nations monitoring mission in Ukraine.⁸¹⁵

395. An early victim of these violent attacks against Crimean Tatars was Reshat Ametov, a well-known activist and father of three. On 3 March 2014, Mr. Ametov stood in silent protest in front of the Cabinet of Ministers building in Simferopol, when uniformed men kidnapped him in broad daylight, and forced him into a car.⁸¹⁶ Two weeks later, Mr. Ametov was found dead, with signs of torture on his body.⁸¹⁷ The perpetrators of this chilling crime are still at large notwithstanding the existence of video footage which could help to identify them.⁸¹⁸

396. Crimean Tatar individuals continued to disappear in the weeks and months after the referendum, including Timur Shaimardanov. Mr. Shaimardanov was a leader of a local activist group, and disappeared on 26 May 2014 – the day after he spoke about the disappearance of another activist, Leonid Korzh, a few days previously.⁸¹⁹ On 30 May 2014,

⁸¹⁵ See Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 102 (“OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar – all men.”) (Annex 759).

⁸¹⁶ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 April 2014), para. 85 (Annex 44); Human Rights Watch, *Crimea: Disappeared Man Found Killed* (18 March 2014) (Annex 939).

⁸¹⁷ Office of the United Nations High Commissioner for Human Rights, *Accountability for Killings in Ukraine from January 2014 to May 2016*, para. 121 (Annex 49); Human Rights Watch, *Crimea: Disappeared Man Found Killed* (18 March 2014) (Annex 939).

⁸¹⁸ Videos of Crimean Tatar Reshat Ametov kidnapping, h[e] was found dead on March 15, 2014 Crimean crisis, <https://www.youtube.com/watch?v=11S2Vhkr-bc> (Published on 6 April 2014) (Annex 1100).

⁸¹⁹ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 November 2014), para. 214 (Annex 48); Human Rights Watch, *Crimea: Enforced Disappearances* (7 October 2014) (Annex 942).

another Crimean Tatar activist, Serian Zinedinov, disappeared after trying to locate Shaimardanov.⁸²⁰ All three activists were members of the pro-Ukrainian group, Ukrainian House.⁸²¹

397. This pattern of disappearances continued into 2016, with the disappearance on 24 May of Ervin Ibragimov. Like other Crimean Tatar individuals who have disappeared, Mr. Ibragimov was a prominent member of the community, as a member of the Coordination Council of the World Congress of Crimean Tatars and the Bakhchysarai regional Mejlis.⁸²² Video footage from a nearby shop shows a group of men stopping Mr. Ibragimov's car, apprehending him, forcing him into a van, and driving away.⁸²³ While Mr. Ibragimov has not been found, his employment record book and passport were located near a bar about a week after his disappearance.⁸²⁴

398. Ukrainians also suffered similar harassment and violence at the hands of Russian forces, and numerous Ukrainians disappeared under suspicious circumstances. As the United Nations has reported, 90 percent of persons who have disappeared and are still

⁸²⁰ See Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 June 2014), para. 288 (Annex 764); Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine (15 November 2014), para. 214; Human Rights Watch, *Crimea: Enforced Disappearances* (7 October 2014) (Annex 942).

⁸²¹ Office of the United Nations High Commissioner for Human Rights, *Accountability for Killings in Ukraine from January 2014 to May 2016*, para. 125 (Annex 49); Human Rights Watch, *Crimea: Enforced Disappearances* (7 October 2014) (Annex 942).

⁸²² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 154 (Annex 772).

⁸²³ See *ibid.*; Amnesty International, *URGENT ACTION: Crimean Tatar Activist Forcibly Disappeared* (26 May 2016) (Annex 951).

⁸²⁴ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 154 (Annex 772).

missing are either Crimean Tatar or Ukrainian.⁸²⁵ Euromaidan activists Vladislav Vaschuk and Ivan Bonariets, for example, disappeared together on 7 March 2014 in Simferopol.⁸²⁶ On the eve of the referendum, on 15 March 2014, AutoMaidan activist and Sevastopol resident Vasyl Chernysh was reported missing.⁸²⁷ Neither Mr. Vaschuk nor Mr. Bonariets nor Mr. Chernysh has been heard from since.

2. Refusal to investigate, delays in investigation.

399. From the highest levels down, the Russian occupation authorities have chosen to ignore this pattern of ethnically-targeted disappearances. For example, in an article dated 16 October 2014—after numerous well-publicized disappearances of Crimean Tatars and Ukrainians in Crimea—Sergei Aksyonov admitted that at least four people had disappeared but declined to acknowledge that the disappearances constituted a pattern.⁸²⁸

400. The occupation authorities have failed to assure the conduct of effective investigations of those disappearances and murders which have already occurred. Despite the fact that Mr. Ametov's kidnapping was videotaped — and the occupation authorities have had more than four years to locate the perpetrators caught on film — the United Nations

⁸²⁵ See Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 102 ("OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar – all men.") (Annex 759)

⁸²⁶ See Sergey Zayets et al., *The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea* (2015), p. 47 (Annex 976).

⁸²⁷ Andrii Klymenko, *Human Rights Abuses in Russian-Occupied Crimea*, Atlantic Council, p. 16 (Annex 1058). Automaidan is a "group of motorists founded in November [2013] to support Ukraine's European integration and counter police assaults against pro-EU demonstrators." *Activists on Wheels: Ukraine's Embattled Automaidan Protesters*, RFE/RL (24 Jan. 2014), at <https://www.rferl.org/a/ukraine-activists-automaidan/25241507.html> (Annex 1035).

⁸²⁸ Interfax, *Head of Crimea Acknowledges Disappearance of Crimean Tatars on Peninsula* (16 October 2014) (Annex 1048).

monitoring mission in Ukraine recently expressed “serious doubts about the effectiveness” of the investigation into Mr. Ametov’s disappearance and murder.⁸²⁹ Although the individuals shown abducting him were initially interrogated as witnesses to the abduction, they were later released and the investigation was suspended, allegedly because Mr. Ametov’s suspected murderer was no longer in Crimea.⁸³⁰

401. Indeed, the Russian occupation authorities have even thwarted family members’ attempts to learn about the disappearances of their loved ones. Specifically, Mr. Ametov’s brother has asked twice to review the materials of the criminal investigation into his brother’s disappearance and murder,⁸³¹ and a third request was filed by his attorney.⁸³² The Russian investigators have refused to allow Mr. Ametov’s brother to read any case files, however, citing their own suspension of the investigation as the reason.⁸³³

402. The Russian occupation authorities failed even to open an investigation into Mr. Shaimardanov’s disappearance until 9 July 2014, nearly two months after the event.⁸³⁴ As of the date of this filing, Mr. Shaimardanov has not been found. The occupation

⁸²⁹ Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 81 (Annex 759).

⁸³⁰ *Ibid.*

⁸³¹ Complaint dated 8 August 2017 by R.M. Ametov to Head of the Central Investigative Directorate of the Investigative Committee of Russia in the Republic of Crimea (Annex 924); Petition dated 16 February 2018 filed by R.M. Ametov to Investigator of High-Profile Cases at the First Investigative Office of the Directorate for Investigation of High-Profile Cases with the Central Investigative Directorate of the Investigative Committee of the Republic of Crimea (Annex 1112).

⁸³² Letter dated 24 July 2017 from the Central Investigative Directorate of the Investigative Committee of Russia in the Republic of Crimea to E.M. Kurbedinov (Annex 865).

⁸³³ *Ibid.*

⁸³⁴ Human Rights Watch, *Crimea: Enforced Disappearances* (7 October 2014) (“Shaimardanov’s family reported his disappearance to the police on May 27, but the criminal investigation into his disappearance was initiated only on July 9.”) (Annex 942).

authorities likewise failed to promptly initiate an investigation into Mr. Zinedinov's disappearance. Although Mr. Zinedinov's family reported his disappearance on the morning of 31 May, authorities waited two months before initiating a criminal investigation.⁸³⁵ Like the investigation into Mr. Ametov's disappearance, investigations into the disappearances of Messrs. Shaimardanov and Zinedinov were suspended, and the United Nations monitoring mission in Ukraine has expressed concern about the "lack of accountability" in these two cases.⁸³⁶

403. The occupation authorities similarly failed to promptly investigate Mr. Ibragimov's disappearance. In fact, when Mr. Ibragimov's father attempted to file a complaint, complete with video of the abduction, the FSB office in Simferopol turned him away.⁸³⁷ As the European Union has stated, the disappearance of Mr. Ibragimov is "regrettably only one of the most recent examples," and part of a "brutal" "persecution of Crimean Tatars."⁸³⁸ The Russian Federation's refusal to institute an investigation into Mr. Ibragimov's disappearance is particularly disturbing because it occurred in May 2016, after numerous international observers had already voiced concerns about the Russian

⁸³⁵ *Ibid.* ("Zinedinov's relatives reported his disappearance to the police on the morning of May 31, but the police started a criminal investigation only two months later.").

⁸³⁶ In particular, the investigation into Mr. Shaimardanov's disappearance was suspended on 9 June 2015 allegedly because the perpetrator had not been found. See Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2015), para. 171 (Annex 769).

⁸³⁷ See *ibid.*, para. 154.

⁸³⁸ EU Statement on "Russia's Ongoing Aggression against Ukraine and Illegal Occupation of Crimea", OSCE Permanent Council No. 1106, PC.DEL/945/16 (24 June 2016) (Annex 814).

Federation's ineffective investigations into the disappearances of Messrs. Ametov, Shaimardanov, Zinedinov, and others in 2014.⁸³⁹

404. The failure to investigate such egregious crimes undermines protection against similar abuses in the future because it leads would-be perpetrators to assume that they can abduct, torture and kill with impunity. And without proper investigation there is little or no chance that the victims' families will ever have the remedy of seeing past perpetrators face justice.

3. Abduction and torture of Crimean Tatar and Ukrainian activists.

405. A further instrument of intimidation employed by the Russian Federation and its agents in the run-up to the referendum was to kidnap and torture prominent activists from the Crimean Tatar and Ukrainian communities. Once the referendum was completed, the victims were released.

406. Mykhailo Vdovchenko, for example, was abducted just days before the referendum, after posting pro-Ukrainian messages on Facebook and participating in

⁸³⁹ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2015), para. 193(o) (calling on the “*de facto* authorities of Crimea” and the Russian Federation to “[i]nvestigate the killing of Crimean Tatar Reshat Ametov and enforced disappearances of Crimean civil society and human rights activists Timur Shaimardanov, Seiran Zinedinov, Leonid Korzh and Vasyl Chernysh, and bring perpetrators to justice”) (footnotes omitted) (Annex 769); OSCE, *Report of the Human Rights Assessment Mission on Crimea* (6–18 July 2015) (17 September 2015), para. 147 (discussing the prosecutor of Crimea’s failure to investigate disappearances, extrajudicial killings, torture, and ill-treatment of Euromaidan activists, journalists, and others) (Annex 812); Human Rights Watch, *Crimea: Enforced Disappearances* (7 October 2014) (describing disappearances of Ametov, Zinedinov, Shaimardanov, and others and the occupation authorities’ failure to investigate them) (Annex 942).

peaceful pro-Ukrainian demonstrations in Crimea.⁸⁴⁰ He endured ten days in Russian captivity, during which he was repeatedly beaten and interrogated.⁸⁴¹ Mr. Vdovchenko was released on 21 March 2014, and fled to mainland Ukraine.⁸⁴²

407. On 9 March 2014, EuroMaidan activists Andrii Shchekun and Anatoly Kovalsky were abducted at the Simferopol train station as they prepared to stage a demonstration on the occasion of the birthday of Taras Shevchenko, an important day of celebration for Ukrainians in Crimea.⁸⁴³ In his witness statement, Mr. Shchekun details the treatment he and Mr. Kovalsky received while unlawfully detained. They were initially taken to an unknown location, stripped, and tied to chairs.⁸⁴⁴ Like Mr. Vdovchenko, Messrs. Shchekun and Kovalsky were held captive for more than ten days, and both were tortured repeatedly while in custody.⁸⁴⁵ They were blindfolded and both threatened with and subjected to physical violence, including electric shocks on multiple occasions.⁸⁴⁶ Mr.

⁸⁴⁰ Human Rights Watch, *Crimea: Attacks, 'Disappearances' by Illegal Forces* (14 March 2014) (Annex 938); Kharkiv Human Rights Group, Sentsov-Kolchenko trial, Crimea and what Russia has to hide 10 July 2015) (Annex 946); Mike Eckel, *A Cry from Crimea*, World Policy Journal (2014–15) (Annex 1019). According to one account, Vdovchenko was stopped by three men at around 3:30 pm on 11 March 2014, while he was carrying a Ukrainian flag. Human Rights Watch, *Crimea: Attacks, 'Disappearances' by Illegal Forces* (14 March 2014) (Annex 938). The men tied Vdovchenko's hands behind his back and began beating and pushing him. *Ibid.*

⁸⁴¹ Mike Eckel, *A Cry from Crimea*, World Policy Journal (2014–15) (Annex 1019).

⁸⁴² *Ibid.*

⁸⁴³ See Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 April 2014), para. 85 (Annex 762); Andrii Klymenko, *Human Rights Abuses in Russian-Occupied Crimea*, Atlantic Council, p. 16 (Annex 948); Human Rights Watch, *Crimea: Attacks, 'Disappearances' by Illegal Forces* (14 March 2014) (Annex 938); Shchekun Statement, paras. 19–20 (Annex 13). Shchekun and Kovalsky had come to the train station to pick up a parcel from Kyiv that contained Ukrainian flags. *Ibid.*, para. 19; Human Rights Watch, *Crimea: Attacks, 'Disappearances' by Illegal Forces* (14 March 2014) (Annex 938).

⁸⁴⁴ Shchekun Statement, para. 22 (Annex 13).

⁸⁴⁵ *Ibid.* paras. 22–23.

⁸⁴⁶ *Ibid.* para. 23.

Shchekun's hands and knees were shot at with an air gun.⁸⁴⁷ After they were released on 20 March 2014, Messrs. Kovalsky and Shchekun fled to Kyiv.⁸⁴⁸

408. Aleksandr Kostenko was tortured while in official custody. Mr. Kostenko was arrested on or about 6 February 2015 for allegedly throwing a rock at a Ukrainian Berkut special police official on 2 February 2014 during the Maidan demonstrations in Kyiv.⁸⁴⁹ The alleged offense thus took place outside of Crimea and before the Russian Federation's unlawful annexation. The day before his arrest, Mr. Kostenko was violently attacked by individuals in plain clothing, thrown in a van, and taken to an unknown location. In FSB custody, Mr. Kostenko was deprived of food and water, beaten, tortured with electricity, subjected to a mock execution, and forced to sign a false confession.⁸⁵⁰ He suffered several broken bones including a broken elbow, severe injuries to his abdominal cavity, a dislocated shoulder, and significant bruising.⁸⁵¹ The Deputy Head of the Office of the Human Rights

⁸⁴⁷ *Ibid.*

⁸⁴⁸ *Ibid.* para. 25. Andrii Klymenko, *Human Rights Abuses in Russian-Occupied Crimea*, Atlantic Council, p. 16 (Annex 948). In an apparent attempt to further intimidate the ethnic Ukrainian community in Crimea, Sergei Aksenov and Sergei Tsekov both publicly announced the detention of Schekun and Kovalsky — who were well-known Ukrainian activists — and stated that they would remain in custody until after the referendum. Human Rights Watch, Ukraine: Activists Detained and Beaten, One Tortured (25 March 2014) (Annex 940); Shchekun Statement, para. 24 (Annex 13).

⁸⁴⁹ OSCE, *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)* para. 143, (17 September 2015) (Annex 812).

⁸⁵⁰ *Ibid.*; Crimean Human Rights Field Mission, *Brief Review of the Situation in Crimea* (April 2015) , pp. 7-8 (Annex 945); U.S. Department of State, *2015 Human Rights Reports: Ukraine (Crimea)*, 13 April 2016 (Annex 1089); Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 February–15 May 2015), para. 158 (Annex 768).

⁸⁵¹ Crimean Human Rights Field Mission, *Brief Review of the Situation in Crimea* (April 2015) (Annex 945).

Ombudsman in Crimea confirmed these injuries, though refusing to assign any responsibility for the harm.⁸⁵² Mr. Kostenko was beaten on several more occasions in prison.⁸⁵³

409. These abductions and torture continue to this day. Renat Paralamov, a Crimean Tatar who lived in Nizhnegorskiiy, was detained in September 2017 on suspicion of involvement with the Islamic organization Hizb ut-Tahrir.⁸⁵⁴ On September 13, a group of masked men searched his home.⁸⁵⁵ After conducting the search, the masked men threw Mr. Paralamov in a van and left.⁸⁵⁶ His family, lawyer, and other activists who amassed to seek any information on his detention were not told anything for 24 hours.⁸⁵⁷ The FSB claimed Mr. Paralamov was voluntarily answering questions.⁸⁵⁸

410. Later that day, Mr. Paralamov called his family from a bus station in Simferopol, seriously injured and unable to walk.⁸⁵⁹ Mr. Paralamov's family took him to a

⁸⁵² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2017), para. 138 (Annex 776); Crimean Human Rights Field Mission, *Brief Review of the Situation in Crimea* (April 2015) (Annex 945).

⁸⁵³ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2015), para. 168 (Annex 769); Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 February–15 May 2015), para. 158 (Annex 768).

⁸⁵⁴ Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies, 14 November 2017 (Annex 964).

⁸⁵⁵ *Ibid.*; Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2017), para. 138.

⁸⁵⁶ *Ibid.*

⁸⁵⁷ *Ibid.*

⁸⁵⁸ Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies, 14 November 2017 (Annex 964).

⁸⁵⁹ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2017), para. 138 (Annex 776); Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies, 14 November 2017 (Annex 964).

hospital which diagnosed him with multiple hematomas and bruises.⁸⁶⁰ He and his family then fled to Kyiv, where Mr. Paralamov spent fifteen days in a hospital being treated after his torture.⁸⁶¹ During his 24-hour detention at the FSB station, Mr. Paralamov was denied a lawyer and forced to sign a confession of his involvement with Hizb ut-Tahrir.⁸⁶² The FSB officers placed a bag over his head, taped his mouth, and punched him repeatedly.⁸⁶³ He was also tortured with electric shocks and then forced to record his confession on camera.⁸⁶⁴

411. These are just a few examples of torture and forced disappearances illustrating the grave situation Crimean Tatars and Ukrainians have faced and continue to face in Crimea. Ongoing reporting by numerous organizations on the ground in Crimea has revealed numerous additional instances of forced disappearances, murders, and torture in post-annexation Crimea.⁸⁶⁵

B. Political Suppression of Crimean Tatars

412. As described in Chapter 8, when President Putin wanted to win the support of the Crimean Tatar community for annexation, he knew who to approach: the Mejlis, as the legitimate representative body of the Crimean Tatar people and, specifically, its first chair, Mustafa Dzhemilev, whose history as a Soviet dissident had won him wide support within the community. When the desired support was not forthcoming, the Russian occupation forces equally knew how to exact collective punishment against the Crimean Tatar community: by banning the same body—the Mejlis—from operating as its representative

⁸⁶⁰ Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies, 14 November 2017 (Annex 964).

⁸⁶¹ *Ibid.*

⁸⁶² *Ibid.*

⁸⁶³ *Ibid.*

⁸⁶⁴ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2017), para. 138 (Annex 776); Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies, 14 November 2017 (Annex 964).

⁸⁶⁵ See sources cited *supra* in footnote 814.

body and exiling and otherwise depriving it of its political leadership. This section describes how the Russian Federation did just that.

413. After the referendum in Crimea, the Russian Federation intensified its campaign of discrimination against the Crimean Tatar community, and in the weeks and months following the referendum, took a series of actions with the apparent purpose and foreseeable effect of crippling the political leadership of the Crimean Tatar community. Statements of officials of the Russian occupation authorities show that the measures taken against the Mejlis and against individual Crimean Tatar leaders were part of a strategy targeting the Crimean Tatar community as a whole. For example, Alexander Formanchuk, an advisor to Sergey Aksyonov (Head and Prime Minister of the so-called Republic of Crimea), publicly identified the Crimean Tatar community as “the main problem in the integration of Crimea into the political and legal space of Russia today.”⁸⁶⁶

1. Restricting the Movements of Crimean Tatar Leaders

414. In April 2014—just weeks after the referendum—the Russian Federation banned Mr. Dzhemilev from entering Crimea for five years.⁸⁶⁷ Given the great respect that Mr. Dzhemilev inspires in the Crimean Tatar community and his status as the former longstanding Chairman of the Mejlis, his banishment was a significant blow to the Crimean

⁸⁶⁶ See *Kommersant, The Crimean Tatar Ego* (3 March 2015) (Annex 1050).

⁸⁶⁷ See Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 May 2014), paras. 152, 229 (Annex 45); OSCE, *Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 229 (Annex 812); Amnesty International Public Statement, *Harassment and Violence against Crimean Tatars by State and Non-State Actors* (23 May 2014) (Annex 941).

Tatar community. Shortly after banning Mr. Dzhemilev, in July 2014, Russia imposed a similar five-year ban on Refat Chubarov, the current Chairman of the Mejlis.⁸⁶⁸

415. The effective decapitation of the Crimean Tatar's self-chosen political leadership, combined with repressive measures against other Mejlis members still resident in Crimea (discussed below) forced the Mejlis to relocate to Kyiv. This relocation immediately limited the ability of the Mejlis to act as the defender and advocate of Crimean Tatar rights within the peninsula.⁸⁶⁹

416. After banning Dzhemilev and Chubarov from Crimea, the Russian Federation further increased the political vulnerability of the Crimean Tatar community by excluding a number of other leaders from Crimea, or otherwise restricting their movement in and out of the peninsula. For example, on 9 August 2014, the Russian Federation imposed a five-year exile on Mr. Ismet Yuksel, general coordinator of the Crimean Tatar media outlet QHA and

⁸⁶⁸ See OSCE, *Thematic Report on the Right to Freedom of Movement across the administrative boundary line with Crimea* (19 June 2015), p. 9 (Annex 811); OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 152 (Annex 812); European Parliament Policy Department Study, *The situation of national minorities in Crimea following its annexation by Russia* (April 2016), p. 18 (Annex 829). Letter from Federal Migration Service to R. Chubarov (8 January 2015) (stating that Chubarov's exile is "necessary to ensure the defense or security of the state, public order, or public health" under Article 27(1) of Federal Law No. 114-FZ) (Annex 849); Letter from FSB to R. Chubarov (13 March 2015) (same) (Annex 858).

⁸⁶⁸ See Organization for Security and Co-operation in Europe, *Thematic Report: Freedom of Movement across the Administrative Boundary Line with Crimea* (19 June 2015), p. 9 (Annex 811); Organization for Security and Co-operation in Europe, *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)* (17 September 2015), para. 152 (Annex 812). Prosecutor General's Office of the Russian Federation, *Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO* (23 October 2015) (Annex 911).

⁸⁶⁹ See generally Andrew Wilson, The Crimean Tatar Question: A Prism for Changing Nationalisms and Rival Versions of Eurasianism, 3(2) JOURNAL OF SOVIET AND POST-SOVIET POLITICS AND SOCIETIES 1, 37-38 (2017) (Annex 1024).

an advisor to the Mejlis.⁸⁷⁰ Mr. Yuksel attempted to appeal his exile in the Russian courts, but this appeal was denied.⁸⁷¹

417. Eskender Bariiev, the coordinator of the Committee on the Protection of the Rights of the Crimean Tatar People and a prominent member of the Mejlis, describes in his witness statement how he was stopped and searched no fewer than 39 times as he travelled in and out of Crimea between the Russian invasion of Crimea and January 2015.⁸⁷² On the night of 22 to 23 January 2015, Bariiev was detained along with two other members of the Committee on the Rights of the Crimean Tatar People – Sinaver Kadyrov, and Akmedzhit Suleimanov – while the three of them were returning to Crimea from mainland Ukraine.⁸⁷³ This detention occurred just after the Russian authorities had squelched their efforts to hold events marking International Human Rights Day (discussed in Chapter 10 below),⁸⁷⁴ an event celebrated by Crimean Tatars since 1990.⁸⁷⁵ After hours of detention while Mr. Kadyrov was interrogated, Mr. Bariiev and Mr. Suleymanov were eventually released. Mr. Kadyrov, however, was taken to court, fined, and banned from entering Crimea because of an

⁸⁷⁰ See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 229 (Annex 812); Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 128 (Annex 759); Sergey Zayets (Regional Center for Human Rights) et al., *The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea* (2015), p. 63 (Annex 976).

⁸⁷¹ Supreme Court of the Russian Federation, No. 5-APG15-110s, Ruling (18 November 2015) (Annex 912).

⁸⁷² Witness Statement of Eskender Bariiev, para. 30 [hereinafter Bariiev Statement] (Annex 15).

⁸⁷³ *Ibid.*, para. 31.

⁸⁷⁴ See *infra* Chapter 10, Section A.

⁸⁷⁵ Bariiev Statement, para. 31 (Annex 15).

alleged immigration violation.⁸⁷⁶ As explained further below, the immigration charge against Mr. Kadyrov was itself an act of racial discrimination.⁸⁷⁷

418. Mr. Bariiev was ultimately forced to relocate to Kyiv with his wife and two sons after the Russian occupation authorities brought fabricated criminal charges against him of engaging in and funding extremist activity, organizing public disturbances, and compromising the territorial integrity of the Russian Federation.⁸⁷⁸ On the same day that Mr. Bariiev relocated to Kyiv, another prominent Mejlis leader, Mr. Akhtem Chiygoz (discussed below), was arrested.⁸⁷⁹

419. Russia's campaign of discriminatory political suppression against Crimean Tatars has affected not only the ability of Crimean Tatar leaders to enter Crimea, but also their ability to leave. For example, in September 2014 Mr. Ali Ozenbasha, Chairman of the Audit Committee of the Qurulaty of Crimean Tatars and a member of the Mejlis, was removed from a train by the Russian occupation authorities while attempting to cross into mainland Ukraine for medical treatment.⁸⁸⁰ About a year later, several prominent Mejlis leaders were prevented from leaving Crimea to attend the World Congress of Crimean Tatars,⁸⁸¹ a gathering attended by hundreds of delegates from dozens of countries, as well as

⁸⁷⁶ *Ibid.*; see also Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine (1 December 2014–15 February 2015)*, para. 98 (Annex 767).

⁸⁷⁷ See *infra* Chapter 9, Section C.

⁸⁷⁸ Bariiev Statement, para. 32 (Annex 15).

⁸⁷⁹ *Ibid.*

⁸⁸⁰ See OSCE, *Latest from OSCE Special Monitoring Mission to Ukraine (SMM) Based on Information Received as of 18:00 (Kyiv time) (11 September 2014)* (Annex 809).

⁸⁸¹ See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)* (17 September 2015), para. 238 (Annex 812).

numerous NGOs, at which strategic issues and future plans are discussed.⁸⁸² The Crimean leaders who were prevented from attending this event included some of the most senior members of the Mejlis and the Qurultay, namely first deputy chairman Nariman Dzheljalov and chairman of the central electoral commission of the Qurultay, Zair Smedlyaev.⁸⁸³

420. These incidents of harassment of Crimean Tatar leaders were not random or coincidental. The Russian authorities are well aware that the Crimean Tatars cannot organize themselves effectively if their leaders are not free to travel. The effects of the Russian Federation's discriminatory campaign to curtail the freedom of movement of Crimean Tatar leaders were therefore felt across the entire Crimean Tatar community, whose political effectiveness it ultimately undermined.

2. Oppression of the Mejlis of the Crimean Tatar People

421. It was not enough for the Russian Federation to undermine the effectiveness of the Mejlis by exiling and harassing its leaders; the Russian occupation authorities also undermined the Mejlis as a whole by carrying out searches of the Mejlis' building, by seizing assets of entities associated with the Mejlis, and ultimately by banning the Mejlis as an organization. As can be seen in the series of attacks suffered by the Mejlis and associated bodies within just a few days in September 2014, there was a coordinated campaign on the part of the Russian occupation authorities to put this representative institution (and through it the entire Crimean Tatar community) under maximum pressure.

⁸⁸² Ridvan Bari Urcosta, New Eastern Europe, Crimean Tatar World Congress: Fear and Expectations (4 August 2015), available at <http://www.neweasterneurope.eu/interviews/1680-crimean-tatar-world-congress-fears-and-expectations> (Annex 947).

⁸⁸³ OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 155 (Annex 812).

422. On 16 September 2014, the FSB carried out a 17-hour search of the Mejlis building in Simferopol.⁸⁸⁴ During this search computers belonging to the Mejlis and the charitable foundation Krym were seized, as well as religious texts, hard drives, and some of Mr. Dzhemilev's personal belongings.⁸⁸⁵ After the search, the building was placed under arrest and sealed.⁸⁸⁶

423. On the same date, the homes of Mejlis members' Eskender Bariiev and Mustafa Asaba were also searched, their personal belongings were seized, and their families were terrified.⁸⁸⁷ Mr. Bariiev describes in his witness statement the rough and intimidating manner in which the search of his house was conducted after four men carrying assault rifles, wearing masks and camouflage suits barged into the apartment that Mr. Bariiev shared with his wife and two young children at 6:30 am that day.⁸⁸⁸ The search at the home

⁸⁸⁴ See United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 November 2014), para. 218 (Annex 766); OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 232 (Annex 812); Excerpts of Protocol of Search of Mejlis Building (Annex 1114); Bariiev Statement, para. 29 (Annex 15).

⁸⁸⁵ See United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 November 2014) (Annex 48), para. 218; OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 232 (Annex 812); Excerpts of Protocol of Search of Mejlis Building (Annex 1114); Bariiev Statement, para. 29 (Annex 15).

⁸⁸⁶ Bariiev Statement, para. 29 (Annex 15); Protocol of Search for Home of Eskender Bariiev (Annex 1115).

⁸⁸⁷ See United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 November 2014), para. 218 (Annex 766); Human Rights Watch, Rights in Retreat (November 2014), at 16 (943); Protocol of Search for Home of Eskender Bariiev (Annex 1114).

⁸⁸⁸ Bariiev Statement, para. 27.

of Mr. Asaba was carried out in a similar manner, and the authorities seized religious materials and a booklet on the Crimean Tatar national movement.⁸⁸⁹

424. On 17 September 2014, the Crimea Fund, the charitable organization that owns the Mejlis building, was given 24 hours to evacuate the Mejlis building pursuant to a court order.⁸⁹⁰ As the OSCE observed at the time, this action essentially “confiscated” the property of the Crimean Fund and the Mejlis.⁸⁹¹ Pursuant to a separate court order, of 25 September 2014, property of the Bakhchysarai Regional Mejlis was likewise seized. This court order — which was affirmed on appeal — forced the Bakhchysarai Regional Mejlis to vacate the premises they had previously rented.⁸⁹²

425. The Russian occupation authorities significantly escalated their attacks on the Mejlis as an organization in April 2016, taking the extreme step of banning the Mejlis’s activities altogether. Ironically, it did so by invoking Russia’s own anti-extremism laws, with the prosecutor of Crimea alleging that the Mejlis was an “extremist” organization because, among other reasons, it had organized a pro-Ukraine rally on 26 February 2014.⁸⁹³ The Supreme Court of Crimea ruled in the prosecutor’s favor in a judgment of 26 April 2016.

426. It was obvious from the outset to independent observers that Russia’s ban on the Mejlis was a political measure directed at the Crimean Tatar community as a whole, and

⁸⁸⁹ Bariiev Statement, para. 28.

⁸⁹⁰ See United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 November 2014), para. 218 (Annex 766).

⁸⁹¹ See OSCE, *Report of the Human Rights Assessment Mission in Crimea (6-18 July 2015)* (17 September 2015), para. 232 (Annex 812); Interim measures for Civil Suit No. 2-1688/2014 (prohibiting Crimea Foundation from exercising ownership of its properties and sequestering its bank accounts) (Annex 929).

⁸⁹² See OSCE, *Report of the Human Rights Assessment Mission in Crimea (6-18 July 2015)* (17 September 2015), para. 233 (Annex 812).

⁸⁹³ Decision in the name of the Russian Federation, Case No. 2A-3/2016 (26 April 2016) (Annex 913).

that the allegations of extremism were a pretext. Indeed, even before the ban was imposed, the Council of Europe stated that a ban “would indicate a new level of repression targeting the Crimean Tatar community as a whole.”⁸⁹⁴

427. Despite the criticism, the Supreme Court of the Russian Federation upheld the ban on 29 September 2016. Thereafter, Russian occupation authorities enforced the ban against eight Mejlis members in October and November 2016 by imposing fines for holding a meeting at the home of Deputy Chairman Ilmi Umerov.⁸⁹⁵ Mr. Shevket Kaybullayev, for example, was fined five hundred roubles for his participation in the meeting,⁸⁹⁶ and Mr. Mustafa Maushev was fined 750 roubles.⁸⁹⁷

428. Notwithstanding its obligation to comply with binding orders of the Court, the Russian Federation has done nothing to lift the ban despite this Court’s order on 19 April 2017 that Russia must “[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis.”⁸⁹⁸ To the contrary, Russia has rebuffed attempts by the Mejlis as an institution and by certain of its members to obtain a suspension of the ban through the Russian government and court system.

⁸⁹⁴ See Council of Europe Report of 11 April 2016, p. 4 (Annex 825).

⁸⁹⁵ See Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 August–15 November 2016), para. 168 (Annex 773).

⁸⁹⁶ Ruling in Case No. 5-1591/2016 (4 October 2016) (Annex 916).

⁸⁹⁷ Ruling in Case No. 5-1588/2016 (23 November 2016) (Annex 917).

⁸⁹⁸ Order on Provisional Measures 19 April 2017, para. 106.

429. On behalf of the Mejlis, its Chairman –Refat Chubarov — wrote to both the Ministry of Foreign Affairs of the Russian Federation⁸⁹⁹ and the prosecutor of Crimea⁹⁰⁰ following the Court’s Provisional Measures Order, asking them to take steps to lift the ban. To facilitate their own efforts to defend the rights of the Crimean Tatar people, the Mejlis requested that the Russian Ministry of Foreign Affairs provide certified copies of this Court’s provisional measures order so that these copies could be used in Russian domestic proceedings.⁹⁰¹ In a cursory response dated 9 August 2017, the Russian Ministry of Foreign Affairs assured Mr. Chubarov that it was taking all appropriate steps to implement the Provisional Measures Order, while at the same time emphasizing the temporary nature of that order.⁹⁰² The 27 September 2017 response from the prosecutor of Crimea was no more helpful, simply reiterating the purported legal basis for the ban on the Mejlis and indicating that it could only be reconsidered if new evidence was discovered.⁹⁰³

430. Separately, on 12 July 2017, Mr. Bariiev filed a private complaint with the Supreme Court of Crimea seeking reconsideration of the ban of the Mejlis and attaching this Court’s Provisional Measures Order.⁹⁰⁴ Less than ten days later, however, the Crimean Supreme Court rejected Mr. Bariiev’s complaint on procedural grounds.⁹⁰⁵ Mr. Bariiev

⁸⁹⁹ Ruling in Case No. 5-1588/2016 (23 November 2016) (Annex 917).

⁹⁰⁰ Letter of 27 September 2017 from the Prosecutor’s Office of the Republic of Crimea to Refat Chubarov (Annex 867).

⁹⁰¹ *Ibid.*

⁹⁰² Letter dated 9 August 2017 from Russian Ministry of Foreign Affairs to R. Chubarov (Annex 866).

⁹⁰³ Letter of 27 September 2017 to R. Chubarov from the Prosecutor of Crimea (Annex 867).

⁹⁰⁴ Letter of Petition for reconsideration, signed by Eskender Bariiev (12 July 2017) (Annex 863).

⁹⁰⁵ Case No. 2A-3/2016, Decision of 26 April 2016 of the Supreme Court of the Republic of Crimea concerning the appeal of the ban of the Mejlis (Annex 913). Specifically, The Crimean Supreme Court stated, surprisingly, that it was not able to authenticate a copy of its own ruling of 26 April 2016 which was attached to Bariiev’s complaint. *Ibid.*

appealed to the Supreme Court of the Russian Federation in August 2017,⁹⁰⁶ but has yet to receive any response.

431. The ban has been widely and strongly condemned both before and after this Court’s Provisional Measures Order. A June 2016 United Nations report observed that the Mejlis ban “could be perceived as a collective punishment against the Crimean Tatar community” and opined that the ban “confirm[ed] the significant restrictions already imposed by the *de facto* authorities on [the Mejlis] since March 2014.”⁹⁰⁷ On 19 December 2017, the United Nations General Assembly called on the Russian Federation to revoke the ban on the Mejlis “immediately.”⁹⁰⁸

3. Retroactive prosecutions and convictions related to demonstrations of 26 February

432. In addition to attacking the Mejlis as an institution and exiling much of its top leadership, the Russian Federation has resorted to politically-motivated prosecutions of those Mejlis leaders who remained in Crimea. Along with several other Crimean Tatars, Deputy Chairman of the Mejlis, Akhmet Chiygoz, faced charges arising from the demonstrations in front of the Crimean Parliament building on 26 February 2014 (described in Chapter 8 above).

433. The discriminatory nature of these proceedings is clear from the absence of any similar prosecution of participants in the pro-Russian counter demonstration that day

⁹⁰⁶ Private complaint against the Decision of 21 July 2017, by Eskender Bariiev (Annex 864).

⁹⁰⁷ United Nations, Report on the human rights situation in Ukraine (16 February–15 May 2016) (3 June 2016), para. 188 (Annex 771).

⁹⁰⁸ U.N. General Assembly Resolution 72/190, U.N. Doc. A/Res/72/190, *Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine* (19 December 2017) (Annex 50). The General Assembly also took note of this Court’s Provisional Measures Order, and called on the Russian Federation to “refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions.” *Ibid.*

and from the extraordinary spectacle of Russian-controlled courts applying Russian criminal law to events that occurred well before 18 March 2014, the date on which Russia claims for all other purposes that its law first became applicable on the peninsula.⁹⁰⁹ While Ukrainians have also suffered from the retroactive application of Russian law in Crimea,⁹¹⁰ no ethnic Russian supportive of the purported annexation has suffered a similar fate.⁹¹¹

434. As Mr. Chiygoz explains in his witness statement, he was held in deplorable conditions during his pre-trial confinement and spent long periods in solitary

⁹⁰⁹ Federal Constitutional Law No. 6-FKZ (21 March 2014) (Annex 888); Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017)*, para. 77 (Annex 759); OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 236 (Annex 812).

⁹¹⁰ For example, Mr. Kostenko, whose torture is discussed above, was arrested on 8 February 2015 on suspicion of wounding a Berkut police officer on 18 February 2014 during the Maidan protests, before the illegal referendum had been carried out. Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine (16 February to 15 May 2015)*, para. 158 (Annex 768). Mr. Kostenko was sentenced to four years in prison based on alleged violence against police officers during this time. See Council of Europe Report of 11 April 2016, p. 10 (Annex 825). Similarly, Maidan activist Andriy Kolomiets was sentenced to 10 years in prison in June 2016 for Maidan protest activities. See Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine (16 February to 15 May 2016)*, para. 189 (Annex 771); Radio Free Europe/Radio Liberty, Ukrainian Jailed in Crimea over Euromaidan ‘Murder’ Charge (10 June 2016) (Annex 1081).

⁹¹¹ See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), paras. 146, 236. As the European Parliament has stated, this case violates the norms of international humanitarian law, in particular the Geneva Conventions of 1949, as well as the Russian Criminal Code, because the de facto authorities retroactively applied Russian legislation to events that occurred before the occupation. See European Parliament Policy Department Study, *The situation of national minorities in Crimea following its annexation by Russia* (April 2016), at 15 (Annex 829). Six others were also arrested in connection with this case. See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015), para. 236 n.373 (Annex 812).

confinement.⁹¹² He was denied basic human accommodations such as being permitted to attend his mother's funeral,⁹¹³ being provided with the pork-free food required by his Muslim faith, or being informed of the cardinal directions so that he could pray in the manner prescribed by that faith.⁹¹⁴ Other inmates were not subjected to such treatment, and officers at the facilities where Mr. Chiygoz was held repeatedly reminded Mr. Chiygoz that they had special attitudes toward him.⁹¹⁵

435. After more than two years in custody, Mr. Chiygoz's trial began in the summer of 2016.⁹¹⁶ Numerous witnesses in this trial testified in opposition to the prosecution's case, and some even testified that they had been pressured into giving false evidence against Mr. Chiygoz.⁹¹⁷ As Mr. Chiygoz explains, of the 213 alleged witnesses and victims, only four gave detailed direct testimony against him — and three of these four witnesses were so-called secret witnesses.⁹¹⁸ Mr. Chiygoz was consistently denied the right to fully and effectively defend himself, as he was not permitted to attend his trial in person but rather only via a poor video connection, despite the fact that he was being held in a detention facility within easy reach of the courthouse.⁹¹⁹ At the end of the grossly defective trial, the Crimean court found Mr. Chiygoz guilty of organizing a mass riot under Article 212 of the Criminal Code of

⁹¹² Witness Statement of Akhtem Chiygoz, paras. 8, 12 [hereinafter Chiygoz Statement] (Annex 19).

⁹¹³ *Ibid.*, para. 26.

⁹¹⁴ *Ibid.*, para. 9.

⁹¹⁵ *Ibid.*, paras. 13, 15.

⁹¹⁶ See *ibid.*, para. 16.

⁹¹⁷ *Ibid.*, para. 18.

⁹¹⁸ *Ibid.*, para. 17.

⁹¹⁹ *Ibid.*, para. 19.

the Russian Federation and sentenced him to eight years in prison.⁹²⁰ Mr. Chiygoz is free today due to an informal agreement between Turkey and the Russian Federation, reflecting the political nature of the charges against him.⁹²¹

4. Arrest, detention, and trial of Ilmi Umerov

436. On 12 May 2016, the Russian FSB arrested Ilmi Umerov and charged him with undermining the territorial integrity of the Russian Federation.⁹²² Mr. Umerov is also a Deputy Chairman of the Mejlis, and at the time of his arrest in May 2016 was one of the few senior Mejlis leaders who remained free in Crimea. Mr. Umerov's prosecution was a significant blow to Crimean Tatars due to his multiple roles as a founding member of the Mejlis, and in the Crimean provincial and local governments.⁹²³ In these roles, Mr. Umerov had been a significant force in supporting the rights of the Crimean Tatar community, and for decades had linked Crimean Tatars' self-governing bodies and Crimean government institutions.

437. Mr. Umerov remained a strong voice for Crimean Tatars after Russia's military intervention, giving numerous interviews in which he forthrightly described the occupation and purported annexation of the peninsula by Russia as a violation of international law.⁹²⁴ Given his outspokenness on this issue of evident sensitivity to the

⁹²⁰ *Ibid.*, para. 27; Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)* (22 February 2014–12 September 2017), para. 77 (Annex 759).

⁹²¹ Chiygoz Statement, paras. 28–33 (Annex 19); RFE/RL, *Crimean Tatar Leaders 'Freed,' Fly To Turkey* (26 October 2017) (Annex 1070).

⁹²² United Nations Report on the human rights situation in Ukraine 16 February to 15 May 2016 (June 3, 2016), para. 182; United States Mission to the OSCE, *Ongoing Violations of International Law and Defiance of OSCE Principles and Commitments by the Russian Federation in Ukraine* (26 May 2016) (Annex 1070).

⁹²³ Witness Statement of Ilmi Umerov [hereinafter Umerov Statement], paras. 2–4 (Annex 20).

⁹²⁴ *Ibid.*, para. 7.

Russian occupation authorities, it is perhaps unsurprising that he became a target of their repressive tactics. The brutality with which he was treated by those authorities, however, shocked world opinion.⁹²⁵

438. Mr. Umerov's ordeal began on 12 May 2016 with his interrogation and the search of his house.⁹²⁶ As Mr. Umerov describes in his witness statement, although he made no effort to resist, he was escorted from his home to his interrogation in Simferopol by three police cars and two special forces buses, along with dozens of armed men in masks. Similarly, Russian occupation authorities sent numerous armored vehicles and dozens of armed men to carry out a search of Mr. Umerov's home that day, but the search itself was cursory and lasted only a few minutes.⁹²⁷ Mr. Umerov concludes that the show of unnecessary force was an attempt to intimidate the wider Crimean Tatar community.⁹²⁸

439. In August 2016, the Russian occupation authorities revived a brutal Soviet technique for suppressing dissent, involuntarily committing Mr. Umerov to a psychiatric

⁹²⁵ See, e.g., Max Seddon, *Moscow cracks down on embattled Crimea Tatar dissidents: Russian tactics echo KGB practice of forced psychiatric confinement*, Financial Times (11 October 2016) (Annex 1082); Christina Paschyn, *Russia Is Trying to Wipe Out Crimea's Tatars*, New York Times (19 May 2016) (Annex 1083); Human Rights Watch, *Crimean Tatar Activist Confined in Psychiatric Hospital* (26 August 2016) (Annex 953); RFE/RL, *Russian Court Convicts Crimean Tatar Leader Umerov of 'Separatism'* (28 September 2017) (Annex 1084).

⁹²⁶ Umerov Statement, paras. 9-15 (Annex 20).; Decree for the Initiation of criminal proceeding and Pre-trial Investigation (12 May 2016) (Annex 932); Protocol, Interrogation of the Suspect (12 May 2016) (Annex 933). A few days later the occupation authorities issued a formal decision to prosecute Mr. Umerov. See Decision to Prosecute As Defendant Adopted by I.A. Skripka, Senior Lieutenant of Justice and the Investigator of the Investigation Department of the Department of Federal Security Service (FSB) of Russia in the Republic of Crimea and the city of Sevastopol (19 May 2016) (Annex 934).

⁹²⁷ Umerov Statement, para. 14 (Annex 20).

⁹²⁸ *Ibid.*, para. 15.

facility for evaluation and detaining him there for three weeks.⁹²⁹ During this period—which Mr. Umerov refers to as a 21-day torture—Mr. Umerov was held in a ward for persons with incurable mental diseases.⁹³⁰ While in this ward, Mr. Umerov endured unhygienic conditions, and was forced to share a small space with three other persons.⁹³¹ Because the ward lacked doors, sound traveled freely throughout, meaning that all 100 patients could hear each other, and even approach each other's beds.⁹³² On many occasions, Mr. Umerov awoke in the night to see another patient standing over his bed, looking down at him.⁹³³ The Chair of the OSCE Parliamentary Assembly's human rights committee described Mr. Umerov's detention as “a worrying new low in Russia's stigmatization of the Crimean Tatar community.”⁹³⁴

440. The Russian authorities' persecution of Mr. Umerov continued over the summer of 2017, when Mr. Umerov was subjected to a lengthy criminal trial.⁹³⁵ As Mr. Umerov describes in his witness statement, this trial revealed numerous, obvious errors and

⁹²⁹ See OHCHR, Report on the Human Rights Situation in Ukraine (16 May–15 August 2016), para. 178 (Annex 772); Human Rights Watch, Confined Tatar Activist Confined in Psychiatric Hospital (26 August 2016) (Annex 953); RFE/RL, Punitive Medicine? Crimean Tatars Shaken By Leader's Confinement to Mental Asylum (25 August 2016) (Annex 1063).

⁹³⁰ Umerov Statement, para. 17 (Annex 20).

⁹³¹ *Ibid.*

⁹³² *Ibid.*, 17.

⁹³³ *Ibid.*

⁹³⁴ See Organization for Security and Co-operation in Europe, *Press Release: Parliamentary Assembly Human Rights Chair Calls for Release of Crimean Tatar Leader Umerov* (27 August 2016) (Annex 815); Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2016), para. 178 (Annex 772); Human Rights Watch, *Crimean Tatar Activist Confined in Psychiatric Hospital* (26 August 2016) (Annex 953).

⁹³⁵ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 May–15 August 2017), para. 140 (Annex 772); RFE/RL, *Crimean Tatar Leader Umerov Goes On Trial On Separatism Charge* (7 June 2017) (Annex 1066); RFE/RL, *Crimean Tatar Leader Umerov's Trial Resumes in Simferopol* (21 June 2017) (Annex 1067).

falsehoods in the charges against him, including a mistranslation of the statement by Mr. Umerov that formed the basis of his charges.⁹³⁶ Despite such clear errors and falsehoods, Mr. Umerov was convicted of alleged separatism on 27 September 2017, and sentenced to endure two years of forced labor.⁹³⁷ For Mr. Umerov, who suffers from heart disease and Parkinson's disease, this sentence was particularly harsh.

441. Reflecting the political nature of the charges against him, Mr. Umerov was ultimately released by the Russian Federation only as part of an agreement between Turkey and the Russian Federation.⁹³⁸

C. Arbitrary Searches and Detentions

442. As explained in the preceding section, abusive searches and detentions are just one of several techniques used by the Russian occupation authorities to harass the leaders of the Crimean Tatar community, and to make it harder for them to defend the rights of their people. But Russia has put that particular technique to wider use in Crimea, employing arbitrary searches against lower level activists, Crimean Tatar schools and mosques to keep the entire community off-balance.

443. Since the occupation, Russian authorities have targeted members of the Crimean Tatar community by searching their homes, raiding public spaces, and blocking off entire towns to conduct massive inspections and ID checks against Crimean Tatar individuals.⁹³⁹ Numerous Crimean Tatar individuals have been detained in the process, sometimes merely for being bystanders. Frequently, the asserted basis for these discriminatory raids has been Russia's laws on anti-extremism. As explained in Chapter 8,

⁹³⁶ Umerov Statement, para. 20 (Annex 20).

⁹³⁷ RFE/RL, *Russian Court Convicts Crimean Tatar Leader Umerov of 'Separatism'*, 27 September 2017 (Annex 1069).

⁹³⁸ Umerov Statement, para. 22 (Annex 20); RFE/RL, *Crimean Tatar Leaders 'Freed,' Fly To Turkey* (26 October 2017) (Annex 1070).

⁹³⁹ Crimean Tatar Resource Center, Analysis of human rights violations in the occupied Crimea in 2017 (presentation), 2 February 2018 (concluding that a vast majority of detentions and arrests conducted in Crimea in 2017, as well as resulting fines, were directed at Crimean Tatars) (Annex 970).

these laws were extended to Crimea in violation of international humanitarian law and have been widely criticized as so vaguely written as to be susceptible to discriminatory application.

1. Searches of Homes of Crimean Tatars

444. In the weeks and months following the referendum, the occupation authorities targeted Crimean Tatar families in their homes, with spurious searches for so-called extremist materials. In August and September 2014, for example, the occupation authorities entered the homes of numerous Crimean Tatar families, purporting to conduct searches for illegal drugs and weapons. When they did not find illegal drugs or weapons, the Russian FSB members confiscated so-called extremist literature or personal belongings of the families.⁹⁴⁰ In some cases, homeowners were taken to police stations for interrogation, and held there for hours.⁹⁴¹

445. These searches continued after 2014. On 12 October 2016, for example, the Russian FSB forcefully broke into six Crimean Tatar homes and conducted searches in the presence of children.⁹⁴² As with the 2014 searches, the FSB did not find weapons or drugs,

⁹⁴⁰ See Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 September 2014), para. 153 (describing a 28 August 2014 search of the home of a Crimean Tatar family in Bakhchysarai at which no drugs or weapons were found, but so-called extremist literature was confiscated) (Annex 765); *ibid.*, para. 156 (describing searches of at least 10 Crimean Tatar homes on 4 and 5 September 2014 in Simferopol, Nizhnegorsk, Krasnoperekopsk and Bakhchysarai, and stating that police found no weapons during these searches but confiscated religious literature); *ibid.*, para. 154 (describing a 10 September 2014 search of two Crimean Tatar homes in the village Kamenka (Leninskiy district) at which two notebooks, a mobile phone and two religious books were confiscated).

⁹⁴¹ *Ibid.*, para. 155 (describing a 10 September 2014 search of two Crimean Tatar homes in the village Kamenka (Leninskiy district) at which two notebooks, a mobile phone and two religious books were confiscated and the homeowners were taken to Simferopol for interrogation, and were released after 18 hours).

⁹⁴² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2016), para. 165 (Annex 773).

but instead confiscated religious literature.⁹⁴³ As the United Nations monitoring mission in Ukraine recently observed, these intrusive raids of private homes have “disproportionately affected the Crimean Tatars.”⁹⁴⁴

446. Such searches have continued since the initiation of these proceedings; indeed, the Russian authorities have carried out mass arrests in Crimean Tatar neighborhoods on charges of extremism, breaching public order, and other spurious allegations. On 21 February 2017, for example, the occupation authorities searched the home of Crimean Tatar activist Marlen Mustafayev on the pretext of suspected “extremist” activity.⁹⁴⁵ When other Crimean Tatars began filming the search in an effort to protect Mr. Mustafayev’s human rights, these individuals were arrested.⁹⁴⁶ In connection with this search, ten Crimean Tatars were found guilty of breaching public order and impeding the movement of civilians.⁹⁴⁷ According to the Crimean Tatar Resource Center, all nine house searches conducted in Crimea in the month of January 2018 were of houses of Crimean Tatars.⁹⁴⁸

447. In many instances, searches against Crimean Tatar individuals were based on accusations of religious extremism. On 2 October 2017, for instance, the Crimean branch of

⁹⁴³ *Ibid.*

⁹⁴⁴ See Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)* (22 February 2014 to 12 September 2017), para. 12 (Annex 759).

⁹⁴⁵ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2017), para. 144; RFE/RL, *Russia Detains 11 Crimean Tatars* (22 February 2017) (Annex 1064).

⁹⁴⁶ *Ibid.*

⁹⁴⁷ *Ibid.*

⁹⁴⁸ Crimean Tatar Resource Center, Analysis of human rights violations in the occupied Crimea over January 2018 (presentation), 15 February 2018 (Annex 971).

the Russian FSB conducted house raids of four Crimean Tatar men who were arrested for allegedly engaging in “extremist” activities.⁹⁴⁹ The men were accused by the FSB of being members of *Tablighi Jamaat*, a Sunni movement banned in the Russian Federation (but not Ukraine) as an extremist organization.⁹⁵⁰

448. Similarly, on 11 October 2017, the FSB and Special Forces units searched homes of Crimean Tatars in Bakhchysarai, and arrested six Crimean Tatar men on charges of alleged membership in a terrorist group.⁹⁵¹ The men were this time accused of being members of *Hizb ut-Tahrir*, another organization labelled as terrorist and banned in the Russian Federation (but not Ukraine).⁹⁵² On the same day, 11 other Crimean Tatar men who filmed the actions of law enforcement officers were also detained and charged with participating in an unauthorized public gathering leading to disruption of public order.⁹⁵³ Nine were sentenced to administrative fines.⁹⁵⁴

449. Considering that Islamic extremism had not been part of the history of the Crimean peninsula before the Russian occupation, the frequency with which Russian

⁹⁴⁹ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 August to 15 November 2017), para. 136 (Annex 776).

⁹⁵⁰ *Ibid.*, para. 136 & n.218.

⁹⁵¹ *Ibid.*, para. 137.

⁹⁵² Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies (14 November 2017) (noting that Russian authorities have arrested at least 26 people on charges of involvement with Hizb ut-Tahrir since 2015, facing from five years to life in prison, “solely for acts – often in private – of expression, assembly, opinion, or religious and political belief that the Russian authorities claim constitute affiliation with Hizb ut-Tahrir”) (Annex 964).

⁹⁵³ *Ibid.*

⁹⁵⁴ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 August to 15 November 2017), para. 137 (Annex 776); Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies (14 November 2017) (quoting a lawyer present to witness the detention who told the media that “police [had] struck several of the activists while transporting them to the police station”) (Annex 964).

authorities are using this accusation to justify their searches and detentions of Crimean Tatar individuals strongly suggests that it is a pretext for discrimination.⁹⁵⁵

2. Raids in Public Spaces Targeting Crimean Tatars

450. The occupation authorities have also raided public places such as markets, mosques, cafés, restaurants, or theaters. In these raids, like the searches of private homes, Crimean Tatars have particularly been targeted.⁹⁵⁶ On 1 April 2016, for example, a group of armed and masked individuals entered a café in the village of Pionerske (Simferopol district) and began destroying furniture, allegedly in search of drugs.⁹⁵⁷ In connection with this search, dozens of Crimean Tatars were detained at the Simferopol police's Centre for Countering Extremism, where they were interrogated, photographed, and required to provide DNA samples and fingerprints.⁹⁵⁸

451. The occupation authorities have engaged in arbitrary searches at even larger scale in some instances, setting up blockades around towns and conducting full or random checks of passing individuals. In April 2015, for example, such blockades and searches occurred in Zhuravki village of Kirov district, Yarkoe Shchelkovo, Lenino, Battalion, Semisotka, Vojkovo, Bagerovo villages, near Simferopol Fountains and in Saki.⁹⁵⁹ About

⁹⁵⁵ Magocsi Report, para. 82 (Annex 21); see also Askold Krushelnnyky, Ukraine: Crimea's Tatars -- Clearing The Way For Islamic Extremism?, RFE/RL (26 August 2004) (Annex 1033); Thomas J. Reese & Daniel I. Mark, *Losing Their Religion in Crimea*, Foreign Affairs (15 April 2015) (discussing Russia's use of its oppressive laws to persecute religious minorities in Crimea) (Annex 1054).

⁹⁵⁶ See Office of the United Nations High Commissioner for Human Rights, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)* (22 February 2014 to 12 September 2017), para. 96 ("OHCHR noted a prevalence of members of the Crimean Tatar community among people apprehended during police raids.") (Annex 759).

⁹⁵⁷ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2016), para. 183 (Annex 771).

⁹⁵⁸ *Ibid.*

⁹⁵⁹ See Crimea Human Rights Field Mission - Brief Review of the Situation in Crimea (April 2015), pp. 10-11 (Annex 945); Human Rights Group Report of October 2015, pp. 7-8 (Annex 949).

100-150 armed officers mounted sandbags on all roads leading to and from the villages. They required the passing cars to show documents and be inspected. At least in two villages, machine guns and road blocks were installed instead of sandbags.⁹⁶⁰

452. In cases where random inspections were conducted, the officers targeted Crimean Tatar individuals. Slavic-looking people needed only to show government-issued IDs, while Crimean Tatars with the same documentation were in many cases accompanied to their homes, where authorities conducted searches.⁹⁶¹

453. It is important to note that the foregoing searches are merely illustrative of a broader policy and practice carried out by the Russian occupation authorities in Crimea.⁹⁶² In fact, the Russian Federation's campaign of discriminatory searches has continued into late 2017 and 2018, and continues to oppress the Crimean Tatar community.

454. In November 2017, for example, the Russian occupation authorities carried out an aggressive search of a café favored by Crimean Tatars.⁹⁶³ Vedzhie Kashka, an 82 year-old Crimean Tatar activist, was present at the café when the search began and was taken to the hospital in the course of the search.⁹⁶⁴ She died shortly thereafter. On 26 April 2018, the Russian occupation authorities carried out a series of armed searches at the homes and businesses of Crimean Tatars, and detained prominent members of the Crimean Tatar

⁹⁶⁰ See *ibid.*

⁹⁶¹ See *ibid.*

⁹⁶² See, e.g., Crimean Tatar Resource Center, *Security officers conducted regular searches in the houses of the Crimean Tatars in Crimea* (23 January 2018) (Annex 969); Crimean Human Rights Group, *Statement on Unlawful searches and detainments of Crimean Tatar national movement activists and veterans in Crimea* (24 November 2017) (Annex 965); Human Rights Watch, *Crimea: Persecution of Crimean Tatars Intensifies* (14 November 2017) (Annex 964).

⁹⁶³ See RFE/RL, *Veteran Crimean Tatar Activist Dies As Associated Detained By Russia* (23 November 2017) (Annex 1071); Human Rights Watch, *Another Day, Another Tragedy in Crimea* (27 November 2017) (Annex 966).

⁹⁶⁴ See *ibid.*

community, on the absurd pretext that they possessed food products that were beyond their sell-by dates.⁹⁶⁵ By carrying out this pervasive pattern of searches, the Russian Federation undermines the Crimean Tatar community's basic sense of safety and belonging in their indigenous homeland.

D. Forced Russian Citizenship and Subsequent Discrimination Against Non-Russians

455. As described in Chapter 8, the Law of Admission's provision for permanent residents of Crimea to automatically receive Russian nationality laid a foundation for systematic discrimination against Crimean Tatars and Ukrainians in Crimea. This section describes in more detail how the law was implemented and its impact on both those who had no choice but to accept Russian nationality and the smaller number who were able to opt out.

1. Implementation of the Law of Admission's Citizenship Provisions

456. The Law of Admission, by which Russia purported to incorporate Crimea into its federal structure, extended Russian nationality to all "citizens of Ukraine ... permanently residing in the territory of the Republic of Crimea or the federal city of Sevastopol ... with the exception of persons who within one month from that date declare their desire to keep the other citizenship that they and/or their underage children have."⁹⁶⁶

⁹⁶⁵ Kharkiv Human Rights Protection Group, Crimean Tatar businessman & philanthropist seized and new FSB offensive in Russian-occupied Crimea (3 May 2018) (Annex 973); Unrepresented Nations and Peoples Organizatino, *Crimean Tatars: Russian Repression Continues with Arrest of Crimean Businessman* (8 May 2018) (Annex 974).

⁹⁶⁶ Federal Constitutional Law of the Russian Federation of 21 March 2014 No. 6-FKZ "On the Admission of the Republic of Crimea into the Russian Federation, and the formation of new Constituent Entities of the Russian Federation: The Republic of Crimea and the Federal City of Sevastopol," art. 4(1) (Annex 888).

457. Implicit in this formulation was a deviation from the general Russian practice of recognizing dual citizenship.⁹⁶⁷ By its terms, the Law on Admission extended Russian citizenship only to those Ukrainians who did not desire to keep their Ukrainian citizenship, creating a presumption that those individuals who accepted Russian nationality had renounced their Ukrainian citizenship.⁹⁶⁸

458. In practice, the number of people who were able to declare their desire to retain Ukrainian citizenship likely represented only a fraction of those who wanted to do so.⁹⁶⁹ The Law on Admission created a very tight deadline for such declarations – one month from 18 March 2014,⁹⁷⁰ the date that Russian law treats as the day on which Crimea was admitted to the Russian Federation by virtue of the purported treaty between Russia and the so-called Republic of Crimea. Because Russia's Federal Migration Service did not issue

⁹⁶⁷ See Federal Law 62-FZ "On Citizenship of the Russian Federation," art. 6(2) (Annex 875); see also Open Society Foundation, Report: Human Rights in the Context of Automatic Naturalization in Crimea, para. 76 (Annex 975).

⁹⁶⁸ Any such presumption is not, however, determinative of the possession or otherwise of Ukrainian nationality by a given resident of Crimea. As this Court has recognized, "it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation." *Nottebohm Case (Second Phase)* (Liech. v. Guat.), Judgment of 6 April 1955 I.C.J. Reports 1955, p. 20. Forced acquisition of Russian nationality by Ukrainian nationals residing in Crimea is not recognized by Ukraine and is not accepted as a ground for loss of nationality in Ukraine. Law of Ukraine "On guaranteeing the rights and freedoms of nationals and on the legal regime in the temporarily occupied territory of Ukraine," art. 5 (cited in Crimea Beyond Rules, p. 45 (Annex 955)).

⁹⁶⁹ According to the Russian Federal Migration Service, 3,427 permanent residents of Crimea successfully opted out of Russian citizenship. OHCHR, *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)*, A/HRC/36/CRP.3 (25 September 2017) para. 59 (Annex 778).

⁹⁷⁰ By contrast, in 1991 the Russian Federation gave former USSR citizens residing in its territory one year to declare their unwillingness to accept Russian nationality. See Regional Centre for Human Rights, et al., *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), p. 22 (quoting Article 13(1) of Law of the Russian Federation of 28 November 1991 no. 1948-I "On Citizenship of the Russian Federation") (Annex 955).

instructions on the refusal procedure until 1 April 2014, however, in reality people wishing to decline Russian citizenship had only 18 days to do so.⁹⁷¹ Further, the Russian occupation authorities allowed people to opt out of Russian nationality at only four locations in the entirety of Crimea, two of which were available only from 4 April 2014 and the other two from 9 April 2014.⁹⁷² Crimean residents who wanted to receive Russian passports could do so by mail, apply at 160 designated offices around Crimea (including the four locations designated for opt outs) or apply at any Russian consulate or embassy in the world.⁹⁷³

459. Leaving aside the logistical difficulty of opting out of Russian citizenship, many Ukrainians in Crimea would have been deterred by the likely implications of doing so. As described in Chapter 8, beginning in late February 2014, the Russian government and media had used disinformation and hate speech to inflame tensions between Ukrainians and pro-Russian Crimeans.⁹⁷⁴ In an atmosphere in which Ukrainians were being labeled as fascists and neo-Nazis, many Crimeans who identified as Ukrainian (including both Ukrainians and Crimean Tatars) would not have wanted to risk the opprobrium of their pro-Russian neighbors by publicly declaring their desire to retain Ukrainian citizenship.

⁹⁷¹ See OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014) (Annex 763); Open Society Justice Initiative, Human Rights in the Context of Automatic Naturalization in Crimea (June 2018), paras. 77 & 79 & 82 & 211 (Annex 975); Regional Centre for Human Rights, et al., *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), p. 22 (Annex 955); See Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 29 (2014) (Annex 943).

⁹⁷² See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 39 (17 September 2015) (Annex 812).

⁹⁷³ Open Society Justice Initiative, Human Rights in the Context of Automatic Naturalization in Crimea (June 2018), para. 82 (Annex 975); Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 30 (2014) (Annex 943).

⁹⁷⁴ See *supra* Chapter 8, Section A.

460. Moreover, as described in more detail below, opting out of Russian citizenship meant choosing the status of a foreigner within one's own country and, with it, many important material disadvantages compared to Russian nationals. For example, the Law on Admission extended to Crimea the prohibition in Russian law on citizens or permanent residents of third states from being employed in government and municipal jobs.⁹⁷⁵ Any government or municipal worker opting to retain Ukrainian citizenship was also therefore opting for dismissal from employment. Many Crimeans who identified as Ukrainian would have chosen not to opt out to avoid this and other forms of discrimination that retaining one's Ukrainian citizenship would have invited.

461. Conversely, because the Law of Admission made Russian citizenship available only to "permanent residents" of Crimea, many Crimeans were excluded from the process, becoming by default foreigners in their own land. Many Crimeans, especially Crimean Tatars and Ukrainians, did not have the proof of permanent residency that the authorities on the ground interpreted the Law of Admission to require, such as a residency registration stamp in their passport or a court decision proving residence.⁹⁷⁶ Crimean Tatars who had recently returned from exile in Central Asia, may not have overcome all the hurdles to becoming a registered permanent resident of Crimea before February 2014.⁹⁷⁷ Ukrainians

⁹⁷⁵ See Law on Admission, art. 4(3) (Annex 888).

⁹⁷⁶ For detailed analysis of hardship that Crimean residents faced for not possessing proof of residency required by Russia, see, e.g., Crimean Human Rights Group, Memorandum: Discrimination of Crimean Residents for Non-Possession of Russian Documents Issued Unlawfully by Russia in Crimea (2018) (Annex 968); *see also* Open Society Justice Initiative, Human Rights in the Context of Automatic Naturalization in Crimea (June 2018), paras. 92-97 (Annex 975).

⁹⁷⁷ See HCNM Needs Assessment, p. 4 (noting, as a major legal challenge, "the regulation of the legal status of individual [formerly deported persons] returning to Crimea, including the regulation of their repatriation and residency status and access to citizenship.") (Annex 805).

who had moved to Crimea from other parts of Ukraine may not have bothered to change their formal residency status.⁹⁷⁸

462. Other Crimean Tatars and Ukrainians in Crimea who held permanent resident status and remained loyal to Ukraine, would have elected to do nothing when confronted with the deadline in the Law on Admission. Members of this group would have taken the view that any application to the Russian occupation authorities pursuant to the Law on Admission risked lending legitimacy to Russia's unlawful acts of occupying and purporting to annex Crimea.

463. As described below, each of these groups suffered harm as a result of Russia's imposition upon Crimea of its own citizenship and permanent residency regime, albeit in different ways. These harms were generally not borne by members of the ethnic Russian community who supported annexation.

2. Harms Suffered by Those Who Did Not Opt Out and Were Subsequently Deemed to Be Russian Citizens

464. For those self-identifying Crimean Tatars and Ukrainians who for these or other reasons did not opt out, the forcing upon them of Russian citizenship created an invidious conflict. As Russian citizens, they assumed an obligation of loyalty to the Russian Federation that could leave them subject to severe punishment if they cooperated with Ukraine, the state with which they actually identified. For example, Article 275 of the Criminal Code of the Russian Federation provides for prison terms of up to 20 years for Russian citizens who provide "any financial, material and technical, consultative or other assistance to a foreign state, an international or foreign organization, or their representatives in activities against the security of the Russian Federation."⁹⁷⁹ In view of the arbitrary way in

⁹⁷⁸ Crimean Human Rights Group, Memorandum: Discrimination of Crimean Residents for Non-Possession of Russian Documents Issued Unlawfully by Russia in Crimea (2018), p. 2 (Annex 968); Human Rights Watch, Rights in Retreat: Abuses in Crimea (November 2014) (noting that "many people, while in practice residing in Crimea, either did not have the registration stamp in their passport at all or were formally registered in mainland Ukraine") (emphasis added) (Annex 943).

⁹⁷⁹ Criminal Code of the Russian Federation, art. 275 ("High Treason") (Annex 927).

which Russia's anti-extremism laws have been deployed against Crimean Tatars and Ukrainians in Crimea, members of these communities who acquired Russian citizenship against their will would likely regard Article 275's broad language as potentially reaching even innocent acts of cooperation with Ukraine or international organizations (including the United Nations and OSCE) monitoring events in Crimea and eastern Ukraine.

465. As Russian citizens, this group of people also now faces the prospect of being conscripted into the Russian armed forces and potentially being made to fight against the very country with which they most identify. The Law of Admission expressly contemplates “[c]itizens of the Russian Federation who are conscripted into military service in the Republic of Crimea and the federal city of Sevastopol,” providing that such service should take place within Crimea and Sevastopol until the end of 2016.⁹⁸⁰ With that deadline now expired, there is no barrier to Crimean conscripts being deployed by the Russian armed forces in other theatres of conflict, including eastern Ukraine.

466. The forcing of Russian citizenship on Ukrainian nationals in Crimea has also opened the door to other abuses. Ukrainian citizens who were in prison in Crimea between 18 March 2014 and 18 April 2014 did not have a meaningful opportunity to opt out of Russian citizenship. Because they are now considered Russian citizens, such prisoners are vulnerable to forced transfer to prisons anywhere in the Russian Federation, in contravention of international humanitarian law.⁹⁸¹

467. According to human rights groups in Crimea, more than 4,700 Ukrainian citizens kept in places of detention in Crimea have been transferred by the Russian

⁹⁸⁰ Treaty of Admission, art. 5(6).

⁹⁸¹ See Fourth Geneva Convention (1949), art. 76 (“Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.”)

authorities to locations within Russia.⁹⁸² One especially notorious example is Oleg Sentsov, a film-maker and Russian-speaking member of the Ukrainian community in Crimea, who helped to deliver food and supplies to Ukrainian forces blockaded by the invading undeclared Russian forces.⁹⁸³ Sentsov was arrested and charged with plotting acts of terrorism.⁹⁸⁴ When he came to trial in 2015, the court claimed that he had automatically acquired Russian citizenship with the annexation.⁹⁸⁵ The attempts of the Ukrainian authorities to intervene on his behalf, including by seeking his transfer to Ukraine, were rebuffed by the Russian government on grounds of his Russian nationality.⁹⁸⁶ And, after having been sentenced to 20 years in prison he was sent first to a prison in the Russian federal subject Sakha Republic and later transferred to Russia's northernmost prison in Yamalo-Nenets Autonomous Okrug.⁹⁸⁷ Again, Sentsov's incarceration in Russia was justified on the grounds of his Russian citizenship.

⁹⁸² Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation*, para. 26 (2017) (Annex 954).

⁹⁸³ Lilya Palveleva, Ukrainian Filmmaker Remains Behind Bars Despite Growing Support, RFE/RL (26 June 2014) (Annex 1078).

⁹⁸⁴ OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, para. 117, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (Annex 778).

⁹⁸⁵ Masha Gessen, Opinion, Oleg Sentsov and the Kremlin's Thin Skin, NYTimes (28 August 2015) (Annex 1079).

⁹⁸⁶ See Ukrainian Parliament Commissioner for Human Rights, Officially: Mr. Oleg Sentsov is the citizen of Ukraine (8 April 2015) (picture of redacted copy of the State Migration Service of Ukraine letter embedded) (Annex 1085).

⁹⁸⁷ Ukrainian Filmmaker Sentsov Reportedly To Be Transferred To Russian Far North Prison, RFE/RL (30 September 2017) (further noting: "Sentsov's whereabouts have been a mystery since early this month. Members of a public oversight commission in the Far Eastern city of Irkutsk reported on September 9 that Sentsov had been transferred from that city to the Urals city of Chelyabinsk. However, defense lawyers have had no idea of his location since then") (Annex 1080).

468. Mr. Chiygoz similarly testifies that he was threatened with transfer to a prison in the Russian Federation, where he would face much tougher conditions, unless he withdrew his appeal:

[T]wo FSB officers from Moscow ... demanded that I withdraw my appeal. When I rejected their demands, threats followed. One of the officers told me that a man of my age would probably not be able to survive the conditions of the transfer across Russia from a red zone (a special supervision zone) to the next, all the way to Magadan. I recalled that some of the special unit officers wearing masks had previously made similar threats, saying that they were waiting for me and that I would suffer physical harm.⁹⁸⁸

469. The use of forced deportation into the Russian prison system as a means of coercing prisoners is a clear breach of Russia's IHL obligations. The disproportionate use of such threats, and actual transfers, against Crimean Tatar and Ukrainian prisoners additionally constitutes racial discrimination within the meaning of the CERD.

3. Harms Suffered by Inhabitants of Crimea Who Did Not Receive Russian Nationality

470. Those Crimeans who did not receive Russian nationality – either because they opted out or because they did not qualify for it – suffered in different ways.

471. Permanent residents of Crimea who opted out of Russian citizenship were allowed to apply for residency permits. This status entitles the holder to some of the benefits enjoyed by Russian citizens, including state pensions, free health insurance and social

⁹⁸⁸ See Chiygoz Statement, para. 28 (Annex 19).

allowances.⁹⁸⁹ But foreign holders of residency permits suffer many other disadvantages compared to Russian citizens. As indicated above, they are not permitted to take employment in government or municipal jobs. Nor are they allowed to run for government or municipal office.⁹⁹⁰ Other Russian laws extended to Crimea barred them from applying to hold a public gathering⁹⁹¹ or owning a media entity,⁹⁹² among others.⁹⁹³ As foreign

⁹⁸⁹ OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (2017), para. 61 ("Residents of Crimea who opted out of Russian Federation citizenship became foreigners. They could obtain residency permits through a simplified procedure, giving them certain rights enjoyed by Russian Federation citizens, such as the right to pension, free health insurance, social allowances, and the right to exercise professions for which Russian Federation citizenship is not a mandatory requirement."); Crimean Human Rights Group, Memorandum: Discrimination of Crimean Residents for Non-Possession of Russian Documents Issued Unlawfully by Russia in Crimea (2018), 6 (explaining that free medical insurance policy is available, pursuant to Article 10 of Federal Law No. 326 of 29 November 2010 'On obligatory medical insurance in the Russian Federation, to Russian citizens, foreign citizens and stateless persons "with a residence permit or temporary stay permit on the [Russian] territory" and those defined as refugees under Russian law) (Annex 777).

⁹⁹⁰ See Law on Admission, art. 4(3) (Annex 888).

⁹⁹¹ See Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing No. 54-FZ of 19 June 2004 of the Russian Federation, as amended by Federal Law No. 65-FZ of 8 June 2012, art. 5 (Annex 877); *see also* Law of the Republic of Crimea on Creating Conditions for the Exercise by Citizens of the Russian Federation of the Right to Hold Assemblies, Rallies, Processions, or Small Protests in the Republic of Crimea No. 56-ZRK of 21 August 2014, art. 2(4) (Annex 895).

⁹⁹² Law of the Russian Federation on Mass Media, No. 2124-1 of 27 Dec. 1991, art. 7 (Annex 872); Federal Law N 305-FZ "On Amending Russian Federation Law 'On Mass Media,'" dated 14 October 2014, Art. 1.3 (Annex 873).

⁹⁹³ Office of the United Nations High Commissioner for Human Rights, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (25 September 2017), para. 62 ("[O]verall, persons holding a residency permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights. They cannot own agricultural land, vote and be elected, register a religious community, apply to hold a public meeting, hold positions in the public administration and re-register their private vehicle on the peninsula." (footnotes omitted) (Annex 778)).

nationals, this group also was subject to Russian migration controls, making them vulnerable to permanent exclusion from Crimea at the discretion of the Russian authorities.⁹⁹⁴

472. The large number of Crimeans who could not prove permanent residency, and to whom the grant of automatic Russian citizenship did not therefore extend, were placed in an even worse position. These individuals were considered foreigners under Russian law. As such they were not permitted to stay in Crimea more than 90 days within a period of 180 days from the moment they entered the peninsula.⁹⁹⁵ Moreover, in addition to all the disadvantages suffered by permanent residents who had opted out of Russian citizenship, this group was also denied the rights conferred by permanent resident status, including state pensions, free health insurance and otherf social allowances.

473. Discriminatory enforcement of Russia's immigration laws is a particular problem for this group, meaning that its members are in constant jeopardy of being arrested and expelled from the place they call home by the Russian authorities. For example, as described earlier in this Chapter, Sinaver Kadyrov, a Crimean Tatar activist and founder member of the Committee for the Protection of Rights of Crimean Tatars, was detained at a checkpoint and thereafter ordered deported from Crimea for overstaying Russia's 90-day limit for foreigners. Kadyrov had on principle taken no action either to take or to opt out from Russian citizenship.⁹⁹⁶

474. By contrast, OHCHR has reported that those with pro-Russian sympathies receive the benefit of the doubt from the immigration authorities. For example:

⁹⁹⁴ See Ukrainian Helsinki Human Rights Union, Crimea Beyond Rules: Right to Nationality (Citizenship) (2017), p. 40 (Annex 957).

⁹⁹⁵ OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, para. 64, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (Annex 778).

⁹⁹⁶ Written statement submitted by the Society for Threatened Peoples, p. a, U.N. Doc. A/HRC/28/NGO/97 (23 February 2015) (Annex 784); see also Bariiev Statement, at 31 (Annex 15).

A Ukrainian citizen who claimed to be “an active participant of the Russian Spring in Sevastopol” claimed that his family was in Crimea and therefore deportation would “interfere with his private and family life.” … The Supreme Court of Crimea accepted his argument, preventing deportation.⁹⁹⁷

* * *

475. In sum, by introducing its own nationality and immigration framework into Crimea, the Russian Federation has massively increased the ability of its enforcement and judicial authorities to discriminate against Crimean Tatars and Ukrainians who deny the legitimacy of the Russian Federation’s actions on the peninsula.

476. In common with other aspects of its assault on the political and civil rights of these communities, Russia purports to act on the basis of facially neutral laws. But the application of Russia’s nationality, residency and immigration laws in occupied Crimea is no more legitimate than its extension to the peninsula of its anti-extremism and other penal laws and, because it leads to disproportionate enforcement of these laws against members of the Crimean Tatar and Ukrainian communities in Crimea, it constitutes racial discrimination within the meaning of the Convention.

⁹⁹⁷ Open Society Justice Initiative, Human Rights in the Context of Automatic Naturalization in Crimea (June 2018) at 33 (quoting OHCHR, *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea*, No. 12-401/2016, 17 Nov. 2016 (Annex 777)) (Annex 975).

Chapter 10. THE RUSSIAN FEDERATION'S POLICY OF CULTURAL DISCRIMINATION AND SUPPRESSION

477. In addition to the systematic assault on political and civil rights described in Chapter 9, the Russian Federation has methodically choked off cultural expression by the Crimean Tatar and Ukrainian communities over the last four years of occupation. This additional dimension to Russia's campaign of racial discrimination raises the specter of the total erasure of these distinct cultures from the Crimean peninsula.

478. Russia has cracked down hard on public gatherings by these communities to commemorate events of cultural importance to them. It has eliminated independent Crimean Tatar and Ukrainian voices from the media and civil society, leaving only unrepresentative stooges to speak for those communities.⁹⁹⁸ It has allowed their cultural heritage to be irreparably damaged. And it has attacked the ability of these communities to pass their distinct identities on to future generations by elevating Russian culture at the expense of their own in the educational system.

479. This chapter summarizes in turn each of these dimensions to Russia's assault on Crimean Tatar and Ukrainian culture.

A. Suppression of Culturally Significant Gatherings

480. The restrictions that Russia has imposed on cultural gatherings by the Crimean Tatar and Ukrainian communities are particularly damaging. As Professor Magocsi explains in his expert report, the commemoration of historical figures and events is central to the Crimean Tatar culture and sense of identity and was a key factor in preserving them during the years in exile in Central Asia.⁹⁹⁹ In particular, annual commemorations of the

⁹⁹⁸ See Witness Statement of Lenur Islyamov paras. 17–18 (Annex 18); Recording of conversation between M. Efremova and L. Islyamov (Annex 1101).

⁹⁹⁹ Magocsi Report para. 75 (Annex 21).

deportation of 1944 – the Sürgün – have been a central part of Crimean Tatar life in independent Ukraine.¹⁰⁰⁰ For the Ukrainian community, such cultural events are no less important as a means of preserving an identity separate from that of ethnic Russians on the peninsula, with the annual celebration of the birthday of Taras Shevchenko – the cultural father of the Ukrainian nation – chief among them.

481. Since February 2014, the Russian occupation authorities have actively sought to prevent the continuation of these traditions. In violation of IHL, Russia has introduced its own repressive laws governing public gatherings into occupied Crimea. It has then applied those laws discriminatorily to deny Crimean Tatars and Ukrainians an opportunity to commemorate culturally important events equal to that afforded the ethnic Russian community.

1. Russia's Unlawful Application to Crimea of Its Laws Restricting Freedom of Peaceful Assembly

482. Under Ukrainian law applicable prior to the occupation, an event organizer needed only to submit a preliminary notice of peaceful assembly; no permissions or licenses were required to hold a public gathering under the Ukrainian Constitution.¹⁰⁰¹ Such gatherings were generally permitted to proceed, no matter which ethnic group had noticed the event, subject to an appropriate police presence. Gatherings could only be minimally restricted “in accordance with law” and “only in the interests of national security and public order, for the purpose of prevention of disturbances or crimes, protection of the health of the population, or protection of the rights and freedoms of other persons.”¹⁰⁰²

483. Following its purported annexation of Crimea, the Russian Federation extended to Crimea its own repressive laws requiring affirmative approval by relevant authorities. As with the extension of Russia’s anti-extremism laws, this was a violation of

¹⁰⁰⁰ See Witness Statement of Eskender Bariiev at para. 5 (describing the annual commemorations of the event on Lenin Square in Simferopol from 1990 to 2013) (Annex 15).

¹⁰⁰¹ Ukrainian Constitution (8 December 2004) Art.39 (protecting the right to peaceably assemble subject only to advance notification) (Annex 732).

¹⁰⁰² *Ibid.*

Russia's IHL obligations, because Russia was not "absolutely prevented" from keeping in place the Ukrainian regulatory scheme for public gatherings. Moreover, even before Russia's intervention in Crimea, its laws had attracted much criticism for their failure to guarantee the right to freedom of assembly. For example, the Venice Commission's analysis of Law No. 54-FZ of 19 June 2004 concluded, *inter alia*:

[T]he regime of prior notification ... should be revised; the co-operation between the organisers and the authorities ... should be settled on a voluntary basis respecting the assemblies' autonomy and without depriving the organisers of the right to hold an assembly on the ground of a failure to agree on any changes to the format of an assembly or to comply with the timeframe for notification of the public event; the power of the executive authorities to alter the format of a public event should be expressly limited to cases where there are compelling reasons to do so ..., with due respect for the principles of proportionality and non-discrimination and the presumption in favour of assemblies.¹⁰⁰³

484. In addition to applying existing Russian laws, on 8 August 2014, the State Council of the Republic of Crimea enacted Law No. 56-ZRK, replicating the Russian regulatory regime by requiring prior approval for public gatherings and imposing a list of stringent technical requirements that a notice must satisfy.¹⁰⁰⁴ Based on these laws, the occupation authorities have repeatedly rejected requests by Crimean Tatar and Ukrainian

¹⁰⁰³ Council of Europe, European Commission for Democracy Through Law (Venice Commission), Opinion on the Federal Law No. 54-FZ of 19 June 2004 On Assemblies, Meetings, Demonstrations, Marches and Picketing of the Russian Federation (adopted 16-17 March 2012) para. 49 (Annex 816).

¹⁰⁰⁴ Law of the Republic of Crimea No. 56-ZRK of 21 August 2014, Art. 2 (Annex 895); Letter from Administration of Simferopol to the Committee for Protection of Rights of the Crimean Tatars, No. 12154/24/01-66, dated 9 December 2014 (citing, in addition to Federal Law No. 65-FZ, Article 2 of the Law of the Republic of Crimea No. 56-ZRK of August 21, 2014) (Annex 846).

groups to hold gatherings in Crimea and have threatened administrative penalties in case of incompliance.¹⁰⁰⁵

2. Russia's Application of Its Laws to Deny the Crimean Tatar Community's Right to Mark Events of Cultural Significance

485. The occupation authorities have applied these repressive laws to systematically suppress the ability of the Crimean Tatar community to mark events of cultural significance. For instance, the Russian occupation authorities have repeatedly frustrated plans by the Crimean Tatar community to mark the *Sürgün*. As previously discussed, commemoration of victims of the *Sürgün* on 18 May each year has been particularly important to Crimean Tatars, many of whom have only recently returned to their homeland following the 1944 deportation. The ceremony commemorating the victims of the 1944 deportation had traditionally been held on Lenin Square — the main square of Simferopol — under the auspices of the Mejlis.¹⁰⁰⁶ On 16 May 2014, less than three months after the purported annexation — and just two days before the 70th anniversary of the *Sürgün* — the occupation authorities abruptly issued a decree that prohibited all public

¹⁰⁰⁵ See, e.g., Letter from Executive Committee of Republic of Crimea Simferopol City Council to the Committee for Protection of Rights of the Crimean Tatars, (2 December 2014), No. 9818/24/01-66 (citing Articles 31 and 55 of the Russian Constitution, Federal Law No. 54-FZ of June 19, 2004 On Assemblies, Rallies, Demonstrations, Processions, and Small Protests, and Federal Law On the General Principles of Organization of Local Government in the Russian Federation) (Annex 841); Letter from Administration of Simferopol to the Committee for Protection of Rights of the Crimean Tatars, No. 12154/24/01-66, dated 9 December 2014 (citing, in addition to Federal Law No. 65-FZ, Article 2 of the Law of the Republic of Crimea No. 56-ZRK of August 21, 2014) (warning the Crimean Tatar organizers that Federal Law No. 65-FZ of June 8, 2012 considerably increases the liability for violating the established procedure for arranging or conducting an assembly, rally, demonstration, procession or small protest) (Annex 846).

¹⁰⁰⁶ See Bariiev Statement, para.5 (Annex 15); see also OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015) para. 252 (Annex 812).

assemblies in Crimea until 6 June 2014, purporting to prevent any provocations by extremists and avoid disruption of the holiday season.¹⁰⁰⁷

486. In the following years, the occupation authorities repeatedly rejected applications to commemorate this event in various locations around the peninsula. In May 2015, the Simferopol authorities refused to issue a permit for a proposed ceremony commemorating the victims of the deportation on public safety grounds.¹⁰⁰⁸ In 2016, a notification was rejected by Voinka village administration of Krasnoperekopsky, this time on account of land improvement works to be carried out on the park where the event was planned.¹⁰⁰⁹ In 2017, numerous Crimean Tatars were found guilty of administrative offenses and faced fines for driving cars displaying the Crimean Tatar flag to mark this day.¹⁰¹⁰

487. Numerous other events of cultural importance to Crimean Tatars have similarly been thwarted. For example, in 2014 the occupation authorities repeatedly denied permits for the Crimean Tatar community's usual commemoration of International Human Rights Day on 10 December. Prior to the occupation, Crimean Tatars had marked this day with rallies in Lenin Square in Simferopol.¹⁰¹¹ This annual event had passed off peacefully for years with modest policing by the Ukrainian authorities.

¹⁰⁰⁷ Decree No. 29 on Mass Gatherings in Connection with the Events in Ukraine's Southeast, Chapters of the Republic of Crimea (16 May 2014) (Annex 891).

¹⁰⁰⁸ OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015) para. 252 (Annex 812).

¹⁰⁰⁹ See Crimean Human Rights Situation Review, May 2016, Annex 9, p. 16 (Annex 950).

¹⁰¹⁰ See, e.g., Case No. 5-239/2017, Decision of 8 June 2017 of the Bakhchysarai District Court concerning Umerova, SD (Annex 919); Case No. 5-238/2017, Decision of 8 June 2017 of the Bakhchysarai District Court concerning Abdurefiyeva, IL (Annex 918); Case Nos. 5-237/2017 & 5-236/2017, Decision of 8 June 2017 of the Bakhchysarai District Court concerning Mamutov, NN (Annex 920).

¹⁰¹¹ Bariiev Statement, para. 9 (Annex 15); RFE/RL, *Crimean Tatars Demand Their Rights Be Respected* (10 December 2012) (Annex 1034).

Figure 15¹⁰¹²



Refat Chubarov addressing the crowd gathered to mark International Human Rights Day in December 2011

488. The witness statement of Eskender Bariiev, Coordinator of the Committee on the Protection of the Rights of the Crimean Tatar People, describes in detail the repeated applications made by the rally organizers and the obstructive bureaucratic responses they received from the Simferopol City authorities.¹⁰¹³ An initial application on 28 November 2014 to hold a conference, a photography exhibition, and a street drawing competition for children close to Lenin Square¹⁰¹⁴ was rejected for failure to specify the estimated number of participants and on the unlikely grounds that the events posed a threat to the life and health

¹⁰¹² Official Website of the Mejlis of the Crimean Tatar People, <http://qtmm.org/en>.

¹⁰¹³ Bariiev Statement, paras. 9–18 (Annex 15).

¹⁰¹⁴ *Ibid.* para. 10 (Annex 15); Letter from Executive Committee of Republic of Crimea Simferopol City Council to the Committee for Protection of Rights of the Crimean Tatars, No. 9818/24/01-66, dated 2 December 2014 (Annex 841).

of the population if held in the noticed locations.¹⁰¹⁵ A second request, to hold a small protest in Lenin Square,¹⁰¹⁶ was rejected because the square was allegedly fully booked between 1 December 2014 and 7 January 2015 in connection with the Christmas and New Year holidays.

489. The City authorities suggested instead that the protest take place at a peripheral park, one of four locations far from the administrative center of Simferopol that had been approved by the authorities for public gatherings.¹⁰¹⁷ While perhaps suitable for small, purely cultural events, the park was an entirely inappropriate venue for a rally addressing human rights issues.¹⁰¹⁸ When the Committee responded accordingly on 9 December 2014 and noticed three alternative venues closer to the administrative center,¹⁰¹⁹ the authorities disapproved again, this time because the notification was untimely and failed to provide the required details of the event.¹⁰²⁰ The authorities also warned that Federal Law No. 65-FZ of 8 June 2012, which amended Federal Law No. 54-FZ of 19 June 2004, considerably increased the liability for violating the established procedure.¹⁰²¹

¹⁰¹⁵ *Ibid.*

¹⁰¹⁶ Letter from the Committee for Protection of Rights of the Crimean Tatars to Viktor Nikolaevich, No. 001/12, dated 5 December 2014 (Annex 844).

¹⁰¹⁷ See Letter from the Committee for Protection of Rights of the Crimean Tatars to Viktor Nikolaevich, No. 001/12, dated 9 December 2014 (explaining that the approved venue is for recreational purposes, not suitable for a protest) (Annex 847).

¹⁰¹⁸ Bariiev Statement, para. 13 (Annex 15).

¹⁰¹⁹ See Letter from the Committee for Protection of Rights of the Crimean Tatars to Viktor Nikolaevich, No. 001/12, dated 9 December 2014 (Annex 847); Bariiev Statement, para. 14 (Annex 15).

¹⁰²⁰ Letter from Administration of Simferopol to the Committee for Protection of Rights of the Crimean Tatars, No. 12154/24/01-66, dated 9 December 2014 (Annex 846).

¹⁰²¹ *Ibid.*

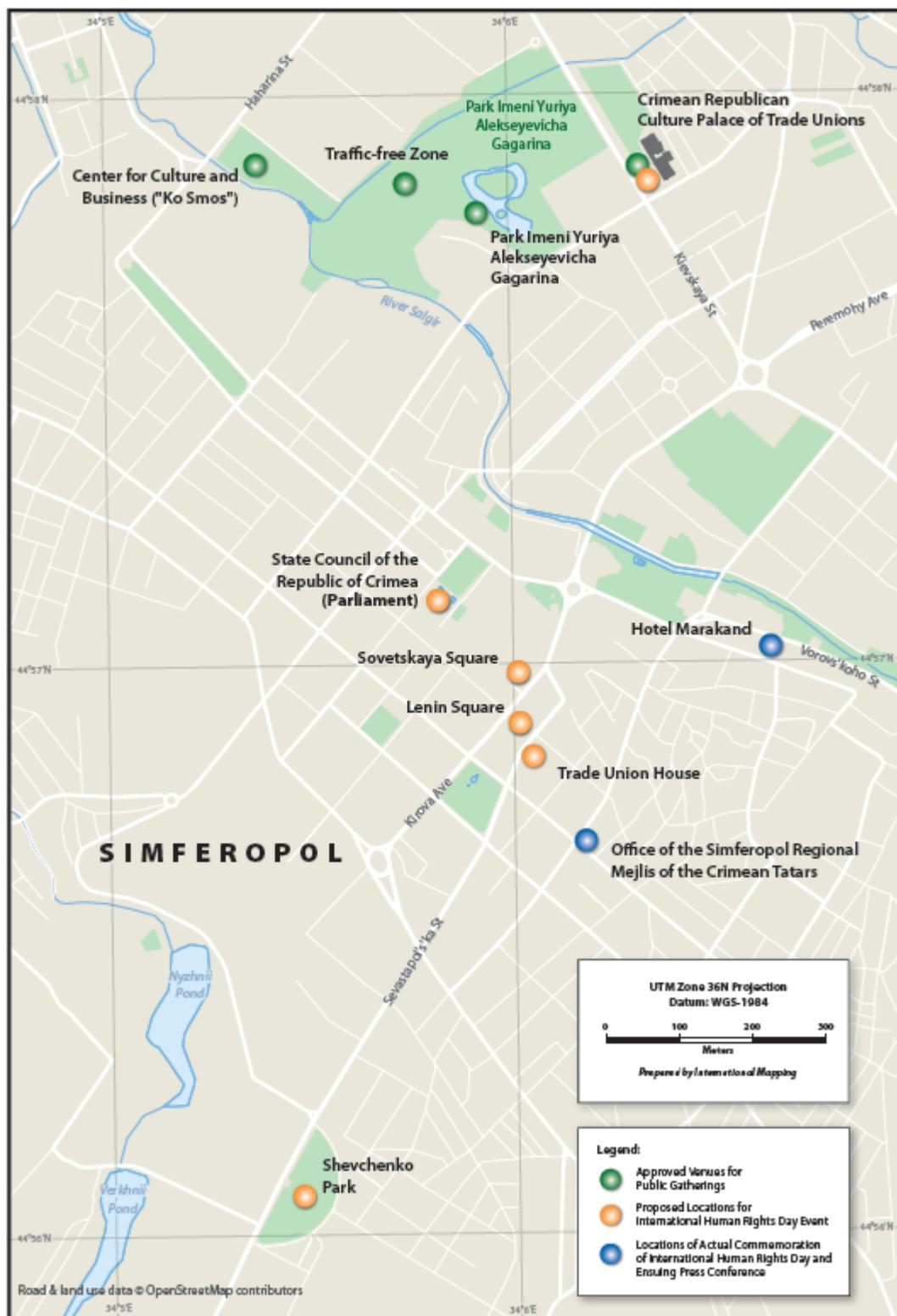
490. This course of events is an object lesson in how, as the Venice Commission had pointed out two years earlier, the shortcomings in Russia's gatherings law can be exploited to unduly restrict freedom of expression and assembly. Rather than respecting the organizers' preferred format and venue and working with them to accommodate any genuine public safety concerns, the authorities exploited the thicket of procedural requirements in Russian and Crimean law to run down the clock until it could rule the last application untimely.

491. When subsequently the Committee on the Protection of the Rights of the Crimean Tatar People sought to avoid the requirements of the gatherings laws by organizing events at private premises, the Russian occupation authorities chose to orchestrate or tolerate disruption of those events by organized groups of hooligans. A press conference on 10 December 2014 at the Simferopol Regional Mejlis was disrupted by male protestors who threw green paint on the organizers.¹⁰²² A conference organized by the Committee in a private hotel a month later was delayed when a group of approximately 20 thugs sought to physically block the participants from taking their seats.¹⁰²³ Although the police were present in numbers, they did nothing to restore order until they realized that their complicity in the disruption was being filmed by activists.

¹⁰²² OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015) para. 135 (Annex 812); Bariiev Statement, para. 15 (Annex 15). *See also* Video footage of the event (Annex 1102).

¹⁰²³ Bariiev Statement, paras. 17–18 (Annex 15). Video of Bariiev Instructing the Crimean Tatars to Show Their Peaceful Intentions in the Face of Provocation (Annex 1101).

Map 14: Permitted v. Desired Locations for Public Gatherings in Simferopol



492. The Mejlis' application in 2015 to mark International Human Rights Day was likewise refused, this time due to an alleged suspension of mass gatherings from 22 November onward.¹⁰²⁴ Notwithstanding this suspension, however, pro-Russia groups were permitted to gather for an anti-Turkey rally on 27 November 2015 in the central square of Simferopol.¹⁰²⁵ After the Mejlis was banned as an organization in early 2016, it no longer sought official permits from the occupation authorities to mark International Human Rights Day.

493. Applications to celebrate Crimean Tatar Flag Day on 26 June have also repeatedly been rejected. Before the occupation, Crimean Tatars had celebrated this occasion with traditional music and dance performances, as well as events for Crimean Tatar children.¹⁰²⁶ In June 2015, the city administration of Simferopol denied a request to hold a similar public event because other organizations had purportedly submitted notifications for the same date, which could create conditions in which public order would be violated.¹⁰²⁷ Although the organizing committee submitted two additional notifications for a different time and place, the administration simply repeated its earlier response.¹⁰²⁸

494. The occupation authorities also prohibited the local Mejlis from carrying out a rally commemorating the 97th anniversary of the death of Noman Çelebichan, the first President of the short-lived Crimean People's Republic, who was executed by a firing squad

¹⁰²⁴ *Mejlis of Crimean Tatars were not allowed to take action in Simferopol to Human Rights Day* (11 December 2015) (Annex 1061).

¹⁰²⁵ *Ibid.*

¹⁰²⁶ Crimean Human Rights Group, *Unsanctioned Freedom* (May 2017) p. 4 (Annex 961).

¹⁰²⁷ Crimean Human Rights Group, *Unsanctioned Freedom* (May 2017) p. 4 (Annex 961).

¹⁰²⁸ Crimean Human Rights Group, *Unsanctioned Freedom* (May 2017) p. 4 (Annex 961).

of the Black Sea Fleet in 1917.¹⁰²⁹ Prior to the occupation, Crimean Tatars had marked this occasion by placing flowers at the monument to Çelebicihan in Simferopol and holding traditional prayer services. Faced with this rejection, the Mejlis proposed to change the venue of the event from Simferopol to the private courtyard of the Khan's palace in Saray, Bakhchysarai. This application too was rejected by the Bakhchysarai authorities.¹⁰³⁰

3. Russia's Application of Its Laws to Deny the Ukrainian Community's Right to Mark Events of Cultural Significance

495. The occupation authorities have also enforced these laws to impede the celebration of anniversaries of cultural significance to ethnic Ukrainians, and have punished those who nonetheless sought to peacefully honor these occasions.

496. Chief among these annual events is the anniversary of the birthday of Taras Shevchenko on 9 March 1814. Shevchenko is a figure of vast cultural significance to the Ukrainian nation: as a poet and writer he is considered by many to be the founder of modern Ukrainian literature. Always an important day in the Ukrainian cultural calendar, the celebration of this day in 2014 was of special significance for the Ukrainian community, as it marked the 200th anniversary of Shevchenko's birth.¹⁰³¹ The ruthlessness with which the attempted celebrations were shut down sent a chilling message to the Ukrainian community about what it could expect from Russian rule.

497. In Simferopol, where a major celebration had been planned, two key organizers – Andrii Shchekun and Anatolii Kovalsky – were detained in broad daylight at the

¹⁰²⁹ Magocsi Report para. 27 (Annex 21).

¹⁰³⁰ Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea Occupied by the Russian Federation, Supplementary Human Dimension Meeting (16–17 April 2015), PC.SHDM.NGO/14/15 (17 April 2015) p. 3 (Annex 810).

¹⁰³¹ Shchekun Statement, para. 19 (Annex 13).

main train station, where they had planned to collect Ukrainian flags.¹⁰³² In his witness statement, Mr. Shchekun describes how he and Mr. Kovalsky were initially stopped by members of the Self Defense Forces, taken to the police, and then passed into the custody of members of the Russian military intelligence agency, the GRU. This was just the beginning of an 11-day ordeal in which they were unlawfully detained, blindfolded and tortured.¹⁰³³

498. The planned celebration in Sevastopol was also disrupted, this time by a group of violent young pro-Russian men, similar to those who would later become familiar at Crimean Tartar cultural gatherings. The events were caught on film by a BBC camera crew whose footage shows the pro-Russian activists picking fights with the Ukrainian attendees, attacking a car driven by a Ukrainian and dragging another into the bushes to beat him.¹⁰³⁴ The pro-Russian group even threatened and chased the international journalists covering the event, but the journalists managed to escape.¹⁰³⁵

499. Subsequent plans to commemorate Shevchenko's birthday in Crimea were also thwarted. In March 2015, authorities refused the application of the Ukrainian Cultural Center to hold a gathering in a central location in Simferopol to commemorate the 201st anniversary of Shevchenko's birth, relegating the event to a peripheral park.¹⁰³⁶ When the

¹⁰³²Shchekun Statement, paras. 19–22 (Annex 13).

¹⁰³³ Shchekun Statement, paras. 22–25 (Annex 13).

¹⁰³⁴ BBC News, *Pro-Ukraine activists beaten up in Crimea* (9 March 2014) archived at <https://www.bbc.com/news/av/world-europe-26504449/pro-ukraine-activists-beaten-up-in-crimea>. See also the video recording of these incidents located at the same link (Annex 1040).

¹⁰³⁵ *Ibid.*

¹⁰³⁶ OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015) para. 140 (Annex 812); Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea Occupied by the Russian Federation, Supplementary Human Dimension Meeting (16–17 April 2015), PC.SHDM.NGO/14/15 (17 April 2015) p. 8 (Annex 810).

event took place at the designated park, the police detained three participants for waving a Ukrainian flag inscribed with the (accurate) statement that Crimea remains part of Ukraine. All three were found guilty of violating public assembly laws by displaying “extremist” symbols.¹⁰³⁷ In March 2016, the planned commemoration could not take place because of the previously described blanket suspension of public events starting from November 2015.¹⁰³⁸ In 2017, the application to hold a commemorative event was simply denied, without any explanation.¹⁰³⁹

500. Attempts by the Ukrainian community to mark other culturally significant events have similarly been denied. For example, the occupying authorities have repeatedly blocked the celebration of Ukrainian flag day on 23 August and have acted against those who attempted to celebrate it. Before the occupation, Crimea residents used to fly Ukrainian flags in different regions of the peninsula and visit public places that house the Ukrainian flag or its colors.¹⁰⁴⁰

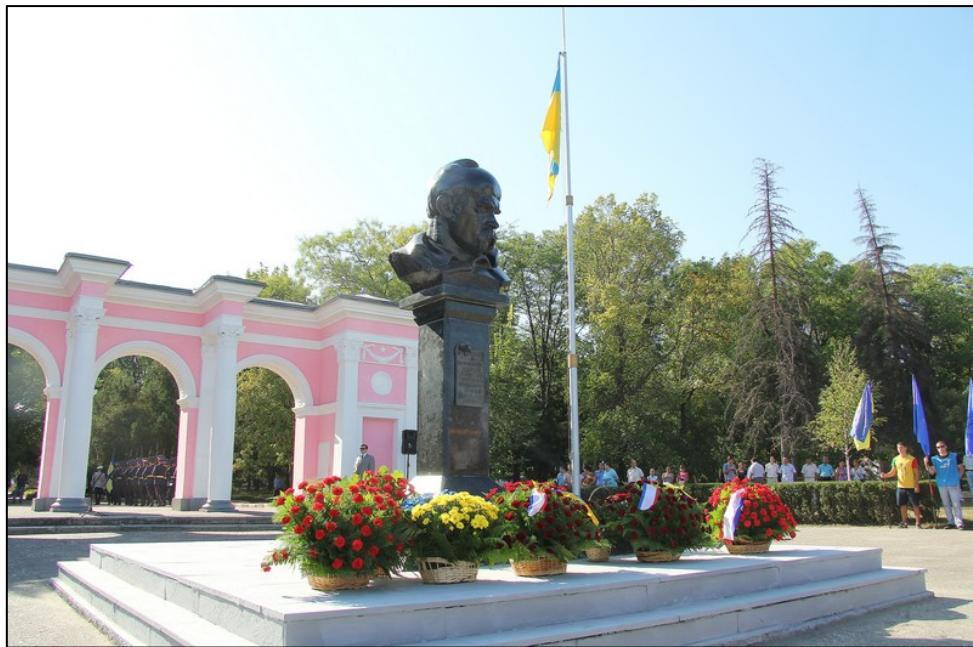
¹⁰³⁷ See OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015) para. 140 (Annex 812).

¹⁰³⁸ Crimean Human Rights Group, Unsanctioned Freedom (May 2017) p. 5 (Annex 961).

¹⁰³⁹ *Ibid.*

¹⁰⁴⁰ Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea Occupied by the Russian Federation, Supplementary Human Dimension Meeting (16–17 April 2015), PC.SHDM.NGO/14/15 (17 April 2015) p. 6 (Annex 810).

Figure 16



A monument to Taras Shevchenko adorned in flowers and the national flag of Ukraine, a site of the 2012 celebration of Ukrainian flag day (Source: Government)

Figure 17



Women in traditional clothing lead the ceremony during the 2012 celebration of Ukrainian flag day (Source: Government)

501. During the 2014 attempted celebration of this day, however, members of the Self Defense Forces detained Sergei Oak, the head of the Adult Intensive Care Department of the Simferopol Perinatal Center, when he tried to visit the monument of Taras Shevchenko

carrying a Ukrainian Flag. Oak was handcuffed and taken to a police station where he was charged with "petty hooliganism" under Article 20.1 of the Code of Administrative Offenses of the Russian Federation, based on the false testimony of the Self Defense Forces members that he had used foul language in a public place.¹⁰⁴¹ Oak was forced to pay a fine of 1,000 Rubles and was subsequently removed from his post as the head of the Adult Intensive Care Department, being demoted to the position of regular doctor instead.¹⁰⁴²

502. The Ukrainian community have also been prevented from celebrating Ukrainian Independence Day. During attempted celebrations of the anniversary in 2014, eight people with Ukrainian flags congregated at the pedestal at the monument of Ukrainian hetman P. Sahadachny. The police detained Viktor Neganov, the organizer of the celebration, and Sergey Kornienko, a participant, both of whom had brought Ukrainian flags to the Sevastopol monument.¹⁰⁴³ They were held at the police department of the Gagarin district of Sevastopol for several hours before being released without charges.¹⁰⁴⁴ According to Neganov, the police threatened him with violence and psychological pressures during his detention.¹⁰⁴⁵

4. The More Favorable Treatment Accorded the Russian Community.

503. The laws used to restrict planned gatherings of Ukrainians and Crimean Tatars, have not been applied in like manner to pro-Russian groups.¹⁰⁴⁶ The occupation

¹⁰⁴¹ *Ibid.*, p. 6.

¹⁰⁴² *Ibid.*, pp. 6-7.

¹⁰⁴³ *Ibid.*, p. 7

¹⁰⁴⁴ *Ibid.*

¹⁰⁴⁵ *Ibid.*

¹⁰⁴⁶ *Ibid.*, p. 2

authorities have consistently approved applications by Russian groups falling short of the statutory criteria — even ones clearly violating the law.¹⁰⁴⁷ For example:

- On 6 June 2014, public gatherings were held in Simferopol to mark the 215th birthday of Alexander Pushkin¹⁰⁴⁸ and to dedicate a monument to Sergius of Radonezh, an important figure in the Russian Orthodox church.¹⁰⁴⁹ These events should have been disallowed under Decree No. 29 of May 2014, which had barred any public gatherings until 6 June 2014, including ones to mark the 70th anniversary of the *Sürgün*.¹⁰⁵⁰
- In February 2015, three political and social groups who support the “Antimaidan” campaign and President Vladimir Putin’s agenda indicated their intention to host a rally to spread their message. The occupying authorities allowed the event to take place in the center of Simferopol, at the intersection of Karl Marx and Pushkin streets, which is not a permitted location for gatherings under the applicable regulations.¹⁰⁵¹ Moreover, the organizers were permitted to drive cars and motorcycles in the pedestrian zone, in direct contravention of the law.¹⁰⁵²
- Pro-Russia groups were permitted to gather for an anti-Turkey rally on 27 November 2015 in the central square of Simferopol, whereas the Mejlis application to mark International Human Rights Day two weeks later was rejected on account of an alleged suspension of mass gatherings that was in place.¹⁰⁵³
- Between 2 and 12 June 2017 — as Crimean Tatars were facing administrative charges and fines for displaying Crimean Tatar flags on 18 May — the

¹⁰⁴⁷ *Ibid.*

¹⁰⁴⁸ See Solemn Meeting of Residents and Guests of Simferopol, Dedicated to the 215th birthday of Alexander Sergeevich Pushkin (6 June 2014), archived at <http://crimea.gov.ru/foto/society/060614> (Annex 1088).

¹⁰⁴⁹ See A Monument “Sergius of Radonezh - the Collector of Russian Land” Was Opened in Simferopol (6 June 2014), archived at <http://crimea.gov.ru/foto/society/0606142> (Annex 1087).

¹⁰⁵⁰ Decree No. 29 on Mass Gatherings in Connection with the Events in Ukraine’s Southeast, Chapters of the Republic of Crimea (16 May 2014) (ordering any mass gatherings in the territory of the Republic of Crimea be prohibited until 6 June 2014) (Annex 890).

¹⁰⁵¹ Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea Occupied by the Russian Federation, Supplementary Human Dimension Meeting (16–17 April 2015), PC.SHDM.NGO/14/15 (17 April 2015) p. 2 (Annex 810).

¹⁰⁵² *Ibid.*

¹⁰⁵³ Mejlis of Crimean Tatars were not allowed to take action in Simferopol to Human Rights Day (11 December 2015) (Annex 1061).

occupation authorities permitted some 60 events all over Crimea to mark a Russian-language festival called “the Great Russian Word.”¹⁰⁵⁴

504. In addition, numerous gatherings have been held every year since 2014 to celebrate events associated with the occupation of Crimea, including gatherings to honor the establishment of the people’s militia (*i.e.*, the Self Defense Forces) on 23 February,¹⁰⁵⁵ and events to mark the anniversary of the illegal referendum on 16 March.¹⁰⁵⁶ On the first anniversary of the occupation, the occupation authorities permitted a week of celebrations, which included singing the Russian national anthem at the parliament of Crimea.¹⁰⁵⁷

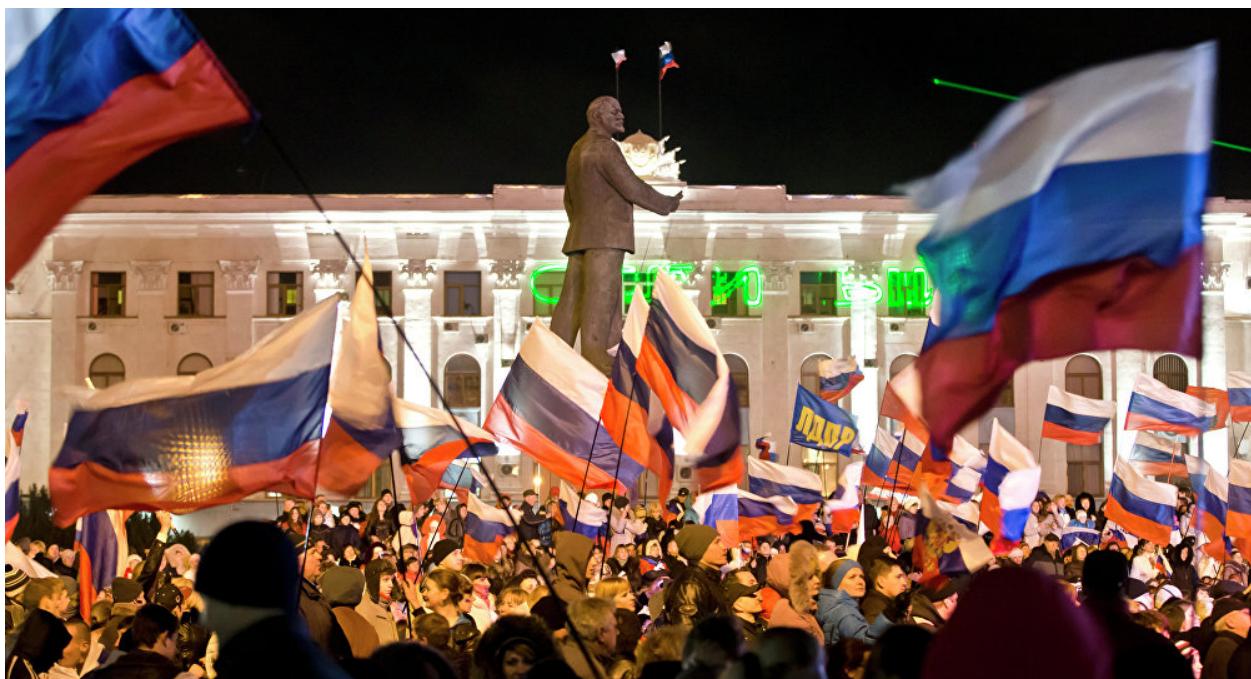
¹⁰⁵⁴ See, e.g., In Yalta the Solemn Opening of the XI International Festival “Great Russian Word” Was Held (6 May 2017), *archived at* <http://crimea.gov.ru/foto/society/050620177>. (Annex 1090); Chairman of the State Council of Crimea Co-Chairman of the Organizing Committee, Program of Events of the Great Russian Word 11th International Festival (16 May 2017) (Annex 1116).

¹⁰⁵⁵ Photos of the first anniversary of the establishment of the People’s Militia(2015) *archived at* <http://crimea.gov.ru/foto/anniversaries/230220155> (Annex 1095). The occupation authorities’ celebrations of the so-called people’s militia are particularly disturbing in light of reports of that this group has carried out widespread attacks, abductions, enforced disappearances, arbitrary detention, torture, and even a summary execution. OHCHR, *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol* (Ukraine) (22 February 2014 to 12 September 2017) paras. 3, 86, 89 (Annex 759).

¹⁰⁵⁶ See Photos of the First Anniversary of the Crimean Spring (16 March 2015), *archived at* <http://crimea.gov.ru/foto/anniversaries/151503> (Annex 1098); Photos of the Anniversary of the General Referendum (16 March 2015), *archived at* <http://crimea.gov.ru/foto/anniversaries/160315> (Annex 1097); Photos of an event celebrating Crimea and Russia (16 March 2015), *archived at* <http://crimea.gov.ru/foto/anniversaries/16032015090316> (Annex 1096); and Photos from a Crimean Spring Photo Exhibition (16 March 2015) *archived at* <http://crimea.gov.ru/foto/society/16032015205> (Annex 1099). Similar events were also held in 2016 and 2017.

¹⁰⁵⁷ RFE/RL, *Russia Celebrates Crimea Annexation Anniversary* (16 March 2015) (Annex 1052).

Figure 18



People celebrate in Lenin Square, Simferopol on 16 March 2016 to mark the second anniversary of the illegal referendum (Source: AP Photo / Vadim Ghirda)

B. Media Restrictions and Harassment

505. The Russian Federation has followed a similar strategy to that used to restrict Crimean Tatar and Ukrainian public gatherings to limit those communities' opportunities to use print and broadcast media to nourish and invigorate their respective cultures. Repressive Russian laws have been extended to occupied Ukraine in violation of international humanitarian law and a registration requirement enforced as a means of excluding potentially critical voices in the Crimean Tatar and Ukrainian media.

506. Before the purported annexation, Crimea's media offerings were diverse, reflecting the multi-ethnic population of the peninsula and its varied needs and interests.¹⁰⁵⁸ This comprehensive array of media allowed individuals to explore and develop their cultural identities, be it through access to media in one's native language or programming geared towards instilling cultural awareness and pride in younger generations. Since March 2014,

¹⁰⁵⁸ Shchekun Statement, paras. 5–8 (describing Ukrainian media outlets before February 2014) (Annex 13); Witness Statement of Lenus Islyamov paras. 2–8 (describing the various media outlets of ATR Holdings operating in Crimea before the purported annexation) (Annex 18).

however, Russia has unlawfully introduced measures that significantly restrict freedom of opinion and expression in Crimea. The apparent purpose and unquestionable effect of these measures has been to burden the free speech rights of the Crimean Tatar and Ukrainian communities in particular.

1. Unlawful Forced Closure of Ukrainian Media

507. Ukrainian TV channels serving Crimea were an early target of the Russian forces that seized control of the peninsula in February and March 2014. The Chernomorskaya Television and Radio Company was the largest independent broadcaster in Crimea prior to the occupation,¹⁰⁵⁹ providing a mixture of Ukrainian- and Russian-language programming. On 3 March 2014, Russian-backed forces shut down Chernomorskaya TV¹⁰⁶⁰ and, a few days later, the station's signal was cut and replaced with that of a Russian station.¹⁰⁶¹ On 28 June 2014, Chernomorskaya TV and other Ukrainian channels were wholly removed from major cable networks in Crimea,¹⁰⁶² thus depriving the Ukrainian community of media outlets that focused on programming of interest to it. The Russian occupation authorities also raided Chernomorskaya TV's premises on 1 August 2014, and seized cameras and computers belonging to the station.¹⁰⁶³ When the seized property was

¹⁰⁵⁹ OSCE, Report by the OSCE Representative on Freedom of the Media (28 November 2013 to 23 May 2014) p. 5 (Annex 806).

¹⁰⁶⁰ *Ibid.*

¹⁰⁶¹ *Ibid.*

¹⁰⁶² OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 111 (Annex 812); OSCE, *OSCE Representative warns of further threats to media pluralism in Luhansk and Crimea, notes threats to media workers* (11 July 2014) (Annex 807). City authorities also took steps to remove Ukrainian television channels from Crimean cable. See RFE/RL, *Crimean City Cuts Off Ukrainian TV Channels* (18 April 2015) (Annex 1055).

¹⁰⁶³ OCSE, *OSCE Representative condemns steps aimed at full silencing of Chernomorskaya TV in Crimea* (4 August 2014) (Annex 808).

returned months later, many cameras had no batteries or memory cards, and the hard drives and sound cards of computers had been removed.¹⁰⁶⁴

508. The Russian occupation authorities have also oppressed Ukrainian-language print media in Crimea. For example, the Russian occupation authorities forced the closure of *Krymska Svitlytsya*, the most significant Ukrainian-language newspaper in Crimea.¹⁰⁶⁵ This newspaper had existed since Ukrainian independence,¹⁰⁶⁶ and was unlawfully evicted from its offices – its departure hastened by the Self-Defense Forces threatening staff to leave the premises immediately.¹⁰⁶⁷

2. Discriminatory Application of Russian Law to Restrict the Operation of Crimean Tatar and Ukrainian Media

i. Russia’s Unlawful Extension to Crimea of Laws Restricting Freedom of Opinion and Expression

509. Since the purported annexation, Russia has unlawfully applied its own laws governing media activities to Crimea, as well as other laws that severely curtail freedom of expression. For example, Russia’s Law on Mass Media requires all “mass media,” defined to include all TV and radio channels as well as print media, to register with the federal authorities before engaging in media activity.¹⁰⁶⁸ The registration regime imposed by this law on all pre-existing media operating in Crimea is more onerous than the licensing

¹⁰⁶⁴ Sergey Zayets et al., THE FEAR PENINSULA: CHRONICLE OF OCCUPATION AND VIOLATION OF HUMAN RIGHTS IN CRIMEA (2015), p. 61 (Annex 976).

¹⁰⁶⁵ See, OSCE, *Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (September 17, 2015) para. 257 (Annex 812).

¹⁰⁶⁶ *Ibid.*

¹⁰⁶⁷ Shchekun Statement, para. 27 (Annex 13).

¹⁰⁶⁸ Law on Mass Media, No. 2124-1 of 27 December 1991, as subsequently amended, Art. 2 (Annex 872).

required of these entities under the Ukrainian law that Russia should have been applying in compliance with IHL.¹⁰⁶⁹

510. As described in Chapter 8, Russia has in addition imposed its own anti-extremism laws in Crimea, including Federal Law No. 114-FZ on Combating Extremist Activities of 25 July 2002 and various similar anti-extremism measures embodied in Russia's Criminal Code. Among the latter, Article 280.1 of Russia's Criminal Code was amended on 28 December 2013 to make "public calls for the violation of territorial integrity of the Russian Federation" a criminal offense, punishable by up to 5 years in prison. Russia's anti-extremism legislation has been severely criticized by the Venice Commission and others as giving the Russian authorities the ability to arbitrarily interfere with freedom of expression.

ii. Russia's Discriminatory Enforcement of Its Laws Against Crimean Tatar and Ukrainian Media Outlets

1. Discriminatory use of re-registration requirement to ban Crimean Tatar media on pretextual grounds

511. After purportedly annexing Crimea, the Russian Federation required all TV and radio stations and all print media to undergo a re-registration process pursuant to its own Law on Mass Media by April 2015.¹⁰⁷⁰ The Russian occupation authorities used this requirement as a pretext to ban disfavored Crimean Tatar media entities for supposed minor defects in their re-registration documents. For example, the Russian occupation authorities

¹⁰⁶⁹ The Freedom House standards rankings for Freedom of the Press in 2017 demonstrate the drastic difference in media laws and freedom in the two countries. Ukraine is given the status of "partly free," earning a score of 53/100 (with 0 being the most free). Russia received an 83, earning the status of "not free." *Freedom of the Press 2017*, FREEDOM HOUSE (6 June 2018), accessed at <https://freedomhouse.org/report/freedom-press/2017/ukraine> (Annex 977) and *Freedom of the Press 2017*, FREEDOM HOUSE (6 June 2018), accessed at <https://freedomhouse.org/report/freedom-press/2017/russia> (Annex 1113).

¹⁰⁷⁰ Federal Law No. 402-FZ (1 December 2014) (Annex 879).

rejected the re-registration application of ATR Television station, as described in the witness statement of Mr. Lenur Islyamov, the owner of ATR Holdings. ATR Television Station had been in operation since 2006, and was the only Crimean Tatar television station in the world.¹⁰⁷¹ It offered programming in the Crimean Tatar language, as well as Russian- and Ukrainian-language programming.¹⁰⁷² The channel emphasized programming that highlighted Crimean Tatar news and culture, but also featured a wide array of programming including political shows and classic films.¹⁰⁷³ It was also the most popular TV channel in Crimea before annexation.¹⁰⁷⁴ As Mr. Islyamov describes, the Russian occupation authorities offered various spurious reasons for denying re-registration to ATR, claiming that the station had paid re-registration fees to the incorrect bank account,¹⁰⁷⁵ failed to submit sufficient information about its shareholders,¹⁰⁷⁶ and failed to properly authenticate documents supporting its application.¹⁰⁷⁷

512. Russian occupation authorities offered some of the same reasons in their repeated rejections of re-registration applications filed by other media entities serving the

¹⁰⁷¹ Andrii Ianitski, *Crimean Tatar TV back on air*, Open Democracy (30 June 2015) (Annex 1058).

¹⁰⁷² Islyamov Statement, paras. 2–3 (Annex 18).

¹⁰⁷³ Islyamov Statement, para. 3 (Annex 18). The station also had its own orchestra, which played weekly televised performances of Crimean Tatar folk music, and organized a children's competition called *TatliSes* ("sweet voice" in Crimean Tatar) that encouraged young Crimean Tatars to learn their native songs, dance, and literary arts. Witness Statement of Lenur Islyamov para. 6 (Annex 18).

¹⁰⁷⁴ Islyamov Statement, para. 8 (Annex 18).

¹⁰⁷⁵ Letter from the Ministry of Telecom and Mass Media of the Russian Federation to ATR Television Company, dated 26 January 2015 (Annex 850).

¹⁰⁷⁶ Letter from the Ministry of Telecom and Mass Media of the Russian Federation to ATR Television Company, dated 6 March 2015 (Annex 855).

¹⁰⁷⁷ Letter from the Headquarters of the Federal Service for Oversight of Telecom, Information Technologies, and Mass Media to ATR Television Company, dated 14 November 2014 (Annex 839).

Crimean Tatar community, including children's television station Lale,¹⁰⁷⁸ the website 15 Minutes,¹⁰⁷⁹ and other outlets.¹⁰⁸⁰ When ATR representatives sought to meet with Crimean media regulators to discuss the re-registration process, the regulators cancelled the meeting on short notice, and did not offer to re-schedule.¹⁰⁸¹ Another major Crimean Tatar media entity to be denied re-registration was Avdet, a newspaper that had been published since 15 July 1990 and specialized in reporting events of interest to the Crimean Tatar community.¹⁰⁸² After the Russian occupation authorities refused re-registration to these entities, they could not lawfully operate in Crimea after 1 April 2015, and they were forced to either shut down or move their operations to mainland Ukraine. These moves significantly restricted Crimean Tatars' access to the media outlets that had historically served the community.¹⁰⁸³

¹⁰⁷⁸ See Letter from the Ministry of Telecom and Mass Media of the Russian Federation to Lale, dated 6 March 2015 (alleging that Lale had failed to submit with its application sufficient information about its shareholders) (Annex 856); Letter from the Ministry of Telecom and Mass Media of the Russian Federation to Lale, dated 27 January 2015 (alleging that Lale had paid its re-registration fee to the incorrect bank account) (Annex 851).

¹⁰⁷⁹ Application dated 19 December 2014 for re-registration of 15 Minutes (Annex 905); Letter from the Ministry of Telecom and Mass Media of the Russian Federation to 15 Minutes, dated 2 February 2015 (alleging that 15 Minutes had paid its re-registration fee to the incorrect bank account) (Annex 853).

¹⁰⁸⁰ See Letter from the Ministry of Telecom and Mass Media of the Russian Federation to Meydan Radio Channel, dated 14 November 2014 (stating that Meydan radio channel had failed to submit properly authenticated documents to support its re-registration application) (Annex 840).

¹⁰⁸¹ Islyamov Statement, para. 26 (Annex 18); Letter from ATR Holdings to Federal Service for Communications, Information, Technologies, and Mass Communications, dated 12 February 2014 (Annex 834).

¹⁰⁸² RFE/RL, *The Editors of the Crimean Tatar Newspaper Are Summoned for Interrogations on Suspicion of Extremism* (3 June 2014) (Annex 1047).

¹⁰⁸³ Islyamov Statement, para. 34 (stating that Russian blocking prevents Crimean residents to access the content of ATR media outlets only through VPN, Facebook, or dedicated applications on smartphone or tablet, as those outlets have been forced to operate from mainland Ukraine) (Annex 18).

513. The United Nations and other international organizations, as well as a variety of NGOs dedicated to media freedom, have reported that the re-registration requirements were applied in a manner that disproportionately disfavored Crimean Tatar media.¹⁰⁸⁴ Ukraine is not aware of any media entities serving the Russian community in Crimea that were denied registration on comparably pretextual grounds.

2. Discriminatory enforcement of Russia's anti-extremism laws to harass and intimidate Crimean Tatar and Ukrainian media outlets

514. The Russian occupation authorities have also abused the arbitrary powers accorded them by Russia's anti-extremism laws to harass and intimidate Crimean Tatar and Ukrainian media. Specifically, the authorities have relied on the recently enacted criminalization of statements against the territorial integrity of the Russian Federation to target Crimean Tatar and Ukrainian media outlets that have questioned the lawfulness of Russia's annexation of Crimea.

515. In 2014, for example, the editor of the Crimean Tatar newspaper Avdet, Shevket Kaybullayev, received repeated warnings from the Russian FSB regarding Avdet's publication of materials that the occupation authorities considered "extremist."¹⁰⁸⁵ In June and September 2014, the FSB admonished Kaybullayev that he could be held accountable if

¹⁰⁸⁴ OHCHR, *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol* (Ukraine) (22 February 2014 to 12 September 2017), paras. 8, 156–157 (Annex 759); OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea* (6–18 July 2015) (17 September 2015) paras. 75–79 (Annex 812); Freedom House, Freedom of the Press: Crimea 2015 (last visited 25 September 2017) (Annex 963); Freedom House, Freedom of the Press: Crimea 2016 (last visited 8 March 2018) (Annex 972); Human Rights Watch, Rights in Retreat: Abuses in Crimea (November 2014) pgs. 2, 25–26 (Annex 943).

¹⁰⁸⁵ Notice about the Inadmissibility of Violations of the Law (3 June 2014), issued to Shevket Kaybullayev by the Federal Security Service of the Russian Federation (Annex 891); Official Notice dated 17 September 2014, issued to Shevket Kaybullayev by the Federal Security Service of the Russian Federation (Annex 897).

Avdet published materials that “creat[ed] conditions favoring” a violation of Russia’s anti-extremism law¹⁰⁸⁶ and expressed concern regarding alleged “concealed” appeals to readers to violate Russian law.¹⁰⁸⁷ Occupation authorities also conducted a 17-hour search of Avdet’s offices in September 2014, paralyzing its operations for the day.¹⁰⁸⁸

516. Like Kaybullayev, the general coordinator of Crimean Tatar media outlet QHA Ismet Yuksel faced personal harassment and persecution by the Russian occupation authorities. On 30 June 2014, the FSB issued a decision to ban Yuksel from Crimea for five years.¹⁰⁸⁹ Yuksel challenged the ban in the Russian courts, but it was upheld.¹⁰⁹⁰

517. The Russian Federation’s suppression and intimidation of individuals associated with Crimean Tatar media outlets continued even after these outlets were banned from the peninsula. For example, on 2 November 2015, occupation authorities carried out searches simultaneously at the home of Mr. Islyamov and the homes of ATR Television Stations’ general director and senior editor.¹⁰⁹¹ This oppression even continued into 2016. Specifically, on 30 May 2016, the Crimean Prosecutors issued a warning to ATR’s deputy

¹⁰⁸⁶ Notice about the Inadmissibility of Violations of the Law (3 June 2014), issued to Shevket Kaybullayev by the Federal Security Service of the Russian Federation (Annex 891).

¹⁰⁸⁷ Official Notice dated 17 September 2014, issued to Shevket Kaybullayev by the Federal Security Service of the Russian Federation (Annex 897).

¹⁰⁸⁸ See OHCHR, Report on Human Rights Situation in Ukraine (15 November 2014) para. 226; Human Rights Watch, *Rights in Retreat: Abuses in Crimea* (November 2014) p. 13 (Annex 943).

¹⁰⁸⁹ See Supreme Court of the Russian Federation (18 November 2015) (upholding the 14 May 2015 decision of the Moscow City Court to reject Yuksel’s appeal); OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 229 (Annex 812).

¹⁰⁹⁰ Supreme Court of the Russian Federation, No. 5-APG15-110s, Ruling (18 November 2015) (upholding the 14 May 2015 decision of the Moscow City Court to reject Yuksel’s appeal) (Annex 912).

¹⁰⁹¹ Islyamov Statement, para. 30–33 (Annex 18).

director Budzhurova regarding her alleged “extremist” views — which arose from her criticism of the arrests of Crimean Tatars on social media.¹⁰⁹²

518. The Russian occupation authorities have also invoked anti-extremism laws to silence media outlets and media representatives that adopt a pro-Ukrainian stance. A particular target for the Russian occupation authorities’ repression has been the Center for Journalist Investigations. As the Russian military began to take control of Crimea in late February 2014, the Center refused to adopt the editorial line encouraged by pro-Russian elements, that this was a spontaneous uprising of the Crimean people desirous of union with the Russian Federation. Instead the Center rigorously documented the Russian takeover and described it, accurately, as a violation of international law. Due to increased harassment and inspections, the Center was forced to move its activities to mainland Ukraine in September 2014, but the Russian Federation continued its attempts to silence the organization.¹⁰⁹³

519. On 13 March 2015, the Russian occupation authorities charged Center journalist Anna Andriyevska with “anti-state activities” based on an article she had authored stating that Crimea was part of Ukraine.¹⁰⁹⁴ The Russian authorities characterized this as questioning the territorial integrity of the Russian Federation. Andriyevska was in Ukraine at the time the charges were entered against her. In her absence, the FSB subjected her family and friends to arbitrary searches and interrogation.¹⁰⁹⁵

520. The same day the charges were made, the Russian occupation authorities raided and searched the home of Andriyevska’s parents, seizing Andriyevska’s old notebooks

¹⁰⁹² See OHCHR, Report on the Human Rights Situation in Ukraine (16 May–15 August 2016) para. 169 (Annex 772).

¹⁰⁹³ Andriyevska Statement, para. 13 (Annex 14).

¹⁰⁹⁴ *Ibid.* paras. 14–15 (Annex 14).

¹⁰⁹⁵ *Ibid.* paras. 16–18 (Annex 14).

and her father's computer.¹⁰⁹⁶ As she had not lived with her parents in over ten years before the time of the search, the clear purpose was to intimidate and harass Andriyevska and her family. Also on that day, the home of Andriyevska's friend and colleague, Center editor Natalia Kokorina, was searched. After the search, Kokorina was detained and taken to the FSB headquarters, where she was interrogated for six hours.¹⁰⁹⁷ In 2016, the Russian Federal Financial Monitoring Service added Andriyevska to its list of terrorists and extremists.¹⁰⁹⁸

521. These non-exhaustive examples are illustrative of the harassment that Crimean Tatar and Ukrainian journalists and media organizations have faced and continue to face in Crimea. A fuller account of the persecution suffered by journalists and media groups from these two communities, prepared by local human rights groups, is annexed to this memorial.¹⁰⁹⁹

C. Degradation of Cultural Heritage

522. The Crimean Tatar and Ukrainian communities have also suffered a more general assault on their respective cultural heritage. For the Crimean Tatars, this has come in the form of the partial destruction of their most important remaining cultural

¹⁰⁹⁶ See Andriyevska Statement, paras. 16–17 (Annex 14); Council of Europe Media Freedom Alert, *Harassment of Journalists Natalya Kokorina and Anna Andrievska in Crimea, Ukraine by Russian Officials* (2 April 2015) (Annex 823).

¹⁰⁹⁷ See Andriyevska Statement, para. 18 (Annex 14); Council of Europe Media Freedom Alert, *Harassment of Journalists Natalya Kokorina and Anna Andrievska in Crimea, Ukraine by Russian Officials* (2 April 2015) (Annex 823).

¹⁰⁹⁸ Andriyevska Statement, para. 19 (Annex 14); List of Organizations and Individuals on which There is Information that They are Involved in Extremist Activity or Terrorism, ROSFINMONITORING [16 May 2018], accessed at <http://www.fedsfm.ru/documents/terrorists-catalog-portal-act> (Annex 926).

¹⁰⁹⁹ Regional Centre for Human Rights, *Ukrainian Helsinki Human Rights Union, and CHROT, Crimea Beyond Rules: Thematic Review of the Human Rights Situation Under Occupation* (2017), pp. 26-40, 77-81 (aNNEX 956); Human Rights Information Centre, *Crimean Tatar Media in Crimea: Situation in 2014 – 2016* (10 April 2017) (Annex 960).

artefact – the Khan’s Palace in Bakhchysarai. For the Ukrainian community, it has taken the form of the progressive closure of virtually all institutions focused on cultural expression in the Ukrainian language.

1. Destruction of the Khan’s Palace

523. The large majority of Crimean Tatar historical sites were destroyed by the Soviet authorities as they sought to wipe the peninsula of any trace of the Crimean Tatar people in the wake of the Sürgün.¹¹⁰⁰ One exception, and by far the most important remaining historical site of this people is the Palace of the Crimean Khans (“the Khan’s Palace”), a complex in Bakhchysarai that dates back to the sixteenth century.¹¹⁰¹ The Palace was originally the primary residence for the monarchs of the Crimean Khanate. But its cultural significance to the Crimean Tatars does not end there — the first Qurultay was held at the Khan’s Palace in 1917 and members of the modern Qurultay swear their oaths of office there.¹¹⁰² In 2013, UNESCO listed the Khan’s Palace as a potential addition to its World Heritage List.¹¹⁰³

524. The integrity of the Palace and the broader historical Preserve of which it forms part has, however, been seriously undermined by a culturally insensitive renovation commissioned and managed by the Crimean authorities. The contractor hired to lead the renovations, ATTA Group, and its subcontractor Kiramet have no experience renovating historical buildings and, in their initial phase of work, have already caused significant

¹¹⁰⁰ Greta Uehling, Genocide’s Aftermath: Neostalinism in Contemporary Crimea, *Genocide Studies and Prevention* 3 (2015) (Annex 1021).

¹¹⁰¹ Ministry of Information Policy of Ukraine, *Save the Khan’s Palace* (2018) p. 1 (Annex 734).

¹¹⁰² *Ibid.*, p. 4.

¹¹⁰³ Tony Wesolowsky, *Facelift Or Farce? ‘Restoration’ Of Palace Shocks Crimean Tatars* (18 February 2018), accessed at <https://www.rferl.org/a/crimea-khan-s-palace-restoration-bakhchisary-shock-tatars-persecutionunesco/29046866.html> (Annex 1073).

damage to the Khan's Palace, to the extent that experts consider this work to be new construction, as opposed to the much less invasive restoration required for historical architecture.¹¹⁰⁴ The depredations visited on the site to date include:

- Destruction beyond repair of the concourse to the complex.¹¹⁰⁵
- Damage to the roof to the mosque in the Preserve by unnecessarily invasive work, with 104 original joists replaced with completely new ones built with modern technology, even though only six actually needed to be replaced and five more restored.¹¹⁰⁶
- Complete replacement of the original oak anti-seismic belt supporting the roof with a completely new one made of incongruous concrete and metal.¹¹⁰⁷
- The stripping and discarding of historical handcrafted tiles ("Tatarka") from the roof of the mosque in the Khan Palace's complex and their replacement by modern Spanish tiles.¹¹⁰⁸
- Damage to the interior of the mosque because of a failure to adequately protect it from moisture during work on the roof.¹¹⁰⁹

525. In sum, "[t]he large- scale replacement of wooden structural elements with modern materials is not consistent with the construction principles of the Crimean Tatar khanate, subverts the historical accuracy of the entire ensemble, and causes irreparable

¹¹⁰⁴ A.E. Antoniuk, National Coordinator of International Center for the Study of the Preservation and Restoration of Cultural Property in Ukraine, Letter No. 12 (April 2018) (Annex 1030).

¹¹⁰⁵ Center of Monument Studies, "Restoration" of the Great Khan Mosque (Biyuk Khan-Djami) in Bakhchisaray: on the Tile Roofing (14 March 2018) p. 1 (Annex 1031); Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) pp. 7, 19 (Annex 734)

¹¹⁰⁶ Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) p. 8 (Annex 734).

¹¹⁰⁷ A.E. Antoniuk, National Coordinator of International Center for the Study of the Preservation and Restoration of Cultural Property in Ukraine, Letter No. 12 (April 2018) (Annex 1030); Center of Monument Studies, "Restoration" of the Great Khan Mosque (Biyuk Khan-Djami) in Bakhchisaray: on the Tile Roofing (14 March 2018) p. 1 (Annex 1031); Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) p. 11 (Annex 734).

¹¹⁰⁸ Center of Monument Studies, "Restoration" of the Great Khan Mosque (Biyuk Khan-Djami) in Bakhchisaray: on the Tile Roofing (14 March 2018) p. 1–7 (Annex 1031); Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) p. 10-11 (Annex 734).

¹¹⁰⁹ Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018). p. 13–14 (Annex 734).

damage to the history and culture of the Crimean Tatars as a nation.”¹¹¹⁰ With a second phase of renovation affecting the most important part of the complex, the main house, due to begin soon, the Crimean Tatar community is understandably deeply concerned at the further damage that may be inflicted on its most prized historical site. The harm inflicted on the site to date has prompted no intervention by the director of the complex, a former prosecutor in Luhansk who is neither a Crimean Tatar nor a Muslim.

526. The Crimean Tatar community’s efforts to have ATTA Group and Kiramet removed from the renovation project have been rebuffed by the Crimean courts.¹¹¹¹ Yet when the same companies were engaged to renovate objects of cultural importance to the ethnic Russian community, the Lenin District court in the Rostov Oblast did not hesitate to intervene, finding that they had violated renovation standards in their work on the Aivazovsky House cultural heritage site in Feodosia in 2017.¹¹¹²

2. Harassment and Closure of Ukrainian Cultural Institutions

527. Meanwhile, Ukrainian culture in Crimea is under siege across the board. As the witness testimony of Mr. Andrii Shchekun indicates, prior to the Russian occupation of Crimea, Crimea-based NGOs were instrumental in promoting Ukrainian-language newspapers and the broadcasting of television programs in Ukrainian.¹¹¹³ The Russian occupation authorities have cracked down especially harshly on activists promoting

¹¹¹⁰ A.E. Antoniuk, National Coordinator of International Center for the Study of the Preservation and Restoration of Cultural Property in Ukraine, Letter No. 12 (April 2018) (Annex 1030).

¹¹¹¹ Zheleznodorozhny District Court of Simferopol of the Republic of Crimea (dismissing the claim by the former director against the contractor and sub-contractor for lack of standing without addressing the harms of the construction work to this cultural heritage) (Annex 930).

¹¹¹² Judgment in an administrative offence case, 11 October 2017, Rostov-on-Don, Case No. 5-438/17 (Annex 925).

¹¹¹³ See Shchekun Statement, paras. 5–6 (Annex 13).

Ukrainian culture. As previously described, Mr. Shchekun himself was kidnapped with a colleague in March 2014, subjected to ten days of unlawful detention, blindfolded and tortured, before eventually being released.¹¹¹⁴

528. Other Ukrainian cultural activists in Crimea have also been harshly dealt with. In May 2015, Leonid Kuzmin founded the Ukrainian Cultural Centre in Simferopol with the express mission of preserving Ukrainian language and culture on the peninsula.¹¹¹⁵ The Centre published a Ukrainian-language newspaper under the title “Krymsky Teren” featuring stories about Ukrainian culture. With a print run of approximately 500 copies, Krymsky Teren was the only Ukrainian-language newspaper in circulation in Crimea following the Russian occupation.¹¹¹⁶ Mr. Kuzmin and his fellow staff at the Centre were, however, subjected to unremitting harassment by the Russian security services in Crimea, involving frequent arrests and the threat of criminal charges . As one NGO report in March 2017 stated:

Four members of the Ukrainian Cultural Centre have been subjected to FSB interrogation in a move that seems clearly aimed at intimidation and at labelling any pro-Ukrainian activities however unpolitical, as “extremist.” One of the original founders of the Centre has been driven out of Crimea and is now facing charges effectively for opposing annexation, while another activist is threatened with possible criminal charge for a photo on her social network page with a Ukrainian flag.¹¹¹⁷

¹¹¹⁴ *Ibid.*, para. 23–25 (Annex 13).

¹¹¹⁵ Interfax, FSB Detains Activist of Ukrainian Cultural Center in Crimea (12 January 2017) (Annex 1074).

¹¹¹⁶ Hromadske International, *The True Cost of Remaining Ukrainian in Crimea* (2 April 2018), accessed at <https://en.hromadske.ua/posts/exclusive-the-true-cost-of-remaining-ukrainian-in-crimea> (Annex 1076).

¹¹¹⁷ Kharkiv Human Rights Protection Group, Menacing FSB Interrogations of Ukrainian Cultural Centre Activists in Russian-Occupied Crimea (23 March 2017), accessed at <http://khpg.org/en/index.php?id=1490184936> (Annex 937).

The Ukrainian Cultural Centre was ultimately forced to close and, with it, Crimea's sole Ukrainian-language newspaper.

529. Ukrainian cultural entities elsewhere in Crimea are withering. The Lesya Ukrainka museum in Yalta, for example, was dedicated to the famous nineteenth and twentieth century Ukrainian writer, activist, and feminist who had lived for some time in Yalta, Crimea. The museum shut down in 2016 for renovation; when it reopened, the museum's collection of Ukrainka's items had been diminished from an entire floor to a small corner of the building.¹¹¹⁸

530. In Simferopol, a Ukrainian-language children's drama school was forced to shut down after local officials accused the school of promoting Ukrainian nationalism and western symbols. The ire of the officials was triggered when the school staged a work by a Crimean author titled "Songs of the Amazon." According to one account:

[Co-founder] Polchenko said officials interpreted political undertones throughout the performance, taking particular offence at the costume of a young girl wearing a golden crown and impersonating the sun, which he says they saw as a reference to New York's Statue of Liberty.

...

... "They also described the embroidered clothing and the Ukrainian-language scenario as brazen Ukrainian nationalism."¹¹¹⁹

531. Without activists to champion the cause of Ukrainian culture, it is becoming harder for Ukrainians in Crimea to express themselves culturally. Even speaking publicly in Ukrainian has become suspect. As one journalist notes:

¹¹¹⁸ See *infra* note 1121.

¹¹¹⁹ The Guardian, *Crimea Children's Theatre Forced to Shut for 'Promoting Western Propaganda* (6 January 2016) (Annex 1075).

Finding a place to talk to journalists, especially in Ukrainian, is problematic. Many people worry that the hotels are unreliable (you could be overheard at any point.). In the cafes, there are too many onlookers while speaking Ukrainian on a bus, taxi or café could attract unwanted attention; it would be an indicator of dissent, a political stance.¹¹²⁰

532. The stigmatization of the Ukrainian language and speakers of it indicates the extreme pressure that Ukrainian identity is under in Crimea as a result of the Russian Federation's discriminatory policies.

D. Suppression of Minority Education Rights

533. A strategy of cultural erasure would not be complete without measures to prevent the target culture being passed on to future generations through the educational system. Accordingly, the Russian occupation authorities have worked overtly and covertly to limit opportunities for Crimean children to be taught in the Crimean Tatar or Ukrainian languages. This has been accompanied by a new emphasis on Russian as the dominant language of tuition and a reorientation of both the curriculum and educational qualifications towards Russia.

534. Since March 2014, the Russian Federation has introduced a number of measures in Crimea that significantly inhibit the education and training of Ukrainians and Crimean Tatars. The apparent goal has been erasing non-Russian cultures from Ukraine's history. The unquestionable purpose and effect of these measures has been to exclude Ukrainian and Crimean Tatar culture and history from education as a general matter, as well as to decrease the quality and availability of education specific to the Ukrainian and Crimean Tatar communities in Crimea.

¹¹²⁰ *Ibid.*

1. Restricting Crimean Tatar and Ukrainian language education

535. From Ukraine's independence in 1991, Crimeans expressed their patriotism and their now-recognized freedom of expression by returning to their cultural roots. In Soviet times, students had no choice but to be educated in Russian. After independence, Crimea saw a growing demand for education in both the Ukrainian and Crimean Tatar languages. The first school in Crimea to primarily teach in Crimean Tatar opened in 1993.¹¹²¹ By 1998, only five years later, that number of Crimean Tatar educational institutions quickly rose to six. Likewise, the first school in Crimea to teach primarily in Ukrainian opened in 1997. Five years later, four schools used Ukrainian as the language of instruction.¹¹²²

536. Families' desire for their children to be instructed in their native language only strengthened with time. Native language education continued to grow, and schools that offered instruction in several languages also became more popular.¹¹²³ Whereas only 82 students were educated in Ukrainian in Crimea a year after independence, 12,694 were learning in Ukrainian by 2014. 278 pupils learning in Crimean Tatar a year after independence grew to 5,551 by 2014.¹¹²⁴ Before February 2014, numerous programs for multi-ethnic and multi-lingual education were developed and implemented in Crimea.¹¹²⁵ These programs are described in the witness statement of Yulia Tyshchenko, who was

¹¹²¹ Education Statistics from Ministry of Education of Ukraine (Annex 735).

¹¹²² *Ibid.*

¹¹²³ In his witness statement, Shchekun describes the various language offerings of the 571 comprehensive schools in Crimea before the occupation, and the distribution in language of instruction at that time. Shchekun Statement, paras. 30–31 (Annex 13).

¹¹²⁴ Education Statistics from Ministry of Education of Ukraine (Annex 735); *see also* Shchekun Statement, para. 8 (noting that Crimean schools were receptive to increasing their Ukrainian-language and Ukrainian cultural offerings prior to February 2014) (Annex 13).

¹¹²⁵ Tyshchenko Statement, paras. 4–17 (Annex 17).

actively involved in these programs from 2008 to early 2014, in collaboration with the OSCE High Commissioner for National Minorities and other organizations.¹¹²⁶

537. In June 2014, the Crimean Ministry of Education signaled the coming assault on the increasing demand for minority language teaching, declaring that studying the Crimean Tatar and Ukrainian languages “must not be conducted at the expense of instruction and study of the official language of the Russian Federation,” *i.e.* Russian.¹¹²⁷ More recently, the Governor of Sevastopol, Sergey Meniaylo, displayed his disregard for Crimean Tatar language education in an 18 March 2016 interview. In this interview, Meniaylo acknowledged Crimean Tatars’ concerns that they were forgetting their own language under the Russian occupation regime, and replied “[e]xcuse me, friends, speak your own language with your family.”¹¹²⁸

538. Consistent with such statements, many Crimean parents have found that their requests for Ukrainian or Crimean Tatar language instruction have been ignored by the Russian occupation authorities. Other parents have felt unsafe even making such requests.¹¹²⁹ At community meetings, school directors have reportedly attempted to dissuade parents from seeking to have their children educated in Ukrainian by arguing that the language will decrease the child’s opportunities for higher education and employment.¹¹³⁰

¹¹²⁶ *Ibid.*

¹¹²⁷ Republic of Crimea, Ministry of Education, Science and Youth, Letter No. 01-14/ 382 (25 June 2014) (Annex 836).

¹¹²⁸ Interview with Sergey Meniaylo, the Governor of Sevastopol published on Meduza.ru on (18 March 2016) (Annex 1062).

¹¹²⁹ OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 190 (Annex 812); Tyshchenko Statement, para. 25–27 (Annex 17).

¹¹³⁰ Ukrainian Center for Independent Political Research, “*Annexed*” *Education in Temporarily Occupied Crimea*, Monitoring Report 2015, para. 23 [hereinafter UCCIP 2015 Monitoring report] (Annex 944); Tyshchenko Statement, para. 25–27.

539. In fact, the CERD Committee itself has expressed concern about treaty violations caused by restrictions that the Russian Federation has placed on education in Crimea. In particular, the CERD Committee took note of the restrictions that the Russian Federation had imposed on using and studying the Ukrainian language in Crimea since 2014. The CERD Committee recommended that the Russian Federation, in light of its obligations under the CERD, take effective measures to ensure that the Ukrainian language is used and studied without interference.¹¹³¹

2. Decrease in the number and quality of Crimean Tatar and Ukrainian schools in Crimea.

540. The Russian Federation's actions have significantly decreased the number of schools in Crimea that currently serve the Ukrainian population, and the number of Ukrainians in Crimea currently enrolled in Ukrainian schools there. In the 2013–14 school year, general education in the Ukrainian language was provided to 12,694 children.¹¹³² In the following school year — the first year after the occupation began — the number of children

¹¹³¹ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Russian Federation, CERD/C/RUS/CO/23-24 (20 September 2017), paras. 19, 20 (Annex 804).

¹¹³² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2015), para. 157 (Annex 770); see also Permanent Delegation of the Russian Federation to UNESCO, *Information on the Situation in the Republic of Crimea (the Russian Federation) within the Scope of UNESCO Competence as of April 8, 2015* (14 April 2015), p. 2 (Annex 785).

receiving Ukrainian-language education plummeted to 2,154.¹¹³³ In the 2015–16 school year, that number was cut in half, reduced to less than 1,000 students.¹¹³⁴

541. At present, 318 students are reportedly educated in Ukrainian, a mere 0.2 percent of children attending public schools in Crimea.¹¹³⁵ The number of children learning Ukrainian as an elective subject has decreased by 50 percent since the occupation began.¹¹³⁶ As the U.N. reported in December 2016, of the seven Ukrainian-language educational institutions that existed in Crimea until 2014, only *one* remains in operation, and even this school has ceased instruction in Ukrainian in the first and second grades.¹¹³⁷

¹¹³³ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2015), para. 157 (Annex 770). The Russian Federation has admitted this decrease, and in fact reported a lower number (1,990) for the 2014–15 school year. See Permanent Delegation of the Russian Federation to UNESCO, *Information on the Situation in the Republic of Crimea (the Russian Federation) within the Scope of UNESCO Competence as of April 8, 2015* (14 April 2015) p. 2 (Annex 785).

¹¹³⁴ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–15 November 2015), para. 157 (Annex 770).

¹¹³⁵ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 November 2017–15 February 2018), para. 126 (Annex 779).

¹¹³⁶ *Ibid.*

¹¹³⁷ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine* (16 August–5 November 2016), para. 180 (Annex 773).

Map 15: Suppression of Ukrainian Schools in Crimea since February 2014



542. Consistent with these figures, parents report that the Ukrainian-language schools that their children previously attended in Crimea are simply being switched over to Russian-language institutions. For example, one father reported that his two children had to stop their education in the Ukrainian language in Simferopol in September 2014.¹¹³⁸ At that time, his son's 9th grade class – which had been in Ukrainian previously – was divided into two smaller Russian-language classes.¹¹³⁹ His daughter's classes, also previously in

¹¹³⁸ Tanya Cooper & Yulia Gorbunova, *Russia is Violating Crimeans' Rights*, Kyiv Post (3 May 2017) (Annex 1065).

¹¹³⁹ *Ibid.*

Ukrainian, were likewise made Russian-language classes in September 2014 after several Russian-speaking children were added to the class.¹¹⁴⁰ This man sent his son to school in mainland Ukraine, but the daughter continues to be educated in Crimea in Russian.¹¹⁴¹

543. As set forth below, the dire situation of Ukrainian language education has not improved, despite this Court’s 19 April 2017 Provisional Measures Order that required the Russian Federation to “[e]nsure the availability of education in the Ukrainian language.” In fact, Russian suppression of minority schools is not a new phenomenon, and the CERD Committee observed as early as 1996 that “[s]everal minority and indigenous groups [in Russia] have no access to education in their own language.”¹¹⁴²

544. Although the *number* of students receiving education in Crimean Tatar schools has remained relatively steady since the Russian occupation of Crimea began, the *quality* of education provided at these schools had decreased significantly. As set forth in the statement of Ms. Tyshchenko, the Russian occupation authorities failed to provide textbooks to Crimea Tatar schools until the 2017-2018 school year, more than three years after the annexation of Crimea.¹¹⁴³ Those textbooks that were provided present a heavily russified version of history, portray Stalin as a hero — despite his 1944 deportation of the Crimean Tatars — and minimize discussions of the *Sürgün*.¹¹⁴⁴ Far from being truly supportive of

¹¹⁴⁰ *Ibid.*

¹¹⁴¹ *Ibid.*

¹¹⁴² Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Russian Federation, CERD/C/304/Add.5 (28 March 1996), para. 7; see also para. 16 (“The State Party should take all appropriate measures to ensure the promotion of minority and indigenous people’s languages. The Committee recommends that education programmes be provided in the appropriate languages.”) (Annex 795).

¹¹⁴³ Tyshchenko Statement, para. 21 (Annex 17).

¹¹⁴⁴ *Ibid.* para. 22.

Crimean Tatar education, such textbooks provided by the Russian Federation are an affront to the Crimean Tatar community and demonstrate the depths of its discriminatory actions.¹¹⁴⁵

3. Creation of an artificial teacher shortage

545. Separately, the Russian occupation authorities have manufactured a shortage of teachers to provide instruction in Ukrainian and Crimean Tatar languages in Crimea, ensuring that those schools which remain in existence cannot provide proper education to their students. To achieve this artificial teacher shortage, the Russian Federation ended a number of teacher-training programs that had been in existence in Crimea since the mid-1990s. Specifically, in Fall 2014, the Russian occupation authorities closed the Ukrainian Philology Faculty of the Tavrida National VI Vernadsky University.¹¹⁴⁶ This faculty had previously graduated about 50 Ukrainian-language teachers per year, but in the 2014-2015 academic year, only about 15 students were accepted to become Ukrainian-language teachers.¹¹⁴⁷

546. As described in the statement of Ms. Tyshchenko, the closure of this faculty is a significant blow to Ukrainian language education in Crimea. This faculty had been established in the mid 1990s, and had served as a strong basis to ensure that Ukrainian language education was available to those in Crimea who sought it.¹¹⁴⁸ The Russian

¹¹⁴⁵ *Ibid.* paras. 22, 24 (describing school games in which Crimean Tatar schoolchildren are asked to draw their parents wearing Russian traditional dress and the frequent lectures in Crimean schools about fighting “Islamic Extremism.”).

¹¹⁴⁶ OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 191 (Annex 812); UCCIP 2015 Monitoring Report para. 7 (Annex 944).

¹¹⁴⁷ SCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), para. 191 (Annex 812); Tyshchenko Statement, paras. 13, 19 (Annex 17).

¹¹⁴⁸ Witness Statement of Tyshchenko paras. 13, 19 (Annex 17).

occupation authorities have also shrunk the Ukrainian-English program the Crimean Polytechnic Pedagogic University, which had about 240 students before February 2014, but now has only 40 students, all of whom are studying Russian.¹¹⁴⁹

547. By July 2015, the Russian occupation authorities had taken a similar step with respect to Crimean Tatar language teachers. Specifically, the Russian Federation cancelled the basic training for Crimean Tatar language teachers that was previously carried out by the Crimean Polytechnic-Pedagogic University and Philology School of Tavrida National V.I. Vernadsky University.¹¹⁵⁰ Like its Ukrainian-language counterpart, this program for the training of Crimean Tatar language teachers had been established in the mid-1990s, and was part of the efforts by the Ukrainian government to revitalize the Crimean Tatar language after years of oppression under Soviet rule.

548. The Russian Federation's purpose in cancelling these programs — promoting Russian-language education — was made plain in August 2014, when the Russian occupation authorities ordered that 300 Ukrainian language and literature teachers would be retrained to teach Russian.¹¹⁵¹

4. Discriminatory searches of Crimean Tatar schools.

549. The Russian occupation authorities have disrupted Ukrainian and Crimean Tatar education in Crimea by carrying out intrusive searches of schools and educators serving these communities. On 24 June 2014, for example, a particularly intrusive search

¹¹⁴⁹ Witness Statement of Yulia Tyshchenko para. 19 (Annex 17).

¹¹⁵⁰ OSCE, Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015) (17 September 2015), para. 291 (Annex 812).

¹¹⁵¹ Republic of Crimea, Ministry of Education, Science, and Youth, Order No. 116 of 6 August 2014 (Annex 893); Witness Statement of Yulia Tyshchenko para. 20 (Annex 17); *see also* UCCIP 2015 Monitoring report p. 7 (discussing Ministry of Education of the Republic of Crimea [Decree] No. 132 of 29 August 2014) (Annex 944).

was carried out at a religious school in the village of Kolchugino near Simferopol.¹¹⁵² The search was carried out by some 30 armed FSB agents and policemen, who forcibly entered the school and spent around 5 hours searching the school, the library, and students' personal possessions. They confiscated school computers and memory sticks, and then searched the home of the school's deputy director. Similar searches have taken place at numerous other Crimean Tatar schools, and other school officials have likewise faced retaliation for providing education to this community.¹¹⁵³ Ukrainian schools in Crimea have also been raided and Ukrainian textbooks have been confiscated by the occupation authorities.¹¹⁵⁴

5. Biased teaching of history in remaining schools

550. More generally, Crimean schools have been affected by the Russian Federation's biased teaching of history, which — in the words of the PCIJ — prevents the ethnic Ukrainian and Crimean Tatar communities from preserving their traditions and their national characteristics. Perhaps most notably, the history of Ukraine and Ukrainian literature has disappeared from the list of humanitarian disciplines offered in Crimean schools.¹¹⁵⁵ Before the purported annexation of Crimea, by contrast, all students at

¹¹⁵² Human Rights Watch, *Rights in Retreat* (November 2014), p. 17 (Annex 943).

¹¹⁵³ See, e.g., Council of Europe, *Report by Nils Muižnieks Following his mission in Kyiv, Moscow, and Crimea from 7 to 12 September 2014* (Oct. 27, 2014), para. 21 (stating that by mid-September 2014, searches had been carried out in 8 out of 10 religious schools, madrasas, belonging to the Spiritual Directorate of the Muslims of Crimea, Dukhovnoe Upravlenie Musulman Kryma) (Annex 822); OSCE, *Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015)* (17 September 2015), paras. 242-43 (stating that three Madrassas in Simferopol, the Education Centre on Victory Avenue, a women's madrassa in Kamenka and Seit-Settar madrassa were searched between June and September 2014) (Annex 812); Tyshchenko Statement, para. 22 (describing a raid on 9 September 2014 at a preparatory school for the gifted in Taknove, Bakhchysarai District, Crimea) (Annex 17).

¹¹⁵⁴ UCCIP 2015 Monitoring Report, p. 24 (Annex 944).

¹¹⁵⁵ *Ibid.* pp. 5, 13 (Annex 944); Tyshchenko Statement, para. 24 (Annex 17).

comprehensive schools in Crimea studied Ukrainian language and literature.¹¹⁵⁶ Omitting Ukrainian history from Crimean education effectively extinguishes the Ukrainian community as a distinct culture in Crimea, by denying its very existence.

551. The history of Crimean Tatars as a distinct ethnic group is also absent from Crimean school curricula under the Russian occupation regime. As set forth in the statement of Ms. Tyshchenko, the Russian Federation's history curriculum seeks to show that Crimea is part of the great Russian empire; and Crimean Tatar culture, as distinct to this ethnic group, is simply not part of the story that the Russian occupation authorities wish to teach Crimean students.

552. The history of the Crimean peninsula itself is also lacking from general history courses in Russian-occupied Crimea, apart from the events of March 2014.¹¹⁵⁷ The account of the annexation of Crimea presented to students on the peninsula is highly russified, seeks to “emphasize the feasibility of Crimea’s annexation from the viewpoint of international law, moral and ethical norms.”¹¹⁵⁸ Even general history classes were reoriented toward a pro-Russian ideology, and teachers are encouraged to incorporate teaching materials that seek to legitimize the annexation of Crimea.¹¹⁵⁹

553. Creative writing contests for Crimean students under the Russian occupation regime are also russified. For example, Crimean students are asked to write poetry about the “Crimean Spring”¹¹⁶⁰ and compete in essay contests on “my contribution to the future of a

¹¹⁵⁶ Shchekun Statement, para. 32 (Annex 13).

¹¹⁵⁷ UCCIP 2015 Monitoring report, p. 13 (Annex 944).

¹¹⁵⁸ *Ibid.*, p. 14 (Annex 944).

¹¹⁵⁹ *Ibid.*, pp. 5, 12 (Annex 944).

¹¹⁶⁰ *Ibid.*, p. 29 (Annex 944).

Russian Crimea.”¹¹⁶¹ As described in the statement of Ms. Tyshchenko, Crimean Tatar children are asked in school to depict their parents in traditional Russian dress. Such contests suppress Ukrainian and Crimean Tatar cultural identity in education and training, while championing Russian identity, in violation of the CERD.

554. The Russian Federation is well aware of its obligations to avoid such biased teachings under the CERD. In 2012, the Russian Federation acknowledged to the CERD Committee that “[s]upport for education with an ethnic focus plays a major role in preserving ethnic identity.”¹¹⁶² The CERD Committee has already recognized that the Russian Federation is not taking sufficient steps to support education in a manner that preserves ethnic identity, however, and encouraged the Russian Federation in 2017 to ensure that “history education [is] taught in such a way as to prevent a dominant historical narrative and ethnic hierarchizing.”¹¹⁶³ As the foregoing makes plain, the Russian Federation has clearly implemented a programme of education in Crimea that presents a dominant (Russian) historical narrative, contrary to the admonition of the CERD Committee and in violation of Article 5(e)(v).

¹¹⁶¹ See Ministry of Education, Science and Youth of the Republic of Crimea, *Order No. 41 of 15 January 2015 “On holding in 2018 the republican contest for the best essay in the official languages of the Republic of Crimea ‘My contribution to the future of a Russian Crimea,’”* <http://monm.rk.gov.ru/file/scan01300720180115173945.pdf> (Annex 906).

¹¹⁶² Russian Federation, Reports submitted by States parties under article 9 of the Convention, Twentieth to twenty-second periodic reports of States parties due in 2012, Russian Federation, CERD/C/RUS/20-22 (6 June 2012), para. 336 (Annex 793).

¹¹⁶³ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Russian Federation, CERD/C/RUS/CO/23-24 (20 September 2017), paras. 31-32 (Annex 804).

6. Reorientation of Crimean educational system towards Russian higher education system.

555. More generally, the Russian occupation authorities have reoriented the Crimean educational system towards the Russian higher education system, coercing Crimean families to enroll their children in Russian-focused elementary education so as to prepare them for entry into the Russian higher-education system.

556. On 5 May 2014, the Russian Federation implemented a new law — contrary to the law of occupation — that brought Crimean education qualification levels into conformity with those in place in the Russian Federation, and established a process for admitting graduates of Crimean schools to Russian universities.¹¹⁶⁴ Russian occupation authorities also shifted Crimean schools toward the use of the five-point Russian grading scale, and away from the twelve-point European scale, thereby virtually assuring that they must study at Russian higher education institutions, rather than Ukrainian institutions.¹¹⁶⁵

557. The re-alignment of Crimean schools goes beyond mere qualification levels and grading scales, however, and permeates all aspects of the educational system. For example, the stated objective of an 18 December 2014 decree by the Russian occupation authorities was to ensure implementation in Crimea “a public policy on patriotic upbringing by accelerating efforts to close the gap between the common Russian and local practices in terms of the ideological, content-specific, and methodological aspects.”¹¹⁶⁶ This decree goes

¹¹⁶⁴ UCCIP 2015 Monitoring Report, p. 15 (Annex 944)

¹¹⁶⁵ *Ibid.*, pp. 30–31 (Annex 944); Witness Statement of Yulia Tyshchenko para 26 (Annex 17).

¹¹⁶⁶ Decree of the Head of the Republic of Crimea, Approving the Concept of Patriotic, Spiritual and Moral Upbringing of the Population in the Republic of Crimea (18 December 2014) (Annex 894); UCCIP 2015 Monitoring report, p. 26 (Annex 944).

on to set forth the necessary steps to ensure that Crimean children have the appropriately “patriotic” upbringing with respect to culture, history, and morals.¹¹⁶⁷

558. Even school holidays in Crimea have become russified, with mandatory celebrations of Russian Constitution Day, the Day of Heroes of the Fatherland, the Day of Russian Elections, among other Russia-centric holidays.¹¹⁶⁸ Meanwhile, teachers are encouraged to report Crimean Tatar children who are absent from school on 18 May, the date of the Crimean Tatars’ traditional remembrance of the *Sürgün*.¹¹⁶⁹

559. It is hard to imagine a more brutal choice than to either leave your child uneducated or to allow him or her to be entirely indoctrinated into a foreign culture. The many steps taken toward general reorientation of the educational system away from Ukraine and towards Russia, are both inconsistent with the Russian Federation's obligations as an occupying power and discriminatory towards the Crimean Tatar and, even more so, the Ukrainian communities. Those communities are characterized by their common desire to be part of the Ukrainian political and socio-economic space. Radically shifting the Crimean educational system towards Russia alters the choices of future generations, deprives Crimean Tatars and Ukrainians of future educational and job opportunities in their preferred country, and since the Russian occupation began, has forced many Crimean families to relocate to mainland Ukraine in order to preserve the vestiges of their native culture..

¹¹⁶⁷ Decree of the Head of the Republic of Crimea, Approving the Concept of Patriotic, Spiritual and Moral Upbringing of the Population in the Republic of Crimea (18 December 2014) (Annex 894).

¹¹⁶⁸ UCCIP 2015 Monitoring Report, p. 27 (Annex 944).

¹¹⁶⁹ Tyshchenko Statement, para. 22 (Annex 17).

Section B: The Russian Federation Has Breached Its Obligations Under the Convention on the Elimination of All Forms of Racial Discrimination

560. Section A described the actions taken by the Russian Federation in Crimea that form the basis for Ukraine's claims under the CERD. This section will explain how those actions violate Russia's obligations under the Convention. Chapter 11 describes the core principles of non-discrimination and equality before the law embodied in the Convention and establishes that the Crimean Tatars and Ukrainians in Crimea are protected ethnic groups under the CERD. Chapter 12 addresses in sequence the specific CERD provisions implicated by the Russian Federation's conduct in Crimea and describes how that conduct violates each provision.

561. The Russian Federation has already acknowledged in this proceeding that the CERD applies in Crimea.¹¹⁷⁰ Yet the overall picture presented in this section is one of total Russian contempt for its solemn obligations to seek to eliminate all forms of racial discrimination.

Chapter 11. CERD's MEANING AND APPLICABILITY IN THE PRESENT CASE

562. The prohibition against racial discrimination elaborated in the CERD is one of the fundamental protections of international human rights law. The UN Charter states in its opening article that one of the purposes of the United Nations shall be to "promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without

¹¹⁷⁰ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Verbatim Record (7 March 2017), p. 54, para. 4 (Lukiyantsev) ("Russia does not dispute the applicability of CERD in the territory of Crimea.").

distinction as to race, sex, language or religion.”¹¹⁷¹ Three years later, in 1948, the Universal Declaration of Human Rights (“UDHR”) set out as one of its guiding principles that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race ...”¹¹⁷² The CERD was adopted by the General Assembly on 21 December 1965, the first of several universal human rights treaties elaborating on the principles set forth in the UN Charter and UDHR.¹¹⁷³ At its heart lies the obligation on every State Party to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.”¹¹⁷⁴ Today, the prohibition of racial discrimination is recognized as a peremptory norm of general international law.¹¹⁷⁵

A. The Principles of Non-Discrimination and Equality Before the Law Are Bedrock Principles Under the Convention and Should Be Given Their Broadest Meaning

563. Racial discrimination is defined in Article 1(1) of the Convention:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of human life.¹¹⁷⁶

¹¹⁷¹ UN Charter, art. 1(3).

¹¹⁷² UDHR, art. 2.

¹¹⁷³ U.N. General Assembly, G.A. Res. 2106 (XX) (21 December 1965) (Annex 738).

¹¹⁷⁴ CERD, art.2(1).

¹¹⁷⁵ See, e.g., *Barcelona Traction, Light and Power Company Limited, Judgment, I.C.J. Reports 1970*, p. 32, para. 34 (referring to obligations *erga omnes* in contemporary international law, including “the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.”).

¹¹⁷⁶ CERD, art 1(1).

564. The ordinary meaning of this language is consistent with the Convention having a broad field of application:

565. First, “racial discrimination” is not limited to distinctions based on race alone, but includes measures based on several other features that may define a group protected by the Convention, including ethnic origin.¹¹⁷⁷

566. Second, the definition does not require that discrimination be intentional but instead reaches all conduct with a discriminatory “purpose or effect.” Accordingly, the Convention bars both intentional or purposeful discrimination (sometimes called direct discrimination, or *de jure* discrimination), as well as discrimination manifested through the disparate impact or effect of facially neutral laws or regulations (sometimes called indirect discrimination, or *de facto* discrimination).¹¹⁷⁸ In her expert report, Sandra Fredman, Rhodes Professor of the Laws of the British Commonwealth and the USA at the University of

¹¹⁷⁷ The CERD Committee has clarified that discrimination “based on” these criteria has the same meaning as discrimination “on the grounds of” these criteria, as that phrase appears in paragraph 7 of the CERD preamble. General recommendation 14 (Annex 788). In addition, the CERD Committee has taken a broad view of whether actions are based on protected criteria within the meaning of CERD Article 1. As the CERD Committee has opined, “[t]he ‘grounds’ of discrimination [in Article 1] are extended in practice by the notion of ‘intersectionality’ whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention.” General Recommendation 32 (Annex 790).

¹¹⁷⁸ The CERD Committee has confirmed in its general recommendations that CERD prohibits both direct and indirect discrimination. As the CERD Committee has explained, making purposeful distinctions based on race or ethnicity will constitute direct discrimination, while indirect discrimination occurs when an action “has an unjustifiable disparate impact upon a group distinguished by” the criterial in CERD Article 1. General Recommendation 14. The Committee has further stated that indirect discrimination may result from the application of facially neutral laws, where such application “would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons.” Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by states parties under article 9 of the Convention, United States of America, CERD/C/USA/CO/6 (8 May 2008), para. 10 (Annex 801).

Oxford, concludes that a showing of intent to discriminate is not needed to establish indirect discrimination.¹¹⁷⁹

567. Third, the definition is not limited to conduct that impairs the equal enjoyment only of human rights enumerated in the Convention, but instead reaches all human rights and fundamental freedoms in the field of public life.

568. A broad construction is consistent with the object and purpose of international human rights treaties generally¹¹⁸⁰ and this Convention in particular, as reflected both in its title, which targets the elimination of “all forms” of racial discrimination, and its preamble, which refers back to the expansive statements concerning racial discrimination in the UN Charter and the UDHR. For example, the latter instrument makes clear that “all of the rights and freedoms” enumerated in the Declaration are to apply without racial distinction.

569. The preparatory works of the Convention also confirm that it was intended to apply broadly to ensure preservation of distinct cultural identities. As one CERD drafter opined, “[e]thnic differences were absolutely dependent for survival on language, schools, publications and other, cultural institutions” and “[h]owever well-treated in other respects a member of an ethnic group might be, if he were cut off from his tradition and culture, he

¹¹⁷⁹ Expert Report of Professor Sandra Fredman para. 52 *et seq* [hereinafter Fredman Report] (Annex 22).

¹¹⁸⁰ See *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75), Inter-Am.Ct.H.R. (Ser. A) No. 2 (1982), para. 29 (Annex 832):

Modern human rights treaties in general ... are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States.

would be the victim of discrimination and the right of his group to survive would be jeopardized.”¹¹⁸¹

570. A concept closely related to that of racial discrimination in the CERD is “equality before the law.” Indeed, in his noted dissenting opinion in *South West Africa*, Judge Tanaka treated the concepts of non-discrimination and equality before the law as effectively interchangeable.¹¹⁸²

571. Under Article 5 of the Convention, States Parties undertake:

[T]o prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone , without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ...¹¹⁸³

The article then sets out a long list of examples of specific rights to which equality before the law is guaranteed. The use of the word “notably” to introduce that list indicates that it is not intended to be exhaustive. As noted above, other provisions of the CERD make clear that the Convention’s scope of application reaches all human rights and fundamental freedoms, not just those specifically articulated in its text.

¹¹⁸¹ United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sixteenth Session), Summary Record of the Four Hundred and Eleventh Meeting Held 16 January 1964, E/CN.4/Sub.2/SR.411 (5 February 1964) (Annex 737).

¹¹⁸² *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966* (Diss. Op. Tanaka), pp. 250, at 287-88 (“The question is whether the Charter of the United Nations contains a legal norm of equality before the law and the principle of non-discrimination on account of religion, race, colour, sex, language, political creed, etc.”).

¹¹⁸³ CERD, art. 5.

572. The principle of non-discrimination or equality before the law does not require equal treatment of all persons regardless of the circumstances. As Judge Tanaka observed:

[T]he principle of equality before the law does not mean the absolute equality, namely equal treatment of men without regard to individual, concrete circumstances, but it means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal.¹¹⁸⁴

Judge Tanaka went on to point out that different treatment of individuals must, however be reasonably related and proportionate to the differences between them and that “reasonableness as a criterion for the different treatment logically excludes arbitrariness.”¹¹⁸⁵

573. The CERD Committee’s practice is consistent with these principles.¹¹⁸⁶ As explained in its General Recommendation No. 32:

The term “non-discrimination” does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will

¹¹⁸⁴ *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966* (Diss. Op. Tanaka), pp. 305-06.

¹¹⁸⁵ *Ibid.* p. 306 (“[N]ot every different treatment can be justified by the existence of differences, but only such as corresponds to the differences themselves . . .”).

¹¹⁸⁶ In addition to broadly prohibiting discrimination, the CERD also created a committee (the CERD Committee) which was tasked with receiving reports from CERD parties and making “suggestions and general recommendations” regarding compliance with the CERD. CERD, art. 9(2). The Committee has not been given general competence to interpret the Convention, but may do so as required for the performance of its functions. While the Committee’s interpretation of the Convention for that purpose is not binding on States Parties, it “shapes the practice of states in applying the Convention and may establish and reflect their agreement regarding its interpretation.” Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT’L L 283, 285 (1985) (ANNEX 1011).

constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.

574. As demonstrated below, there was no “objective and reasonable justification” for the differential treatment meted out to the Crimean Tatar and Ukrainian communities by the Russian Federation.

B. The Crimean Tatar and Ukrainian Communities in Crimea Are Ethnic Groups Protected by the Convention

575. As discussed above, the CERD defines racial discrimination in terms of distinctions “based on race, colour, descent, or national or ethnic origin.”¹¹⁸⁷ The Convention does not, however, identify the factors to be considered in determining whether a group identity falls within the scope of its protections. In this case, Ukraine alleges that the Russian Federation’s conduct towards two ethnic groups – the Crimean Tatars and Ukrainians in Crimea – constitutes racial discrimination for the purposes of the Convention. This section describes the criteria the Court may consider in determining what constitutes an ethnic group for the purposes of the Convention. It then explains how the Crimean Tatar and Ukrainian communities in Crimea satisfy those criteria.

1. Meaning of Ethnicity for the Purposes of the Convention

576. The ordinary meaning of “ethnicity” relates to “membership of a group regarded as ultimately of common descent, or having a common national or cultural tradition.”¹¹⁸⁸ The context in which “ethnic origin” appears in Article 1(1) provides some additional guidance. Ethnicity is listed separately from race, color, descent and national

¹¹⁸⁷ CERD, art. 1(1).

¹¹⁸⁸ Oxford English Dictionary (2018), <http://www.oed.com/>. See also <https://www.merriam-webster.com/dictionary/ethnic> ([O]f or relating to large groups of people classed according to common racial, national, tribal, religious, linguistic, or cultural origin or background.”) (Annex 1091).

origin in the definition, implying that it is different in some way from all these things.¹¹⁸⁹ In particular, the separate reference to “descent” indicates that, for the purposes of the Convention, ethnic origin is not simply an identity inherited by each generation from the previous one. Instead it can evolve across the generations in response to the political and social context.

577. In addition to the ordinary meaning in context, other relevant rules of international law may be taken into account in interpreting the term pursuant to Article 31(3)(c) of the Vienna Convention.¹¹⁹⁰ The CERD is part of an interlocking corpus of treaty instruments intended by their drafters to constitute a comprehensive regime of human rights protections. Many of the underlying human rights to which the CERD applies are referenced in the UDHR and have been further developed in subsequent universal instruments concluded under the auspices of the United Nations or pursuant to the regional arrangements contemplated by Chapter VIII of the UN Charter.¹¹⁹¹ The concept of ethnicity is addressed by several other international human rights treaties dealing with discrimination, as well as by multilateral conventions in the fields of minorities law and

¹¹⁸⁹ *Ibid.*

¹¹⁹⁰ VCLT, art. 32.

¹¹⁹¹ See Patrick Thornberry, THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY 317, 321, 383 (2016) (referring to UDHR, ICCPR, and other instruments as “background standards” for particular CERD provisions and that CERD provisions “connect[] closely” with provisions of other human rights instruments) (Annex 1029); Natan Lerner, THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (2015), at 59-63 (stating that most of the rights catalogued in CERD Article 5 “correspond to those listed in the Universal Declaration” and comparing the language of CERD provisions with similar provisions in the ICCPR and ICESCR) (Annex 1027).

international criminal law. All these instruments are relevant rules of international law for the purpose of determining the meaning of ethnicity under the CERD.¹¹⁹²

578. In her expert report, Professor Fredman describes how, under discrimination law, minority law and international criminal law, the general practice is to look to both subjective and objective criteria in determining whether a group shares an ethnic identity. Subjective factors include the perception of a dominant population as to whether a given group is ethnically different, as well as self-identification by individuals as belonging to a given group. Objective factors include sharing a common culture, religious affiliation, and physical appearance.¹¹⁹³ The CERD Committee has taken the view in its general recommendations that “if no justification exists to the contrary,” an individual will be identified as being a member of a particular racial or ethnic group “based on self-identification by the individual concerned.”¹¹⁹⁴

579. Professor Fredman finds that the weight to be given to different factors will vary depending on the context and that not all factors need to be present to determine that an individual belongs to a particular ethnic group.¹¹⁹⁵ Thus, speaking a common language may be sufficient to qualify some members as belonging to an ethnic group, while others who

¹¹⁹² VCLT, art. 31(3)(c); see also Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 Am. J. Int'l L 283, 294 (1985) (Annex 1011).

¹¹⁹³ See Fredman Report, paras. 19–37 (Annex 22).

¹¹⁹⁴ CERD Committee, General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention (1990) (Annex 781).

¹¹⁹⁵ Fredman Report, paras. 32-51 (Annex 22).

do not speak that language may also belong based on other criteria.¹¹⁹⁶ Moreover, the nature of ethnic identity is fluid over time and the criteria determining whether someone belongs may evolve, especially in times of conflict or other crisis.¹¹⁹⁷

2. The Crimean Tatars Are a Distinct and Identifiable Ethnic Group

580. A host of subjective and objective factors confirm that the Crimean Tatars are an ethnic group for the purpose of the Convention. Addressing subjective factors first, the Crimean Tatars consider themselves to be a separate people, indeed one of the indigenous peoples of Crimea, and have been so recognized by the Government of Ukraine,¹¹⁹⁸ the European Parliament¹¹⁹⁹ and the United Nations, among others. The Soviet Union treated the Crimean Tatars as a distinct group when Stalin singled them out for deportation in

¹¹⁹⁶ Fredman Report para. 34 (Annex 22). *See also* Finland, Reports Submitted by States Parties under Article 9 of the Convention, Twelfth periodic reports due in 1993, CERD/C/240/Add.2 (17 May 1995), para. 53 (responding to the CERD Committee's concern that it may have used language as the "sole criterion" to determine group membership, Finland confirmed that it had relied on individual self-identification for this purpose) (Annex 794).

¹¹⁹⁷ Fredman Report, paras. 11–18 (Annex 22).

¹¹⁹⁸ *The Verkhovna Rada of Ukraine adopted the Resolution "On Statement of the Verkhovna Rada of Ukraine re guarantees of rights of the Crimean Tatar people as a part of the State of Ukraine,"* VERKHOVNA RADA (20 March 2014), accessed at <http://rada.gov.ua/en/news/News/89899.html> (Annex 733).

¹¹⁹⁹ European Parliament Resolution of 12 May 2016 on the Crimean Tatars, 2016 O.J. C 76/27 (noting that "so-called authorities have targeted the *indigenous community of Crimean Tatars*," and "the entire population of Crimean Tatars, *an indigenous people of Crimea*, was forcibly deported to other parts of the then USSR in 1944, with no right to return until 1989"; recognizing "the Mejlis of the Crimean Tatar People" as "the legitimate ... representative body of the indigenous people of Crimea" and that "*the indigenous Crimean Tatar people* have suffered historic injustices which led to their massive deportation by Soviet authorities") (emphasis added) (Annex 830).

1944.¹²⁰⁰ Since 1991, both Ukraine¹²⁰¹ and the Russian Federation¹²⁰² have treated the Crimean Tatars as a separate ethnic group for census-taking purposes. And, since Russia's unlawful occupation of Crimea, the Russian Federation has treated the Crimean Tatars as a separate group, including by offering them benefits as a group if they would collaborate with annexation.¹²⁰³

581. Among the numerous objective factors confirming their distinct identity as a national or ethnic group, the Crimean Tatars share their own language (although, as a result of their exile after 1944, many contemporary Crimean Tatars do not speak it) and are typically adherents of the same moderate form of Islam.¹²⁰⁴ The shared history of the Crimean Tatar people includes having their own state, the Crimean Khanate, prior to its annexation by Imperial Russia in 1783.¹²⁰⁵

582. Considered together, these factors establish that discrimination against Crimean Tatars that otherwise meets the Article 1(1) definition constitutes a violation of the CERD.

¹²⁰⁰ State Defense Committee of the Soviet Union Decree No. 589ss "On the Crimean Tatars" (11 May 1944) (ordering the Crimean Tatars "to be banished from the territory of the Crimea") (Annex 871).

¹²⁰¹ All-Ukrainian Population Census National Composition of Population, Autonomous Republic of Crimea (2001) (Annex 730).

¹²⁰² Russia Census in the Republic of Crimea, National Composition of the Population (2014) (Annex 878).

¹²⁰³ Witness Statement of Mustafa Dzhemilev para. 24 (Annex 16). See also Back into Exile, The Economist (18 June 2015) (Annex 1057).

¹²⁰⁴ Magocsi Report, at 82 (Annex 21).

¹²⁰⁵ *Ibid* at 9, 13, 51 (Annex 21).

3. Ukrainians in Crimea Are a Distinct and Identifiable Ethnic Group

583. A combination of subjective and objective factors also confirms the separate identity of Ukrainians in Crimea as a distinct group encompassing both Ukrainian speakers and others who self-identify as Ukrainian on civic grounds.

584. Imperial Russia, the Soviet Union, Ukraine and the Russian Federation have all treated Ukrainians as a separate category in their census forms over the centuries.¹²⁰⁶ Recent censuses taken by both Ukraine¹²⁰⁷ and the Russian Federation¹²⁰⁸ have distinguished between Ukrainians in Crimea who speak Ukrainian and those who do not. Members of the Ukrainian community in Crimea feel a shared sense of identity based not only on language, but also on a shared outlook with regards to Crimea remaining part of Ukraine's sovereign territory and the importance of defending individual freedoms.¹²⁰⁹

585. Objective factors establishing a Ukrainian ethnicity in Crimea include, for that part of the Ukrainian community that speaks it, the existence of a distinct Ukrainian language. For non-Ukrainian speakers who identify as Ukrainian, attachment to other facets of Ukrainian culture may be a relevant factor, such as Ukrainian history, folklore, music, or sports teams.¹²¹⁰ Social identity and political beliefs also contribute to the distinct Ukrainian ethnicity in Crimea.¹²¹¹ For the community identifying as of Ukrainian ethnicity, such social identity and political beliefs may include, since March 2014, the conviction that Crimea is part of Ukraine, and that the Russian occupation of the peninsula is unlawful.

¹²⁰⁶ *Ibid.* at 33, 46 (Annex 21); All-Ukrainian Population Census National Composition of Population, Autonomous Republic of Crimea (2001) (Annex 730); Russia Census in the Republic of Crimea, National Composition of the Population (2014) (Annex 878).

¹²⁰⁷ See *supra* note 754.

¹²⁰⁸ Russia Census in the Republic of Crimea, National Composition of the Population (2014) (Annex 878); *See also Address by President of the Russian Federation*, The Kremlin, Moscow (18 March 2014) (observing that Crimea's population included 350,000 "Ukrainians who predominantly consider Russian their native language") (Annex 887).

¹²⁰⁹ Andriyevska Statement, paras. 3-4 (Annex 14).

¹²¹⁰ Fredman Report, para. 37 (Annex 22).

¹²¹¹ Fredman Report, paras. 43–52 (Annex 22).

586. Considered together, these factors establish that discrimination against Ukrainians that otherwise meets the Article 1(1) definition constitutes a violation of the CERD.

Chapter 12. THE RUSSIAN FEDERATION'S VIOLATIONS OF THE CERD

587. Measured against the standards set out in Chapter 11, the Russian Federation's treatment of the Crimean Tatar and Ukrainian communities in Crimea unambiguously violates numerous of its obligations under the CERD. Not only does the Russian Federation fail to live up to the affirmative obligations it has assumed under the CERD – Russia's systematic campaign of racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea is the exact opposite of what the CERD requires. Instead of taking measures to eliminate racial discrimination, Russia has implemented measure after measure the purpose or effect of which is to generate racial discrimination.

A. Article 2 – Obligation to Eliminate Racial Discrimination

588. In the chapeau of Article 2(1), each State Party undertakes “to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms” To that end, the States Parties further undertake in Article 2(1)(a) “to engage in no act or practice of racial discrimination”

589. It follows from these undertakings that when a State Party engages in individual acts of racial discrimination it violates the CERD. When a series of acts undertaken by the State Party constitutes a practice or a policy of racial discrimination, that entire course of conduct is equally a violation of the CERD.

590. The scope of state responsibility under the CERD is broad, encompassing violations of the Convention on account of actions (or inaction) by the State or its officials, as well as actions by third parties that are tolerated by the State.

591. Under CERD Article 2(1)(a), parties must “undertake to engage in no act or practice of racial discrimination” and “ensure that all public authorities and public

institutions, national and local, shall act in conformity with this obligation.”¹²¹² Accordingly, States Parties are responsible not only for acts of racial discrimination carried out by central government but also for such acts perpetrated by regional or local authorities.¹²¹³ Moreover, that responsibility extends to all public authorities and institutions, including government ministries, the civil service, armed forces, police and other security forces.¹²¹⁴

592. CERD Article 2(1)(b) goes further, requiring States Parties “not to sponsor, defend or support racial discrimination by any persons or organizations.” The ordinary meaning of the verbs “sponsor, defend or support” captures a wide spectrum of state behavior accommodating racial discrimination by non-state actors ranging from active financial or other assistance, through express or tacit encouragement or approval, to mere tolerance of racial discrimination.¹²¹⁵ This reading of Article 2(1)(b) as including passive acceptance of racial discrimination by non-state actors is reinforced by the surrounding context, including the affirmative obligation placed on States Parties by Article 2(1)(d) “to prohibit and bring to an end, by all appropriate means … racial discrimination by any persons, groups or organization.” The phrase “any persons or organizations” is wide enough

¹²¹² CERD, art. 2(1)(a).

¹²¹³ The scope of state responsibility under Article 2(1)(a) has been interpreted expansively in practice to encompass discrimination by organizations under the control or influence of government organs. For example, in connection with an individual claim brought under CERD, the Australian authorities removed a racially derogatory sign from a sports stadium whose trustees were subject to government appointment and removal, and the trustees managed the stadium for public purposes. *Hagan v. Australia*, Communication No. 26/2002, CERD/C/62/D/26/2002 (14 April 2003), paras. 4.5, 5.4, 7.3 & 8 (Annex 797).

¹²¹⁴ See, e.g., Turkey, Combined fourth to sixth periodic reports of States parties due in 2013, CERD/C/TUR/4-6 (17 April 2014), para.35 (confirming, in response to a request from the CERD Committee, that Turkey had prohibited discrimination by organs of state, administrative bodies, civil servants, and the armed forces) (Annex 802).

¹²¹⁵ See Thornberry, *supra* note 1191, at 185 (“‘Support’ is wider and may include assistance, encouragement, or approval as well as financial support; in a related sense it may include ‘endure’ or ‘tolerate.’”) (Annex 1029).

to capture political parties, private militias, paramilitaries and other organized groups ostensibly outside the control of the state.¹²¹⁶

593. The Russian Federation has comprehensively violated Article 2. First, its systematic campaign of discrimination against the Crimean Tatar and Ukrainian communities constitutes a practice and policy of racial discrimination contrary to its undertakings in both the chapeau of Article 2 and in Article 2(1)(a). Second, each and every discriminatory component of Russia's campaign independently violates its Article 2(1)(a) obligation to engage in no act or practice of racial discrimination. Third, to the extent that Russia claims that any particular discriminatory act was undertaken by non-state agents and the act was not prevented by Russian authorities, it simply confirms that Russia has violated its Article 2(1)(b) obligation not to tolerate acts of discrimination by "any persons or organizations."

1. Russia's Overall Policy and Practice of Discriminating Against the Crimean Tatar and Ukrainian Communities Violates Article 2(1)

594. The catalogue of human rights violations suffered disproportionately by the Crimean Tatar and Ukrainian communities, as described in Chapters 8 to 10, are part of a single course of conduct on the part of the Russian Federation. Russia's discriminatory policies are intimately bound up with its drive to dominate Crimea politically, militarily and culturally. The Crimean Tatars and Ukrainians in Crimea are an obstacle to that ambition because a defining characteristic of each community is its loyalty to the principle that Crimea is part of Ukraine's sovereign territory. There could be no more graphic illustration of that

¹²¹⁶ See, e.g., Kenya, Fifth to seventh periodic reports of States parties due in 2014, CERD/C/KEN/5-7 (28 January 2016), para. 29 (reporting, in response to a CERD Committee request for information on implementation of this article, that Kenya had tasked a domestic institution with "discourag[ing] persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race.") (Annex 803).

central fact than the sight of Ukrainian and Crimean Tatar flags confronting Russian flags above the heads of the demonstrators in front of the Crimean Parliament building on 26 February 2014.¹²¹⁷

595. Integral to Russia's purported annexation of Crimea has been a broad assault on political and civil rights by the Russian occupation authorities designed to shut down opposition to the annexation. This assault has been both comprehensive and concerted. Crimean Tatar and Ukrainian activists were targeted for kidnapping, followed by torture and, in some cases, murder, in an attempt to intimidate their respective communities in the run-up to the referendum.¹²¹⁸ The Mejlis was harassed and its activities eventually banned.¹²¹⁹ Its leadership was variously excluded from Crimea, imprisoned in Crimea on trumped up charges, and subjected to repeated arbitrary searches.¹²²⁰ The broader Crimean Tatar community has been subjected to a pattern of similarly arbitrary searches and detentions on the pretext of rooting out religious extremism.¹²²¹ Russian citizenship has been forced on the inhabitants of occupied Crimea, creating conflicting loyalties for Crimean Tatars and Ukrainians who acquiesced to it and allowing the Russian occupation authorities to overtly discriminate against those who did not..¹²²²

596. The Crimean Tatar and Ukrainian communities are, in part, defined by their loyalty to the principle that Crimea is part of Ukraine's sovereign territory and that Russia's purported annexation of the peninsula is therefore illegitimate. As a result, these two communities have been disproportionately burdened by Russia's crackdown on political and civil rights. There is no legitimate justification for the differential treatment suffered by

¹²¹⁷ See *supra* Chapter 8, Section B, Figure 13.

¹²¹⁸ See *supra* Chapter 9, Section A.

¹²¹⁹ See *supra* Chapter 9, Section B.

¹²²⁰ See *ibid.*

¹²²¹ See *ibid.*

¹²²² See *supra* Chapter 9, Section C.

these communities compared to that enjoyed, for example, by ethnic Russians who support annexation. Eliminating opposition to annexation is not a cognizable defense, all the more so where the very act of invading and then integrating Crimea into the Russian Federation is a gross violation of international law.

597. In addition to its assault on political and civil rights, the Russian Federation has also systematically suppressed cultural expression by the Crimean Tatar and Ukrainian communities. Crimean Tatar and Ukrainian cultural gatherings have been disallowed or disrupted while Russian gatherings have proceeded unhindered. Independent Crimean Tatar and Ukrainian voices in the media have been eliminated. Access to education in the Crimean Tatar and Ukrainian languages has been limited. All these actions demonstrate that the end goal of Russia's policy and practice of racial discrimination is to culturally erase the Crimean Tatar and Ukrainian communities, leaving Russian culture to dominate on the peninsula. This policy, reminiscent of Stalin's attempt to wipe out whole cultures in Crimea through mass deportation, likewise can have no legitimate justification.

598. Viewed together, the various components of Russia's discriminatory conduct in Crimea form a single policy or practice: to collectively punish the two communities that have stood out against the establishment of Russian hegemony over Crimea. Russia's pursuit of a policy so inimical to the objectives of the CERD blatantly violates its obligations under Article 2 to "pursue ... a policy of eliminating racial discrimination in all its forms" and to "engage in no ... practice of racial discrimination."

2. Russia's Discriminatory Acts Individually Violate Article 2(1)(a) or Article 2(1)(b)

599. For the reasons explained above, each of Russia's individual acts of discrimination in violation of Article 4, 5 and 6 (as described below) also violate either Article 2(1)(a) or Article 2(1)(b). Where the act in question is attributable to the Russian Federation itself, it violates Russia's Article 2(1)(a) obligation "to engage in no act ... of racial discrimination .. and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation." Where the act cannot be attributed to

the Russian Federation but has been tolerated by the Russian authorities, it violates Russia's Article 2(1)(b) obligation "not to sponsor, defend or support racial discrimination by any persons or organizations."

B. Article 4 – Incitement to Racial Discrimination

600. Article 4 requires States Parties to "condemn all propaganda ... which attempt to justify or promote racial hatred and discrimination in any form" and to "adopt immediate and positive measures designed to eradicate all incitement to, or acts of, [racial] discrimination."¹²²³ Among other measures to this end, States Parties are required to "prohibit organizations which promote and incite racial discrimination"¹²²⁴ and not to "permit public authorities or public institutions, national or local, to promote or incite racial discrimination."¹²²⁵ Again, in Crimea the Russian Federation has done the exact opposite of what the CERD requires. Instead of taking measures to eradicate incitement to racial discrimination, the Russian Federation has itself deliberately inflamed racial tensions and has encouraged (or, at least, tolerated) third parties who have done the same.

601. As described in Chapter 8, an integral part of the Russian Federation's operation to seize control of Crimea was a disinformation campaign designed to persuade ethnic Russians in Crimea that Ukrainian fascists were about to descend upon them.¹²²⁶ This campaign appears to have been initiated by the Russian intelligence services on social media and then amplified by Russian television channels broadcasting into Crimea.¹²²⁷ This campaign has been coordinated by the highest levels of the State, as Russian officials up to

¹²²³ CERD, art. 4 (chapeau).

¹²²⁴ *Ibid.* art. 4(b)

¹²²⁵ *Ibid.* art. 4(c).

¹²²⁶ See *supra* Chapter 8, Section B.

¹²²⁷ See *ibid.*

and including President Putin made remarks playing into this false and inflammatory narrative.¹²²⁸

602. The Russian Federation's unlawful extension to Crimea of its anti-extremism laws and disproportionate deployment of them against Crimean Tatar and Ukrainian individuals has made matters worse. The targeting of Crimean Tatars as religious extremists¹²²⁹ and of Ukrainians as threats to Russia's territorial integrity¹²³⁰ under the anti-extremism laws fuels mutual distrust between ethnic communities and makes racial discrimination more, not less, likely.

603. Again, there is no reasonable justification for Russia's conduct. The Crimean Tatar people have a long history of following a moderate form of Islam. Creating the impression that Crimean Tatar society has been penetrated by Islamic extremists serves no public safety function and, indeed, is more likely to generate conflict in the long term by turning Crimean Tatars into objects of fear and hate. Similarly, there is no reasonable justification for branding Ukrainians as fascists and accusing them under the anti-extremism laws of threatening Russia's territorial integrity. The use of such historically loaded terms can only inflame tensions among neighbors, making ethnic conflict more, not less, likely. The inflammatory nature of the Russian Federation's racially divisive policies is even clearer when contrasted with Ukraine's prior efforts to promote multiculturalism within Crimea's ethnically diverse population prior to 2014.¹²³¹

C. Article 5 –Equality Before the Law

604. Article 5 requires States Parties to guarantee equality before the law in the enjoyment of a series of underlying rights, many of which are further elaborated in other universal or regional human rights instruments. Russia's conduct violates many of these

¹²²⁸ See *supra* Chapter 8, Section B.

¹²²⁹ See, e.g., *ibid.*

¹²³⁰ See, e.g., *ibid.*

¹²³¹ See Tyshchenko Statement, paras. 4–19 (Annex 17); Islyamov Statement, paras. 2–8 (Annex 18); Shchekun Statement, paras. 4–8 (Annex 13); Andriyevska Statement, paras. 2–4 (Annex 14).

specific provisions because it disproportionately burdens the human rights of Crimean Tatars and Ukrainians in Crimea, as compared to other ethnic groups.

1. Article 5(a) – Equal Treatment Before Tribunals

605. CERD Article 5(a) guarantees equality before the law with respect to “[t]he right to equal treatment before the tribunals and all other organs administering justice.” The ordinary meaning of this provision is that States Parties must ensure non-discrimination in the operation of their judicial systems. The CERD Committee has interpreted Article 5(a) as covering acts undertaken by the police and prison system, in addition to courts.¹²³²

606. The Russian Federation’s judicial assault on the Mejlis and its leadership violates this provision. The Russian courts have banned the Mejlis as an extremist organization,¹²³³ frozen the assets of the NGO that funds it,¹²³⁴ and convicted top Mejlis leaders on trumped-up and, in Mr. Chiygoz’s case, blatantly discriminatory charges.¹²³⁵ No other ethnic group in Crimea has faced similar repression. Even after this Court ordered Russia to “[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis,” the Supreme Court of Crimea rejected on flimsy procedural grounds the applications of Crimean Tatar litigants for review of the ban.¹²³⁶

¹²³² See also CERD General Recommendation No. 31 (recommending various actions related to policing and the prison system in connection with implementation of CERD Article 5(a)) (Annex 789).

¹²³³ See *supra* Chapter 9, Section B.

¹²³⁴ See *supra* Chapter 9, Section B.

¹²³⁵ See *supra* Chapter 9, Section B.

¹²³⁶ See *supra* Chapter 9, Section B.

607. Russia has further violated Article 5(a) by disproportionately targeting the Crimean Tatar community for arbitrary searches and detentions.¹²³⁷ These searches have been carried out at Crimean Tatar schools, homes, businesses, as well as throughout entire villages populated predominantly by Crimean Tatars.¹²³⁸

608. These differences in the treatment of the Crimean Tatar community have no reasonable justification. The Russian Federation has repeatedly invoked its anti-extremism legislation to justify the court cases against the Mejlis and its leadership and its targeting of Crimean Tatars for searches and detentions.¹²³⁹ But those laws – much criticized by the Venice Commission and others as enablers of arbitrary state action¹²⁴⁰ – were extended to Crimea in violation of Russia’s obligations under IHL and cannot be invoked as a justification. Moreover, the use of those laws to prosecute Crimean Tatar individuals and institutions for upholding Ukraine’s sovereignty over Crimea is contrary to international law. Even if the Russian Federation could lawfully apply Russian law in Crimea, its use of these laws to justify searches for so-called religious extremist materials is plainly pretextual, given that the Crimean Tatar community has traditionally adhered to a moderate, not an extreme or violent, form of Islam.¹²⁴¹

2. Article 5(b) – Right to Security of Person and Protection Against Violence or Bodily Harm

609. CERD Article 5(b) guarantees equality before the law in enjoyment of “[t]he right to security of person and protection by the State against violence or bodily harm,

¹²³⁷ See *supra* Chapter 9, Sections A and B.

¹²³⁸ See *supra* Chapter 9, Section C & Chapter 10, Section D; Islyamov Statement, paras. 13, 17, 25–28 (Annex 18); Tyshchenko Statement, para. 22 (Annex 17).

¹²³⁹ See *supra* Chapter 9, Sections B and C.

¹²⁴⁰ See *supra* Chapter 10, Section A.

¹²⁴¹ See *supra* Chapter 8, Section A; Magocsi Report at 82 (Annex 21).

whether inflicted by government officials or by any individual, group or institution.” This provision has a broad sweep, covering all violence or injuries inflicted on protected groups, not just the more aggravated violence – “torture or … cruel, inhuman or degrading treatment or punishment” – referenced in other key human rights instruments.¹²⁴²

610. Russia has violated this provision by sponsoring or tolerating disappearances, abductions, murder and torture selectively directed at Crimean Tatar and Ukrainian activists. Reshat Ametov was kidnapped in broad daylight by uniformed men before being brutally tortured and murdered.¹²⁴³ Andrii Shchekun was detained by the Self Defense Forces and processed by the police before being unlawfully detained and tortured, apparently by members of the Russian intelligence services.¹²⁴⁴ The UN reported on a “pattern” of disappearances overwhelmingly affecting Crimean Tatar and Ukrainian men in the run-up to the referendum.¹²⁴⁵ The Russian Federation is either directly responsible for the discriminatory violence directed at Crimean Tatars and Ukrainians, has assumed responsibility by incorporating the Self Defense Forces into the law enforcement structure of Crimea,¹²⁴⁶ or is responsible for tolerating violence inflicted by non-state agents seeking to intimidate opponents of annexation.

¹²⁴² See, e.g., UDHR, art. 5; ICCPR, art. 7. The official French version of Article 5(b) is consistent with this broad interpretation, referring to “voies de fait” (usually translated as “assaults”) and “les sevices” (abuses).

¹²⁴³ See *supra* Chapter 9, Section A.

¹²⁴⁴ See *supra* Chapter 9, Section A; Shchekun Statement, paras. 19-25 (Annex 13).

¹²⁴⁵ See *supra* Chapter 9, Section A.

¹²⁴⁶ See *supra* Chapter 9, Section A; Statute on the People’s Militia of Crimea, No. 1734-6/14 (11 March 2014).

3. Article 5(c) – Right to Participate in Elections and Take Part in the Government

611. CERD Article 5(c) guarantees equality before the law in the enjoyment of:

Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

612. This provision is violated by the Russian Federation's imposition and enforcement of laws limiting the rights to run for government and municipal office and to be employed in government and municipal service to Russian citizens who do not hold citizenship in another state.¹²⁴⁷ These restrictions discriminate against Crimean Tatars and Ukrainians who were able to opt out of the imposition upon them of Russian citizenship by declaring their desire to retain their Ukrainian citizenship, as well as the large number of Ukrainian and Crimean Tatars who were ineligible for Russian nationality because they lacked proof of permanent residency in Crimea. The operation of these laws also selectively injures Crimean Tatars and Ukrainians in government or municipal employment who did not reject Russian nationality for fear of losing their jobs and who as a result are subject to conflicting loyalties and duties.

613. There is no reasonable justification for this different treatment of non-Russian citizens and Russian citizens who hold a second nationality. Nor may the Russian Federation invoke Articles 1(2) or 1(3) of the CERD to avoid scrutiny of these discriminatory measures.¹²⁴⁸ The discriminatory distinctions at issue here are the result of Russia's annexation of Crimea and imposition of its citizenship in violation of IHL.¹²⁴⁹ Russia cannot

¹²⁴⁷ See *supra* Chapter 9, Section C; Law on Admission, art. 4(3).

¹²⁴⁸ CERD, art. 1(2) (CERD not applicable to distinctions between citizens and non-citizens); 1(3) (CERD does not affect legal provisions concerning nationality, provided that such provisions do not discriminate against any particular nationality).

¹²⁴⁹ See Fourth Geneva Convention (1949), art. 47 (protected persons not to be deprived of rights by "any agreement concluded between the authorities of the occupied territories and the Occupied Power, nor by any annexation by the latter of the whole or part of the occupied territory."); Laws of War: Laws and Customs of War on Land (Hague IV), 19 October 1907, art. 45 ("It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.") (Annex 979).

invoke its own internationally unlawful acts as a basis for restricting the obligations it owes to Ukrainian citizens in occupied Crimea.

4. Articles 5(d)(i) & (ii) – Right to Freedom of Movement and Residence within the Border of the State; Right to Leave and Return to One’s Country

614. Article 5(d)(i) guarantees equality before the law in the enjoyment of the “right to freedom of movement and residence with the border of the State.” Article 5(d)(ii) sets forth the same guarantee with respect to the “right to leave any country, including one’s own, and to return to one’s country.” Pursuant to Article 31(3)(c) of the Vienna Convention on the Law of Treaties,¹²⁵⁰ the scope of the underlying rights protected by these articles should be interpreted as encompassing the corresponding rights arising under IHL applicable to Crimea in view of the Russian occupation.¹²⁵¹ Specifically, Article 49 of the Fourth Geneva Convention of 1949 provides:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of

¹²⁵⁰ In the context of the present case, international humanitarian law (“IHL”), and in particular the law of occupation, are relevant rules of international law applicable in the relations between the parties. Notwithstanding the unlawfulness of its military intervention, as recognized by the United Nations General Assembly, the Russian Federation has the status of an occupying power and owes obligations to the population of Crimea under IHL. Those obligations do not supersede or limit the operation of the CERD in occupied territory. By its terms the CERD does not permit States Parties to derogate from its provisions in situations of occupation. See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 25 (derogations from ICCPR in times of war limited to those expressly provided for in Article 4). And IHL itself imposes a parallel non-discrimination obligation on occupying powers. See Fourth Geneva Convention (1949), art. 27 (“[A]ll protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.”).

¹²⁵¹ CERD Article 1(1) brings within the scope of the Convention all discrimination with respect to “the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” When the existence of an armed conflict or state of occupation triggers the operation of IHL, the human rights and fundamental freedoms guaranteed by IHL also fall within the scope of the CERD.

the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

615. The Russian Federation has violated the right to freedom of movement and residence by excluding Crimean Tatars, including Mustafa Dzhemilev and Refat Chubarov from Crimea for political reasons, and by inhibiting the ability of numerous other Crimean Tatars to pass freely in and out of Crimea.¹²⁵² Political leaders from other ethnic groups have not been subjected to like treatment. More generally, by subjecting Ukrainian residents of Crimea who lack Russian nationality to Russian immigration regulations, the Russian Federation has impaired the enjoyment of these rights by members of the Ukrainian and Crimean Tatar communities.¹²⁵³ Russia's transfer of Crimean Tatar and Ukrainian prisoners to prisons in mainland Russia not only constitutes deportation in violation of Russia's obligations under IHL,¹²⁵⁴ but also discriminates against Crimean Tatar and Ukrainian prisoners who, unlike pro-annexation ethnic Russians, identify the Russian Federation as a hostile environment.

5. Article 5(d)(iii) – The Right to Nationality

616. Russia has forced its citizenship onto the Ukrainian population of Crimea in violation of its obligations under the law of occupation.¹²⁵⁵ Among those that it now treats as its own citizens for purposes of Russian law are many Crimean Tatars and Ukrainians who continue to consider themselves citizens of Ukraine. These include individuals who justifiably declined to lend legitimacy to Russia's purported annexation by applying to retain

¹²⁵² See *supra* Chapter 9, Section B; Bariiev Statement, paras. 31–32 (Annex 15); Dzhemilev Statement, para. 29 (Annex 16).

¹²⁵³ See *supra* Chapter 9, Section C.

¹²⁵⁴ See *supra* Chapter 9, Section C.

¹²⁵⁵ Laws of War: Laws and Customs of War on Land (Hague IV), 18 October 1907, Art. 45 (Annex 979).

Ukrainian citizenship pursuant to Article 4 of the Law of Admission;¹²⁵⁶ others who would have applied pursuant to Article 4 if they had been given a more reasonable opportunity to do so¹²⁵⁷; government and municipal employees who were coerced into accepting the conferral of Russian citizenship through fear of losing their jobs¹²⁵⁸; and vulnerable individuals, such as those in state custody at the time the Law on Admission came into effect and who were not given a meaningful opportunity to reject Russian citizenship.¹²⁵⁹

617. The right to nationality of these Crimean Tatars and Ukrainians who did not want to become Russian citizens is significantly burdened by the Russian Federation's disregard for their Ukrainian citizenship. For example, by virtue of their presumed Russian nationality, this group of people are now subject to conflicting loyalties and exposed to application of severe penalties reserved for Russian citizens under Russian law if they are found to be assisting Ukraine.¹²⁶⁰ Members of this group are now subject to conscription into the armed forces of the Russian Federation where they face the possibility of being required to take up arms against Ukraine.¹²⁶¹ Members of this group also risk having their rights under international law – including their rights as protected persons under IHL – violated as a result of the Russian Federation's decision to treat them as Russian citizens. For example, Oleg Sentsov continues to be held in prison in the far north provinces of the Russian Federation, and to be denied the consular assistance of his true state of nationality, on the false premise that he is a Russian and not a Ukrainian citizen.¹²⁶²

618. This burden falls disproportionately on members of the Crimean Tatar and Ukrainian communities, as these communities remain loyal to Crimea's status as part of the

¹²⁵⁶ See *supra* Chapter 9, Section C.

¹²⁵⁷ See *ibid.*

¹²⁵⁸ See *ibid.*

¹²⁵⁹ See *ibid.*

¹²⁶⁰ See *ibid.*

¹²⁶¹ See *ibid.*

¹²⁶² See *ibid.*

sovereign territory of Ukraine. Ethnic Russians who welcomed the purported annexation of Crimea by the Russian Federation do not suffer the same impairment of their right to nationality.

6. Article 5(d)(viii) – Right to Freedom of Opinion and Expression

619. The severe restrictions placed on free speech in Crimea by the Russian Federation since February 2014 have disproportionately burdened the Crimean Tatar and Ukrainian communities. One of the principal aims of Russian-imposed censorship is to prevent journalists and others from challenging the legitimacy of Russia's purported annexation of Crimea.¹²⁶³ This restriction predictably and necessarily has a disproportionate impact on Crimean Tatar and Ukrainian journalists and media entities, given the well-known opposition of those communities to Russia's military occupation and purported annexation of the peninsula.¹²⁶⁴ Accordingly, numerous Crimean Tatar media entities have been denied re-registration by the Russian authorities for pretextual reasons.¹²⁶⁵ Ukrainian media entities and journalists have been harassed and have had to relocate to other parts of Ukraine in order to continue operating.¹²⁶⁶

620. This differential treatment of the Crimean Tatar and Ukrainian communities has no reasonable justification. The United Nations General Assembly has repeatedly condemned the Russian Federation's invasion and purported annexation of Crimea as a violation of the most fundamental norms of international law.¹²⁶⁷ Discriminatory restrictions on the ability of journalists and others to publicly state that Crimea remains part of Ukraine's sovereign territory accordingly violate Article 5(d)(viii).

¹²⁶³ See *supra* Chapter 10, Section B.

¹²⁶⁴ See Islyamov Statement, paras. 9–30 (Annex 18); Andriyevska Statement, paras. 8–20 (Annex 14).

¹²⁶⁵ See *supra* Chapter 10, Section B.

¹²⁶⁶ See *ibid.*; Islyamov Statement, paras. 13, 26 (Annex 18); Andriyevska Statement, para. 12 (Annex 14).

¹²⁶⁷ See, e.g., U.N. General Assembly Resolution 68/262, U.N. Doc. A/RES/68/262, *Territorial Integrity of Ukraine* (27 March 2014) (Annex 43); U.N. General Assembly Resolution 72/190, U.N. Doc. A/Res/72/190 (19 December 2017) (Annex 50).

7. Article 5(d)(ix) – Right to Freedom of Peaceful Assembly and Association

621. The Russian Federation has violated this provision by unlawfully replacing Ukraine's liberal regime for public assembly with its own much more restrictive laws and applying those laws in a discriminatory manner to deny the Crimean Tatar and Ukrainian communities the ability to commemorate culturally important events. Even under these restrictive laws, events of cultural importance to the ethnic Russian community — such as the birthday of Alexander Pushkin, the Great Russian Word festival, and events associated with the anniversary of the illegal annexation — have been allowed to proceed unhindered. Meanwhile, as described in Chapter 10 and in the witness statements of Eskender Bariiev and Andrii Shchekun, attempted commemorations of such anniversaries as International Human Rights Day,¹²⁶⁸ the Sürgün¹²⁶⁹ and the birthday of Taras Shevchenko¹²⁷⁰ have been frustrated either by the denial of official permission on pretextual grounds or the intervention of pro-Russian thugs. To the extent the latter genuinely have no connection to the Russian occupation authorities, Russia violates Article 2(1)(b) by tolerating the discriminatory conduct of third parties. Events of cultural importance to the ethnic Russian community have been allowed to proceed unhindered.

622. There is no reasonable justification for this different treatment of the Crimean Tatar and Ukrainian communities, whose commemorations of the same annual events prior to 2014 were entirely peaceful.

¹²⁶⁸ See *supra* Chapter 10, Section B; Bariiev Statement, paras. 9–19 (Annex 15).

¹²⁶⁹ See *supra* Chapter 10, Section B; Bariiev Statement, paras. 5–8 (Annex 15).

¹²⁷⁰ See *supra* Chapter 10, Section B; Shchekun Statement, para. 19 (Annex 15).

8. Article 5(e)(i) – Right to Work and Free Choice of Employment

623. This provision guarantees equality before the law in the enjoyment of:

The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

624. The Russian Federation has violated this provision by unlawfully extending to Crimea its restrictions on the employment of non-Russian citizens in government and municipal jobs.¹²⁷¹ These restrictions discriminate against Crimeans who were able to opt out of the imposition upon them of Russian citizenship by declaring their desire to retain their Ukrainian citizenship, as well as the large number of Ukrainian and Crimean Tatars who were ineligible for Russian nationality because they lacked proof of permanent residency in Crimea. The operation of these laws also selectively injures Crimean Tatars and Ukrainians in government or municipal employment who did not reject Russian nationality for fear of losing their jobs and who as a result are subject to conflicting loyalties and duties.

625. As explained in relation to Russia's violation of Article 5(c), Russia may not invoke Articles 1(2) or 1(3) of the CERD in defense of this conduct because any distinction in this regard between citizens and non-citizens is predicated on an underlying violation of IHL.

9. Article 5(e)(iv) – Right to Public Health, Medical Care, Social Security and Social Services

626. The Russian Federation has violated this provision by providing pensions, free medical insurance and other social allowances to Russian citizens and permanent residents in Crimea, while denying the same to the large number of Ukrainian and Crimean Tatars who were ineligible for Russian nationality because they lacked proof of permanent residency in Crimea.¹²⁷² As previously explained, Russia may not invoke Articles 1(2) or 1(3) of the CERD in defense of this conduct because any distinction in this regard between

¹²⁷¹ See *supra* Chapter 9, Section C.

¹²⁷² See *supra* Chapter 9, Section C.

citizens and non-citizens is the result of Russia's annexation of Crimea and imposition of its citizenship, both in violation of IHL.

10. Article 5(e)(v) – Right to Education and Training

627. The Russian Federation has violated this provision by favoring education in the Russian language at the expense of instruction in the Crimean Tatar and, especially, the Ukrainian languages.¹²⁷³ The Crimean Tatar and Ukrainian communities have suffered further discrimination by the introduction of textbook teaching a pro-Russian slanted version of history, which is particularly repulsive to the Crimean Tatars in the way that it plays down the Sürgün and glorifies Stalin.¹²⁷⁴ Courses of study on Ukrainian history and literature have wholly disappeared from the offerings at Crimean universities.¹²⁷⁵ Moreover, the reorientation of the educational system to feed into the Russian higher educational system and job market disproportionately affects Crimean Tatars and Ukrainians as communities that wish to continue living with the Ukrainian social and economic space.¹²⁷⁶

628. There is no reasonable justification for this difference in treatment of the Crimean Tatar and Ukrainian communities. In particular, any reduction in formal requests for instruction in the Crimean Tatar and Ukrainian languages is the result of pressure on parents not to request such instruction in the first place.¹²⁷⁷

11. Article 5(e)(vi) – Right to Equal Participation in Cultural Activities

629. The Russian Federation has violated this provision through its discriminatory restrictions on Crimean Tatar and Ukrainian public gatherings, media and education, all of which also have the effect of restricting these communities' cultural life in ways not experienced by different ethnic groups in Crimea. The Crimean Tatar community has suffered further discrimination in this field of public life through the Crimean courts'

¹²⁷³ See *supra* Chapter 9, Section C.

¹²⁷⁴ See *supra* Chapter 9, Section C.

¹²⁷⁵ Tyshchenko Statement, paras. 20, 24 (Annex 17).

¹²⁷⁶ See *supra* Chapter 10, Section C.

¹²⁷⁷ See *supra* Chapter 10, Section C; Tyshchenko Statement, paras. 25–27 (Annex 17).

selective refusal to grant protection against the damage inflicted by shoddy renovation work on its one significant cultural site in Crimea, the Khan’s Palace in Bakhchysarai.

630. There is no reasonable justification for this difference in treatment of the Crimean Tatar and Ukrainian communities in Crimea who, as minority populations deserve special solicitude in their effort to sustain and preserve their distinct cultural identities as part of Crimea’s rich multi-ethnic heritage.

D. Article 6 – Effective Protection and Remedies

631. Article 6 requires State Parties to assure “everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination.”

632. The ordinary meaning of this language requiring “effective protection and remedies” is that contracting States must not only provide *ex post* recourse to victims of racism but also take affirmative action to ensure that they are not subjected to racial discrimination in the first place. The word “effective” qualifies both “protection” and “remedies” and indicates that the State’s efforts in this regard should be tailored to achieve their desired effect, rather than simply the appearance of protection or a remedy.¹²⁷⁸

633. The CERD Committee’s general recommendations make clear that Article 6 requires CERD parties to ensure that police receive discrimination complaints “in a satisfactory manner,” meaning that complaints are recorded “immediately”, and investigations are pursued “without delay and in an effective, independent and impartial manner.”¹²⁷⁹ In addition, police must be willing to accept complaints of discrimination, and

¹²⁷⁸ Oxford English Dictionary (2018) (“effective” defined to mean, among other things, “that is attended with result or has an effect.”) (Annex 1092).

¹²⁷⁹ CERD General Recommendation 31, para. 11 (Annex 789).

“[a]ny refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions.”¹²⁸⁰ The Committee has emphasized that in instances of alleged State harm, Member States must fully investigate and then punish any responsible actors.¹²⁸¹

634. Russia has comprehensively violated this provision. As indicated above, rather than protecting the Crimean Tatar and Ukrainian communities from racial discrimination, the courts have actively participated in Russia’s course of discriminatory conduct, convicting Crimea Tatar leaders on trumped-up charges, banning the Mejlis, denying relief to protect Crimean Tatar cultural heritage, and jailing Ukrainian activists.

635. In addition, neither the courts nor other public institutions have helped to redress the effects of Russia’s discriminatory conduct. The police have failed to properly investigate the disappearances of Crimean Tatar and Ukrainian activists.¹²⁸² The father of one victim was turned away by the FSB in Simferopol when he attempted to report the disappearance of his son, complete with video of the abduction.¹²⁸³ And the Supreme Court of Crimea has brushed off applications by Crimean Tatar litigants seeking review of the ban on the Mejlis in the wake of this Court’s Provisional Measures order.¹²⁸⁴

E. Article 7 – Education to Combat Racial Discrimination

636. In this article, States Parties “undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.” The ordinary meaning of

¹²⁸⁰ *Ibid.* para. 12. When torture, ill-treatment or executions are alleged, the CERD Committee recommends that investigations be conducted in accordance with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CERD General Recommendation 31, para. 14 (citing UNGA Resolution 555/89 of 4 December 2000) (Annex 789).

¹²⁸¹ Report of the Committee on the Elimination of Racial Discrimination, General Assembly Official Records: 48th Session, Supp. No. 18, A/48/18 (19 January 1994) para. 543.

¹²⁸² See *supra* Chapter 9, Section A.

¹²⁸³ See *ibid.*

¹²⁸⁴ See *supra* Chapter 9, Section B.

this provision is that it places an affirmative obligation on States Parties to integrate into their educational, cultural and information policies measures aimed at overcoming prejudice, in particular as directed at racial or ethnic minorities.

637. The Russian Federation's conduct in Crimea plainly violates this provision. Not only has Russia failed to put in place educational or other measures designed to combat prejudice, in the educational, cultural and information fields, it has instead implemented measures that can only have the effect of increasing the prejudice that leads to racial discrimination.

638. In the fields of teaching and education, it has abandoned the efforts that took place under Ukrainian governance to encourage multi-culturalism in the Crimean education system.¹²⁸⁵ In its place, the Russian Federation has introduced a “Russia First” educational ethos – reducing the resources devoted to education in languages other than Russian¹²⁸⁶ and introducing new textbooks that glorify Russian history and culture at the expense of other communities.¹²⁸⁷

639. In the field of culture, the Russian Federation has set up its own culture as superior to those of other ethnic groups in Crimea. Public gatherings with a Russian cultural theme are freely permitted while those designed to commemorate events or people of cultural importance to the Crimean Tatar and Ukrainian communities are routinely disallowed.¹²⁸⁸ Russian media broadcasts freely in Crimea, while Ukrainian TV channels were switched off in the earliest days of the occupation and independent Crimean Tatar and

¹²⁸⁵ See Tyshchenko Statement, paras. 4–17 (Annex 17).

¹²⁸⁶ See *ibid.* paras. 18–27 (Annex 17); see *supra* Chapter 10, Section C.

¹²⁸⁷ See Tyshchenko Statement, para. 23 (Annex 17).

¹²⁸⁸ See generally Chapter 10, Section A.

Ukrainian broadcast and print media are denied registration under Russia's repressive media laws for pretextual procedural reasons.¹²⁸⁹

640. And in the field of information, it has embarked on a vicious campaign of hate speech and disinformation in which it has labeled Ukrainians as fascists and Crimean Tatars as religious extremists.¹²⁹⁰

641. Rather than "combating prejudices" and "promoting understanding, tolerance and friendships among nations and racial or ethnical groups," Russia's conduct inflames ethnic tensions in Crimea. As such, it flagrantly violates Russia's obligations under Article 7 of the CERD.

¹²⁸⁹ See generally Chapter 10, Section B.

¹²⁹⁰ See generally Chapter 8, Section B.

Section C: Jurisdiction

Chapter 13. THE COURT HAS JURISDICTION OVER THE PARTIES' DISPUTE CONCERNING THE CERD

642. As with its claims under the ICSFT, Ukraine brings its claims under the CERD to this Court pursuant to Article 36(1) of its Statute.¹²⁹¹ Ukraine and the Russian Federation are both parties to the CERD, under which Article 22 provides:

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.¹²⁹²

643. Ukraine and the Russian Federation have therefore agreed to submit disputes concerning the interpretation or application of the CERD to this Court, provided that two preconditions are satisfied: (1) the existence of a dispute; and (2) failure of settlement "by negotiation or by the procedures expressly provided for" in the CERD. Both preconditions are met.

A. There Exists a Dispute Between Ukraine and the Russian Federation with Respect to the Interpretation or Application of the CERD.

644. Based on the record in this case, the Court has already found that there exists a dispute between Ukraine and the Russian Federation as regards the interpretation or

¹²⁹¹ Statute of the Court, Art. 36(1); *See supra* Chapter 9.

¹²⁹² CERD, Art. 22.

application of the CERD.¹²⁹³ The Court summarized the competing positions of both States: “Ukraine has claimed that the Russian Federation violated its obligations under this Convention,” whereas “[t]he Russian Federation has positively denied that it has committed any of th[ose] violations.”¹²⁹⁴

645. Since 2014, Ukraine has brought to the Russian Federation’s attention numerous and specific violations of the CERD. Following Ukraine’s first diplomatic note to the Russian Federation regarding the CERD, Ukraine followed up with eighteen additional notes. The Russian Federation responded with fifteen notes of its own, and both sides engaged in three rounds of negotiations on this subject, but to no avail. Since Ukraine has demonstrated that the Russian Federation “[is] aware, or could not [be] unaware, that its views are ‘positively opposed’” by Ukraine, a dispute exists under these circumstances.¹²⁹⁵

B. The Dispute Between Ukraine and the Russian Federation has not been Settled by Negotiation or by the Procedures Provided for in the CERD.

646. In its Order on Provisional Measures, this Court found that Ukraine has “demonstrate[d] that” the parties “engaged in negotiations regarding the question of the [Russian Federation’s] compliance with its substantive obligations under CERD,” and that it “appears from the record that these issues had not been resolved by negotiations at the time

¹²⁹³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order*, pp. 15-16, paras. 37-39. In particular, the Court noted that “the Parties differ on the question of whether the events which occurred in Crimea starting from late February 2014 have given rise to issues relating to their rights and obligations under CERD.” *Ibid.* p. 15, para. 37.

¹²⁹⁴ *Ibid.*

¹²⁹⁵ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016*, p. 568, para. 38 (citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 32, para. 73; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 99, para. 61, pp. 109-110, para. 87, p. 117, para. 104).

of the filing of the Application.”¹²⁹⁶ There can be no serious doubt that Ukraine’s efforts to negotiate bilaterally have been substantial and genuine. Indeed, Ukraine’s efforts to negotiate have been significantly more robust than Belgium’s attempt to negotiate with Senegal, where the Court concluded that the dispute at issue could not be settled by negotiation.¹²⁹⁷

647. Where there has been “no change in the respective positions of the Parties,” this Court has determined that “negotiations did not and could not lead to the settlement of the dispute.”¹²⁹⁸ The record here is clear that Ukraine and the Russian Federation have been unable to find common ground. Notwithstanding Ukraine’s repeated attempts to negotiate, the Russian Federation has consistently declined to engage substantively.¹²⁹⁹ As a consequence, the dispute was “not settled by negotiation,” and the preconditions under Article 22 of the CERD have been met.

648. The Russian Federation has argued that after spending more than two years pursuing bilateral negotiation to the point of futility, Ukraine was *further* required to engage Russia in the CERD Committee’s voluntary conciliation procedures. Russia’s position is contrary to the ordinary meaning of Article 22 and would thwart the object and purpose of the CERD.

¹²⁹⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order*, pp. 20-21, para. 59.

¹²⁹⁷ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, pp. 433-35, paras. 24-28 p. 446, paras. 58-59; see *supra* Chapter 9.

¹²⁹⁸ *Ibid.* para. 59. See also *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 13 (when a party “refuses ... to give way,” there can be “no doubt that the dispute cannot be settled by diplomatic negotiation”).

¹²⁹⁹ See, e.g., Russian Federation Note Verbale No. 4413 to Ukraine, dated 25 April 2016 (instead of addressing Ukraine’s numerous and specific claims, urging Ukraine “to provide to the Russian Side more specific information and refrain from vague summaries”).

649. Article 22 is phrased in the disjunctive: “Any dispute ... which is not settled by negotiation *or* by the procedures expressly provided for in this Convention....”¹³⁰⁰ The most natural reading of this language is that parties must exhaust *either* negotiation “*or*” the procedures provided for in the CERD before referring matters to this Court.

650. The broader context of Article 22 within the CERD also demonstrates that the drafters intended to permit states to bring disputes to the Court without having to exhaust two separate preconditions. The CERD Committee procedures referred to in Article 22 are voluntary, providing that a State “may bring the matter to the attention of the Committee.”¹³⁰¹ To do so, however, the treaty is quite clear about the preconditions for that settlement procedure, clearly stating that the Committee may only deal with a matter “after it has ascertained that *all* available domestic remedies have been invoked and exhausted.”¹³⁰² Had the drafters meant to make the voluntary procedures of Articles 11-13 *mandatory* in order to access judicial procedures, it would have been straightforward to use similarly clear language.¹³⁰³

651. The object and purpose of the CERD similarly show that the preconditions in Article 22 are alternative, not cumulative. Indeed, as several Members of this Court have explained, the “logic and purpose” of the text of Article 22 are “conclusive”¹³⁰⁴:

The point of this text cannot be to require a State to go through futile procedures solely for the purpose of delaying or impeding its access to the Court. The end sought is not purely one of form; if we look at it from the perspective taken by the

¹³⁰⁰ CERD, art. 22 (emphasis added).

¹³⁰¹ CERD, art. 11(1). Notably, the CERD Committee’s website makes clear that the inter-State complaint procedures have “never been used.”

<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate>

¹³⁰² *Ibid.* Art. 11(3) (emphasis added).

¹³⁰³ See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, dissenting opinion of Judge Trindade, p. 283, para. 96 (“[W]hen the draftsmen of the CERD Convention considered it necessary to establish a procedural condition, they clearly did so, leaving no margin or room for further interpretation or doubts.”).

¹³⁰⁴ *Ibid.* joint dissenting opinion of President Owada, Judges Simma, Abraham and Donoghue, and Judge *ad hoc* Gaja, p. 156, para. 43.

Court, the rule has a reasonable aim, to reserve judicial settlement for those disputes which cannot be settled by an out-of-court means based on agreement between the parties.

[. . .]

If the text is understood in these terms, it becomes illogical to consider the two modes referred to in Article 22 as necessarily cumulative. Each mode ultimately depends on an understanding between the parties and their desire to seek a negotiated solution. This is obvious in the case of “negotiation” and it is equally true for the “procedures expressly provided for” in Part II of CERD. The Committee established by the Convention has no power to impose a legally binding solution on the disputing States. . . . Ultimately, a favourable outcome depends on the readiness of the parties to come to an agreement, in other words, on their willingness to negotiate.

Consequently, where a State has already tried, without success, to negotiate directly with another State against which it has grievances, it would be senseless to require it to follow the special procedures in Part II, unless a formalism inconsistent with the spirit of the text is to prevail.¹³⁰⁵

652. Here, Ukraine exhaustively pursued negotiations to the point of futility, and no reasonable observer could conclude that a negotiated settlement with Russia is possible. In such circumstances, it would be “highly unreasonable” to read Article 22 as requiring Ukraine to delay seeking binding judicial relief and pursue time-consuming conciliation procedures with no prospect of success.¹³⁰⁶

¹³⁰⁵ *Ibid.* pp. 155-56, para. 43.

¹³⁰⁶ *Ibid.* pp. 157, para. 44.

PART IV: SUBMISSIONS

653. For the reasons set out in this Memorial, Ukraine respectfully requests the Court to adjudge and declare that:

ICSFT

- a. The Russian Federation is responsible for violations of Article 18 of the ICSFT by failing to cooperate in the prevention of the terrorism financing offenses set forth in Article 2 by taking all practicable measures to prevent and counter preparations in its territory for the commission of those offenses within or outside its territory. Specifically, the Russian Federation has violated Article 18 by failing to take the practicable measures of: (i) preventing Russian state officials and agents from financing terrorism in Ukraine; (ii) discouraging public and private actors and other non-governmental third parties from financing terrorism in Ukraine; (iii) policing its border with Ukraine to stop the financing of terrorism; and (iv) monitoring and suspending banking activity and other fundraising activities undertaken by private and public actors on its territory to finance of terrorism in Ukraine.
- b. The Russian Federation is responsible for violations of Article 8 of the ICSFT by failing to identify and detect funds used or allocated for the purposes of financing terrorism in Ukraine, and by failing to freeze or seize funds used or allocated for the purpose of financing terrorism in Ukraine.
- c. The Russian Federation has violated Articles 9 and 10 of the ICSFT by failing to investigate the facts concerning persons who have committed or are alleged to have committed terrorism financing in Ukraine, and to extradite or prosecute alleged offenders.
- d. The Russian Federation has violated Article 12 of the ICSFT by failing to provide Ukraine the greatest measure of assistance in connection with criminal investigations in respect of terrorism financing offenses.

- e. As a consequence of the Russian Federation's violations of the ICSFT, its proxies in Ukraine have been provided with funds that enabled them to commit numerous acts of terrorism, including the downing of Flight MH17, the shelling of Volnovakha, Mariupol, Kramatorsk, and Avdiivka, the bombings of the Kharkiv unity march and Stena Rock Club, the attempted assassination of a Ukrainian member of Parliament, and others.

CERD

- f. The Russian Federation has violated CERD Article 2 by engaging in numerous and pervasive acts of racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea and by engaging in a policy and practice of racial discrimination against those communities.
- g. The Russian Federation has further violated CERD Article 2 by sponsoring, defending or supporting racial discrimination by other persons or organizations against the Crimean Tatar and Ukrainian communities in Crimea.
- h. The Russian Federation has violated CERD Articles 4 by promoting and inciting racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.
- i. The Russian Federation has violated CERD Article 5 by failing to guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in their enjoyment of (i) the right to equal treatment before the tribunals and all other organs administering justice; (ii) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (iii) political rights; (iv) other civil rights; and (v) economic, social and cultural rights.
- j. The Russian Federation has violated CERD Article 6 by failing to assure the Crimean Tatar and Ukrainian communities in Crimea effective protection and remedies against acts of racial discrimination.

k. The Russian Federation has violated CERD Article 7 by failing to adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.

654. The aforementioned acts constitute violations of the ICSFT and CERD, and are therefore internationally wrongful acts for which the Russian Federation bears international responsibility. The Russian Federation is therefore required to:

ICSFT

- a. Cease immediately each of the above violations of ICSFT Articles 8, 9, 10, 12, and 18 and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.
- b. Take all practicable measures to prevent the commission of terrorism financing offences, including (i) ensuring that Russian state officials or any other person under its jurisdiction do not provide weapons or other funds to groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, Kharkiv Partisans, and other illegal armed groups; (ii) cease encouraging public and private actors and other non-governmental third parties to finance terrorism in Ukraine; (iii) police Russia's border with Ukraine to stop any supply of weapons into Ukraine; and (iv) monitor and prohibit private and public transactions originating in Russian territory, or initiated by Russian nationals, that finance terrorism in Ukraine, including by enforcing banking restrictions to block transactions for the benefit of groups engaged in terrorism in Ukraine, including without limitation the DPR, LPR, the Kharkiv Partisans, and other illegal armed groups.
- c. Freeze or seize assets of persons suspected of supplying funds to groups engaged in terrorism in Ukraine, including without limitation illegal armed groups associated with the DPR, LPR, and Kharkiv Partisans, and cause the forfeiture of assets of persons found to have supplied funds to such groups.

- d. Provide the greatest measure of assistance to Ukraine in connection with criminal investigations of suspected financers of terrorism.
- e. Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the ICSFT, including the harm suffered by its nationals injured by acts of terrorism that occurred as a consequence of the Russian Federation's ICSFT violations, with such compensation to be quantified in a separate phase of these proceedings.
- f. Pay moral damages to Ukraine in an amount deemed appropriate by the Court, reflecting the seriousness of the Russian Federation's violations of the ICSFT, the quantum of which is to be determined in a separate phase of these proceedings.

CERD

- g. Immediately comply with the provisional measures ordered by the Court on 19 April 2017, in particular by lifting its ban on the activities of the Mejlis of the Crimean Tatar People and by ensuring the availability of education in the Ukrainian language.
- h. Cease immediately each of the above violations of CERD Articles 2, 4, 5, 6, and 7, and provide Ukraine with appropriate guarantees and public assurances that it will refrain from such actions in the future.
- i. Guarantee the right of members of the Crimean Tatar and Ukrainian communities to equality before the law, notably in the enjoyment of the human rights and fundamental freedoms protected by the Convention.
- j. Assure to all residents of Crimea within its jurisdiction effective protection and remedies against acts of racial discrimination.
- k. Adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination against the Crimean Tatar and Ukrainian communities in Crimea.
- l. Pay Ukraine financial compensation, in its own right and as *parens patriae* for its citizens, for the harm Ukraine has suffered as a result of Russia's violations of the CERD, including the harm suffered by victims as a result of the Russian Federation's

violations of CERD Articles 2, 4, 5, 6 and 7, with such compensation to be quantified in a separate phase of these proceedings.

12 June 2018,

Ms. Olena Zerkal
Deputy Foreign Minister of Ukraine
Agent of Ukraine

CERTIFICATION

I hereby certify that the annexes are true copies of the documents
referred to and that the translations provided are accurate.

12 June 2018,

Ms. Olena Zerkal
Deputy Foreign Minister of Ukraine
Agent of Ukraine

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