INTERNATIONAL COURT OF JUSTICE

ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(UKRAINE *V.* RUSSIAN FEDERATION)

VOLUME OF ANNEXES

TO THE MEMORIAL

SUBMITTED BY UKRAINE

1 JULY 2022

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Annex 1

Prosecutor General's Office of Ukraine, *The Prosecutor General's Office of Ukraine Initiated Criminal Proceedings Against Officials of the Investigative Committee of the Russian Federation* (29 September 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

29 September 2014

The Prosecutor General's Office of Ukraine initiated criminal proceedings against officials of the Investigative Committee of the Russian Federation

The Prosecutor General's Office of Ukraine has initiated criminal proceedings against officials of the Investigative Committee of the Russian Federation (the IC of the Russian Federation) for committing crimes provided for by Article 258-3 (facilitating terrorist organization), Article 343 (interference in the activities of a law enforcement officer), Article 344 (interference in the activities of a statesman) of the Criminal Code of Ukraine.

As the Prosecutor General's Office has learned, in May-June 2014, a department for investigating crimes related to the use of prohibited means and methods of warfare was created within the structure of the Central Office of the IC of the Russian Federation. The purpose of this department, according to the official website of the entity, is to bring the Ukrainian military to justice for alleged crimes against civilians.

In particular, the Investigative Committee of the Russian Federation opened a criminal case against the Ukrainian military officer N.V. Savchenko for allegedly aiding and abetting the murder of journalists of the "Russia" TV channel I.V. Kornelyuk and A.D. Voloshyn.

The IC of the Russian Federation is also conducting criminal investigation against unidentified servicemen of the Armed Forces of Ukraine, the National Guard of Ukraine and activists of the public organization "Right Sector" for their alleged shelling of Slovyansk, Kramatorsk, Donetsk, Mariupol and other territories of Donetsk and Luhansk regions, killing civilians.

Thus, by means of a groundless criminal prosecution, unlawful interference in the activities of law enforcement agencies of Ukraine and the Armed Forces of Ukraine is being carried out. In this regard, it can be stated that the creation of the Department for the Investigation of Crimes Related to the Use of Prohibited Means and Methods of Warfare within the structure of the IC of the Russian Federation, as well as the initiation of these and other criminal cases by the officials of the IC of the Russian Federation, are aimed at facilitating terrorist organizations "Donetsk People's Republic" and "Luhansk People's Republic" in their criminal activities, and obstructing representatives of state bodies and public figures from performance of their duties.

The commission of these criminal offenses encroaches on the interests of the state, its sovereignty and territorial integrity protected by international treaties and laws of Ukraine.

Department of Public Affairs and Media
of the Prosecutor General's Office of Ukraine

Annex 2

ArmyINFORM, *About Us* (27 May 2019)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

About us

27 May 2019

ArmyINFORM is an information agency of the Ministry of Defense of Ukraine, established in December 2018.

Our goal is a quality information product, objectivity and impartiality in editorial policy, and round-the-clock access to news. Every day ArmyINFORM gives a complete picture of events in the field of defense and security: operational information, analytics, exclusive comments, interviews, photo reports, infographics, and video streams from the scene. We are created for smart, active, caring people, for whom it is important to be aware of everything that happens in the army and to draw their own conclusions.

ArmyINFORM has a network of correspondent offices. Correspondents of the agency work in all regions of Ukraine, in particular, constantly in the area of the Joint Forces Operation.

Among the partners of the agency are military units and organizations, electronic and print media, TV and radio companies of Ukraine, foreign media, authorities, embassies and consulates, and defense industrial complex enterprises.

ArmyINFORM has a professional photo service and its own photo archive.

ArmyINFORM Press Center provides professional training, holding and comprehensive media support of press conferences, briefings, round tables, Internet conferences, presentations, seminars, and exhibitions. Among the regular guests of the press center are statesmen, military leaders, domestic and foreign diplomats, opinion leaders, prominent athletes, artists, writers and scientists, religious and public figures, and show business stars.

ArmyINFORM keeps up with the times and is constantly improving due to close feedback from the consumer of our information product.

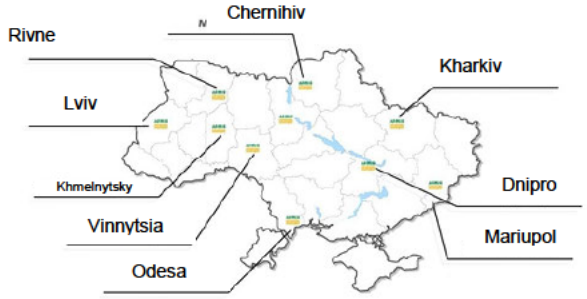
Be the first with ArmyInform. Our credo is: "To society – about the army. To army – about the society".

ARMY INFORM

OUR TASK

Preparation and distribution of the information product of a military nature fully ready-to-use by both media organizations and structures and individual consumers

INFORMATION EDITORIAL OFFICES



INFORMATION EDITORIAL OFFICES

- **Troop Training Coverage Department**
- **Department of Humanitarian Policy and Social Protection**
- **News and Internet Projects Department**
- **Department of Coverage of International Cooperation**

INFORMATION EDITORIAL OFFICES

- **Department of Coverage of Defense Policy and Development of the Armed Forces of Ukraine**
- **Department of Coverage of Military-Technical Policy and Development of Defense Industrial Complex**
- **Department of History, Development of National Traditions, Culture and Sports**

Annex 3

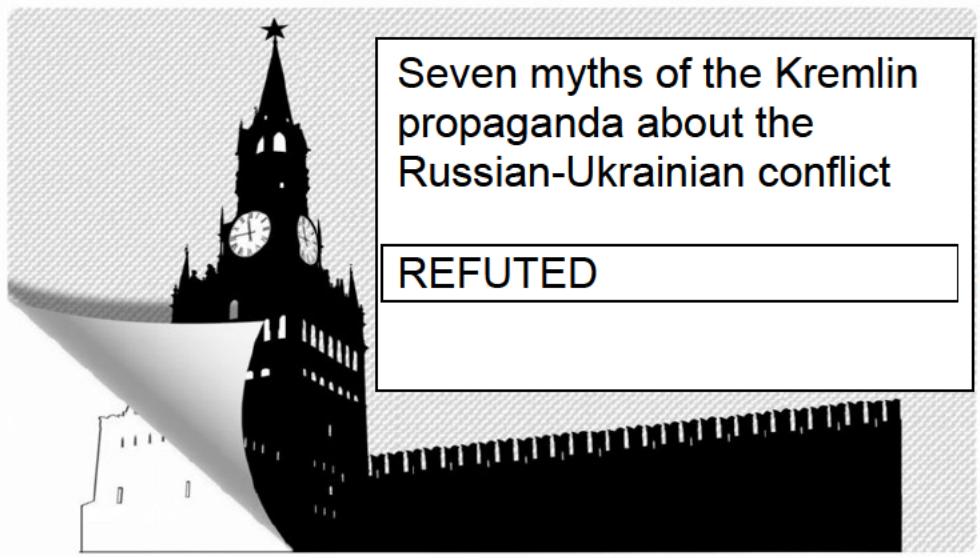
Ruslan Tkachuk, *Seven Myths of the Kremlin Propaganda About the Russian-Ukrainian Conflict*, ArmyINFORM (26 January 2022)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

АРМІЯ INFORM

Seven myths of the Kremlin propaganda about the Russian-Ukrainian conflict

Read in: 8 minutes 26 January 2022,12: 39 398



Against the background of prolonged military aggression against Ukraine, Russia is conducting a constant and state-coordinated disinformation campaign aimed at the population of Russia and its neighbors, the European Union and beyond, in particular to influence public opinion. The Kremlin spares no effort to denigrate Ukraine, to portray it as a threat to global security, and to weaken international support for Ukrainian sovereignty. The recent Russian military build-up has only exacerbated this flurry of misinformation.

The EUVSDisinfo fact-checking platform systematized the most common and dangerous myths, and often outright lies related to the Russian-Ukrainian conflict.

. . .

Myth 2: *"This conflict was provoked by the situation in Ukraine. There is evidence that Ukraine is committing atrocities against the Russian-speaking population in the east of the country. Russia must intervene, not least because Ukraine and Russia are "one nation". Ukraine simply belongs to Russia's "privileged sphere of influence".*

Not true: The claim that Ukraine is attacking its own territory and pursuing its own citizens is absurd. To intensify domestic support for Russian military aggression, the Russian state media are relentlessly trying to denigrate Ukraine, accusing it of genocide in eastern Ukraine, drawing groundless parallels with Nazism and World War II.

> There is no evidence that Russian-speaking or ethnic Russians in eastern Ukraine are persecuted, not to mention genocide, by the Ukrainian authorities.

In fact, there is no evidence that Russian-speaking or ethnic Russians in eastern Ukraine are persecuted, not to mention genocide, by the Ukrainian authorities. This is confirmed in reports published by the Council of Europe, the UN High Commissioner for Human Rights and the OSCE.

The Kremlin's propaganda often claims that Ukraine and Russia are "one nation", which is the most deeply rooted myth used against Ukraine. This claim is ungrounded even from a long-term historical perspective. Despite long periods of foreign rule, Ukraine has a strong national culture and identity and is a sovereign country. The concept of an "all-Russian nation" without political borders is an ideological construction dating back to imperial times. The Russian government has been cultivating this myth by force since 2014, trying to rationalize and justify its military aggression against Ukraine.

As for “spheres of influence”, this concept has no place in the 21st century. Like all sovereign states, Ukraine is free to determine its own path, its foreign policy and security policy, as well as its participation in international organizations and military alliances.

Like all sovereign states, Ukraine is free to determine its own path, its foreign policy and security policy, as well as its participation in international organizations and military alliances.

To promote the idea that Ukraine belongs to Russia's "sphere of influence," Kremlin propaganda often declares that Ukraine is not a "real" state, and tries to distort history to legitimize the idea that Ukraine belongs to Russia's natural sphere of interests.

. . .

Ruslan Tkachuk
Correspondent of ArmyInform

Annex 4

Resolution of the State Duma of the Federal Assembly of the Russian Federation of February 15, 2022 N 743-8 GD , “On the appeal of the State Duma of the Federal Assembly of the Russian Federation to the President of the Russian Federation V.V. Putin on the necessity to recognize the Donetsk People’s Republic and the Luhansk People's Republic” (15 February 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51

RESOLUTION

OF THE STATE DUMA

OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION

On the appeal of the State Duma of the Federal Assembly of the Russian Federation "To the President of the Russian Federation V.V. Putin on the necessity to recognize the Donetsk People's Republic and the Luhansk People's Republic"

The State Duma of the Federal Assembly of the Russian Federation decides to:

1. Adopt the appeal of the State Duma of the Federal Assembly of the Russian Federation "To the President of the Russian Federation V.V. Putin on the necessity to recognize the Donetsk People's Republic and the Luhansk People's Republic".

2. Send this Resolution and the said Appeal to the President of the Russian Federation V.V. Putin.

3. Send this Resolution and the said Appeal to the "Parliamentary newspaper" for official publication.

4. This Resolution shall enter in force from the day of its adoption.

Chairman of the State Duma
of the Federal Assembly
of the Russian Federation V.V. Volodin

Moscow

15 February 2022

No. 743-8 DG

Appeal

of the State Duma of the Federal Assembly
of the Russian Federation (eight convocation)
to the President of the Russian Federation V.V. Putin
on the necessity to recognize the Donetsk People's Republic and the Luhansk People's Republic

Dear Vladimir Vladimirovich!

The State Duma of the Federal Assembly of the Russian Federation expresses unequivocal and unified support for the appropriate measures taken for humanitarian purposes to support residents of certain areas of the Donetsk and Luhansk regions of Ukraine who have expressed a desire to speak and write in Russian, who want freedom of religion, as well as those who disagree with the actions of the Ukrainian authorities, violating their rights and freedoms.

Residents of the Donetsk and Luhansk regions of Ukraine at the all-Ukrainian referendum of 27 March 1994 agreed to the federal land structure of Ukraine and the confirmation of the Russian language as the state language of Ukraine along with the Ukrainian language, and also supported the use of the Russian language in the territories of the Donetsk and Luhansk regions of Ukraine in the field of labor relations, office work, documentation, education and scientific activities.

The new authorities of Ukraine, now glorifying the fascists Bandera, Shukhevych and their followers, have become intolerant of the historically established norms of life, as well as the will and religion of the inhabitants of these regions. The actions of the Ukrainian authorities forced residents of certain areas of the Donetsk and Luhansk regions of Ukraine to initiate a referendum and vote in May 2014 for the adoption of the Act of Self-Determination of the Donetsk People's Republic (89 percent) and the Act of Self-Determination of the Luhansk People's Republic (96 percent).

For eight years, residents of certain areas of the Donetsk and Luhansk regions of Ukraine have been living under shelling from small- and large-caliber weapons. According to data of the United Nations, more than ten thousand people died, more than fifty thousand are injured, more than 1.4 million people are displaced within Ukraine and more than 2.5 million people arrived in the Russian Federation en masse as an emergency seeking asylum. The authorities of Ukraine have stopped paying pensions and social benefits to these residents and have established a complete economic blockade of the population and enterprises in the certain areas of the Donetsk and Luhansk regions of Ukraine. The actions of the Ukrainian authorities are quite comparable with the genocide of their own people.

The process of peaceful settlement of the situation in the south-east of Ukraine could only be started with the personal participation of the leaders of the Russian Federation, the French Republic, the Federal Republic of Germany and Ukraine in the “Normandy Four” format. A Contact Group for resolving the situation in Ukraine was also created, consisting of representatives of Ukraine, Russia, the Organization for Security and Cooperation in Europe, as well as certain areas of the Donetsk and Luhansk regions of Ukraine. As a result of the work at the negotiation platforms, the Minsk agreements were adopted and approved by a special resolution of the United Nations Security Council, as well as numerous decisions of the Contact Group for resolving the situation in Ukraine.

Today, none of the clauses of the Minsk agreements, which laid down the main vector of

protecting the rights and freedoms and restoring the peaceful life of citizens, infrastructure and the economy of residents of certain areas of the Donetsk and Luhansk regions of Ukraine, has not been implemented by the new Ukrainian authorities. Instead of consistent actions, the Ukrainian authorities are trying to revise or completely cancel all the reached agreements. There have been many recorded attempts to disrupt the peace process: numerous violations of the regime of ceasefire are recorded along the entire contact line, shells destroy civilian homes, schools and other infrastructure. The Ukrainian side seizes settlements between the contact lines, where, among other residents, citizens of the Russian Federation live also. In order to please the Ukrainian authorities, an employee of the Joint Center for Control and Coordination, a representative of the unrecognized Luhansk People's Republic, was arrested during performance of his official duties. Representatives of the Ukrainian side in the Contact Group for resolving the situation in Ukraine deliberately demonstrate their inadequacy and continue to imitate compliance with the established truce in the Donetsk and Luhansk regions of Ukraine.

For humanitarian purposes, since 2014, the Russian Federation has taken significant measures to support residents of certain areas of the Donetsk and Luhansk regions of Ukraine. On a regular basis, humanitarian convoys with food, building materials, medicines and gifts for children are sent from Russia.

Members of the State Duma consider the recognition of the Donetsk People's Republic and Luhansk People's Republic as justified and morally acceptable. During the past years on the basis of the will of the people, democratic representative and executive bodies of state power have been created in the republics, the Constitution of the Donetsk People's Republic and the Constitution of the Luhansk People's Republic are in force, as well as legislative, regulatory legal acts adopted by the highest representative and executive bodies of state power of the republics, regulating relations in the political, financial, economic and social spheres.

Such recognition will create legal grounds for guaranteeing the security and protection of the peoples of the Donetsk People's Republic and the Luhansk People's Republic from external threats and the implementation of a policy of genocide against the inhabitants of the republics, strengthening peace between people and regional stability in accordance with the purposes and principles of the Charter of the United Nations, and will initiate the process of international recognition of both states.

In connection with the foregoing, the members of the State Duma are turning to you, dear Vladimir Vladimirovich, with request to consider the issue about recognition by the Russian Federation of the Donetsk People's Republic and the Luhansk People's Republic as independent, sovereign and independent states, as well as the issue of holding immediate talks with the leadership of the Donetsk People's Republic and the Luhansk People's Republic in order to create a legal basis for interstate relations that ensures the regulation of all aspects of cooperation and mutual assistance, including security issues.

Chairman of the State Duma
of the Federal Assembly
of the Russian Federation V.V. Volodin

Moscow

15 February 2022

Annex 5

President of Russia Vladimir Putin, *Address by the President of the Russian Federation*
(21 February 2022)

Address by the President of the Russian Federation

February 21, 2022 22:35 The Kremlin, Moscow

President of Russia Vladimir Putin: Citizens of Russia, friends,

My address concerns the events in Ukraine and why this is so important for us, for Russia. Of course, my message is also addressed to our compatriots in Ukraine.

The matter is very serious and needs to be discussed in depth.

The situation in Donbass has reached a critical, acute stage. I am speaking to you directly today not only to explain what is happening but also to inform you of the decisions being made as well as potential further steps.

I would like to emphasise again that Ukraine is not just a neighbouring country for us. It is an inalienable part of our own history, culture and spiritual space. These are our comrades, those dearest to us – not only colleagues, friends and people who once served together, but also relatives, people bound by blood, by family ties.

Since time immemorial, the people living in the south-west of what has historically been Russian land have called themselves Russians and Orthodox Christians. This was the case before the 17th century, when a portion of this territory rejoined the Russian state, and after.

It seems to us that, generally speaking, we all know these facts, that this is common knowledge. Still, it is necessary to say at least a few words about the history of this issue in order to understand what is happening today, to explain the motives behind Russia's actions and what we aim to achieve.

So, I will start with the fact that modern Ukraine was entirely created by Russia or, to be more precise, by Bolshevik, Communist Russia. This process started practically right after the 1917 revolution, and Lenin and his associates did it in a way that was extremely harsh on Russia – by separating, severing what is historically Russian land. Nobody asked the millions of people living there what they thought.

Then, both before and after the Great Patriotic War, Stalin incorporated in the USSR and transferred to Ukraine some lands that previously belonged to Poland, Romania and Hungary. In the process, he gave Poland part of what was traditionally German land as compensation, and in 1954, Khrushchev took Crimea away from Russia for some reason and also gave it to Ukraine. In effect, this is how the territory of modern Ukraine was formed.

But now I would like to focus attention on the initial period of the USSR's formation. I believe this is extremely important for us. I will have to approach it from a distance, so to speak.

I will remind you that after the 1917 October Revolution and the subsequent Civil War, the Bolsheviks set about creating a new statehood. They had rather serious disagreements among themselves on this point. In 1922, Stalin occupied the positions of both the General Secretary of the Russian Communist Party (Bolsheviks) and the People's Commissar for Ethnic Affairs. He suggested building the country on the principles of autonomisation that is, giving the republics – the future administrative and territorial entities – broad powers upon joining a unified state.

Lenin criticised this plan and suggested making concessions to the nationalists, whom he called "independents" at that time. Lenin's ideas of what amounted in essence to a confederative state arrangement and a slogan about the right of nations to self-determination, up to secession, were laid in the foundation of Soviet statehood. Initially they were confirmed in the Declaration on the Formation of the USSR in 1922, and later on, after Lenin's death, were enshrined in the 1924 Soviet Constitution.

This immediately raises many questions. The first is really the main one: why was it necessary to appease the nationalists, to satisfy the ceaselessly growing nationalist ambitions on the outskirts of the former empire? What was the point of transferring

to the newly, often arbitrarily formed administrative units – the union republics – vast territories that had nothing to do with them? Let me repeat that these territories were transferred along with the population of what was historically Russia.

Moreover, these administrative units were de facto given the status and form of national state entities. That raises another question: why was it necessary to make such generous gifts, beyond the wildest dreams of the most zealous nationalists and, on top of all that, give the republics the right to secede from the unified state without any conditions?

At first glance, this looks absolutely incomprehensible, even crazy. But only at first glance. There is an explanation. After the revolution, the Bolsheviks' main goal was to stay in power at all costs, absolutely at all costs. They did everything for this purpose: accepted the humiliating Treaty of Brest-Litovsk, although the military and economic situation in Kaiser Germany and its allies was dramatic and the outcome of the First World War was a foregone conclusion, and satisfied any demands and wishes of the nationalists within the country.

When it comes to the historical destiny of Russia and its peoples, Lenin's principles of state development were not just a mistake; they were worse than a mistake, as the saying goes. This became patently clear after the dissolution of the Soviet Union in 1991.

Of course, we cannot change past events, but we must at least admit them openly and honestly, without any reservations or politicking. Personally, I can add that no political factors, however impressive or profitable they may seem at any given moment, can or may be used as the fundamental principles of statehood.

I am not trying to put the blame on anyone. The situation in the country at that time, both before and after the Civil War, was extremely complicated; it was critical. The only thing I would like to say today is that this is exactly how it was. It is a historical fact. Actually, as I have already said, Soviet Ukraine is the result of the Bolsheviks' policy and can be rightfully called "Vladimir Lenin's Ukraine." He was its creator and architect. This is fully and comprehensively corroborated by archival documents, including Lenin's harsh instructions regarding Donbass, which was actually shoved into Ukraine. And today

the “grateful progeny” has overturned monuments to Lenin in Ukraine. They call it decommunization.

You want decommunization? Very well, this suits us just fine. But why stop halfway? We are ready to show what real decommunizations would mean for Ukraine.

Going back to history, I would like to repeat that the Soviet Union was established in the place of the former Russian Empire in 1922. But practice showed immediately that it was impossible to preserve or govern such a vast and complex territory on the amorphous principles that amounted to confederation. They were far removed from reality and the historical tradition.

It is logical that the Red Terror and a rapid slide into Stalin’s dictatorship, the domination of the communist ideology and the Communist Party’s monopoly on power, nationalisation and the planned economy – all this transformed the formally declared but ineffective principles of government into a mere declaration. In reality, the union republics did not have any sovereign rights, none at all. The practical result was the creation of a tightly centralised and absolutely unitary state.

In fact, what Stalin fully implemented was not Lenin’s but his own principles of government. But he did not make the relevant amendments to the cornerstone documents, to the Constitution, and he did not formally revise Lenin’s principles underlying the Soviet Union. From the look of it, there seemed to be no need for that, because everything seemed to be working well in conditions of the totalitarian regime, and outwardly it looked wonderful, attractive and even super-democratic.

And yet, it is a great pity that the fundamental and formally legal foundations of our state were not promptly cleansed of the odious and utopian fantasies inspired by the revolution, which are absolutely destructive for any normal state. As it often happened in our country before, nobody gave any thought to the future.

It seems that the Communist Party leaders were convinced that they had created a solid system of government and that their policies had settled the ethnic issue for good. But falsification, misconception, and tampering with public opinion have a high cost. The virus of nationalist ambitions is still with us, and the mine laid at the initial stage to destroy

state immunity to the disease of nationalism was ticking. As I have already said, the mine was the right of secession from the Soviet Union.

In the mid-1980s, the increasing socioeconomic problems and the apparent crisis of the planned economy aggravated the ethnic issue, which essentially was not based on any expectations or unfulfilled dreams of the Soviet peoples but primarily the growing appetites of the local elites.

However, instead of analysing the situation, taking appropriate measures, first of all in the economy, and gradually transforming the political system and government in a well-considered and balanced manner, the Communist Party leadership only engaged in open doubletalk about the revival of the Leninist principle of national self-determination.

Moreover, in the course of power struggle within the Communist Party itself, each of the opposing sides, in a bid to expand its support base, started to thoughtlessly incite and encourage nationalist sentiments, manipulating them and promising their potential supporters whatever they wished. Against the backdrop of the superficial and populist rhetoric about democracy and a bright future based either on a market or a planned economy, but amid a true impoverishment of people and widespread shortages, no one among the powers that be was thinking about the inevitable tragic consequences for the country.

Next, they entirely embarked on the track beaten at the inception of the USSR and pandering to the ambitions of the nationalist elites nurtured within their own party ranks. But in so doing, they forgot that the CPSU no longer had – thank God – the tools for retaining power and the country itself, tools such as state terror and a Stalinist-type dictatorship, and that the notorious guiding role of the party was disappearing without a trace, like a morning mist, right before their eyes.

And then, the September 1989 plenary session of the CPSU Central Committee approved a truly fatal document, the so-called ethnic policy of the party in modern conditions, the CPSU platform. It included the following provisions, I quote: “The republics of the USSR shall possess all the rights appropriate to their status as sovereign socialist states.”

The next point: “The supreme representative bodies of power of the USSR republics can challenge and suspend the operation of the USSR Government’s resolutions and directives in their territory.”

And finally: “Each republic of the USSR shall have citizenship of its own, which shall apply to all of its residents.”

Wasn’t it clear what these formulas and decisions would lead to?

Now is not the time or place to go into matters pertaining to state or constitutional law, or define the concept of citizenship. But one may wonder: why was it necessary to rock the country even more in that already complicated situation? The facts remain.

Even two years before the collapse of the USSR, its fate was actually predetermined. It is now that radicals and nationalists, including and primarily those in Ukraine, are taking credit for having gained independence. As we can see, this is absolutely wrong. The disintegration of our united country was brought about by the historic, strategic mistakes on the part of the Bolshevik leaders and the CPSU leadership, mistakes committed at different times in state-building and in economic and ethnic policies. The collapse of the historical Russia known as the USSR is on their conscience.

Despite all these injustices, lies and outright pillage of Russia, it was our people who accepted the new geopolitical reality that took shape after the dissolution of the USSR, and recognised the new independent states. Not only did Russia recognise these countries, but helped its CIS partners, even though it faced a very dire situation itself. This included our Ukrainian colleagues, who turned to us for financial support many times from the very moment they declared independence. Our country provided this assistance while respecting Ukraine’s dignity and sovereignty.

According to expert assessments, confirmed by a simple calculation of our energy prices, the subsidised loans Russia provided to Ukraine along with economic and trade preferences, the overall benefit for the Ukrainian budget in the period from 1991 to 2013 amounted to $250 billion.

However, there was more to it than that. By the end of 1991, the USSR owed some $100 billion to other countries and international funds. Initially, there was this idea that all former Soviet republics will pay back these loans together, in the spirit of solidarity and proportionally to their economic potential. However, Russia undertook to pay back all Soviet debts and delivered on this promise by completing this process in 2017.

In exchange for that, the newly independent states had to hand over to Russia part of the Soviet foreign assets. An agreement to this effect was reached with Ukraine in December 1994. However, Kiev failed to ratify these agreements and later simply refused to honour them by making demands for a share of the Diamond Treasury, gold reserves, as well as former USSR property and other assets abroad.

Nevertheless, despite all these challenges, Russia always worked with Ukraine in an open and honest manner and, as I have already said, with respect for its interests. We developed our ties in multiple fields. Thus, in 2011, bilateral trade exceeded $50 billion. Let me note that in 2019, that is before the pandemic, Ukraine's trade with all EU countries combined was below this indicator.

At the same time, it was striking how the Ukrainian authorities always preferred dealing with Russia in a way that ensured that they enjoy all the rights and privileges while remaining free from any obligations.

The officials in Kiev replaced partnership with a parasitic attitude acting at times in an extremely brash manner. Suffice it to recall the continuous blackmail on energy transits and the fact that they literally stole gas.

I can add that Kiev tried to use dialogue with Russia as a bargaining chip in its relations with the West, using the threat of closer ties with Russia for blackmailing the West to secure preferences by claiming that otherwise Russia would have a bigger influence in Ukraine.

At the same time, the Ukrainian authorities – I would like to emphasise this – began by building their statehood on the negation of everything that united us, trying to distort the mentality and historical memory of millions of people, of entire generations living in Ukraine. It is not surprising that Ukrainian society was faced with the rise of far-right

nationalism, which rapidly developed into aggressive Russophobia and neo-Nazism. This resulted in the participation of Ukrainian nationalists and neo-Nazis in the terrorist groups in the North Caucasus and the increasingly loud territorial claims to Russia.

A role in this was played by external forces, which used a ramified network of NGOs and special services to nurture their clients in Ukraine and to bring their representatives to the seats of authority.

It should be noted that Ukraine actually never had stable traditions of real statehood. And, therefore, in 1991 it opted for mindlessly emulating foreign models, which have no relation to history or Ukrainian realities. Political government institutions were readjusted many times to the rapidly growing clans and their self-serving interests, which had nothing to do with the interests of the Ukrainian people.

Essentially, the so-called pro-Western civilisational choice made by the oligarchic Ukrainian authorities was not and is not aimed at creating better conditions in the interests of people's well-being but at keeping the billions of dollars that the oligarchs have stolen from the Ukrainians and are holding in their accounts in Western banks, while reverently accommodating the geopolitical rivals of Russia.

Some industrial and financial groups and the parties and politicians on their payroll relied on the nationalists and radicals from the very beginning. Others claimed to be in favour of good relations with Russia and cultural and language diversity, coming to power with the help of their citizens who sincerely supported their declared aspirations, including the millions of people in the south-eastern regions. But after getting the positions they coveted, these people immediately betrayed their voters, going back on their election promises and instead steering a policy prompted by the radicals and sometimes even persecuting their former allies – the public organisations that supported bilingualism and cooperation with Russia. These people took advantage of the fact that their voters were mostly law-abiding citizens with moderate views who trusted the authorities, and that, unlike the radicals, they would not act aggressively or make use of illegal instruments.

Meanwhile, the radicals became increasingly brazen in their actions and made more demands every year. They found it easy to force their will on the weak authorities, which

were infected with the virus of nationalism and corruption as well and which artfully replaced the real cultural, economic and social interests of the people and Ukraine's true sovereignty with various ethnic speculations and formal ethnic attributes.

A stable statehood has never developed in Ukraine; its electoral and other political procedures just serve as a cover, a screen for the redistribution of power and property between various oligarchic clans.

Corruption, which is certainly a challenge and a problem for many countries, including Russia, has gone beyond the usual scope in Ukraine. It has literally permeated and corroded Ukrainian statehood, the entire system, and all branches of power.

Radical nationalists took advantage of the justified public discontent and saddled the Maidan protest, escalating it to a coup d'état in 2014. They also had direct assistance from foreign states. According to reports, the US Embassy provided $1 million a day to support the so-called protest camp on Independence Square in Kiev. In addition, large amounts were impudently transferred directly to the opposition leaders' bank accounts, tens of millions of dollars. But the people who actually suffered, the families of those who died in the clashes provoked in the streets and squares of Kiev and other cities, how much did they get in the end? Better not ask.

The nationalists who have seized power have unleashed a persecution, a real terror campaign against those who opposed their anti-constitutional actions. Politicians, journalists, and public activists were harassed and publicly humiliated. A wave of violence swept Ukrainian cities, including a series of high-profile and unpunished murders. One shudders at the memories of the terrible tragedy in Odessa, where peaceful protesters were brutally murdered, burned alive in the House of Trade Unions. The criminals who committed that atrocity have never been punished, and no one is even looking for them. But we know their names and we will do everything to punish them, find them and bring them to justice.

Maidan did not bring Ukraine any closer to democracy and progress. Having accomplished a coup d'état, the nationalists and those political forces that supported them eventually led Ukraine into an impasse, pushed the country into the abyss of civil war. Eight years later, the country is split. Ukraine is struggling with an acute socioeconomic crisis.

According to international organisations, in 2019, almost 6 million Ukrainians – I emphasise – about 15 percent, not of the wokrforce, but of the entire population of that country, had to go abroad to find work. Most of them do odd jobs. The following fact is also revealing: since 2020, over 60,000 doctors and other health workers have left the country amid the pandemic.

Since 2014, water bills increased by almost a third, and energy bills grew several times, while the price of gas for households surged several dozen times. Many people simply do not have the money to pay for utilities. They literally struggle to survive.

What happened? Why is this all happening? The answer is obvious. They spent and embezzled the legacy inherited not only from the Soviet era, but also from the Russian Empire. They lost tens, hundreds of thousands of jobs which enabled people to earn a reliable income and generate tax revenue, among other things thanks to close cooperation with Russia. Sectors including machine building, instrument engineering, electronics, ship and aircraft building have been undermined or destroyed altogether. There was a time, however, when not only Ukraine, but the entire Soviet Union took pride in these companies.

In 2021, the Black Sea Shipyard in Nikolayev went out of business. Its first docks date back to Catherine the Great. Antonov, the famous manufacturer, has not made a single commercial aircraft since 2016, while Yuzhmash, a factory specialising in missile and space equipment, is nearly bankrupt. The Kremenchug Steel Plant is in a similar situation. This sad list goes on and on.

As for the gas transportation system, it was built in its entirety by the Soviet Union, and it has now deteriorated to an extent that using it creates major risks and comes at a high cost for the environment.

This situation begs the question: poverty, lack of opportunity, and lost industrial and technological potential – is this the pro-Western civilisational choice they have been using for many years to fool millions of people with promises of heavenly pastures?

It all came down to a Ukrainian economy in tatters and an outright pillage of the country's citizens, while Ukraine itself was placed under external control, directed not only from

the Western capitals, but also on the ground, as the saying goes, through an entire network of foreign advisors, NGOs and other institutions present in Ukraine. They have a direct bearing on all the key appointments and dismissals and on all branches of power at all levels, from the central government down to municipalities, as well as on state-owned companies and corporations, including Naftogaz, Ukrenergo, Ukrainian Railways, Ukroboronprom, Ukrposhta, and the Ukrainian Sea Ports Authority.

There is no independent judiciary in Ukraine. The Kiev authorities, at the West's demand, delegated the priority right to select members of the supreme judicial bodies, the Council of Justice and the High Qualifications Commission of Judges, to international organisations.

In addition, the United States directly controls the National Agency on Corruption Prevention, the National Anti-Corruption Bureau, the Specialised Anti-Corruption Prosecutor's Office and the High Anti-Corruption Court. All this is done under the noble pretext of invigorating efforts against corruption. All right, but where are the results? Corruption is flourishing like never before.

Are the Ukrainian people aware that this is how their country is managed? Do they realise that their country has turned not even into a political or economic protectorate but has been reduced to a colony with a puppet regime? The state was privatised. As a result, the government, which designates itself as the "power of patriots" no longer acts in a national capacity and consistently pushes Ukraine towards losing its sovereignty.

The policy to root out the Russian language and culture and promote assimilation carries on. The Verkhovna Rada has generated a steady flow of discriminatory bills, and the law on the so-called indigenous people has already come into force. People who identify as Russians and want to preserve their identity, language and culture are getting the signal that they are not wanted in Ukraine.

Under the laws on education and the Ukrainian language as a state language, the Russian language has no place in schools or public spaces, even in ordinary shops. The law on the so-called vetting of officials and purging their ranks created a pathway for dealing with unwanted civil servants.

There are more and more acts enabling the Ukrainian military and law enforcement agencies to crack down on the freedom of speech, dissent, and going after the opposition. The world knows the deplorable practice of imposing unilateral illegitimate sanctions against other countries, foreign individuals and legal entities. Ukraine has outperformed its Western masters by inventing sanctions against its own citizens, companies, television channels, other media outlets and even members of parliament.

Kiev continues to prepare the destruction of the Ukrainian Orthodox Church of the Moscow Patriarchate. This is not an emotional judgement; proof of this can be found in concrete decisions and documents. The Ukrainian authorities have cynically turned the tragedy of the schism into an instrument of state policy. The current authorities do not react to the Ukrainian people's appeals to abolish the laws that are infringing on believers' rights. Moreover, new draft laws directed against the clergy and millions of parishioners of the Ukrainian Orthodox Church of the Moscow Patriarchate have been registered in the Verkhovna Rada.

A few words about Crimea. The people of the peninsula freely made their choice to be with Russia. The Kiev authorities cannot challenge the clearly stated choice of the people, which is why they have opted for aggressive action, for activating extremist cells, including radical Islamist organisations, for sending subversives to stage terrorist attacks at critical infrastructure facilities, and for kidnapping Russian citizens. We have factual proof that such aggressive actions are being taken with support from Western security services.

In March 2021, a new Military Strategy was adopted in Ukraine. This document is almost entirely dedicated to confrontation with Russia and sets the goal of involving foreign states in a conflict with our country. The strategy stipulates the organisation of what can be described as a terrorist underground movement in Russia's Crimea and in Donbass. It also sets out the contours of a potential war, which should end, according to the Kiev strategists, "with the assistance of the international community on favourable terms for Ukraine," as well as – listen carefully, please – "with foreign military support in the geopolitical confrontation with the Russian Federation." In fact, this is nothing other than preparation for hostilities against our country, Russia.

As we know, it has already been stated today that Ukraine intends to create its own nuclear weapons, and this is not just bragging. Ukraine has the nuclear technologies

created back in the Soviet times and delivery vehicles for such weapons, including aircraft, as well as the Soviet-designed Tochka-U precision tactical missiles with a range of over 100 kilometres. But they can do more; it is only a matter of time. They have had the groundwork for this since the Soviet era.

In other words, acquiring tactical nuclear weapons will be much easier for Ukraine than for some other states I am not going to mention here, which are conducting such research, especially if Kiev receives foreign technological support. We cannot rule this out either.

If Ukraine acquires weapons of mass destruction, the situation in the world and in Europe will drastically change, especially for us, for Russia. We cannot but react to this real danger, all the more so since, let me repeat, Ukraine's Western patrons may help it acquire these weapons to create yet another threat to our country. We are seeing how persistently the Kiev regime is being pumped with arms. Since 2014, the United States alone has spent billions of dollars for this purpose, including supplies of arms and equipment and training of specialists. In the last few months, there has been a constant flow of Western weapons to Ukraine, ostentatiously, with the entire world watching. Foreign advisors supervise the activities of Ukraine's armed forces and special services and we are well aware of this.

Over the past few years, military contingents of NATO countries have been almost constantly present on Ukrainian territory under the pretext of exercises. The Ukrainian troop control system has already been integrated into NATO. This means that NATO headquarters can issue direct commands to the Ukrainian armed forces, even to their separate units and squads.

The United States and NATO have started an impudent development of Ukrainian territory as a theatre of potential military operations. Their regular joint exercises are obviously anti-Russian. Last year alone, over 23,000 troops and more than a thousand units of hardware were involved.

A law has already been adopted that allows foreign troops to come to Ukraine in 2022 to take part in multinational drills. Understandably, these are primarily NATO troops. This year, at least ten of these joint drills are planned.

Obviously, such undertakings are designed to be a cover-up for a rapid buildup of the NATO military group on Ukrainian territory. This is all the more so since the network of airfields upgraded with US help in Borispol, Ivano-Frankovsk, Chuguyev and Odessa, to name a few, is capable of transferring army units in a very short time. Ukraine's airspace is open to flights by US strategic and reconnaissance aircraft and drones that conduct surveillance over Russian territory.

I will add that the US-built Maritime Operations Centre in Ochakov makes it possible to support activity by NATO warships, including the use of precision weapons, against the Russian Black Sea Fleet and our infrastructure on the entire Black Sea Coast.

At one time, the United States intended to build similar facilities in Crimea as well but the Crimeans and residents of Sevastopol wrecked these plans. We will always remember this.

I would like to repeat that today such a centre has already been deployed in Ochakov. In the 18th century, soldiers of Alexander Suvorov fought for this city. Owing to their courage, it became part of Russia. Also in the 18th century, the lands of the Black Sea littoral, incorporated in Russia as a result of wars with the Ottoman Empire, were given the name of Novorossiya (New Russia). Now attempts are being made to condemn these landmarks of history to oblivion, along with the names of state and military figures of the Russian Empire without whose efforts modern Ukraine would not have many big cities or even access to the Black Sea.

A monument to Alexander Suvorov was recently demolished in Poltava. What is there to say? Are you renouncing your own past? The so-called colonial heritage of the Russian Empire? Well, in this case, be consistent.

Next, notably, Article 17 of the Constitution of Ukraine stipulates that deploying foreign military bases on its territory is illegal. However, as it turns out, this is just a conventionality that can be easily circumvented.

Ukraine is home to NATO training missions which are, in fact, foreign military bases. They just called a base a mission and were done with it.

Kiev has long proclaimed a strategic course on joining NATO. Indeed, each country is entitled to pick its own security system and enter into military alliances. There would be no problem with that, if it were not for one “but.” International documents expressly stipulate the principle of equal and indivisible security, which includes obligations not to strengthen one's own security at the expense of the security of other states. This is stated in the 1999 OSCE Charter for European Security adopted in Istanbul and the 2010 OSCE Astana Declaration.

In other words, the choice of pathways towards ensuring security should not pose a threat to other states, whereas Ukraine joining NATO is a direct threat to Russia's security.

Let me remind you that at the Bucharest NATO summit held in April 2008, the United States pushed through a decision to the effect that Ukraine and, by the way, Georgia would become NATO members. Many European allies of the United States were well aware of the risks associated with this prospect already then, but were forced to put up with the will of their senior partner. The Americans simply used them to carry out a clearly anti-Russian policy.

A number of NATO member states are still very sceptical about Ukraine joining NATO. We are getting signals from some European capitals telling us not to worry since it will not happen literally overnight. In fact, our US partners are saying the same thing as well. “All right, then” we respond, “if it does not happen tomorrow, then it will happen the day after tomorrow. What does it change from the historical perspective? Nothing at all.”

Furthermore, we are aware of the US leadership’s position and words that active hostilities in eastern Ukraine do not rule out the possibility of that country joining NATO if it meets NATO criteria and overcomes corruption.

All the while, they are trying to convince us over and over again that NATO is a peace-loving and purely defensive alliance that poses no threat to Russia. Again, they want us to take their word for it. But we are well aware of the real value of these words. In 1990, when German unification was discussed, the United States promised the Soviet leadership that NATO jurisdiction or military presence will not expand one inch to the east and that the unification of Germany will not lead to the spread of NATO's military organisation to the east. This is a quote.

They issued lots of verbal assurances, all of which turned out to be empty phrases. Later, they began to assure us that the accession to NATO by Central and Eastern European countries would only improve relations with Moscow, relieve these countries of the fears steeped in their bitter historical legacy, and even create a belt of countries that are friendly towards Russia.

However, the exact opposite happened. The governments of certain Eastern European countries, speculating on Russophobia, brought their complexes and stereotypes about the Russian threat to the Alliance and insisted on building up the collective defence potentials and deploying them primarily against Russia. Worse still, that happened in the 1990s and the early 2000s when, thanks to our openness and goodwill, relations between Russia and the West had reached a high level.

Russia has fulfilled all of its obligations, including the pullout from Germany, from Central and Eastern Europe, making an immense contribution to overcoming the legacy of the Cold War. We have consistently proposed various cooperation options, including in the NATO-Russia Council and the OSCE formats.

Moreover, I will say something I have never said publicly, I will say it now for the first time. When then outgoing US President Bill Clinton visited Moscow in 2000, I asked him how America would feel about admitting Russia to NATO.

I will not reveal all the details of that conversation, but the reaction to my question was, let us say, quite restrained, and the Americans' true attitude to that possibility can actually be seen from their subsequent steps with regard to our country. I am referring to the overt support for terrorists in the North Caucasus, the disregard for our security demands and concerns, NATO's continued expansion, withdrawal from the ABM Treaty, and so on. It raises the question: why? What is all this about, what is the purpose? All right, you do not want to see us as friends or allies, but why make us an enemy?

There can be only one answer – this is not about our political regime or anything like that. They just do not need a big and independent country like Russia around. This is the answer to all questions. This is the source of America's traditional policy towards Russia. Hence the attitude to all our security proposals

Today, one glance at the map is enough to see to what extent Western countries have kept their promise to refrain from NATO's eastward expansion. They just cheated. We have seen five waves of NATO expansion, one after another – Poland, the Czech Republic and Hungary were admitted in 1999; Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia in 2004; Albania and Croatia in 2009; Montenegro in 2017; and North Macedonia in 2020.

As a result, the Alliance, its military infrastructure has reached Russia's borders. This is one of the key causes of the European security crisis; it has had the most negative impact on the entire system of international relations and led to the loss of mutual trust.

The situation continues to deteriorate, including in the strategic area. Thus, positioning areas for interceptor missiles are being established in Romania and Poland as part of the US project to create a global missile defence system. It is common knowledge that the launchers deployed there can be used for Tomahawk cruise missiles – offensive strike systems.

In addition, the United States is developing its all-purpose Standard Missile-6, which can provide air and missile defence, as well as strike ground and surface targets. In other words, the allegedly defensive US missile defence system is developing and expanding its new offensive capabilities.

The information we have gives us good reason to believe that Ukraine's accession to NATO and the subsequent deployment of NATO facilities has already been decided and is only a matter of time. We clearly understand that given this scenario, the level of military threats to Russia will increase dramatically, several times over. And I would like to emphasise at this point that the risk of a sudden strike at our country will multiply.

I will explain that American strategic planning documents confirm the possibility of a so-called preemptive strike at enemy missile systems. We also know the main adversary of the United States and NATO. It is Russia. NATO documents officially declare our country to be the main threat to Euro-Atlantic security. Ukraine will serve as an advanced bridgehead for such a strike. If our ancestors heard about this, they would probably simply not believe this. We do not want to believe this today either, but it is what it is. I would like people in Russia and Ukraine to understand this.

Many Ukrainian airfields are located not far from our borders. NATO's tactical aviation deployed there, including precision weapon carriers, will be capable of striking at our territory to the depth of the Volgograd-Kazan-Samara-Astrakhan line. The deployment of reconnaissance radars on Ukrainian territory will allow NATO to tightly control Russia's airspace up to the Urals.

Finally, after the US destroyed the INF Treaty, the Pentagon has been openly developing many land-based attack weapons, including ballistic missiles that are capable of hitting targets at a distance of up to 5,500 km. If deployed in Ukraine, such systems will be able to hit targets in Russia's entire European part. The flying time of Tomahawk cruise missiles to Moscow will be less than 35 minutes; ballistic missiles from Kharkov will take seven to eight minutes; and hypersonic assault weapons, four to five minutes. It is like a knife to the throat. I have no doubt that they hope to carry out these plans, as they did many times in the past, expanding NATO eastward, moving their military infrastructure to Russian borders and fully ignoring our concerns, protests and warnings. Excuse me, but they simply did not care at all about such things and did whatever they deemed necessary.

Of course, they are going to behave in the same way in the future, following a well-known proverb: "The dogs bark but the caravan goes on." Let me say right away – we do not accept this behaviour and will never accept it. That said, Russia has always advocated the resolution of the most complicated problems by political and diplomatic means, at the negotiating table.

We are well aware of our enormous responsibility when it comes to regional and global stability. Back in 2008, Russia put forth an initiative to conclude a European Security Treaty under which not a single Euro-Atlantic state or international organisation could strengthen their security at the expense of the security of others. However, our proposal was rejected right off the bat on the pretext that Russia should not be allowed to put limits on NATO activities.

Furthermore, it was made explicitly clear to us that only NATO members can have legally binding security guarantees.

Last December, we handed over to our Western partners a draft treaty between the Russian Federation and the United States of America on security guarantees, as well

as a draft agreement on measures to ensure the security of the Russian Federation and NATO member states.

The United States and NATO responded with general statements. There were kernels of rationality in them as well, but they concerned matters of secondary importance and it all looked like an attempt to drag the issue out and to lead the discussion astray.

We responded to this accordingly and pointed out that we were ready to follow the path of negotiations, provided, however, that all issues are considered as a package that includes Russia's core proposals which contain three key points. First, to prevent further NATO expansion. Second, to have the Alliance refrain from deploying assault weapon systems on Russian borders. And finally, rolling back the bloc's military capability and infrastructure in Europe to where they were in 1997, when the NATO-Russia Founding Act was signed.

These principled proposals of ours have been ignored. To reiterate, our Western partners have once again vocalised the all-too-familiar formulas that each state is entitled to freely choose ways to ensure its security or to join any military union or alliance. That is, nothing has changed in their stance, and we keep hearing the same old references to NATO's notorious "open door" policy. Moreover, they are again trying to blackmail us and are threatening us with sanctions, which, by the way, they will introduce no matter what as Russia continues to strengthen its sovereignty and its Armed Forces. To be sure, they will never think twice before coming up with or just fabricating a pretext for yet another sanction attack regardless of the developments in Ukraine. Their one and only goal is to hold back the development of Russia. And they will keep doing so, just as they did before, even without any formal pretext just because we exist and will never compromise our sovereignty, national interests or values.

I would like to be clear and straightforward: in the current circumstances, when our proposals for an equal dialogue on fundamental issues have actually remained unanswered by the United States and NATO, when the level of threats to our country has increased significantly, Russia has every right to respond in order to ensure its security. That is exactly what we will do.

With regard to the state of affairs in Donbass we see that the ruling Kiev elites never stop publicly making clear their unwillingness to comply with the Minsk Package of Measures to settle the conflict and are not interested in a peaceful settlement. On the contrary, they are trying to orchestrate a blitzkrieg in Donbass as was the case in 2014 and 2015. We all know how these reckless schemes ended.

Not a single day goes by without Donbass communities coming under shelling attacks. The recently formed large military force makes use of attack drones, heavy equipment, missiles, artillery and multiple rocket launchers. The killing of civilians, the blockade, the abuse of people, including children, women and the elderly, continues unabated. As we say, there is no end in sight to this.

Meanwhile, the so-called civilised world, which our Western colleagues proclaimed themselves the only representatives of, prefers not to see this, as if this horror and genocide, which almost 4 million people are facing, do not exist. But they do exist and only because these people did not agree with the West-supported coup in Ukraine in 2014 and opposed the transition towards the Neanderthal and aggressive nationalism and neo-Nazism which have been elevated in Ukraine to the rank of national policy. They are fighting for their elementary right to live on their own land, to speak their own language, and to preserve their culture and traditions.

How long can this tragedy continue? How much longer can one put up with this? Russia has done everything to preserve Ukraine’s territorial integrity. All these years, it has persistently and patiently pushed for the implementation of UN Security Council Resolution 2202 of February 17, 2015, which consolidated the Minsk Package of Measures of February 12, 2015, to settle the situation in Donbass.

Everything was in vain. Presidents and Rada deputies come and go, but deep down the aggressive and nationalistic regime that seized power in Kiev remains unchanged. It is entirely a product of the 2014 coup, and those who then embarked on the path of violence, bloodshed and lawlessness did not recognise then and do not recognise now any solution to the Donbass issue other than a military one.

In this regard, I consider it necessary to take a long overdue decision and to immediately recognise the independence and sovereignty of the Donetsk People's Republic

and the Lugansk People's Republic.

I would like to ask the Federal Assembly of the Russian Federation to support this decision and then ratify the Treaty of Friendship and Mutual Assistance with both republics. These two documents will be prepared and signed shortly.

We want those who seized and continue to hold power in Kiev to immediately stop hostilities. Otherwise, the responsibility for the possible continuation of the bloodshed will lie entirely on the conscience of Ukraine’s ruling regime.

As I announce the decisions taken today, I remain confident in the support of Russia’s citizens and the country’s patriotic forces.

Thank you.

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Annex 6

President of Russia Vladimir Putin, *Address by the President of the Russian Federation*
(24 February 2022)

Address by the President of the Russian Federation

February 24, 2022 06:00 The Kremlin, Moscow

President of Russia Vladimir Putin: Citizens of Russia, friends,

I consider it necessary today to speak again about the tragic events in Donbass and the key aspects of ensuring the security of Russia.

I will begin with what I said in my address on February 21, 2022. I spoke about our biggest concerns and worries, and about the fundamental threats which irresponsible Western politicians created for Russia consistently, rudely and unceremoniously from year to year. I am referring to the eastward expansion of NATO, which is moving its military infrastructure ever closer to the Russian border.

It is a fact that over the past 30 years we have been patiently trying to come to an agreement with the leading NATO countries regarding the principles of equal and indivisible security in Europe. In response to our proposals, we invariably faced either cynical deception and lies or attempts at pressure and blackmail, while the North Atlantic alliance continued to expand despite our protests and concerns. Its military machine is moving and, as I said, is approaching our very border.

Why is this happening? Where did this insolent manner of talking down from the height of their exceptionalism, infallibility and all-permissiveness come from? What is the explanation for this contemptuous and disdainful attitude to our interests and absolutely legitimate demands?

The answer is simple. Everything is clear and obvious. In the late 1980s, the Soviet Union grew weaker and subsequently broke apart. That experience should serve as a good

lesson for us, because it has shown us that the paralysis of power and will is the first step towards complete degradation and oblivion. We lost confidence for only one moment, but it was enough to disrupt the balance of forces in the world.

As a result, the old treaties and agreements are no longer effective. Entreaties and requests do not help. Anything that does not suit the dominant state, the powers that be, is denounced as archaic, obsolete and useless. At the same time, everything it regards as useful is presented as the ultimate truth and forced on others regardless of the cost, abusively and by any means available. Those who refuse to comply are subjected to strong-arm tactics.

What I am saying now does not concerns only Russia, and Russia is not the only country that is worried about this. This has to do with the entire system of international relations, and sometimes even US allies. The collapse of the Soviet Union led to a redivision of the world, and the norms of international law that developed by that time – and the most important of them, the fundamental norms that were adopted following WWII and largely formalised its outcome – came in the way of those who declared themselves the winners of the Cold War.

Of course, practice, international relations and the rules regulating them had to take into account the changes that took place in the world and in the balance of forces. However, this should have been done professionally, smoothly, patiently, and with due regard and respect for the interests of all states and one's own responsibility. Instead, we saw a state of euphoria created by the feeling of absolute superiority, a kind of modern absolutism, coupled with the low cultural standards and arrogance of those who formulated and pushed through decisions that suited only themselves. The situation took a different turn.

There are many examples of this. First a bloody military operation was waged against Belgrade, without the UN Security Council's sanction but with combat aircraft and missiles used in the heart of Europe. The bombing of peaceful cities and vital infrastructure went on for several weeks. I have to recall these facts, because some Western colleagues prefer to forget them, and when we mentioned the event, they prefer to avoid speaking about international law, instead emphasising the circumstances which they interpret as they think necessary.

Then came the turn of Iraq, Libya and Syria. The illegal use of military power against Libya and the distortion of all the UN Security Council decisions on Libya ruined the state, created a huge seat of international terrorism, and pushed the country towards a humanitarian catastrophe, into the vortex of a civil war, which has continued there for years. The tragedy, which was created for hundreds of thousands and even millions of people not only in Libya but in the whole region, has led to a large-scale exodus from the Middle East and North Africa to Europe.

A similar fate was also prepared for Syria. The combat operations conducted by the Western coalition in that country without the Syrian government's approval or UN Security Council's sanction can only be defined as aggression and intervention.

But the example that stands apart from the above events is, of course, the invasion of Iraq without any legal grounds. They used the pretext of allegedly reliable information available in the United States about the presence of weapons of mass destruction in Iraq. To prove that allegation, the US Secretary of State held up a vial with white power, publicly, for the whole world to see, assuring the international community that it was a chemical warfare agent created in Iraq. It later turned out that all of that was a fake and a sham, and that Iraq did not have any chemical weapons. Incredible and shocking but true. We witnessed lies made at the highest state level and voiced from the high UN rostrum. As a result we see a tremendous loss in human life, damage, destruction, and a colossal upsurge of terrorism.

Overall, it appears that nearly everywhere, in many regions of the world where the United States brought its law and order, this created bloody, non-healing wounds and the curse of international terrorism and extremism. I have only mentioned the most glaring but far from only examples of disregard for international law.

This array includes promises not to expand NATO eastwards even by an inch. To reiterate: they have deceived us, or, to put it simply, they have played us. Sure, one often hears that politics is a dirty business. It could be, but it shouldn't be as dirty as it is now, not to such an extent. This type of con-artist behaviour is contrary not only to the principles of international relations but also and above all to the generally accepted norms of morality and ethics. Where is justice and truth here? Just lies and hypocrisy all around.

Incidentally, US politicians, political scientists and journalists write and say that a veritable "empire of lies" has been created inside the United States in recent years. It is hard to disagree with this – it is really so. But one should not be modest about it: the United States is still a great country and a system-forming power. All its satellites not only humbly and obediently say yes to and parrot it at the slightest pretext but also imitate its behaviour and enthusiastically accept the rules it is offering them. Therefore, one can say with good reason and confidence that the whole so-called Western bloc formed by the United States in its own image and likeness is, in its entirety, the very same "empire of lies."

As for our country, after the disintegration of the USSR, given the entire unprecedented openness of the new, modern Russia, its readiness to work honestly with the United States and other Western partners, and its practically unilateral disarmament, they immediately tried to put the final squeeze on us, finish us off, and utterly destroy us. This is how it was in the 1990s and the early 2000s, when the so-called collective West was actively supporting separatism and gangs of mercenaries in southern Russia. What victims, what losses we had to sustain and what trials we had to go through at that time before we broke the back of international terrorism in the Caucasus! We remember this and will never forget.

Properly speaking, the attempts to use us in their own interests never ceased until quite recently: they sought to destroy our traditional values and force on us their false values that would erode us, our people from within, the attitudes they have been aggressively imposing on their countries, attitudes that are directly leading to degradation and degeneration, because they are contrary to human nature. This is not going to happen. No one has ever succeeded in doing this, nor will they succeed now.

Despite all that, in December 2021, we made yet another attempt to reach agreement with the United States and its allies on the principles of European security and NATO's non-expansion. Our efforts were in vain. The United States has not changed its position. It does not believe it necessary to agree with Russia on a matter that is critical for us. The United States is pursuing its own objectives, while neglecting our interests.

Of course, this situation begs a question: what next, what are we to expect? If history is any guide, we know that in 1940 and early 1941 the Soviet Union went to great lengths

to prevent war or at least delay its outbreak. To this end, the USSR sought not to provoke the potential aggressor until the very end by refraining or postponing the most urgent and obvious preparations it had to make to defend itself from an imminent attack. When it finally acted, it was too late.

As a result, the country was not prepared to counter the invasion by Nazi Germany, which attacked our Motherland on June 22, 1941, without declaring war. The country stopped the enemy and went on to defeat it, but this came at a tremendous cost. The attempt to appease the aggressor ahead of the Great Patriotic War proved to be a mistake which came at a high cost for our people. In the first months after the hostilities broke out, we lost vast territories of strategic importance, as well as millions of lives. We will not make this mistake the second time. We have no right to do so.

Those who aspire to global dominance have publicly designated Russia as their enemy. They did so with impunity. Make no mistake, they had no reason to act this way. It is true that they have considerable financial, scientific, technological, and military capabilities. We are aware of this and have an objective view of the economic threats we have been hearing, just as our ability to counter this brash and never-ending blackmail. Let me reiterate that we have no illusions in this regard and are extremely realistic in our assessments.

As for military affairs, even after the dissolution of the USSR and losing a considerable part of its capabilities, today's Russia remains one of the most powerful nuclear states. Moreover, it has a certain advantage in several cutting-edge weapons. In this context, there should be no doubt for anyone that any potential aggressor will face defeat and ominous consequences should it directly attack our country.

At the same time, technology, including in the defence sector, is changing rapidly. One day there is one leader, and tomorrow another, but a military presence in territories bordering on Russia, if we permit it to go ahead, will stay for decades to come or maybe forever, creating an ever mounting and totally unacceptable threat for Russia.

Even now, with NATO's eastward expansion the situation for Russia has been becoming worse and more dangerous by the year. Moreover, these past days NATO leadership has been blunt in its statements that they need to accelerate and step up efforts to bring

the alliance's infrastructure closer to Russia's borders. In other words, they have been toughening their position. We cannot stay idle and passively observe these developments. This would be an absolutely irresponsible thing to do for us.

Any further expansion of the North Atlantic alliance's infrastructure or the ongoing efforts to gain a military foothold of the Ukrainian territory are unacceptable for us. Of course, the question is not about NATO itself. It merely serves as a tool of US foreign policy. The problem is that in territories adjacent to Russia, which I have to note is our historical land, a hostile "anti-Russia" is taking shape. Fully controlled from the outside, it is doing everything to attract NATO armed forces and obtain cutting-edge weapons.

For the United States and its allies, it is a policy of containing Russia, with obvious geopolitical dividends. For our country, it is a matter of life and death, a matter of our historical future as a nation. This is not an exaggeration; this is a fact. It is not only a very real threat to our interests but to the very existence of our state and to its sovereignty. It is the red line which we have spoken about on numerous occasions. They have crossed it.

This brings me to the situation in Donbass. We can see that the forces that staged the coup in Ukraine in 2014 have seized power, are keeping it with the help of ornamental election procedures and have abandoned the path of a peaceful conflict settlement. For eight years, for eight endless years we have been doing everything possible to settle the situation by peaceful political means. Everything was in vain.

As I said in my previous address, you cannot look without compassion at what is happening there. It became impossible to tolerate it. We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us. It is their aspirations, the feelings and pain of these people that were the main motivating force behind our decision to recognise the independence of the Donbass people's republics.

I would like to additionally emphasise the following. Focused on their own goals, the leading NATO countries are supporting the far-right nationalists and neo-Nazis in Ukraine, those who will never forgive the people of Crimea and Sevastopol for freely making a choice to reunite with Russia.

They will undoubtedly try to bring war to Crimea just as they have done in Donbass, to kill innocent people just as members of the punitive units of Ukrainian nationalists and Hitler's accomplices did during the Great Patriotic War. They have also openly laid claim to several other Russian regions.

If we look at the sequence of events and the incoming reports, the showdown between Russia and these forces cannot be avoided. It is only a matter of time. They are getting ready and waiting for the right moment. Moreover, they went as far as aspire to acquire nuclear weapons. We will not let this happen.

I have already said that Russia accepted the new geopolitical reality after the dissolution of the USSR. We have been treating all new post-Soviet states with respect and will continue to act this way. We respect and will respect their sovereignty, as proven by the assistance we provided to Kazakhstan when it faced tragic events and a challenge in terms of its statehood and integrity. However, Russia cannot feel safe, develop, and exist while facing a permanent threat from the territory of today's Ukraine.

Let me remind you that in 2000–2005 we used our military to push back against terrorists in the Caucasus and stood up for the integrity of our state. We preserved Russia. In 2014, we supported the people of Crimea and Sevastopol. In 2015, we used our Armed Forces to create a reliable shield that prevented terrorists from Syria from penetrating Russia. This was a matter of defending ourselves. We had no other choice.

The same is happening today. They did not leave us any other option for defending Russia and our people, other than the one we are forced to use today. In these circumstances, we have to take bold and immediate action. The people's republics of Donbass have asked Russia for help.

In this context, in accordance with Article 51 (Chapter VII) of the UN Charter, with permission of Russia's Federation Council, and in execution of the treaties of friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic, ratified by the Federal Assembly on February 22, I made a decision to carry out a special military operation.

The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime. To this end, we will seek to demilitarise and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.

It is not our plan to occupy the Ukrainian territory. We do not intend to impose anything on anyone by force. At the same time, we have been hearing an increasing number of statements coming from the West that there is no need any more to abide by the documents setting forth the outcomes of World War II, as signed by the totalitarian Soviet regime. How can we respond to that?

The outcomes of World War II and the sacrifices our people had to make to defeat Nazism are sacred. This does not contradict the high values of human rights and freedoms in the reality that emerged over the post-war decades. This does not mean that nations cannot enjoy the right to self-determination, which is enshrined in Article 1 of the UN Charter.

Let me remind you that the people living in territories which are part of today's Ukraine were not asked how they want to build their lives when the USSR was created or after World War II. Freedom guides our policy, the freedom to choose independently our future and the future of our children. We believe that all the peoples living in today's Ukraine, anyone who want to do this, must be able to enjoy this right to make a free choice.

In this context I would like to address the citizens of Ukraine. In 2014, Russia was obliged to protect the people of Crimea and Sevastopol from those who you yourself call "nats." The people of Crimea and Sevastopol made their choice in favour of being with their historical homeland, Russia, and we supported their choice. As I said, we could not act otherwise.

The current events have nothing to do with a desire to infringe on the interests of Ukraine and the Ukrainian people. They are connected with the defending Russia from those who have taken Ukraine hostage and are trying to use it against our country and our people.

I reiterate: we are acting to defend ourselves from the threats created for us and from a worse peril than what is happening now. I am asking you, however hard this may be, to understand this and to work together with us so as to turn this tragic page as soon as possible and to move forward together, without allowing anyone to interfere in our affairs and our relations but developing them independently, so as to create favourable conditions for overcoming all these problems and to strengthen us from within as a single whole, despite the existence of state borders. I believe in this, in our common future.

I would also like to address the military personnel of the Ukrainian Armed Forces.

Comrade officers,

Your fathers, grandfathers and great-grandfathers did not fight the Nazi occupiers and did not defend our common Motherland to allow today's neo-Nazis to seize power in Ukraine. You swore the oath of allegiance to the Ukrainian people and not to the junta, the people's adversary which is plundering Ukraine and humiliating the Ukrainian people.

I urge you to refuse to carry out their criminal orders. I urge you to immediately lay down arms and go home. I will explain what this means: the military personnel of the Ukrainian army who do this will be able to freely leave the zone of hostilities and return to their families.

I want to emphasise again that all responsibility for the possible bloodshed will lie fully and wholly with the ruling Ukrainian regime.

I would now like to say something very important for those who may be tempted to interfere in these developments from the outside. No matter who tries to stand in our way or all the more so create threats for our country and our people, they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history. No matter how the events unfold, we are ready. All the necessary decisions in this regard have been taken. I hope that my words will be heard.

Citizens of Russia,

The culture and values, experience and traditions of our ancestors invariably provided a powerful underpinning for the wellbeing and the very existence of entire states and nations, their success and viability. Of course, this directly depends on the ability to quickly adapt to constant change, maintain social cohesion, and readiness to consolidate and summon all the available forces in order to move forward.

We always need to be strong, but this strength can take on different forms. The “empire of lies,” which I mentioned in the beginning of my speech, proceeds in its policy primarily from rough, direct force. This is when our saying on being “all brawn and no brains” applies.

We all know that having justice and truth on our side is what makes us truly strong. If this is the case, it would be hard to disagree with the fact that it is our strength and our readiness to fight that are the bedrock of independence and sovereignty and provide the necessary foundation for building a reliable future for your home, your family, and your Motherland.

Dear compatriots,

I am certain that devoted soldiers and officers of Russia’s Armed Forces will perform their duty with professionalism and courage. I have no doubt that the government institutions at all levels and specialists will work effectively to guarantee the stability of our economy, financial system and social wellbeing, and the same applies to corporate executives and the entire business community. I hope that all parliamentary parties and civil society take a consolidated, patriotic position.

At the end of the day, the future of Russia is in the hands of its multi-ethnic people, as has always been the case in our history. This means that the decisions that I made will be executed, that we will achieve the goals we have set, and reliably guarantee the security of our Motherland.

I believe in your support and the invincible force rooted in the love for our Fatherland.

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Annex 7

Permanent Mission of the Russian Federation to the United Nations, *Statement and Reply by Permanent Representative Vassily Nebenzia at UNSC Briefing on Ukraine* (23 February 2022)

Statement and reply by Permanent Representative Vassily Nebenzia at UNSC briefing on Ukraine

23 February 2022

Colleagues,

We have had a very intense day in terms of discussing the Ukrainian crisis. I will not repeat what I said at the General Assembly in the morning. I can only state with regret that at the end of the day Ukraine did not heed our signals that we sent to Kiev about the need to stop provocations against LPR and DPR.

It seems that our Ukrainian colleagues, whom certain states have been arming and nudging lately, are still under a delusion that with a blessing of Western sponsors, they may secure a military solution to the problem of Donbas. Otherwise, it is hard to explain intensification of fire and acts of sabotage on the territory of the republics. Over past 24 hours, OSCE SMM made records of almost 2,000 ceasefire violations, including almost 1,500 explosions. People of Donetsk and Lugansk still have to hide in basements. Refugees continuously flow to Russia. In a word, the nature of provocations of Ukraine's Armed Forces has not changed. But you do not want to notice that and prefer repeating Ukraine's telltales, according to which the people of Donbas all but bombard themselves.

It is surprising that steepening sufferings of the people of Donbas do not touch our Western colleagues. During today's debate at the General Assembly you found no words to express sympathy and support to them. It seems that for you, those 4 million people do not exist. I would like to remind that the principle of sovereignty and territorial integrity of states, of which violation we are being accused with regard to Ukraine, as stipulated in 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, must be strictly observed with regard to states that are "conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." The current government of Ukraine is not like this. By the way, the tragedy of Ukraine started after the illegitimate Maidan coup in 2014, when instead of talking to the Russian-speaking population, new Ukrainian authorities confronted them with guns and aviation. There is enough information and evidence on that matter, however our Western partners prefer to not notice it.

Yesterday and earlier today we tried to explain to you the logic of decisions on recognition of DPR and LPR made by the Russian leadership, accentuated the need to ensure peace and security on those territories. But you would not listen. To you, the people of Donbas are but a bargaining chip in the geopolitical game that seeks to weaken Russia and bring NATO closer to our borders. Whereas to us, those are women, children, elderly people who had to hide from Ukrainian bombardments and provocations for 8 years by now. To us, this is the Ukrainian people that suffers under the sway of the Maidan authorities. This is what makes our

approaches different. Unless you take off this geopolitical lens, you cannot ever understand us. But those for whose sake those decisions were made, those whom you disregarded for 8 years and only called pro-Russian separatists and terrorists – those people are truly grateful to us. And this is what really matters for us.

I repeat that the root cause of this Ukrainian crisis is Ukraine's acts and its years-long sabotage of direct obligations under the Minsk Package. Last week we still hoped that Kiev would think better and finally implement what it committed to back in 2015. What was needed for that was a direct dialogue with Donetsk and Lugansk. However another confirmation of Ukraine's unreadiness for such dialogue, for steps towards granting a special status (that was enshrined in the Minsk Agreements) to Donbas, and explicit support for that on the part of Ukraine's Western patrons finally convinced us that we had no right to make the people of Donbas suffer further on.

As I said, Ukraine's provocations against Donbas not only failed to stop, but actually intensified, that is why the leadership of DPR and LPR turned to us with a request to grant military support under bilateral agreements on cooperation that had been signed simultaneously with the recognition of Donetsk and Lugansk. This is a logical step that clearly follows from the acts of Ukrainian regime.

While we were in this meeting, President of Russia Vladimir Putin made an address to say that he decided to start a military operation in Donbas. We do not know all the details yet, but let me tell you briefly – what clearly follows from his message is that occupation of Ukraine is not part of our plan. The goal of this special operation is protection of people who have been victimized and exposed to genocide by the Kiev regime. To ensure this, we will seek demilitarization and denazification of Ukraine, and criminal prosecution for those who committed numerous heinous crimes against civilians, including citizens of the Russian Federation.

This decision was made as per Article 51 of the UN Charter and authorized by the Federation Council of the Federal Assembly of Russia in pursuance of the Treaty of Friendship, Cooperation and Mutual Assistance with DPR and LPR.

There is plenty of incoming information on that matter which is yet to be verified. We will keep you updated.

Thank you.

In response to the representative of Ukraine:

I am not going to take any questions today. I gave you what I know at this moment, and I will not wake up Minister Lavrov at this hour. As we said, we will share information as to the latest developments. Do not call it a war. It is called a special military operation in Donbas.

Annex 8

President of Russia Vladimir Putin, *Remarks at the Concert Marking the Anniversary of Crimea's Reunification with Russia* (18 March 2022)

Concert marking the anniversary of Crimea's reunification with Russia

Vladimir Putin attended a concert marking eight years since Crimea's reunification with the Russia, at the Luzhniki Sports Centre in Moscow.

March 18, 2022 16:15 Moscow

President of Russia Vladimir Putin: "We, the multi-ethnic nation of the Russian Federation, united by common fate on our land…" These are the first words of our fundamental law, the Russian Constitution. Each word has deep meaning and enormous significance.

On our land, united by common fate. This is what the people of Crimea and Sevastopol must have been thinking as they went to the referendum on March 18, 2014. They lived and continue to live on their land, and they wanted to have a common fate with their historical motherland, Russia. They had every right to it and they achieved their goal. Let's congratulate them first because it is their holiday. Happy anniversary!

Over these years, Russia has done a great deal to help Crimea and Sevastopol grow. There were things that needed to be done that were not immediately obvious to the unaided eye. These were essential things such as gas and power supply, utility infrastructure, restoring the road network, and construction of new roads, motorways and bridges.

We needed to drag Crimea out of that humiliating position and state that Crimea and Sevastopol had been pushed into when they were part of another state that had only provided leftover financing to these territories.

There is more to it. The fact is we know what needs to be done next, how it needs to be done, and at what cost – and we will fulfil all these plans, absolutely.

These decisions are not even as important as the fact that the residents of Crimea and Sevastopol made the right choice when they put up a firm barrier against neo-Nazis and ultra-nationalists. What was and is still happening on other territories is the best indication that they did the right thing.

People who lived and live in Donbass did not agree with this coup d'état, either. Several punitive military operations were instantly staged against them; they were besieged and subjected to systemic shelling with artillery and bombing by aircraft – and this is actually what is called "genocide."

The main goal and motive of the military operation that we launched in Donbass and Ukraine is to relieve these people of suffering, of this genocide. At this point, I recall the words from the Holy Scripture: "Greater love hath no man than this, that a man lay down his life for his friends." And we are seeing how heroically our military are fighting during this operation.

These words come from the Holy Scripture of Christianity, from what is cherished by those who profess this religion. But the bottom line is that this is a universal value for all nations and those of all religions in Russia, and primarily for our people. The best evidence of this is how our fellows are fighting and acting in this operation: shoulder to shoulder, helping and supporting each other. If they have to, they will cover each other with their bodies to protect their comrade from a bullet in the battlefield, as they would to save their brother. It has been a long time since we had such unity.

It so happened that, by sheer coincidence, the start of the operation was same day as the birthday of one of our outstanding military leaders who was canonised – Fedor Ushakov. He did not lose a single battle throughout his brilliant career. He once said that these thunderstorms would glorify Russia. This is how it was in his time; this is how it is today and will always be!

Thank you!

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Annex 9

Investigative Committee of the Russian Federation, *The Investigative Committee Opened a Criminal Investigation Concerning the Genocide of the Russian-Speaking Population in the South-East of Ukraine* (29 September 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

The Investigative Committee opened a criminal investigation concerning the genocide of the Russian-speaking population in the south-east of Ukraine

The Main Investigation Department of the Investigative Committee of Russia initiated a criminal case concerning the genocide of the Russian-speaking population living on the territory of the Luhansk and Donetsk People's Republics (Article 357 of the Criminal Code of the Russian Federation). The investigation found that in the period from 12 April 2014 to the present, in violation of the 1948 Convention "On the Prevention and Punishment of the Crime of Genocide," as well as other international legal acts condemning genocide, unidentified persons from among the top political and military leadership of Ukraine, the Armed Forces of Ukraine, the National Guard of Ukraine and the "Right Sector" gave orders aimed to completely destroy specifically the Russian-speaking population living on the territory of the Donetsk and Luhansk republics. The investigation established that the killings of Russian-speaking citizens were carried out using the Grad and Uragan multiple launch rocket systems, unguided rockets with a cluster warhead, Tochka-U tactical missiles, and other types of heavy offensive weapons of indiscriminate action. As a result of these actions, at least two and a half thousand people died. In addition, more than 500 residential buildings, public utilities and life support facilities, hospitals, children's and educational institutions were ruined and destroyed on the territory of the Donetsk and Luhansk republics, as a result of which more than 300 thousand residents, fearing for their lives and health, were forced to leave their permanent places of residence and seek asylum in the territory of the Russian Federation. All these listed facts and evidence, already collected by the Russian investigation, confirm that the actions of persons from among the Ukrainian political and military leadership who gave orders for the destruction of the Russian-speaking population are fall under not only in Russian legislation, but also in the norms of international law. As for the Criminal Code of the Russian Federation, the article for genocide provides for punishment in the form of imprisonment for up to twenty years or the death penalty.

Head of Department V.I. Markin

29 September 2014 19:10

Page address: https://sledcom.ru/news/item/523738

Annex 10

Investigative Committee of the Russian Federation, *Kommersant: "Ukraine Has Been Compared to South Osetia"* (30 September 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Kommersant: "Ukraine has been compared to South Osetia."

The Investigative Committee found signs of genocide in the killings of civilians

The Investigative Committee of Russia decided to qualify the events in the south-east of Ukraine as genocide of the Russian-speaking population by initiating a criminal case under the relevant article of the Criminal Code. Earlier, the incident was investigated as the use of prohibited methods of warfare, during which killings and other serious crimes were committed.

Alexander Drymanov, the Chairman of the Department of the Investigative Committee of Russia for the Investigation of Crimes Related to the Use of Prohibited Means and Methods of Warfare in Ukraine, initiated a criminal case on genocide (Article 357 of the Criminal Code of the Russian Federation) of the Russian-speaking population living in the territory of the self-proclaimed Luhansk and Donetsk People's Republics. The investigation found that from 12 April 2014 to the present day, in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, as well as other international legal acts condemning genocide, "unidentified persons" from among the highest political and military leadership of Ukraine, the armed forces of this country, the National Guard and the "Right Sector" gave orders aimed at the eradication of Russian-speaking citizens living on the territory of the DPR and LPR, said Vladimir Markin, the official representative of the Investigative Committee.

For this purpose, Mr. Markin noted, Ukrainian security forces used "Grad" and "Uragan" multiple rocket launcher systems, Tochka-U tactical missiles, cluster bombs, and other heavy weapons of indiscriminate effect. According to the investigation, at least 2,500 civilians became victims of such attacks. In addition, more than 500 residential buildings, public utilities and life support facilities, hospitals, children's and educational institutions were destroyed or damaged on the territory of the unrecognized republics. All this led to the fact that more than 300,000 residents of the southeast were forced to leave Ukraine, moving to Russia. Another reason for the new qualification of the actions of the Ukrainian security forces was the mass graves of killed civilians, which were found in the south-east of Ukraine.

If Article 356 of the Criminal Code of the Russian Federation, under which a criminal case was initially initiated on the events in Ukraine, provides for 10 to 20 years in prison, the new article provides for a life sentence.

At the same time, it should be recalled that Mr. Drymanov already has experience in investigating cases of genocide. It was under Article 357 of the Criminal Code of the Russian Federation that he qualified the actions of the Georgian security forces in South Osetia in 2008. The investigation of the case of the genocide of the South Osetian population has long been completed, but its materials have not been submitted to the court of general jurisdiction in Russia. But the results of the investigation were sent to the International Criminal Court and the ECHR, to which the victims of the genocide appealed. Obviously, the same fate awaits the materials of the new genocide case.

30 September 2014

Page address: https://sledcom.ru/press/smi/item/509217

Annex 11

Investigative Committee of the Russian Federation, *A Criminal Case Has Been Initiated Against a Number of High-Ranking Officials of the Armed Forces of Ukraine* (2 October 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

A criminal case has been initiated against a number of high-ranking officials of the armed forces of Ukraine

The Main Investigation Department of the Russian Investigative Committee initiated a criminal case against the Minister of Defense of Ukraine Valeriy Heletey, the Chief of the General Staff of the Armed Forces of Ukraine Viktor Muzhenko, the Commander of the 25th Brigade of the Armed Forces of Ukraine Oleg Mykas, as well as other unidentified persons from among the commanders of the 93rd Brigade of the Armed Forces of Ukraine, and a number of senior officials from among the military leadership of Ukraine. According to the investigation, the actions of all the named persons show signs of crimes under Part 3 of Art. 33, paragraphs "a", "b", "e", "g", "l" of part 2 of Art. 105, part 3 of Art. 33, part 1 of Art. 356, part 3 of Art. 33, art. 357 of the Criminal Code of the Russian Federation, that is, the organization of murders, the use of prohibited means and methods of warfare and genocide. Geletey, Muzhenko, Mykas and the commanders of the 93rd brigade (AFU), deliberately, in violation of the 1948 Convention "On the Prevention and Punishment of the Crime of

Genocide" and other international legal acts condemning genocide, gave orders for the complete destruction of the national group of Russian-speaking persons living on the territory of the self-proclaimed Luhansk and Donetsk People's Republics. In pursuance of these orders, during the shelling of the cities of Donetsk, Luhansk, Slavyansk, Kramatorsk and other settlements of the self-proclaimed Donetsk and Luhansk People's Republics, subordinate military personnel used the Grad and Uragan multiple launch rocket systems, aviation unguided rockets with a cluster warhead, tactical missiles "Tochka-U", other types of heavy offensive weapons of indiscriminate action. More than 3,000 civilians were killed as a result. In addition, more than 5,000 civilians were harmed with varying degrees of severity, more than 500 residential buildings, public utilities and life support facilities, hospitals, children's and educational institutions were completely or partially destroyed and burned, as a result of which more than 300 thousand residents of these republics, fearing for their lives and health, were forced to leave their places of permanent residence, arriving on the territory of the Russian Federation. As part of the investigation, the investigators plan to issue resolutions on the involvement of these persons as accused and further put them on the international wanted list. Until now, despite the declared truce, peaceful people are dying in Donbas every day. And it is quite obvious that this is happening either as a result of direct orders from the Minister of Defense, or with his tacit consent. And he will bear responsibility for this, from which even a trick of signing an oath with a pen with a closed cap will not save him. By the way, let me remind him and his accomplices that such crimes have no statute of limitations.

Head of Department V.I. Markin

02 October 2014 10:15

Page address: https://sledcom.ru/news/item/523952

Annex 12

Investigative Committee of the Russian Federation, *A Criminal Investigation was Initiated Over New Facts of Genocide of Russian-Speaking Civilians During Shelling of Towns and Settlements in Donbas* (13 January 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

A criminal investigation was initiated over new facts of genocide of Russian-speaking civilians during the shelling of towns and settlements in Donbas

The Main Investigative Directorate of the Investigative Committee of Russia has opened a criminal investigation into the facts of mass shelling of the cities of Donetsk, Gorlovka, Dokuchaevsk and Olenivka, as well as other settlements from multiple rocket launchers "Grad" and "Uragan," self-propelled artillery mounts "Acacia" and "Gvozdika," other heavy weapons, including those using incendiary ammunition, during the period from 01.12.2014 to 12.01.2015. As a result of these shellings, more than 40 people were killed, more than 120 received injuries of varying severity, residential buildings were partially or completely destroyed in the cities of Donbas, as well as social infrastructure and communications facilities. In total, since the beginning of the so-called "anti-terrorist operation" in the south-east of Ukraine, more than 4,800 people have been killed, more than 10,500 received injuries of varying severity, more than 1,000 residential buildings, public utilities and life support facilities have been completely or partially destroyed and burned, in connection with that more than 500,000 civilians were forced to leave their places of permanent residence, arriving on the territory of the Russian Federation. The actions of persons from among the top political and military leadership of Ukraine, who command the so-called "anti-terrorist operation" conducted in the south-east of Ukraine, as well as the commanders of the Ukrainian nationalist battalions "Aidar", "Azov" and "Dnipro" controlled by them, can only be qualified as genocide (Article 357 of the Criminal Code of the Russian Federation), that is, the destruction of the Russian-speaking population. This criminal case will be connected in one proceeding with the previously initiated criminal case on the use of prohibited means and methods of warfare. It should be noted that such acts carried out by the Ukrainian military constitute especially grave crimes not only under Russian law, but also under the norms of international law. In particular, the Protocol on the cessation of the use of weapons in the south-east of Ukraine (Minsk, 05.09.2014) and the Memorandum to it (Minsk, 19.09.2014), as well as the provisions of the Convention on the Protection of Civilian Persons in Time of

War (Geneva, 12.08. 1949) and its Additional Protocol II, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (New York, 10.10.1980), the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 09.12.1948) and others. This is not the first criminal case that the Russian Investigative Committee prosecutes in connection with the killing of civilians in the Donbass, including elderly people, children, journalists, and Russian nationals. Apparently, trying to hide the names of these military men from the international community, the Ukrainian command, obviously hoping that no one would recognize them, carried out a rotation. But this is their naive delusion! There is no doubt that in this case, too, Russian investigators will use all the legal efforts and means at their disposal to not only establish the names of those newly minted "fighters" with the civilian population of Donbas and add to the list of defendants in the criminal case, but also to make them public in order for the whole world to learn as to whose hands are creating lawlessness in the south-east of Ukraine. At the same time, it looks absolutely cynical that the whole world responded so unanimously to the tragedy in France and also unanimously does not notice the more cynical and barbaric crimes that are committed daily by the Ukrainian authorities in Donbas. As for the legal grounds for bringing Ukrainian military and mercenaries to criminal liability, Russian legislation, in accordance with Part 3 of Article 12 of the Criminal Code of the Russian Federation, gives us the right to bring foreign citizens who have committed a crime outside of the Russian Federation to criminal liability in cases where the crime is directed against a citizen of the Russian Federation, as well as in cases provided for by an international treaty of the Russian Federation, if foreign citizens have not been convicted in a foreign state and are held criminally liable in the territory of the Russian Federation.

Head of Department V.I. Markin

13 January 2015 15:10

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Annex 13

Investigative Committee of the Russian Federation, *Criminal Proceedings Have Been Initiated Against High-Ranking Ukrainian Military Personnel, as Well as Against Oleg Lyashko, a Member of Parliament* (10 September 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Criminal proceedings have been initiated against high-ranking Ukrainian military personnel, as well as against Oleg Lyashko, a member of parliament

The Main Investigation Department of the Investigative Committee of Russia has opened a criminal case against the Minister of Defense of Ukraine Stepan Poltorak, the Chief of the General Staff of the Ministry of Defense of Ukraine Viktor Muzhenko, the Commander of the Army of the Armed Forces of Ukraine Anatoly Pushnyakov, the Commander of the National Guard of Ukraine Mykola Balan and other unidentified persons from among servicemen of the Armed Forces of Ukraine and the National Guard of Ukraine. They are suspected of committing crimes under Part 1 of Article 356 and Article 357 of the Criminal Code (use of prohibited means and methods of warfare and genocide).

Thus, in the period from 31 May to 1 September 2015, unidentified persons from among the military personnel of the Armed Forces of Ukraine and the National Guard of Ukraine, following the deliberately criminal orders of Poltorak, Muzhenko, Pushnyakov and Balan in order to destroy the national group of the Russian-speaking population living on the territory of the self-proclaimed Donetsk People's Republic, carried out targeted artillery shelling using heavy types of weapons (caliber not less than 122 mm) of civilian infrastructure objects that are not military targets in the settlements of the republic.

The investigation believes that Ukrainian servicemen violated: the Protocol on the cessation of the use of weapons in the south-east of Ukraine (Minsk, 05.09.2014) and the Memorandum to it (Minsk, 19.09.2014), the provisions of the Convention on the Protection of Civilian Persons in Time of War (Geneva, 12.08.1949) and Additional Protocol II (Geneva, 08.06.1977) to it, the Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 09.12.1948), the Convention on the Rights of the Child (New York, 20.11.1989).

As a result of these artillery shellings, 45 people died, more than 160 people were injured, at least 163 objects were ruined or partially destroyed, including residential buildings, a court building, a mine substation, etc.

In addition, the Main Investigation Department of the Investigative Committee of Russia initiated a criminal case against the member of the Verkhovna Rada of Ukraine of the 7th convocation Oleg Lyashko and other persons from among the fighters of the Azov battalion on the grounds of crimes under paragraphs "a", "c" of part 2 of Art. 126, paragraphs "d," "e" of part 2 of Art. 117, part 1 of Art. 356 of the Criminal Code of the Russian Federation (abduction of a person, torture, use of prohibited means and methods of warfare).

According to investigators, on 17 September 2014, four fighters of the Azov battalion, following orders of Oleg Lyashko, who is the creator of the Azov battalion, illegally entered

the apartment of Dmitry Chaikovsky, a resident of the city of Mariupol. After searching the apartment, the suspects tied Chaikovsky's hands and, using violence, took him to the location of the Azov battalion, and then placed him in a metal container. During the day, Lyashko, together with the fighters of the named battalion, severely beat the victim, and also threatened to kill him, demanding to provide information about the possible possession of a stolen weapon. Subsequently, the suspects took Chaikovsky in the trunk of a car to a wasteland, continuing the torture, but then released him without receiving any information.

Initiating these criminal cases, the Investigative Committee was guided by Part 3 of Art. 12 of the Criminal Code of the Russian Federation, which gives us the right to bring foreign citizens who have committed a crime outside the Russian Federation to criminal liability in cases where the crime is directed against a citizen of the Russian Federation, as well as in cases provided for in an international treaty of the Russian Federation, if foreign citizens have not been convicted in a foreign state and are held criminally liable in the territory of the Russian Federation.

Currently, investigative actions are being carried out aimed at establishing all the circumstances of the crimes committed.

Head of Department V.I. Markin

10 September 2015 11:32

Page address: https://sledcom.ru/news/item/965853

Annex 14

Investigative Committee of the Russian Federation, *Criminal Cases Have Been Initiated Against 20 High-Ranking Officials of the Ministry of Defense of Ukraine* (11 September 2017)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Criminal cases have been initiated against 20 high-ranking officials of the Ministry of Defense of Ukraine

Collecting evidence of crimes against the peace and security of mankind in south-east Ukraine, the Investigative Committee has documented dozens of facts of crimes against the Russian-speaking population of Donbas. In some cases, the investigation has already identified specific military personnel involved in them, in other cases they have yet to be identified. The systematic nature of these crimes, the manner and the circumstances clearly indicate that they are organized and coordinated by the same people — high-ranking officials of the Ministry of Defense of Ukraine.

We have already provided a legal assessment of certain acts recorded since the beginning of the conflict. Since the crimes are being committed to this day, the Main Investigation Department of the Investigative Committee of Russia initiated an additional 20 criminal cases against the Minister of Defense of Ukraine Stepan Poltorak, his deputies Oleg Rusnak, Ivan Shevchuk, Igor Pavlovsky, Alexander Dublan, Chief of General Staff Viktor Muzhenko, as well as his first deputies and deputies Igor Kolesnik, Serhiy Bessarab and Volodymyr Khizhego, officials in charge of intelligence, ground troops and air forces, including special operations: Sergei Popko, Vasily Burba, Sergei Naev, Anatoly Pushniakov, Alexander Krasnook,

Alexander Pavlyuk, Andrei Grishchenko, Alexander Lokota, Sergei Drozdov, Mikhail Zabrodsky, Igor Lunev and Igor Voronchenko. The investigation is of the view that their actions constitute crimes under Articles 356 and 357 of the Criminal Code of the Russian Federation (use of prohibited means and methods of warfare, genocide).

According to the investigation, in the period of 2016-2017, these persons, in violation of the Protocol on the cessation of the use of weapons in the south-east of Ukraine and the Memorandum thereto, as well as the provisions of the Convention on the Protection of Civilian Persons in Time of War and its Additional Protocol II, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide and others, exercising the general control over military operations, gave deliberately criminal orders to the soldiers of the law enforcement agencies of Ukraine to conduct targeted artillery shelling of civilian infrastructure located in settlements of the self-proclaimed Donetsk and Luhansk People's Republics using heavy types of weapons with high damaging properties. It is obvious that all these persons acted out of hatred to the Russian-speaking population living in the Donbass, wishing them to die. This is clearly evident by the results of the shelling - 110 civilians were killed and 430 civilians, who were not related to the armed conflict, were injured. There are children, women and pensioners among them. More than 1,285 infrastructure facilities, including residential buildings, schools, hospitals and other civilian facilities, have been destroyed or partially destroyed, which once again confirms the desire of the Ukrainian military to eradicate the Russian-speaking population and to prevent them from deciding for themselves how to live.

In the near future, the individuals involved in the criminal case will be indicted and then put on a wanted list. The Investigative Committee of Russia continues investigative actions aimed at collecting evidence of crimes against peace and security of mankind committed by officials of the Ukrainian security services.

Official representative

of the Investigative Committee S. Petrenko

Images



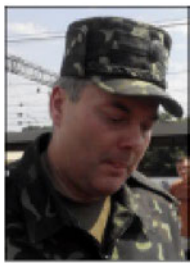











11 September 2017

Page address: https://sledcom.ru/news/item/1162812

Annex 15

Investigative Committee of the Russian Federation, *Alexander Bastrykin Gave a Lecture for Students of the Moscow State Institute of International Relations (MGIMO) on the Investigation of War Crimes* (25 November 2017)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Alexander Bastrykin gave a lecture for the students of the Moscow State Institute of International Relations (MGIMO) on the investigation of war crimes

The Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of Russia hosted a meeting of Doctor of Law, Professor Alexander Bastrykin, with students. The topic of his speech was: "The activities of the Investigative Committee of the Russian Federation in carrying out criminal prosecutions for war crimes using the example of South Osetia and Ukraine."

Before proceeding to the content of the given topic, the Chairman of the Investigative Committee of Russia thanked the Rector of MGIMO, Academician of the Russian Academy of Sciences, Doctor of Political Sciences, Professor Anatoly Torkunov for "providing the opportunity to meet within the walls of one of the country's unique educational institutions, which has created a scientific base for in-depth study of almost any aspect of international relations." Alexander Bastrykin emphasized the relevance of the chosen profession of a diplomat and its growing role in modern conditions "in the search for effective answers to the large-scale challenges of our time."

Turning to the coverage of "problems of implementing the norms of international humanitarian law in relation to a situation in which Russia cannot remain indifferent for objective reasons," the Chairman of the Investigative Committee of Russia recalled the reasons and goals of creating ad hoc international

and mixed criminal tribunals designed to investigate international crimes, including war crimes. "And if in some cases we can talk about the desire to follow the principle of inevitability of punishment for committed criminal acts, then it is impossible not to pay attention to examples when the world community ignores the facts of committing international crimes, including serious violations of international humanitarian law," stressed the Head of the Investigative Committee.

As part of his speech, Alexander Bastrykin dwelled in detail on such issues as the observance of the world law and order, including the norms of international humanitarian law, the timeliness of the investigation and trial of crimes against the peace and security of mankind, the collection of evidence in the investigation of crimes of this category, bringing international criminals to justice. The role of national bodies of preliminary investigation and judicial bodies of states that, by virtue of the norms of international law and domestic legislation, are able to exercise jurisdiction, including extraterritorial jurisdiction, as well as the grounds for extending the extraterritorial jurisdiction of the Russian Federation to crimes committed abroad, were discussed in detail.

Alexander Bastrykin cited some results of the investigation of the criminal case on the facts of the genocide of the ethnic group of Osetians and the massacres of citizens of the Russian Federation living in the territory of South Osetia, and Russian peacekeepers: "being directly in the zone of armed conflict and working practically in combat conditions, the staff of the Investigative Committee of Russia established all the circumstances of the Georgian armed aggression. During the investigation of the criminal case, more than 5,000 persons from among the civilian population of the republic and Russian military personnel were recognized as victims, and more than 1,000 witnesses were interrogated, whose testimonies confirm the facts of the genocide. More than 30,000 items and documents have been recognized as material evidence. Official documents of the Armed Forces of Georgia were found and confiscated in the conflict zone. Numerous violations by the Georgian Party of international treaties on the principles of settling the Georgian-South Osetian conflict, norms of international humanitarian law and universally recognized human and civil rights and freedoms have been documented. The consequences of the treacherous armed invasion were the murders of 162 civilians in South Osetia, as well as causing harm of varying severity to the health of 255 citizens of the Republic. On the basis of the evidence collected during the investigation, indictment orders concerning the former Ministers of Defense and the Ministry of Internal Affairs of Georgia and a number of other high-ranking servicemen of Georgia were issued. They escaped from the preliminary investigation authorities, and therefore were put on the international wanted list. In January 2016, the International Criminal Court authorized the prosecutor of this court to commence an investigation of the events that took place on the territory of South Osetia in October 2008. However, the ICC turned the circumstances of the case 'upside down', leaving the facts of mass murder and mutilation of the Osetian part of the population of South Osetia and the forced resettlement of 16,000 Osetians from their place of residence outside the scope of the investigation. At the same time, the conclusion of the ICC was made contrary to the irrefutable evidence presented by the Investigative Committee – a copy of the case file, which includes more than 33 volumes, as well as a significant amount of photo and video materials. The ICC also ignored the Judgement of the International Court of Justice in the Hague dated 01 April 2011 which terminated the legal action of Georgia against the Russian Federation on the application of the norms of the International Convention on Elimination of All Forms of Racial Discrimination."

The Chairman of the Investigative Committee paid particular attention to the events in the south-east of Ukraine, which "fall under the concept of a non-international armed conflict, as defined in the Additional Protocol to the Geneva Conventions as of 12 August 1949 Relating to the Protection of

Victims of Non-International Armed Conflicts, and in connection with this is governed by the norms of international humanitarian law, which is officially recognized by the International Committee of the Red Cross."

In addition, he announced some data on the progress of the investigation: "Since 2014 to the present, 196 criminal cases have been initiated with 127 people being prosecuted. Among them are high-ranking officials of the Ministry of Defense of Ukraine, including the Minister of Defense of Ukraine Poltorak, his deputies, the Head of the General Staff Muzhenko and his deputies. These persons in violation of the Protocol on the Cessation of the Use of Weapons in the South-East of Ukraine and the Memorandum thereto, as well as the provisions of the Convention relative to the Protection of Civilian Persons in Time of War, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide and other regulatory legal acts issued deliberately criminal orders to carry out targeted artillery shelling of civilian infrastructure and settlements of the self-proclaimed Donetsk and Luhansk People's Republics." Mr. Bastrykin explained that the Investigative Committee is prosecuting war criminals and nationalists who kill the civilian population of south-east Ukraine and our compatriots (we are talking about Russian journalists and residents of Russian settlements who suffered from shelling from the territory of Ukraine).

Concluding the lecture, Alexander Bastrykin thanked those present for their attention, emphasizing that "the history of our great Motherland bears evidence of the terrible war crimes of the fascist regime and the price that the fraternal peoples of the Soviet Union and the whole world paid for to ensure that the criminals receive the punishment they deserve. And only by not allowing ourselves to forget the lessons of history and by following the legal postulates formulated by the post-war era, will we be able to ensure the peaceful and dignified existence of future generations."

Images





25 November 2017

Page address: https://sledcom.ru/news/item/1182455

Annex 16

Investigative Committee of the Russian Federation, *The Chairman of the Investigative Committee of Russia Took Part in the International Scientific and Practical Conference "Crimes Against Peace"* (30 November 2018)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

The Chairman of the Investigative Committee of Russia took part in the international scientific and practical conference "Crimes against peace"

Today the Chairman of the Investigative Committee of Russia Alexander Bastrykin took part in the international scientific and practical conference titled "Crimes against peace" at the All-Russian State University of Justice (the Russian Academy of Law of the Ministry of Justice of Russia). Employees of the central offices of the Investigative Committee of Russia, the Prosecutor General's Office, the Supreme Court, the Federal Security Service, the Ministry of Internal Affairs of Russia, prominent scientists in the field of international law, and foreign guests attended the event.

Alexander Bastrykin made a presentation titled "Crimes against humanity: history and modernity." He recalled that in 1950 the International Law Commission summarized the activities of the Nuremberg Military Tribunal and formulated the fundamental principles that were reflected in its decision. These principles, recognized by the entire international community, became at that time the foundation for the formation of international criminal law. The Chairman of the Russian Investigative Committee paid special attention to principle VI,

according to which war crimes, crimes against peace and humanity are punished as international legal crimes.

Since its inception, the Investigative Committee of Russia has been actively and consistently involved in the investigation of crimes against the peace and security of mankind. The evidence collected by the Investigative Committee of Russia should form the basis of the charges against those who fire daily at civilians and give such orders.

The Chairman of the Investigative Committee of Russia noted that today the investigators of the Investigative Committee are investigating criminal cases that involve more than 230 episodes of criminal activity of Ukrainian military personnel. These are the use of prohibited means and methods of warfare, shelling of civilian infrastructure and the genocide of the Russian-speaking population of the self-proclaimed DPR and LPR. "When one military is fighting against another military, this can be understood, but when the military destroy women, children, the elderly, it is impossible to comprehend. The worst thing is that these are not careless crimes, but deliberate ones. We are recording numerous facts of the Ukrainian military destroying schools, maternity hospitals, and residential areas with aimed fire," the Chairman of the Investigative Committee of Russia emphasized.

Alexander Bastrykin expressed his conviction that specialists in the field of both international and national law need to move forward, while starting from the basic provisions of the Charter of the Nuremberg Tribunal and taking into account modern realities, as well as actively work in the international sphere, defending Russia's national interests.

During the conference, the participants discussed the effectiveness of law enforcement practice in connection with legislative novelties on crimes against peace.

Images




30 November 2018 16:18

Page address: https://sledcom.ru/news/item/1277166

Annex 17

Investigative Committee of the Russian Federation, *International Day of Commemoration for the Victims of Genocide* (9 December 2019)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

International Day of Commemoration for the Victims of Genocide

On 9 December, it is customary to remember and honor the memory of the people who became victims of genocide. It was this day in 2015 that was proclaimed by the UN General Assembly as the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime.

The date is not accidental - on 9 December 1948, the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, to which more than a hundred states, including our country, remain parties. The term "genocide" was used in legal practice as early as the Nuremberg Trials, and the Convention became the first international act to enshrine the concept of genocide.

Unfortunately, the history of mankind knows many examples of this monstrous crime. Among them are the mass extermination of individual peoples and the extermination of entire class groups of people committed by supporters of the Wehrmacht and followers of the Nazis. For several generations, with a shudder and pain in their souls, they have been remembering the horrors and atrocities of the Nazis,

documented and forever remaining in world history.

We have not forgotten the facts of the genocide of the Great Patriotic War. The Investigative Committee of the Russian Federation is investigating a criminal case about the events of October 1942, when more than 200 children were killed by members of the SS-10 "a" Sonderkommanda in order to carry out punitive operations to destroy Soviet citizens in the Yeisk orphanage. There is also an ongoing criminal investigation into the punitive operation during the occupation of the village of Zhestyanaya Gorka in 1942 (now Novgorod Oblast). According to archival materials, a "Tailkommanda" of the security police and SD [from German Sicherheitsdienst standing for Security Service] was formed for the mass murder of Soviet citizens from among the civilian population.

Guided by the norms of both national and international law, investigators, of course, cannot stand aside when acts of genocide are committed in our time. The Investigative Committee of Russia is investigating crimes of genocide of the Russian-speaking population of Donbas, where civilians are dying at the hands of the Ukrainian military under targeted fire. The Russian investigation recorded the facts of the genocide in 2008 of the ethnic group of Osetians, mass killings of citizens of the Russian Federation who lived in South Osetia, and Russian peacekeepers. During the investigation of the circumstances of the Georgian armed aggression, over 1,000 witnesses were interrogated, whose testimony, along with other evidence, confirmed the commission of a crime against humanity.

There is no excuse for genocide. And this day serves not only as a reminder of its consequences – colossal, destructive and painful losses for all mankind, but also as a warning about the inevitability of responsibility and the inadmissibility of any manifestations of this crime. Remembering the lessons of history, it is impossible to leave unpunished the commission of brutal acts of violence against certain groups of the population, regardless of the statute of limitations of their commission. Not a single fact of criminal actions based on the ideas of racial superiority, Nazism, even after a long time, should not go unnoticed.

09 December 2019

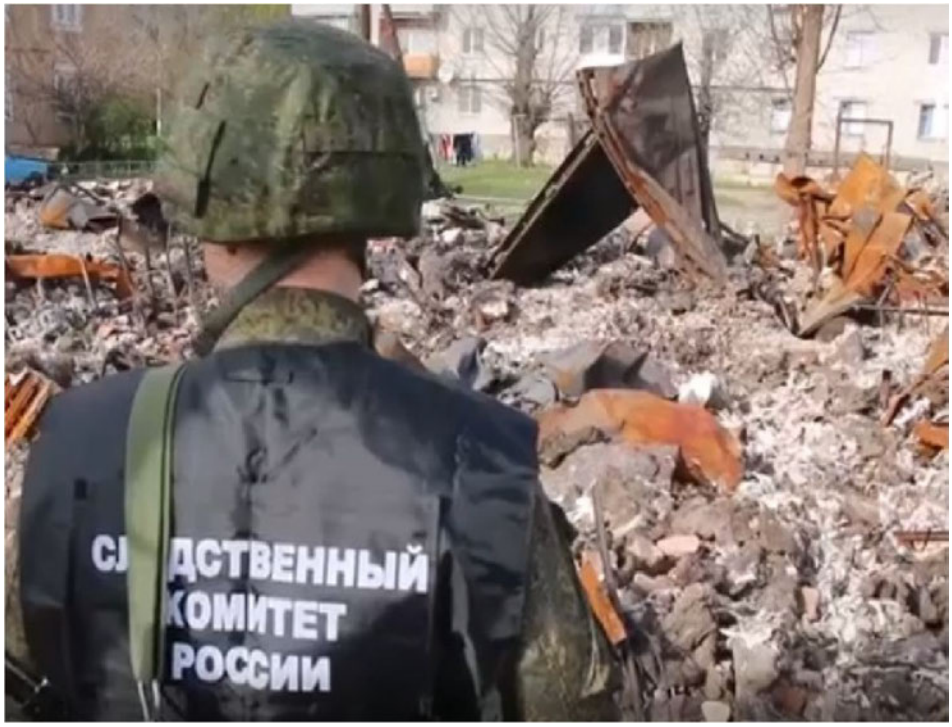
Page address: https://sledcom.ru/news/item/1418032

Annex 18

Investigative Committee of the Russian Federation, *A Criminal Case Has Been Initiated for Genocide Against the Residents of the Town of Shchastya in the LPR* (18 April 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

A criminal case has been initiated for genocide against the residents of the town of Shchastya in the LPR



In violation of the requirements of the Convention on the Prevention and Punishment of the Crime of Genocide (New York, 09 December 1948), the Armed Forces of Ukraine and other Ukrainian military formations, beginning in late February of this year, have repeatedly fired from various types of weapons, including artillery, at residential areas of the city of Shchastya in the Luhansk People's Republic aimed at the complete eradication of Russians and the Russian-speaking population. These citizens did not take part in the armed conflict and hostilities.

As a result of unlawful actions of the Ukrainian side, civilians were killed, hundreds of residents received injuries of varying severity. The exact number of dead and injured will be determined in the course of investigative actions that are currently being carried out by military investigators in the city. In addition, at least 331 residential buildings were damaged, some of which were completely destroyed, as well as civilian infrastructure and life support facilities (gas pipeline, power substation, water supply networks, schools, kindergartens, public eating venues).

Based on this fact, the military investigative bodies of the Investigative Committee of the Russian Federation initiated criminal proceedings against the persons participating in the armed conflict on the side of Ukraine on the grounds of a crime under Article 357 of the Criminal Code of the Russian Federation (genocide, that is, actions aimed at the complete eradication of a national or ethnic group as such, by killing its members, causing serious harm to their health and creating living conditions designed for physical eradication).

Currently, the necessary investigative actions are being carried out aimed at recording the traces of this crime, as well as identifying the persons involved in its commission.

18 April 14:44

Page address: http://sledcom.ru/news/item/1675218/

Annex 19

Investigative Committee of the Russian Federation, *Izvestia: The Investigative Committee of Russia Initiated a Case on the Genocide Against the Residents of the Town of Shchastya in the LPR* (19 April 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Izvestia: "The Investigative Committee of Russia initiated a case on the genocide against the residents of the town of Shchastya in the LPR"

The Investigative Committee of Russia: a case on the genocide of residents of the city of Shchastya has been initiated

The Investigative Committee (IC) of Russia initiated a criminal case against servicemen of the Armed Forces of Ukraine (AFU) for the genocide against residents of the city of Shchastya in the Luhansk People's Republic (LPR). This was reported on April 18th in the publication on the website of the agency.

The criminal case is being investigated under Article 357 of the Criminal Code of the Russian Federation ("genocide, that is, actions aimed at the complete eradication of a national or ethnic group as such, by killing its members, causing serious harm to their health and creating living conditions designed for physical eradication").

According to the IC of Russia, the Ukrainian formations fired at the settlement "to completely eradicate the Russians."

"These citizens did not take part in the armed conflict and hostilities," the IC of Russia noted.

The shelling of the town of Shchastya by the AFU violated the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the agency added.

As a result, civilians were killed, hundreds of residents received injuries of varying severity. The exact number of dead and injured will be determined during the investigation.

"In addition, at least 331 residential buildings were damaged, some of which were completely destroyed, as well as civilian infrastructure and life support facilities (gas pipeline, power substation, water supply networks, schools, kindergartens, pubic eating venues)," the IC concluded.

On April 15, it became known that the IC of Russia will check the data of American journalist Patrick Lancaster about the discovery of killed residents of Mariupol after the withdrawal of the Ukrainian radical nationalist group "Azov." The interrogations of witnesses will also continue. The investigation will provide its criminal law assessment of each death of the civilian population.

On 11 April, a resident of the Mariupol residential district Skhidnyi told the correspondent of the Izvestia TV channel Alexei Poltoranin that the nationalists openly told civilians about the order to wipe the city off the face of the earth.

On 24 February, Russia launched a special operation to protect Donbas. The Kremlin explained that the tasks of the special operation include the demilitarization and denazification of

Ukraine, the implementation of which is necessary to ensure the security of Russia. The decision was made against the background of the aggravation of the situation in the LPR and the DPR as a result of shelling by the Ukrainian military.

19 April 09:20 a.m.

Page address: http://sledcom.ru/press/smi/item/1675467/

Annex 20

Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS (Stevens and Sons Ltd. 1953)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

GENERAL PRINCIPLES OF LAW

as applied by

INTERNATIONAL COURTS AND TRIBUNALS

BY

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Chapter 4

GOOD FAITH IN THE EXERCISE OF RIGHTS (THE THEORY OF ABUSE OF RIGHTS)

The principle of good faith which governs international relations controls also the exercise of rights by States. The theory of abuse of rights (*abus de droit*), recognised in principle both by the Permanent Court of International Justice [1] and the International Court of Justice,[2] is merely an application of this principle to the exercise of rights.

A. The Malicious Exercise of a Right

The prohibition of malicious injury is an important aspect of the theory of abuse of right as it has been applied in most Continental legal systems.[3] In the international sphere, attention may be drawn to the following extract from the proceedings of the Fur Seal Arbitral Tribunal (1892), which clearly shows that the President of the Tribunal entertained no doubt as to its applicability in international law and that counsel for Great Britain was not indisposed to admit it. The question raised was whether the United States had a right to complain of the hunting of fur seals by British fishermen in that part of the Behring Sea adjacent to the American Pribilof Islands.

" Sir Charles Russell: Where is the right that is invaded by that pelagic sealing? . . . It is not enough to prove that their industry (if I must use that phrase) may be less profitable to them because other persons, in the exercise of the right of sealing on the high seas, may intercept seals that come to them—that may be what lawyers

[1] *Cf. infra*, pp. 123, 127.

[2] *Anglo-Norwegian Fisheries Case* (1951), U.K./Norway, *ICJ Reports, 1951*, p. 116, at p. 142. See *infra*, p. 134, note 42. The theory of abuse of rights has been frequently referred to by judges of the I.C.J. in their separate and dissenting opinions. See *ICJ Reports, 1947–1948*, pp. 69, 71, 79 *et seq.*, 91, 92, 93, 103, 115; *ICJ Reports, 1949*, pp. 46, 47 *et seq.*, 75, 129 *et seq.*; *ICJ Reports, 1950*, pp. 14 *et seq.*, 19, 20, 29, 148, 348, 349; *ICJ Reports, 1951*, pp. 149 *et seq.*; *ICJ Reports, 1952*, pp. 56, 128, 133, 135.

[3] *Cf.* H. C. Gutteridge, " Abuse of Rights," 5 *Cambridge L.J.* (1933), p. 22.

call a damnum, but it is not an injuria . . . ; but a damnum does not give a legal right of action. . . .

" The PRESIDENT: Unless done maliciously.

" Sir CHARLES RUSSELL: You are good enough, Mr. President, to anticipate the very next topic. . . . They would have a right to complain . . . if it could be truly asserted that any class or set of men had, for the malicious purpose of injuring the lessees of the Pribilof Islands and not in regard to their own profit and interest and in exercise of their own supposed rights, committed a series of acts injurious to the tenants of the Pribilof Islands, I agree that that would probably give a cause of action; and, therefore, they have the further right (what I might call the negative right) of being protected against malicious injury. . . ." [4]

The exercise of a right—or supposed right, since the right no longer exists for the sole purpose of causing injury to another is thus prohibited. Every right is the legal protection of a legitimate interest. An alleged exercise of a right not in furtherance of such interest, but with the malicious purpose of injuring others can no longer claim the protection of the law.[5] *Malitiis non est indulgendum.*[6]

B. The Fictitious Exercise of a Right

I. EVASION OF THE LAW

Ex re sed non ex nomine is a principle of good faith.[7] By looking to the real state of things and not attaching decisive importance to the legal denominations which the parties may give to their actions, this principle inter alia precludes the form of the law from being used to cover the commission of what in fact is an unlawful act. If international law prescribes respect for private property, but allows expropriation for

[4] *Fur Seal Arbitration* (1893) G.B./U.S., 1 *Int.Arb.*, p. 755, at pp. 889–890. *Cf.* American contention that the high seas were " free only for innocent and inoffensive use, not injurious to the just interests of any nation which borders upon it " (p. 839). See also *ibid.*, p. 892.

[5] *Cf.* PCIJ: *German Interests Case* (Merits) (1926), Speech of German Agent (Ser. C. 11-I, pp. 136 *et seq.*) and German Memorial (pp. 375 *et seq.*), where the German Government admitted that the exercise of no right can be unlimited, and that the exercise of a right for no serious motive except the purpose of injuring others constituted an abuse of right.

[6] *Digest*: VI.i. *De rei vindic*, 38.

[7] *Cf.* PCIJ: *Chorzów Factory Case* (Merits) (1928), D.O. by Ehrlich, A. 17, p. 87. See *supra*, p. 39.

reasons of public utility [8] it is not permissible for a State to go through the forms of an expropriation procedure in order to seize private property not for public purposes, but for the use of some individuals for private profit. This occurred in the *Walter F. Smith Case* (1929) and the act was considered contrary to the principle of good faith and held to be unlawful.[9]

II. EVASION OF TREATY OBLIGATIONS

By application of the same principle, international law prohibits the evasion of a treaty obligation under the guise of an alleged exercise of a right. In the *Free Zones Case* (Jgt.) (1932), France was under treaty obligations to maintain certain frontier zones with Switzerland free from customs barriers. The Permanent Court of International Justice while recognising that France had the sovereign and undoubted right to establish a police cordon at the political frontier, for the control of traffic and even for the imposition of fiscal taxes other than customs duties, held that:—

> " A reservation must be made as regards the case of abuses of a right [*"les cas d'abus de droit"*], since it is certain that France must not evade the obligation to maintain the zones by erecting a customs barrier under the guise of a control cordon." [10]

The principle of good faith thus requires every right to be exercised honestly and loyally. Any fictitious exercise of a right for the purpose of evading either a rule of law or a contractual obligation will not be tolerated. Such an exercise constitutes an abuse of the right, prohibited by law.

C. Interdependence of Rights and Obligations

I. RIGHTS AND TREATY OBLIGATIONS

When a State assumes a treaty obligation, those of its rights which are directly in conflict with this obligation are, to that extent, restricted or renounced. Thus, if Great Britain agrees

[8] *Supra*, p. 37.
[9] *Supra*, p. 39.
[10] A/B. 46, p. 167. See also the Court's Order of December 6, 1930, in the same case, A. 24, p. 12; and *Oscar Chinn Case* (1934), A/B. 63, p. 86 (see *supra*, p. 117).

that inhabitants of the United States shall have the right to fish in certain of her territorial waters, she has to that extent deprived herself of the right to prohibit foreigners from fishing in those waters. But the other rights of Great Britain, for example, her right as local sovereign to legislate for the protection and preservation of fisheries, are apparently not considered as having been affected by this obligation. Thus in the *North Atlantic Coast Fisheries Case* (1910) where the facts were as related above, the Permanent Court of Arbitration said:—

". . . the line by which the respective rights of both parties accruing out of the treaty are to be circumscribed, can refer only to the right granted by the treaty; that is to say the liberty of taking, drying, and curing fish by the American inhabitants in certain British waters in common with British subjects, and not to the exercise of rights of legislation by Great Britain not referred to in the treaty.

". . . a line which would limit the exercise of sovereignty of a State within the limits of its own territory, can be drawn only on the ground of express stipulation, and not by implication from stipulations concerning a different subject-matter." [11]

The non-limitation of the right is, however, only apparent. It is submitted that, in reality, with the assumption of every obligation, all the rights of the State suffer a limitation to a greater or lesser extent. When a State assumes a treaty obligation, the principle of good faith—which governs the performance of treaty obligations—imposes a general limitation on every right of the State so that none may be exercised in a manner incompatible with the bona fide execution of the obligation assumed. Thus in the same decision, the Permanent Court of Arbitration added:—

" The line in question is drawn according to the principle of international law that treaty obligations are to be executed in perfect good faith, therefore excluding the right to legislate *at will* concerning the subject-matter of the treaty, and *limiting the exercise of sovereignty of the State bound by a treaty with respect to that subject-matter to such acts as are consistent with the treaty.*" [12]

[11] 1 H.C.R., p. 141, at p. 169.
[12] *Ibid.*, at p. 169. Italics added.

In other words,

"The exercise of that right [*i.e.*, to legislate] by Great Britain is, however, limited by the said treaty in respect of the said liberties therein granted to the inhabitants of the United States in that such regulations must be made bona fide and must not be in violation of the said treaty.

"Regulations which are (1) appropriate or necessary for the protection and preservation of such fisheries, or (2) desirable or necessary on grounds of public order and morals without unnecessarily interfering with the fishery itself, and in both cases equitable and fair as between local and American fishermen, and not so framed as to give unfairly an advantage to the former over the latter class, are not inconsistent with the obligation to execute the treaty in good faith and are therefore reasonable and not in violation of the treaty." [13]

Whatever the limits of the right might have been before the assumption of the obligation, from then onwards, the right is subject to a restriction. Henceforth, whenever its exercise impinges on the field covered by the treaty obligation, it must be exercised bona fide, that is to say reasonably. A reasonable and bona fide exercise of a right in such a case is one which is appropriate and necessary for the purpose of the right (*i.e.*, in furtherance of the interests which the right is intended to protect). It should at the same time be fair and equitable as between the parties and not one which is calculated to procure for one of them an unfair advantage in the light of the obligation assumed. A reasonable exercise of the right is regarded as compatible with the obligation. But the exercise of the right in such a manner as to prejudice the interests of the other contracting party arising out of the treaty is unreasonable and is considered as inconsistent with the bona fide execution of the treaty obligation, and a breach of the treaty. In this way, the principle of good faith establishes an interdependence between the rights of a State and its obligations. By weighing the conflicting interests covered by the right and the obligation, it delimits them in such a way as to render the exercise of the right compatible with the spirit of the obligation.

Another, though more complicated, example, illustrating the interdependence of rights and treaty obligations, is to be found

[13] *Ibid.*, at p. 171.

in the *German Interests Case* (Merits) (1926). The relevant facts may be briefly recalled. The case was concerned inter alia with the nitrate factory at Chorzów, Polish Upper Silesia. Both the factory and the territory formerly belonged to the German Empire. By the Treaty of Versailles, Germany agreed that a plebiscite should be held in Upper Silesia and in advance renounced in favour of Poland all rights and titles over that portion of Upper Silesia lying beyond the frontier line to be fixed by the Principal Allied and Associated Powers as the result of the plebiscite (Art. 88). Article 256 of the Treaty provided that Powers to which German territory was to be ceded were to acquire the property and possessions situated therein belonging to the German Empire. The value of such acquisitions was to be fixed by the Reparation Commission, and paid to the latter by the State acquiring the territory, to be credited to the German Government on account of the sums due in respect of reparations. Poland, however, was not entitled to reparations. The Treaty was signed on June 28, 1919, but did not come into force between Germany and Poland until January 10, 1920. On December 24, 1919, *i.e.*, between the date of signature of the Treaty and its coming into force, a series of legal instruments were signed and legalised in Berlin. By these instruments a private company was formed and to it the Reich sold the factory at Chorzów. Ownership was transferred only on January 28–29, 1920, at a time when the Treaty had already come into force. After that part of Upper Silesia in which the factory was situated had been allotted to Poland (October 20, 1921), Poland, considering the sale to be null and void, declared that the factory had become Polish State property in accordance with Article 256 of the Treaty of Versailles. Germany contested the legality of this measure.

In the opinion of the Permanent Court of International Justice, Article 88 of the Treaty of Versailles merely contemplated the possible renunciation of sovereignty over the territories in question and Article 256 did not operate in this case until the effective transfer of sovereignty. It held that:—

"Germany undoubtedly retained until the actual transfer of sovereignty the right to dispose of her property." [14]

[14] A. 7, p. 30.

The treaty obligations assumed by Germany did not, therefore, directly affect her proprietary rights, including the right of alienating property in the plebiscite area. The Court added, however:—

"And only a misuse of this right could ['*ce n'est qu'un abus de ce droit ou un manquement au principe de la bonne foi qui pourraient*'] endow an act of alienation with the character of a breach of the Treaty." [15]

It follows, therefore, that a legitimate exercise of the right of alienation was compatible with the treaty obligations, while an abuse of this right, *i.e.*, an exercise of the right contrary to the principle of good faith, would be incompatible therewith.

In considering "whether Poland can rely as against Germany on the contention that there has been a misuse of the right ['*un abus du droit*'] possessed by the latter to alienate property situated in the plebiscite area, before the transfer of sovereignty," [16] the Court arrived at the conclusion that:—

"Such misuse ['*un tel abus*'] has not taken place in the present case. The act in question does not overstep the limits of the normal administration of public property and was not designed to procure for one of the interested Parties an illicit advantage and to deprive the other of an advantage to which he was entitled." [17]

In the opinion of the Court, "the abandonment by the Reich of an enterprise showing a serious deficit, by means of a sale under conditions offering a reasonable guarantee that the capital invested would eventually be recovered" "appears in fact to have fulfilled a legitimate object of the administration," and no sufficient reasons had been shown why the transaction should not be regarded as genuine.[18]

"Again, the Court cannot regard the alienation as an act calculated to prejudice Poland's rights. At the time when the alienation took place (*Auflassung* and entry in the land register, January 28–29, 1920), the Treaty of Versailles was already in force. *An opinion must therefore be formed regarding the good faith of the Government of the Reich in the light of the obligations arising out of this*

[15] *Ibid.*, at p. 30. The French text is authoritative.
[16] *Ibid.*, at p. 37.
[17] *Ibid.*, at pp. 37–38.
[18] *Ibid.*, at p. 38.

Treaty, and not on the basis of other international agreements—such as for instance the Geneva Convention—which did not exist at that date and the conclusion of which could not even be foreseen. Now, under the Treaty of Versailles, Germany could only foresee two possibilities, either that Poland would claim the factory as Reich property, or that she would claim the right to liquidate it as belonging to a company controlled by German nationals, such as the Oberschlesische. The advantage for Poland of the former alternative over the latter would have consisted in the possibility of directly acquiring the ownership under Article 256, at a price to be fixed by the Reparation Commission instead of obtaining it by application of the liquidation procedure referred to in Article 297. This difference, however, cannot suffice to justify the view that the alienation was contrary to the obligations arising under the Treaty of Versailles and that it was even null and void or contrary to the principles of good faith." [19]

This case, and especially the last quotation from the judgment, shows the intimate, one might almost say the intricate, interdependence of a State's rights and obligations, established by the principle of good faith. On the one hand, there was the undoubted right of Germany to dispose of her property in the plebiscite area until the actual transfer of sovereignty. On the other, there were the obligations assumed by Germany under the Treaty of Versailles. These obligations did not prohibit Germany from alienating her property. With the assumption of these obligations, however, the right of disposition implicitly suffered certain restrictions. It could no longer be exercised at will. While the bona fide exercise of the right would be compatible with Germany's treaty obligations, its exercise contrary to the principle of good faith would constitute an abuse of right and a breach of these obligations, *i.e.*, an unlawful act. In such cases, in deciding whether or not the right was exercised in good faith, an international tribunal must examine whether the exercise of the right was in pursuit of the legitimate interests protected by it [20] and whether, in the light of the obligations assumed by the State, the exercise of

[19] *Ibid.*, at pp. 38 39. Italics added.

[20] It must be remembered that, in this case, the right of disposition is merely an attribute of the right of ownership, which determines the object of the right.

the right was calculated to prejudice the rights and legitimate interests of the other party under the Treaty.

In this way, the principle of good faith governing the exercise of rights, sometimes called the theory of abuse of rights, while protecting the legitimate interests of the owner of the right, imposes such limitations upon the right as will render its exercise compatible with that party's treaty obligations, or, in other words, with the legitimate interests of the other contracting party. Thus a fair balance is kept between the respective interests of the parties and a line is drawn delimiting their respective rights. Any overstepping of this line by a party in the exercise of his right would constitute a breach of good faith, an abuse of right, and a violation of his obligation.

II. RIGHTS AND OBLIGATIONS UNDER GENERAL INTERNATIONAL LAW

The Mexican-United States General Claims Commission (1923) in the *North American Dredging Co. of Texas Case* (1926) said:—

"If it were necessary to demonstrate how legitimate are the fears of certain nations with respect to abuses of the right of protection and how seriously the sovereignty of those nations within their own boundaries would be impaired if some extreme conceptions of this right were recognised and enforced, the present case would furnish an illuminating example." [21]

Speaking of the "world-wide abuses either of the right of national protection or of the right of national jurisdiction," the Commission declared:—

"The present stage of international law imposes upon every international tribunal the solemn duty of seeking for a proper and adequate balance between the sovereign right of national jurisdiction, on the one hand, and the sovereign right of national protection of citizens on the other. No international tribunal should or may evade the task of *finding such limitations of both rights as will render them compatible with the general rules and principles of international law.*" [22]

[21] *Op. of Com. 1927*, p. 21, at p. 29.
[22] *Ibid.*, at p. 23. Italics added.

This approach to the problem of the limitation of rights clearly shows that what has so far been said regarding the interdependence of rights and obligations applies not only to treaty obligations but also to obligations derived from the general law. Every right is subject to such limitations as are necessary to render it compatible both with a party's contractual obligations and with his obligations under the general law.

This process of adjusting the rights and obligations of a State may also be illustrated by the Trail Smelter Arbitration (1935). In this case, there was, on the one hand, the right of a State to make use of its own territory, and, on the other hand, the duty of a State at all times " to protect other States against injurious acts by individuals from within its jurisdiction." [23] Taking into account the conflicting interests at stake [24] and analogous cases in municipal law,[25] the Arbitral Tribunal arrived at the conclusion that:—

" No State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence." [26]

Thus, instead of recognising and enforcing some extreme views concerning the use of territory, the Tribunal struck a proper balance between a State's rights and obligations. Any overstepping of this limit would constitute an abuse of right, a violation of the obligation to protect other States from injuries emanating from its territory and an unlawful act.

The recognition of the interdependence of a person's rights and obligations is one of the most important features of the principle of good faith governing the exercise of rights. The rights enjoyed by a person become correlated with his obligations. Generally, each right suffers such limitations as would render its exercise compatible with the obligations arising from the general rules and principles of the legal order. Its limits vary, therefore, with the changing contents of these rules and

[23] *Award II* (1941), 3 UNRIAA, p. 1905, at p. 1963.
[24] *Cf. ibid.*, at pp. 1938, 1939.
[25] *Ibid.*, at pp. 1963 *et seq.*
[26] *Ibid.*, at p. 1965.

principles. As a society becomes more integrated more obligations are laid upon its members and the rights of each subject of law become also more restricted. Whenever the owner of the right contracts additional obligations, these place further limitations upon its exercise, even though this may not be expressly laid down. The right may no longer be exercised in a manner incompatible with the bona fide performance of these obligations. Hence the exact limits of a right may differ from person to person, according to the amount and contents of each person's obligations. In this sense, rights can no longer be regarded as absolute,[27] but are essentially relative.[28]

Good faith in the exercise of rights, in this connection, means that a State's rights must be exercised in a manner compatible with its various obligations arising either from treaties or from the general law. It follows from this interdependence of rights and obligations that rights must be reasonably exercised. The reasonable and bona fide exercise of a right implies an exercise which is genuinely in pursuit of those interests which the right is destined to protect and which

[27] *Cf. North American Dredging Co. of Texas Case* (1926), *Op. of Com. 1927*, p. 21 at p. 26. What the Commission here wished to refute appears to be not so much the law of nature, but the view that certain rights are "inalienable," or "uncurtailable."

[28] *Cf.* ICJ: *Admission of a State to the U.N.* (1948) Adv.Op., Ind.Op. by Azevedo, *ICJ Reports 1947–1948*, p. 57, at p. 79. See also p. 80. It is believed, however, that the learned judge used the term "relativity of rights" in the sense generally employed by writers, *i.e.*, rights must be exercised in conformity with the social purpose of the rule of law which creates them. (See, *e.g.*, L. Josserand, *De l'esprit des lois et de leur relativité; Théorie de l'abus de droit*, 1927).

Among international publicists, the view is quite widely held that an abuse of right is an anti-social exercise of the right. See *e.g.*, Politis, "Le problème des limitations de la souveraineté et la théorie de l'abus des droits dans les rapports internationaux," 6 *Recueil La Haye* (1925), p. 1, at p. 81 *et passim*, and following him, Lauterpacht, *The Function of Law in the International Community*, 1933, pp. 286 *et seq.* T. Selea, in his *La notion de l'abus du droit dans le droit international*, 1940, though in substance following closely the above-cited work of Politis, went further and considered as an abuse of right any exercise of a right which deviates from the social function or social purpose of the right (pp. 57 *et seq.*, 101 *et seq.*, 177). This, however, is going too far. Money thrown into the sea would presumably not be fulfilling its destined social function, but it is doubtful whether a State acting in this way would be legally chargeable with an abuse of right. The functional criterion is above all inadequate. It affords no juridical explanation why an unsocial or anti-social exercise of a right is unlawful. It fails completely to explain such cases of abuse of right as those envisaged by the *German Interests Case* (Merits) (1926) and the *Free Zones Case* (Jgt.) (1932). The correlation is, therefore, in the writer's opinion, between a person's rights and his obligations, and not between rights and the public interest. The existence of the obligation explains the illegality of the abusive exercise of the right.

is not calculated to cause any unfair prejudice to the legitimate interests of another State, whether these interests be secured by treaty or by general international law. The exact line dividing the right from the obligation, or, in other words, the line delimiting the rights of both parties is traced at a point where there is a reasonable balance between the conflicting interests involved. This becomes the limit between the right and the obligation, and constitutes, in effect, the limit between the respective rights of the parties. The protection of the law extends as far as this limit, which is the more often undefined save by the principle of good faith. Any violation of this limit constitutes an abuse of right and a breach of the obligation—an unlawful act. In this way, the principle of good faith, by recognising their interdependence, harmonises the rights and obligations of every person, as well as all the rights and obligations within the legal order as a whole.

D. Abuse of Discretion

In the complexities of human society, either of individuals or of nations, law cannot precisely delimit every right in advance. Certain rights may indeed be rigidly circumscribed, as, for instance, the right of self-defence in the territory of a friendly State. This right is limited to the taking of the only available means of self-defence imperatively demanded by the circumstances.[29] But, in a great number of cases, the law allows the individual or the State a wide discretion in the exercise of a right. Thus we have seen, when examining the principle of self-preservation, that the State enjoys a wide discretion in the exercise of its right of expropriation and requisition, its right to admit and expel aliens, and, generally speaking, all its rights of self-preservation in territory subject to its authority. This discretion extends to the determination of the nature, extent and duration of the State's requirements and the methods best calculated to meet the various contingencies.[30]

But wherever the law leaves a matter to the judgment of the person exercising the right, this discretion must be exercised in good faith, and the law will intervene in all cases where this

[29] *Supra*, pp. 83 *et seq.*
[30] See *supra*, pp. 67–68, and references therein.

discretion is abused.[31] As Judge Azevedo said in one of his individual opinions:—

" Any legal system involves limitations and is founded on definite rules which are always ready to reappear as the constant element of the construction, whenever the field of action of discretionary principles, adopted in exceptional circumstances, is overstepped. This is a long-established principle, and has served, during centuries, to limit the scope of the principle of *qui suo jure utitur neminem laedit.*" [32]

Thus in cases concerning the expulsion of aliens, an international tribunal would normally accept as conclusive the reasons of a serious nature adduced by the State as justifying such action.[33] It would, however, regard as unlawful measures of expulsion those which are arbitrary,[34] or accompanied by unnecessary hardship.[35] Where private property is taken for public use, although it is primarily for the State to decide what are its needs, as well as their extent and duration,[36] international tribunals would intervene when the need is plainly not one of a public character,[37] or when the property is retained clearly beyond the time required by the public need.[38] Furthermore, while it is left to the State conducting military operations to determine what are military necessities, international tribunals are entitled to intervene in cases of manifest abuse of this discretion, causing wanton destruction or injury.[39] Again, while a State taking reprisals against another is not bound to relate its measures closely to the offence,[40] it has been held that " reprisals out of all proportion to the act which had prompted them ought certainly to be considered as excessive and hence unlawful." [41]

Whenever, therefore, the owner of a right enjoys a certain discretionary power, this must be exercised in good faith, which

[31] See *supra*, p. 68, and references therein.
[32] ICJ: *Admission of a State to the U.N.* (1948), Adv.Op., *ICJ Reports, 1947–1948*, p. 57, at p. 80.
[33] *Supra*, pp. 34–35.
[34] *Supra*, p. 35, note 9, and p. 36.
[35] *Supra*, p. 36.
[36] *Supra*, pp. 39, 40–41, 43 45.
[37] *Supra*, p. 39.
[38] *Supra*, p. 44.
[39] *Supra*, pp. 65 *et seq.*
[40] *Supra*, p. 98.
[41] *Supra*, p. 98.

means that it must be exercised reasonably, honestly, in conformity with the spirit of the law and with due regard to the interests of others. But since discretion implies subjective judgment, it is often difficult to determine categorically that the discretion has been abused. Each case must be judged according to its particular circumstances by looking either at the intention or motive of the doer or the objective result of the act, in the light of international practice and human experience. When either an unlawful intention or design can be established, or the act is clearly unreasonable,[42] there is an abuse prohibited by law.

In some cases, however, the existence of an abuse is particularly difficult to determine. This is well illustrated by the case contemplated in the first Advisory Opinion delivered by the International Court of Justice. The question put to the Court was whether a member of the United Nations which was called upon, in virtue of Article 4 of the Charter, to vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, was juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph I of the said Article. A majority of nine judges considered that the conditions laid down in Article 4 I of the Charter were the only conditions to be taken into account,[43] while a minority of six considered that these were merely the indispensable conditions of admission.[44] In determining whether or not a particular condition is fulfilled by an applicant, the State which is called upon to vote naturally enjoys freedom of judgment. But it follows from the above Advisory Opinion that, in the view of the Court, this freedom is to be exercised within the scope of the prescribed conditions of Article 4 I, while in the opinion of the dissenting Judges this freedom is not so circumscribed,

[42] See also the application of the test of " reasonableness " and " moderation " by the I.C.J. in the *Anglo-Norwegian Fisheries Case* (1951) in determining whether Norway committed a " manifest abuse " in delimiting the base line of the Lopphavet Basin (*ICJ Reports, 1951*, p. 116, at pp. 141–142; *cf.* pp. 150. 153, 156, 167 *et seq.*) See also ICJ: *United States Nationals in Morocco Case* (1952), *ICJ Reports, 1952*, p. 176, at p. 212.

[43] *Admission of a State to the U.N.* (1948), Adv.Op., *ICJ Reports 1947–1948*, p. 57, at p. 65.

[44] *Ibid.*, at pp. 90, 104, 109 *et seq.*

but may be exercised within the general purposes and principles of the Charter of the United Nations.[45]

But, as was pointed out by some of the dissenting Judges, however circumscribed, the exercise of this discretion is extremely difficult, if not impossible, to control.[46] For the only result of its exercise is a vote of "yes" or "no," and there is no rule of law which obliges a member, in casting his vote, to give his reasons. Even if the reasons may be gathered from the discussions preceding the vote, a member might change his views between the time of the discussions and the time of the vote. Furthermore, whatever juridical limits may have been set to the type of consideration that may be taken into account, there is no means of verifying whether the reasons advanced during the discussion are genuine and decisive, and, even if they are, whether they are the exclusive ones. As one of the Judges said in an individual opinion "all kinds of prejudices, and even physical repugnance will find a way of influencing the decision, either by an act of the will or even through the action of the subconscious." [47]

It is especially on account of this difficulty of controlling the exercise of discretionary powers that the Judges, whether they were of the opinion that the discretion should be exercised within the limits of Article 4 I or within the wider limits of the general purposes and principles of the United Nations Charter, all agreed in stressing that the discretion inherent in the right to vote must be exercised in good faith.[48] Good faith in the exercise of the discretionary power inherent in a right seems thus to imply a genuine disposition on the part of the owner of the right to use the discretion in a reasonable, honest and sincere manner in conformity with the spirit and purpose, as well as the letter, of the law. It may also be called a spontaneous sense of duty scrupulously to observe the law. In this present case, there is practically no means of controlling the exercise of the discretion. It is, therefore, essential that it should be possible to place reliance on the State's own sense of respect for the law.

[45] *Ibid.*, at pp. 91–2, 93, 103, 115.
[46] *Ibid.*, at pp. 102 *et seq.*, 111 *et seq.*
[47] Judge Azevedo, *ibid.*, at p. 78.
[48] *Ibid.*, at pp. 63, 71, 79 *et seq.*, 91, 92, 93, 103, 115.

The present instance clearly shows how important, and indeed how indispensable, it is to any legal system for the discretionary power inherent in every right to be exercised in good faith.[49] For, unless this discretion is normally exercised by every subject of law spontaneously in a bona fide manner well within the limit beyond which the exercise may be regarded as an abuse, even if the law is able ultimately to prevent certain manifest abuses, the legal system will be strained to breaking point.

In the preceding pages we have seen the various ways in which the principle of good faith governs the exercise of rights. Where the right confers upon its owner a discretionary power, this must be exercised honestly, sincerely, reasonably, in conformity with the spirit of the law and with due regard to the interests of others. All rights have to be exercised reasonably and in a manner compatible with both the contractual obligations of the party exercising them and the general rules and principles of the legal order. They must not be exercised fictitiously so as to evade such obligations or rules of law, or maliciously so as to injure others. Violations of these requirements of the principle of good faith constitute abuses of right, prohibited by law. It follows, however, from the general presumption of good faith that abuses of right cannot be presumed.[50]

The importance of the principle of good faith governing the exercise of rights naturally goes beyond the prohibition of abuses. In recognising the interdependence of rights and obligations, it reconciles conflicting interests, establishes the proper limits of rights, and secures harmony in the legal order. By infusing such qualities as honesty, sincerity, reasonableness and moderation into the exercise of rights, it promotes the smooth and proper functioning of the legal system.

[49] See also ICJ: *United States Nationals in Morocco Case* (1952), *ICJ Reports, 1952*, p. 176, at pp. 207 212, especially p. 212.

[50] PCIJ: *German Interests Case* (Merits) (1926), A. 7, p. 30; *Id.*: *Free Zones Case* (Second Phase: Order) (1930), A. 24, p. 12; Same Case (Jgt.) (1932), A/B 46, p. 167.

Annex 21

L. Oppenheim, INTERNATIONAL LAW: A TREATISE, VOLUME 1 — PEACE
(H. Lauterpacht, ed., David McKay Company Inc., 8th ed. 1955)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

INTERNATIONAL LAW

A TREATISE

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discussed by a number of international tribunals and with varying results. It is believed that while they may often have the legal effect of ousting the jurisdiction of an international tribunal until the remedies of the local courts have been exhausted, nevertheless the weight of authority is against the validity of so much of a 'Calvo clause' as purports to make an individual renounce the right which International Law confers, not upon him but upon his home State, of protecting him against treatment which contravenes the rules of International Law.[1]

Abuse of Rights.

§ 155*aa*. The responsibility of a State may become involved as the result of an abuse of a right enjoyed by virtue of International Law.[2] This occurs when a State avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage. Thus international tribunals have held that a State may become responsible for an arbitrary expulsion of aliens.[3] The Permanent Court of International Justice expressed the view that, in certain circumstances, a State, while technically acting within the law, may actually incur liability by abusing its rights—although, as the Court said, such an abuse cannot be presumed.[4] Individual Judges of the

[1] See Hyde, § 305, and in *A.J.*, 21 (1927), pp. 298-303; Ralston, §§ 70-89; Borchard, §§ 371-378, and in *A.J.*, 20 (1926), pp. 538-540; Freeman, *The International Responsibility of States for Denial of Justice* (1938), pp. 456-496; Bullington, *ibid.*, 22 (1928), pp. 66-68; Feller, *ibid.*, 27 (1933), pp. 461-468; Summers in *R.I.* (*Paris*), 7 (1931), pp. 567-581, and 12 (1933), pp. 229-233; Ténékidès in *R.G.*, 43 (1936), pp. 270-284; Borchard in *Annuaire*, 36 (i.) (1931), pp. 357-398; Lipstein in *B.Y.*, 22 (1945), pp. 130-145; Freeman in *A.J.*, 40 (1946), pp. 120-147. See also the *North American Dredging Co.'s* claim before the American-Mexican Mixed Claims Commission, in *A.J.*, 20 (1926), pp. 800-809, and *Annual Digest*, 1925-1926; and *Mexican Union Railway* (*Limited*) case, decided in February 1930 by the British-Mexican Claims Commission: *Annual Digest*, 1929-1930, Case No. 129.

[2] See Lauterpacht, *The Function of Law*, pp. 286-306; Scerni, *L'abuso del diritto nei rapporti internazionali* (1930); Selea, *La notion de l'abus du droit dans le droit international* (1939); Kiss, *L'abus de droit en droit international* (1953); Cheng, *General Principles of Law as Applied by International Tribunals* (1953), pp. 121-136; Politis in *Hague Recueil*, vol. 6 (1925) (i.), pp. 1-109; Leibholz in *Z.ö.V.*, 1 (1929), pp. 77-125; Schlochauer in *Z.V.*, 17 (1933), pp. 373-394; Salvioli in *Hague Recueil*, vol. 46 (1933) (iv.), pp. 66-69; Guggenheim, *ibid.*, 74 (1949) (i.), pp. 249-254.

[3] See below, §§ 323, 324. And see Boeck in *Hague Recueil*, vol 18 (1927) (iii.), pp. 627-640.

[4] *Free Zones of Upper Savoy and the District of Gex*: Series A, No. 24

International Court of Justice have repeatedly referred to it [1]; probably it is implied in the frequent judicial affirmation of the obligation of States to act in good faith.[2] The conferment and deprivation of nationality is a right which International Law recognises as being within the exclusive competence of States; but it is a right the abuse of which may be a ground for an international claim.[3] The duty of the State not to interfere with the flow of a river to the detriment of other riparian States has its source in the same principle.[4] The maxim, *sic utere tuo ut alienum non laedas*, is applicable to relations of States no less than to those of individuals; it underlies a substantial part of the law of tort in English law and the corresponding branches of other systems of law [5]; it is one of those general principles of law recognised by civilised States which the Permanent

p. 12, and Series A/B, No. 46, p. 167. See also the case of *Certain German Interests in Polish Upper Silesia*: Series A, No. 7, p. 30.

[1] See *e.g.* Judge Azevedo in the *Admission* case (*I.C.J. Reports*, 1948, pp. 79, 80); Judge Alvarez in the *Admission* (*General Assembly*) case (*I.C.J. Reports*, 1950, p. 15). See also Judge Anzilotti in the *Electricity Company of Sofia* case, Series A/B, No. 77, p. 88.

[2] See the Joint Dissenting Opinion in the *Admission* case (*I.C.J. Reports*, 1948, pp. 91, 92). And see the Opinion of the Court itself in that case for the statement that with regard to the conditions of admission of new members the Charter did not forbid the taking into consideration of any factor it was possible 'reasonably and in good faith' to connect with the conditions laid down in the Charter.

[3] See the *Minutes* of the First Committee of the Hague Conference on Codification of International Law, 1930, pp. 20 and 197. And see Rundstein in *Z.V.*, 16 (1931), pp. 41-45, and § 293, below.

[4] See below, § 178*a*. And see §§ 174 and 197 *f*.

[5] On abuse of rights generally see Gutteridge in *Cambridge Law Journal*, 5 (1932), pp. 22-45. For an instance of conventional regulation of a nuisance committed by private persons and affecting injuriously the territory of a neighbouring State see the Convention of April 15, 1935, between Canada and the United States for the settlement of difficulties arising out of the complaint of the United States that fumes discharged from the smelter of the Consolidated Mining and Smelting Company in British Columbia were causing damage to the State of Washington: *U.S. Treaty Series*, No. 983; *A.J.*, 30 (1936), Suppl., p. 163. In the *Trail Smelter Arbitration* arising out of this Agreement it was held, in 1941, that under international law no State has a right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another: *Annual Digest*, 1938-1940, Case No. 315. And see the Report in the same matter of the International Joint Commission between Canada and the United States of February 28, 1931: *A.J.*, 25 (1931), p. 540. When the International Law Commission adopted in 1953 a draft Article on Fisheries which provided, *de lege ferenda*, that States shall be under a duty to accept regulations prescribed by an international authority as essential for the purpose of protecting fishing resources against waste or extermination, it stated that the prohibition of abuse of rights is supported by judicial and other authority (*Report of the Commission*, Fifth Session, 1953).

Court is bound to apply by virtue of Article 38 of its Statute. However, the extent of the application of the still controversial [1] doctrine of the prohibition of abuse of rights is not at all certain. It is of recent origin in the literature and practice of International Law, and it must be left to international tribunals to apply and develop it by reference to individual situations.

Nationality of Claims.

§ 155b. A State which puts forward a claim before a claims commission or other international tribunal must be in a position to show that it has *locus standi* for that purpose.[2] The principal, and almost the exclusive, factor creating that *locus standi* is the nationality of the claimant, and it may be stated as a general principle [3] that from the time of the

[1] See *e.g.* Balladore Pallieri, p. 287; Cavaglieri, *Nuovi studi sull' intervento* (1928), pp. 42-52. According to Article 33 of the Treaty of April 18, 1951, constituting the European Coal and Steel Community (see above, p. 186), the Court set up by the Community has jurisdiction, *inter alia*, in appeals by member-States against decisions or recommendations of the High Authority on account of abuse of power.

[2] On the nature of the claim put forward by a State on behalf of its nationals see the Judgment of the Permanent Court of International Justice of September 13, 1928, in the *Case concerning the Factory at Chorzów*: Series A, No. 17, pp. 25-29; *Annual Digest*, 1927-1928, Case No. 170. See also Borchard in *Yale Law Journal*, 43 (1933-1934), pp. 365-371, for a survey of other relevant cases.

[3] See Hurst in *B.Y.*, 1926, pp. 163-182; Hyde, §§ 275, 280; Ralston, §§ 291-348; Lambie in *A.J.*, 24 (1930), pp. 264-278; Borchard in *Annuaire*, 36 (i.) (1931), pp. 277-356; Witenberg in *Hague Recueil*, vol. 41 (1932) (3), pp. 44-50; Borchard in *R.I.*, 3rd ser., 14 (1933), pp. 421-467; Ch. de Visscher, *ibid.*, 17 (1936), pp. 481-484; *Bases of Discussion*, iii. pp. 140-145; Sibert in *R.G.*, 44 (1937), pp. 514-520; Sinclair in *B.Y.*, 27 (1950), pp. 125-144. With regard to the nationality of corporations see below, p. 642, n. 3. As to protection of shareholders in foreign companies see Mervyn Jones in *B.Y.*, 26 (1949), pp. 225-258. The principle stated above has not been followed invariably, and exceptional cases exist in which a State has been allowed to support a claim on the joint basis of the claimant's domicile within its territory and of his having made a declaration of intention to acquire its nationality: see Hyde, § 275, and Ralston, § 300. See also the observations of Fitzmaurice in *B.Y.*, 17 (1936), pp. 104-110, in connection with the *I'm Alone* case in which the owners of the ship, which the Commissioners held to have been illegally sunk, were nationals of the *defendant* State. See also *Annual Digest*, 1933-1934, Case No. 86 (at pp. 205, 206). As to the two cases —*Martin Koszta* and *August Piepenbrink*—of the successful assertion by the United States of America of a right of protection over persons who were not its nationals see Wharton, ii, § 175; Moore, iii. §§ 490, 491; Martens, *Causes célèbres*, v. pp. 583-599; Borchard, § 250. But see Hyde, i. § 396, who cites a passage in Moore, iii. p. 844, which makes it clear that the claim to protect was based upon Koszta's admission to American protection *ad interim* by the American Consul and Chargé d'Affaires at Constantinople by the grant of a passport or safe-conduct in accordance with the recognised usage in Turkey. See also the case of *Edward Hilson* v. *Germany* in *A.J.*, 19 (1925), pp. 810-815, and *Annual Digest*, 1925-1926, Case No. 198. As to the *August*

Annex 22

Michel Virally, *Panorama du droit international contemporain. Cours général de droit international public*, Recueil Des Cours 1983-V, Collected Courses of the Hague Academy of International Law, Vol. 183

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

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PANORAMA DU DROIT INTERNATIONAL CONTEMPORAIN

Cours général de droit international public

par

MICHEL VIRALLY

et la protestation. Il a déjà été beaucoup question de la première, sur laquelle il n'est pas nécessaire de revenir ici (cf. *supra*, pp. 52 ss.). La protestation a pour objet de manifester un désaccord, un refus d'acceptation et, ainsi, de rendre inopposable juridiquement la situation qu'elle vise.

La signification juridique de ces deux actes leur est inhérente. Le droit international a seulement à en tirer les conséquences.

2) Les actes relatifs à l'exercice des droits de souveraineté

Les actes relatifs à l'exercice par leur auteur de ses droits de souveraineté sont eux-mêmes très nombreux et divers. Ils revêtent habituellement la forme d'actes de droit interne (lois, décrets), mais ont une portée internationale dans la mesure où ils ont pour objet de créer une situation s'imposant à d'autres Etats. On peut citer, à titre d'exemples : la fixation de l'étendue de la mer territoriale, l'établissement d'une zone de pêche, ou d'une zone économique exclusive, l'établissement de lignes de base droites, ou d'autres limites maritimes, une déclaration de guerre ou de neutralité, l'établissement d'un blocus maritime, une déclaration d'embargo commercial, une autorisation de survol du territoire, une suspension du droit de passage inoffensif à travers certaines parties de la mer territoriale, l'établissement d'une zone interdite à la navigation des tiers à titre temporaire, etc.

La validité et la portée juridique internationale de ces actes est déterminée par le droit international. Ils sont inattaquables et immédiatement opposables aux autres Etats s'ils sont pris dans les limites de ce que le droit international autorise (12 milles pour la mer territoriale, 200 milles pour la zone économique exclusive, etc.). Au-delà de ces limites, ils ne peuvent produire d'effets qu'à l'égard des Etats vis-à-vis desquels ils sont devenus opposables, par reconnaissance ou par tolérance (la reconnaissance n'ayant évidemment pas pour conséquence de rendre la situation conventionnelle).

3) Les actes comportant des engagements juridiques

Un certain nombre d'actes unilatéraux des Etats comportent des engagements à l'égard d'autres Etats. On peut y assimiler les actes portant renonciation à un droit, qui constituent un engagement de

ne pas exercer ce droit. Ce sont des actes que l'on a tenté de réduire à une proposition, ou à une promesse, qui acquerrait valeur conventionnelle après avoir été acceptée tacitement et lierait son auteur seulement à l'égard des Etats l'ayant ainsi acceptée.

Cette construction paraît artificielle. Elle ne correspond pas, dans la plupart des cas, à la réalité des faits (et, notamment à la volonté des auteurs des engagements en cause). Le recours à la fiction vient ici au secours d'un préjugé doctrinal hostile à l'acte unilatéral.

Dans l'affaire des *Essais nucléaires,* la Cour internationale de Justice a pris une position très claire, en affirmant que « tout engagement valablement pris lie son auteur et doit être exécuté par lui de bonne foi» (*CIJ Recueil 1974,* p. 267). Ce *dictum* de la Cour formule un principe général tout à fait analogue, pour les actes unilatéraux, à *pacta sunt servanda* pour les traités. Le fondement est le même dans les deux cas : c'est celui de la bonne foi. On notera que, pour la Cour, la validité de l'engagement pris ne dépend en aucune façon de l'acceptation d'un quelconque Etat tiers. Aussi bien, un tel engagement peut-il être pris *erga omnes.* L'application dans le cas d'espèce (des essais nucléaires) du principe posé par la Cour peut être discutable. Le raisonnement suivi par la Cour paraît, au contraire, inattaquable. Il convient, simplement, dans chaque cas d'espèce, de déterminer : 1) si l'auteur de la déclaration a entendu prendre un engagement (ou ne s'est pas contenté d'une déclaration d'intention, qui n'était pas destinée à le lier) et 2) s'il s'est placé sur le plan du droit, ou n'a pris qu'un engagement purement politique. On retrouve ici le problème déjà rencontré à propos des accords purement politiques, et qui doit être résolu de la même façon (*supra,* p. 191).

4) Des actes s'imposant à d'autres Etats ?

Aucun des actes précédemment mentionnés n'implique une quelconque supériorité de leur auteur sur d'autres Etats. Ils ne portent donc aucune atteinte au principe de l'égalité souveraine. Tous reposent sur la volonté de leur auteur de produire des effets de droit et ceux-ci ne sont effectivement produits que s'ils sont admis par le droit international, qui rend ainsi leur intention juridiquement efficace, ou s'ils bénéficient de la reconnaissance ou de la tolérance des autres Etats.

Annex 23

Giorgio Gaja, *Obligations and Rights Erga Omnes in International Law*, Second Report, Annuaire de l'Institut de droit international, Vol. 71 (Krakow Session, 2005)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Institute of International Law

Yearbook

Volume 71, Part I

Session of Krakow, 2005 - First part

Preparatory Work

Justitia et Pace

Editions A. Pedone - 13, rue Soufflot - Paris

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Justitia et Pace

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III. Second Report *(August 2004)*

Introduction

In presenting my first report in March 2002 I expressed the wish that that report, « together with the comments to be made by members of the 5th Commission and a brief summing up », would lead to a wide-ranging discussion on substantial issues in a plenary meeting at Bruges. As this discussion could not take place, the 5th Commission met in Bruges and decided that a certain number of propositions should be drafted in view of the Institute's discussion in Krakow. The present report, which is based on my previous report, the ten valuable comments on the report, the discussion in Bruges and further reflections, contains the draft of seven propositions, each with a brief commentary. According to the Commission's guidelines, the propositions concentrate on questions relating to the consequences of infringements of obligations *erga omnes* and on related remedies; obligations established under treaties have also been considered. Several issues referred to in my first report or in some of the comments could not be included.

Proposition A

« For the purposes of the present propositions, an obligation *erga omnes* is :

(a) an obligation under general international law that a State owes in any given case to all the other States, in view of their common values and concern for compliance; or

(b) an obligation under a treaty that a State party to the treaty owes in any given case to all the other States parties to the same treaty, in view of their common values and concern for compliance. »

(1) There is no widely accepted definition of obligations *erga omnes*. The International Court of Justice has often referred to this type of obligation, but has not elaborated on the elements briefly described in its pioneering judgment in the *Barcelona Traction* case. The Court then mentioned « obligations towards the international community as a whole » and said they were « the

concern of all States », so that « in view of the importance of the rights involved all States can be held to have a legal interest in their protection ».[108]

(2) The « importance of the rights involved » clearly reflects the basic values of the « international community as a whole » and explains the concern that « all States » are considered to have in the protection of those rights, and hence in compliance with the corresponding obligations.

(3) As in practice an organized response by the international community or a collective response by all States would prove in most cases to be impossible, an obligation owed by a State to all the other States necessarily means an obligation existing towards each other State individually.

(4) While the judgment in the *Barcelona Traction* case appears to view the « international community as a whole » as only composed of States, the international community may be considered as including other entities, such as peoples or international organizations. However, as the role of States is certainly predominant and a consideration of other entities to which an obligation *erga omnes* may also be owed would complicate the drafting of the present propositions, these only refer to States as *omnes*.

(5) What characterizes an obligation *erga omnes* is that all States are concerned with compliance in any specific case, irrespective of the existence of a State, entity or individual which may be specially affected by a breach. For instance, when the obligation not to commit genocide is infringed by a State, the targeted group is specially affected, but all the other States are also concerned with compliance.

(6) The example of genocide is taken from the judgment in the *Barcelona Traction* case, where the Court also mentioned « aggression » and the infringement of « the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination ».[109] The Court referred to an obligation *erga omnes* concerning self-determination in its judgment in the *East Timor* case[110] and in its advisory opinion on the *Legal consequences of the construction of a wall in the occupied Palestinian territory*,[111] in which the Court also mentioned « certain [...] obligations under international humanitarian law ».[112]

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[108] ICJ Reports (1970), p. 32 (para. 33).

[109] *Ibid.*, p. 32 (para. 34).

[110] ICJ Reports (1995), p. 102 (para. 29). In this judgement self-determination was defined a right *erga omnes*.

[111] ICJ Reports (2004), p. 199 (paras. 155-156).

[112] *Ibid.*, p. 199 (paras. 155 and 157).

(7) Obligations under a treaty may share some of the characteristics of obligations *erga omnes* under general international law. Treaties may be based on common values of the States parties, which may be concerned with compliance in any given case, irrespective of the existence of a specially affected State or entity or individual. Since obligations under a treaty are only owed to the other States parties to the treaty, they are sometimes referred to as obligations *erga omnes partes*.

(8) The following propositions cover obligations both under general international law and under a treaty, with the understanding that in the latter case obligations are owed only to other States parties to the treaty.

(9) Some treaties providing for obligations *erga omnes* establish collective guarantees for compliance which may significantly contribute to the respect of obligations, in particular through the supervision of monitoring bodies and the availability of remedies for States and individuals. Contrary to what was held by the Court in its judgment on the merits of the *Military and paramilitary activities in and against Nicaragua* case,[113] the existence of such mechanisms does not generally imply that States may not take in the case of infringements of obligations under those treaties the same actions that are allowed with regard to breaches of obligations *erga omnes* under general international law.

(10) Entities other than States and individuals may also have obligations *erga omnes*. Since compliance with those obligations raises specific issues, the present propositions are limited to obligations pertaining to States.

Proposition B

« When a State is under an obligation *erga omnes*, all the States to whom the obligation *erga omnes* is owed have a corresponding right. A right *erga omnes* belongs to the State, entity or individual to whom the obligation is also owed and which would be specially affected by a breach of the obligation *erga omnes* in a given case. »

(1) The concept of rights *erga omnes* has not been defined by the International Court of Justice. It has not generally been used with regard to the rights of all the States to whom an obligation *erga omnes* is owed, but mainly with reference to the rights that specially concerned States or entities or individuals have in relation to an obligation *erga omnes* in a specific case, so that they

[113] The Court then said that « where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves ». ICJ Reports (1986), p. 134 (para. 267).

would be specially affected by a breach. When the Court said in the *East Timor* case that « Portugal's assertion that the rights of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character is irreproachable »,[114] the Court appeared to refer to the right that the East Timorese people have towards all the States, including the defendant State in the proceedings.

(2) The fact that a right is characterized *erga omnes* implies that concern with compliance of the corresponding obligation is shared by all the States to whom the obligation *erga omnes* is owed. Moreover, as stated in Proposition G, these States may also be under an obligation to ensure compliance. That obligation would be owed to the State, entity or individual having a right *erga omnes*.

Proposition C

« While peremptory norms always impose obligations *erga omnes*, these obligations are not necessarily established by peremptory norms. »

(1) Article 53 of the Vienna Convention on the Law of Treaties defines a peremptory norm as « a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted » and sanctions with invalidity any conflicting treaty. It is clear that peremptory norms reflect fundamental values shared by « the international community of States as a whole » and that all States are concerned with compliance with the obligations imposed by peremptory norms, so much so that a treaty designed to affect compliance negatively is considered invalid. Should the obligation not be owed by a State to all the other States, there would be no reason why a treaty between two or more States could not affect compliance.

(2) As has been widely held in literature,[115] peremptory norms represent an inner circle within the wider circle of norms establishing obligations *erga omnes*. This is because obligations *erga omnes* are not necessarily imposed by peremptory norms. Thus, unless it was peremptory, a norm establishing an

[114] ICJ Reports (1995), p. 102 (para. 29). In his dissenting opinion Judge Weeramantry referred to « the right *erga omnes* of the people of East Timor to the recognition of their self-determination and permanent sovereignty over their natural resources » (p. 215).

[115] Among recent reassertions see M. Byers, « Conceptualizing the Relationship between *Jus Cogens* and *Erga Omnes* Rules », 66 *Nord. JIL* (1997), p. 211 at p. 237; G. Abi-Saab, « The Uses of Article 19 », 10 *EJIL* (1999), p. 339 at p. 348; K. Zemanek, « New Trends in the Enforcement of *erga omnes* Obligations », 4 *Max Planck Yearbook of UN Law* (2000), p. 1 at p. 6; L.-A. Sicilianos, « The Classification of Obligations and the Multilateral Dimensions of the Relations of International Responsibility », 13 *EJIL* (2002), p. 1127 at p. 1137.

obligation *erga omnes* could be validly derogated by a treaty, with the consequence that it would no longer apply in the relations between States party to that treaty.

(3) Examples of treaties derogating norms establishing obligations *erga omnes* may be rare. However, the distinction between these norms and peremptory norms is at least theoretically important because one would otherwise have to assume that, for instance, all the norms of general international law concerning the protection of human rights have a peremptory character. These are certainly norms establishing obligations *erga omnes* because, in view of the fact that infringements of human rights mainly concern nationals of the infringing State, no other State would be specially affected by the breach and thus the obligation to protect human rights would have little meaning unless it was *erga omnes*.

Proposition D

« When a State commits a breach of an obligation *erga omnes* all the States to whom the obligation is owed are entitled to claim from the responsible State in particular :

(a) cessation of the internationally wrongful act;

(b) performance of the obligation of reparation in the interest of the State, entity or individual which is specially affected by the breach. Restitution should be effected unless materially impossible. »

(1) This proposition follows to a large extent the wording of Article 48 of the ILC Articles on Responsibility of States for internationally wrongful acts.[116] Paragraph 1 of that Article provides that :

« Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if : [...] (b) The obligation breached is owed to the internationally community as a whole. »

Paragraph 2 runs as follows :

« Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State :

(a) Cessation of the international wrongful act, and assurances and guarantees of non-repetition in accordance with Article 30; and

(b) Performance of the obligation of reparation in accordance with the preceding Articles, in the interest of the injured State or of the beneficiaries of the obligation breached. »

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[116] UN doc. A/56/10, pp. 318-319.

Annex 24

OPPENHEIM'S INTERNATIONAL LAW: VOLUME 1 PEACE (Robert Jennings & Arthur Watts, eds., Oxford University Press, 9th ed. 2008)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Oxford Public International Law

Part 1 The subjects of international law, Ch.3 Position of the states in international law, Independence and Territorial and Personal Authority

Sir Robert Jennings qc, Sir Arthur Watts kcmg qc

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condemning hostile propaganda[67] as well as, more generally, propaganda against peace or for wars of aggression.[68]

The condemnation of such propaganda has tended to be accompanied by measures to encourage the freedom to provide and receive information, this being regarded as necessary for the proper development of international understanding and as an important factor contributing to the maintenance of international peace. It has also been regarded as involving a fundamental human right.[69] A draft Convention on Freedom of Information was prepared at the 1948 United Nations Conference[70] but, although given further study subsequently, it has not yet been adopted. A draft Declaration on Freedom of Information was approved by the Economic and Social Council in 1960,[71] but it too has not yet been adopted by the General Assembly.[72] Freer access to and dissemination of information (p. 406) was also provided for in the Final Act of the Helsinki Conference on Security and Cooperation in Europe 1975.[73] It is in the context of the freedom to provide and receive information that states have sometimes felt it necessary to protest at actions by another state designed to prevent the reception in its territory of broadcasts originating from the territory of the protesting state.[74]

§ 123 Restrictions upon personal authority

Personal authority does not give unlimited liberty of action. Although the citizens of a state remain to a considerable extent under its power when abroad, the exercise of this power is restricted by the state's duty to respect the territorial supremacy of the foreign state on whose territory those citizens reside. A state must refrain from performing acts which, although they are according to its personal supremacy within its competence, would violate the territorial supremacy of this foreign state. A state must not perform acts of sovereignty in the territory of another state.[1] Thus, for instance, a state may not use force upon its nationals abroad to compel them to fulfil their military service obligations in their home state (even though it is within its rights in imposing such obligations upon them);[2] and a state is prevented from requiring such acts from its citizens abroad as are forbidden to them by the municipal law of the land in which they reside, and from ordering them not to commit such acts as they are bound to commit according to the municipal law of the land in which they reside.[3]

But a state may also by treaty obligation be in some respects restricted in its liberty of action with regard to its citizens.[4] Thus insofar as the principle of (p. 407) humanitarian intervention[5] is tending to become a rule of international law and specific legal obligations in the field of human rights and fundamental freedoms are becoming established,[6] states are bound to respect the fundamental human rights of their own citizens.

§ 124 Abuse of rights

A further restraint on the freedom of action which a state in general enjoys by virtue of its independence, and territorial and personal supremacy, is to be found in the prohibition of the abuse by a state of a right enjoyed by it by virtue of international law.[1] Such an abuse of rights occurs when a state avails itself of its right in an arbitrary manner in such a way as to inflict upon another state an injury which cannot be justified by a legitimate consideration of its own advantage. Thus international tribunals have held that a state may become responsible for an arbitrary expulsion of aliens.[2] The Permanent Court of International Justice expressed the view that, in certain circumstances, a state, while technically acting within the law, may nevertheless incur liability by abusing its rights — although, as the Court said, such an abuse cannot be presumed.[3] Individual judges of the International Court of Justice have sometimes (p. 408) referred to it;[4] possibly it is implied in the frequent judicial affirmation of the obligation of states to act in good faith.[5] The conferment and deprivation of nationality is a right which international law recognises as being within the exclusive competence of states; but it is a right the abuse of which may be a ground for an international claim.[6] The duty of the state not to interfere with the flow of a river to the

detriment of other riparian states has its source in the same principle.[7] The maxim, *sic utere tuo ut alienum non laedas*, is applicable to relations of states no less than to those of individuals; it underlies a substantial part of the law of tort in several systems of law;[8] it is one of those general principles of law recognised by civilised states which the International Court is bound to apply by virtue of Article 38 of its Statute.[9] However, the extent of the application of the still controversial[10] doctrine of the prohibition of abuse of rights is not at all certain.

Much of the purpose of a doctrine of abuse of rights is directed to securing a balance between the right of the state to do freely all those things it is entitled to do, and the right of other states to enjoy a similar freedom of action without harmful interference originating outside their borders. The need for such a balance has been underlined by the rapid growth of activities which could cause harm far outside the area where they take place, and by the urgency of contemporary concern for the protection of the human environment. In the *Trail Smelter Arbitration*, which raised questions of state responsibility for acts of private persons on its territory, the tribunal supported the proposition that 'a (p. 409) State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction';[11] and in the *Corfu Channel* case, which by contrast raised questions of direct state responsibility, the International Court of Justice referred to 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States'.[12] Such limited international judicial consideration of the issues involved, while affording sound guidance as to the underlying principles, is insufficient to regulate increasingly complex situations. In relation in particular to pollution of the environment[13] of one state from sources in another state, international agreements have been concluded as a means of regulating the extent of state responsibility.[14] The topic of 'international liability for injurious consequences arising out of acts not prohibited by international law' was placed in the work programme of the International Law Commission in 1974 at the request of the General Assembly of the United Nations.[15] This has been seen as 'an affirmation of a broad principle that States, even when undertaking acts that international law did not prohibit, had a duty to consider the interests of other States that might be affected'.[16] This notion is broader than that of 'abuse of rights' since it omits the suggestion of excess inherent in the term 'abuse'.

Early consideration of this topic by the Commission, as reflected in draft articles considered by it in 1988–90, covers activities within a state which create an appreciable risk of causing physical transboundary injury, and of which the state knew or had the means of knowing:[17] while states are free to carry out or (p. 410) permit activities in their territories, that freedom must, if such activities involve risk, be compatible with the protection of the rights flowing from the sovereignty of other states, which calls for cooperation between the states concerned to prevent or minimise the risk of transboundary injury, or its effects if injury has already occurred, and for reparation to be made for any appreciable injury suffered.[18]

§ 125 Protection of the environment

Concern for the effects which a state's acts may have outside its territory has increasingly extended beyond their specific effects on nearby states, to cover also acts which may affect all states through their impact on the world's environment generally.[1]

(p. 411) This wider environmental concern sprang from growing awareness of the damage done to neighbouring states by various forms of pollution, particularly that brought about by increasingly intensive industrial activity and its associated phenomenon of 'acid rain'.[2] The development of nuclear power, with the attendant risks of radioactive pollution should the nuclear reactors be damaged, added an extra dimension to the problem; and special urgency and importance was added after the Chernobyl disaster of 1986,[3] which caused serious and damaging (p. 412) pollution of the land in several other countries as a result of

70 See § 115, n 8.

71 Resolution 756 (XXIX).

72 A Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War was adopted at the 20th UNESCO General Conference in November 1978: ILM, 18 (1979), p 276. See also the Resolution on an International Programme for the Development of Communication adopted at the 21st UNESCO General Conference in 1980: ILM, 20 (1981), p 451. This resolution has been seen as marking the establishment of a so-called 'new international information and communication order', on which see Condorelli, Ital YBIL, 5 (1980–81), pp 123–38; Sur, AFDI, 27 (1981), pp 45–64. On the UNESCO Committee for the Intergovernmental Information Programme, established in 1985, see Beer-Gabel, AFDI, 32 (1986), pp 684–96.

73 Cmnd 6198, at pp 36–9; ILM, 14 (1975), pp 1292, 1315–17. See also the Concluding Document of the Madrid Follow-up Conference 1980–83 (Cmnd 9066, pp 19–21; ILM, 22 (1983), pp 1398, 1403).

74 See eg *Parliamentary Debates (Commons)*, vol 32, col 31 (written answers, 15 November 1982), *ibid*, vol 60, col 115 (written answers, 15 May 1984), and *ibid*, vol 79, col 463 (written answers, 22 May 1985). Such jamming of radio broadcasts is likely to be inconsistent with the relevant provisions, particularly Art 35, of the International Telecommunication Convention 1982, Art 19.2 of the International Covenant on Civil and Political Rights 1966, and the Final Act of the Helsinki Conference on Security and Cooperation in Europe 1975 (Art 2 of Basket 3).

1 See § 118.

2 See Oppenheimer, AJ, 36 (1942), at pp 589–90.

3 For example, in time of war a belligerent is not entitled to prohibit one of its nationals, resident in a neutral state under the laws of which debts must be paid, from paying a debt due to a national of the other belligerent. For a survey of the law of the US as to the jurisdiction of courts of equity over persons to compel the doing of acts outside the territorial limits of the state, see Messner, Minn Law Rev, 14 (1929–30), pp 494–529. As to enforcement of foreign public law, see § 144. See also § 139, as to certain problems which have arisen in connection with anti-trust cases and boycotts.

4 Note also the Treaty of Berlin of 1878 which restricted the personal supremacy of Bulgaria, Montenegro, Serbia, and Romania in so far as these states were thereby obliged not to impose any religious disabilities on any of their subjects (see also § 40, n 4 and § 131, n 41, as to the position of Cyprus); and the policy of protecting racial, religious, and linguistic minorities by means of treaty obligations was carried further in the treaties concluded at the end of the First World War (see §§ 426–7).

5 See § 131(2).

6 See §§ 429–44.

1 See H Lauterpacht, *The Function of Law*, pp 286–306, *Development of International Law by the International Court* (1958), pp 162–5; Scerni, *L'abuso del diritto nei rapporti internazionali* (1930); Gutteridge, CLJ, 5 (1932), pp 22–45; Seles, *La Notion de l'abus du droit dans le droit international* (1939); Kiss, *L'abus de droit en droit international* (1953); Cheng, *General Principles of Law as Applied by International Tribunals* (1953), pp 121–36; Politis, Hag R, 6 (1925), i, pp 1–109; Leibholz, ZöV, I (1929), pp 77–125; Schlochauer, ZöV, 17 (1933), pp 373–94; Salvioli, Hag R, 46 (1933), iv, pp 66–9; Guggenheim, *ibid*, 74 (1949), i, pp 249–54; Roulet, *Le Caractère artificiel de la théorie de l'abus de droit en droit international* (1958); Garcia-Amador, Hag R, 94 (1958), ii, pp 376–82; Schwarzenberger, *International Law and Order* (1971), pp 84–109; Taylor, BY, 46 (1972–73), pp 323–52;

Goodwin-Gill, *International Law and the Movement of Persons between States* (1978), pp 209–18, and BY, 47 (1974–75), pp 79–86; Thirlway, BY, 60 (1989), pp 25–9. See also the work done by the ILC from 1974 onwards and referred to at nn 15, 16 and 18.

To some extent, the matter may be one of formulation. If a right is formulated in absolute terms ('a State may expel aliens'), arbitrary and precipitate action may involve an abuse of that right; if the right is formulated in qualified terms ('a State may take reasonable measures to expel aliens'), such action would be wrongful not so much as an abuse of right but as being outside the scope of the right claimed. And see YBILC (1973), p 182, para (10). The inclusion in a rule of a qualification requiring reasonableness, or something similar, in its application, serves much of the purpose of the doctrine of 'abuse of rights'. That doctrine is a useful safeguard in relatively undeveloped or over-inflexible parts of a legal system pending the development of precise and detailed rules.

2 See §§ 413–14.

3 *Free Zones of Upper Savoy and the District of Gex*: Series A, No 24, p 12, and Series A/B, No 46, p 167. See also the case of *Certain German Interests in Polish Upper Silesia*: Series A, No 7, p 30. In the *Anglo-Norwegian Fisheries* case the Court regarded the situation before it as in part involving a 'case of manifest abuse' of the right to measure the territorial sea: ICJ Rep (1951), p 142. See Fitzmaurice, BY, 27 (1950), pp 12–14; *ibid*, 30 (1953), pp 53–4; and *ibid*, 35 (1959), pp 210–16.

When the ILC adopted in 1953 a draft Article on Fisheries which provided, *de lege ferenda*, that states shall be under a duty to accept regulations prescribed by an international authority as essential for the purpose of protecting fishing resources against waste or extermination, it stated that the prohibition of abuse of rights was supported by judicial and other authority (*Report of the Commission* (Fifth Session, 1953)).

4 See eg Judge Azevedo in the *Admission Case*, ICJ Rep (1948), pp 79, 80; Judge Alvarez in the *Admission (General Assembly) Case*, ICJ Rep (1950), p 15. See also Judge Anzilotti in the *Electricity Company of Sofia Case*, Series A/B, No 77, p 88.

5 See the Joint Dissenting Opinion in the *Admission Case*, ICJ Rep (1948), pp 91, 92; and see the Opinion of the Court itself in that case for the statement that with regard to the conditions of admission of new members the Charter did not forbid the taking into consideration of any factor it was possible 'reasonably and in good faith' to connect with the conditions laid down in the Charter.

6 See the *Minutes* of the First Committee of the Hague Conference on Codification of International Law (1930), pp 20 and 197. And see Rundstein, ZöV, 16 (1931), pp 41–5, and § 378. See also the Dissenting Opinion of Judge Read in the *Nottebohm Case*, ICJ Rep (1955), at pp 37–8.

7 See §§ 175–81 and also §§ 173, 225.

8 See *Handelskwekerij G J Bier BV v Mines de Potasse d'Alsace SA*, Neth YBIL, 11 (1980), p 326, concerning pollution of the Rhine by a company in France, causing damage in the Netherlands. The court concluded that it had to apply international law and that, there being no applicable rule of customary international law, it had to apply general principles of law, which included the principle *sic utere tuo ut alienum non laedas*, by virtue of which the person making the discharge which was causing the pollution was acting in breach of a legal duty.

9 See § 12. In *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1972] CMLR 177, 186, a court in the Federal Republic of

Germany regarded the principle of proportionality as existing in public international law as part of the general principle of law prohibiting the abuse of rights.

l0 See eg Balladore Pallieri, p 287; Cavaglieri, *Nuovi Studi sull' intervento* (1928), pp 42–52. 'Abuse of rights' may have some affinities with, although it is distinct from, the doctrine of *détournement de pouvoir*. The Court of Justice of the European Communities has jurisdiction to hold invalid acts of the Council and Commission of the Communities on grounds, *inter alia*, of misuse of powers: see Art 173 of the Treaty establishing the EEC, and equivalent Articles of the Treaties establishing the ECSC and Euratom.

11 RIAA, iii, p 1963, quoting Eagleton, *Responsibility of States in International Law* (1928), p 80. See also n 14.

12 ICJ Rep (1949), p 22; and see § 121, n 8.

See also the *Lake Lanoux Arbitration* — in which France's entitlement to exercise its rights (in relation to the utilisation of the waters of Lake Lanoux) had to be set against the entitlement of Spain (which was downstream of Lake Lanoux) to have its rights respected and Spanish interests taken into consideration — but this Arbitration turned on the provisions of a treaty between the two parties rather than on customary international law (ILR, 24 (1957), at p 140). It must be noted that where actions of private individuals and companies in one state cause harm in the territory of another, the matter is often settled by municipal courts applying municipal law. For references to several such cases, see Lachs, ICLQ, 39 (1990), pp 663–9. See also n 8 of this section. As to the damage caused to downstream states by the escape of chemical wastes into the Rhine from the Sandoz Chemical Corporation's factory at Basle, Switzerland, see Rest, Germ YBIL, 30 (1987), pp 160–76.

13 See generally, § 125. On liability for ultra-hazardous activities, see also § 149.

14 For an instance of conventional regulation of a nuisance committed by private persons and affecting injuriously the territory of a neighbouring state, see the Convention of 15 April 1935, between Canada and the USA for the settlement of difficulties arising out of the complaint of the US that fumes discharged from the smelter of the Consolidated Mining and Smelting Company in British Columbia were causing damage to the State of Washington: US TS No 983; AJ, 30 (1936), Suppl, p 163. In the *Trail Smelter Arbitration* arising out of this Agreement it was held, in 1941, that under international law no state has a right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another; RIAA, iii, p 1963; AD, 9 (1938–40), No 104. See the Report in the same matter of the International Joint Commission between Canada and the US of 28 February 1931: AJ, 25 (1931), p 540. See also § 121, n 5.

15 Res 3071 (XXVIII) (1973).

16 YBILC (1980), ii, pt 2, p 159. See generally, UN Secretariat, *Study of State Practice Relevant to International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law* (1984, UN Doc A/CN 4/384).

17 Note also the Decision of the OECD Council of 8 July 1988 on the exchange of information concerning accidents capable of causing transfrontier damage: ILM, 28 (1989), p 247. And see § 125, n 15, for other OECD decisions.

18 See draft Arts 1–10 submitted by the Special Rapporteur and referred to the Drafting Committee by the ILC at the end of its debate on this topic at its 1988 session: *Report of the ILC* (40th Session, 1988), paras 21–101. See also Arts 10–17 (the previous Arts 1–10 having been revised to become Arts 1–9) discussed by the ILC at its 1989 session, and focusing on procedures (warnings, notifications, etc) for preventing transboundary harm: *Report of the ILC* (41st Session, 1989), paras 377–97, these articles were expanded into Arts 10–20 at the Commission's session in 1990, and draft Arts 21–27 (on international liability) and 28–33

(on civil liability in municipal law) were also discussed: *Report of the ILC* (42nd Session, 1990), paras 492–525. See generally on the ILCs work on this topic, Caubet, AFDI, 29 (1983), pp 99–120; Magraw, AJ, 80 (1986), pp 305–30; Barboza, AFDI, 34 (1988), pp 513–22; Boyle, ICLQ 39 (1990), pp 1–26.

1 See generally Andrassy, Hag R, 79 (1951), ii, pp 77–178; Thalmann, *Grundprinzipien des modernen zwischenstaatlichen Nachbarrechts* (1951); Hag R (1973), Special Vol (ed Kiss) (Proceedings of Colloquium on the Protection of the Environment and International Law); Dickstein, ICLQ, 23 (1974), pp 426–46; Barros and Johnston, *The International Law of Pollution* (1974), pp 69–82; Handl, AJ, 69 (1975), pp 50–76; Teclaff and Utton (eds), *International Environmental Law* (1975); Kiss, *Survey of Current Developments in International Environmental Law* (1976), in *The Structure and Process of International Law* (eds Macdonald and Johnston, 1983), pp 1069–94, *Droit international de l'environment* (1989), and Germ YBIL, 32 (1989), pp 241–63; Hoffman, ICLQ, 25 (1976), pp 509–42; Johnson, *International Environmental Law* (1976); Dupuy, AFDI, 20 (1974), pp 815–29, and *La Responsabilité internationale des états pour les dommages d'origine technologique et industrielle* (1977); Springer, ICLQ, 26 (1977), pp 531–57; Handl, *Rev Belge*, 14 (1978–79), pp 40–64, AJ, 74 (1980), pp 525–65, and *AS Proceedings* (1980), pp 223–34; Schneider, *World Public Order and the Environment* (1979); Bothe (ed), *Trends in Environmental Policy and Law* (1980); Cripps, ICLQ, 29 (1980), pp 1, 2–6; Caldwell, *International Environmental Policy* (1984); Hag R (1984), Special Vol (ed Dupuy) (Proceedings of Colloquium on the Future of the International Law of the Environment); Gündling, ZöV, 45 (1985), pp 265–91; Lang, ZöV, 46 (1986), pp 261–83; Flinterman, Kwiatkowska and Lammers (eds), *Transboundary Air Pollution* (1986); Malvia, Indian JIL, 27 (1987), pp 30–49; *Annuaire*, 1 (1987), pp 159–294 (an exhaustive study); *Environmental Protection and Sustainable Development* (1987), a Report of UN Experts Group on Environmental Law (Munro, Chairman; Lammers, Rapporteur), appointed by the UN World Commission on Environment and Development; Anand, *International Law and the Developing Countries* (1987), pp 150–73; *Restatement (Third)*, ii, pp 99–143; Sumitra, Indian JIL, 27 (1987), pp 385–410; Boyle, BY, 60 (1989), pp 257–313; Gaines, Harv ILJ, 30 (1989), p 311–49; Hahn and Richards, *ibid*, pp 421–46; Lachs, ICLQ, 39 (1990), pp 663–9; Schachariew, Neth IL Rev, 37 (1990), pp 193–206; Wolfrum, Germ YBIL, 33 (1990), 308–30.

See also discussion of the legal aspects of long-distance air pollution by the ILA: *Report of the 58th Conference* (1978), pp 383, 390–422; *Report of the 59th Conference* (1980), pp 531–79; *Report of the 60th Conference* (1982), pp 157–82 (approving the 'Montreal' Rules of International Law Applicable to Transfrontier Pollution); *Report of the 61st Conference* (1984), pp 377–413; *Report of the 62nd Conference* (1986), pp 198–230; *Report of the 63rd Conference* (1988), pp 218–81. See also § 179, as to pollution of river waters resulting from the conduct of upper riparian states; and § 124, n 18, as to the work of the ILC on state responsibility for injurious consequences arising out of acts not prohibited by international law.

While international concern has grown rapidly in the last decade, the matter began to attract growing attention among lawyers and scientists much earlier. See eg *Air Pollution* (1961), World Health Organisation Monograph Series No 46.

2 See n 11 of this section.

3 Some states formally reserved their rights as against the USSR; these included the UK (see UKMIL, BY, 57 (1986), p 600). See generally on this incident, RG, 90 (1986), pp 1016–20, and 91 (1987), p 653; Kiss, AFDI, 32 (1986), pp 139–52; Handl, RG, 92 (1988), pp 5–62; the statement by the IAEA Board of Governors, at ILM, 25 (1986), p 1009; Sands, *Chernobyl: Law and Communication* (1988); and Woodliffe, ICLQ, 39 (1990), pp 461–71. For an attempt (unsuccessful, mainly on procedural grounds) to institute proceedings against the USSR for damage allegedly caused by the Chernobyl accident, see *Garden*

Annex 25

Florian Jeßberger, *The Definition of Genocide*, *in* THE UN GENOCIDE CONVENTION: A COMMENTARY (Paola Gaeta, ed., Oxford University Press 2009)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Part II The Definition of Genocide, 4 The Definition and the Elements of the Crime of Genocide

Florian Jeßberger

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(p. 87) 4 The Definition and the Elements of the Crime of Genocide

1. Introduction

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide[1] (hereinafter the 'Genocide Convention' or 'the Convention') (p. 88) contains the definition of genocide and therefore forms the 'heart' of the Convention's regime. The definition is relevant for the application of many provisions of the Convention, such as Articles I, III, IV, V, VI, and VII. In a strict sense, the significance of Article II is confined to define genocide within the meaning of the Convention. In context, however, as defined in Article II, genocide is a crime under international law, which the state parties undertake to prevent and punish. Acts of genocide may give rise to both responsibility of the individual and the state.[2]

It is apparent that the definition provided for in Article II differs from what is commonly perceived as genocide. To many, genocide is mass murder. Mass murder may, but does not necessarily, amount to genocide within the meaning of Article II. At the same time, under certain circumstances even non-lethal acts may be covered by the definition of genocide.

Today, the definition contained in Article II of the Convention is widely accepted and generally recognized as the authoritative definition of the crime of genocide. The crime of genocide as defined in Article II of the Convention is part of customary international law and *ius cogens*.[3] The definition in Article II is reproduced, mostly *verbatim*, not only in many international instruments[4] but also in the legislation of many states.[5] Thus, Article II

forms the foundation on which statutory and case law on both international and national level is based. All this statutory and case law has direct repercussions on the (p. 89) interpretation of the Convention itself, since it forms ‘subsequent practice’ within the meaning of Article 31(3)(b) of the 1969 Vienna Convention of the Law of Treaties.

2. Structure and Elements of the Crime of Genocide

The definition laid down in Article II consists of two distinct elements: the requisite intent and the individual act.

The first element is addressed in the opening clause of the definition. Genocide requires the specific intent to destroy in whole or in part a national, ethnic, racial or religious group as such. This specific intent embodies the systematic element of genocide, which represents the international dimension of the crime.[6]

The second element of genocide, the individual act, is addressed in subparagraphs (a) to (e). This exhaustive list includes acts against the physical or psychological integrity of members of the group, against the existence or biological continuity of the group, and—as is arguably the case in (e)—the cultural existence of the group.[7] It follows that the definition does not pick up all of the aspects of genocide Raphael Lemkin identified in his groundbreaking work;[8] clearly the definition of genocide in the Convention does not relate to ‘genocide’ in ‘the political field’, ‘in the social field’, ‘in the economic field’, and ‘in the field of morality’.

As regards ‘cultural genocide’ it is interesting to note that Article III of the *ad hoc* Committee’s Draft dealt with it, but it never made its way into the subsequent drafts or the Convention itself, mainly because it was perceived as too vague a concept and the difference between mass murder and, for instance, the closing of libraries was perceived as being too great.[9] Instead, on a Greek motion,subparagraph (e) was included as one form of cultural genocide. Beyond that, however, as the International Criminal Tribunal for the former Yugoslavia (ICTY) stated

> [A]n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity (p. 90) distinct from the rest of the community would not fall under the definition of genocide.[10]

Although Article II explicitly mentions this only with regard to the genocidal acts in subparagraphs (c) (‘deliberately’) and (d) (‘intended’), it is to be noted that each of the individual acts embraced by the definition of genocide requires the presence of a mental element. This mental element is not to be confused with the specific intent to destroy. As the International Law Commission (ILC) pointed out:

> The prohibited acts enumerated in subparagraphs (a) to (e) are by their very nature conscious, intentional or volitional acts which an individual could not usually commit without knowing that certain consequences were likely to result. These are not the type of acts that would normally occur by accident or even as a result of mere negligence.[11]

The requirement of a ‘general intent’ has also been confirmed by the International Court of Justice (‘ICJ’)[12] and the case law of the *ad hoc* Tribunals.[13] Furthermore, according to the *ad hoc* Tribunals, genocide may be committed by act or omission.[14]

defies universal conscience […]'. In the definition of genocide itself, the draft refers to 'purpose' rather than 'intent': according to Article I(2) of the Secretariat's draft genocide is an act committed 'with the purpose of destroying [the group] in whole or in part, or of preventing its preservation or development.' In its Commentary, the Secretariat made it clear that this definition would exclude e.g. 'isolated acts of violence not aimed at the destruction of a group of human beings'.[28] The phrase 'in whole or in part' was inserted after a Norwegian initiative. A Soviet motion to include also negligent acts in the ambit of Article II was rejected.[29]

In its initial drafts, the *ad hoc* Committee used the term 'deliberate' instead of 'purpose' or 'intent' to describe the mental element of the crime.[30] According (p. 94) to this definition genocide means 'any of the following deliberate acts directed against a […] group'. In the course of its discussions, the *ad hoc* Committee replaced the phrase 'directed against' with 'committed with the intent to destroy', following a proposal by the US.[31]

In the Sixth Committee the term 'deliberate' was ultimately deleted from the definition; the reason being a controversy in the Committee whether or not 'deliberate acts' would require premeditation on the part of the perpetrator or not.[32]

4. Genocidal Acts

Article II defines genocide as any of the five acts enumerated in subsections (a) to (e) if committed with the intent to destroy. The list of acts is exhaustive.[33] Other acts, which are not included in the list, are not genocide, even if the perpetrator acts with the intent to destroy a protected group.

The definition creates no requirements as regards the person of the perpetrator. Thus, everybody can commit genocide, low-level executors and high-level planners alike and even members of the protected groups.[34]

The individual acts are directed against individual members of the group; these members are targets of the attack, their physical integrity or social existence is violated or endangered.[35] Although Article II subsections (a), (b), (d) and (e) use the plural form and speak of 'members' as immediate victims of the genocidal act, as a rule, it is sufficient if the individual act is directed against one single member of the group.[36] This is clarified, e.g., in the Elements of Crimes to Article 6 of the Statute of the International Criminal Court (ICC), which points out that it is required, for instance, that the 'perpetrator killed one or more persons'. An exception is (c), where the group itself is the target.

(p. 95) Genocide is not conditional upon the actual destruction of the group.[37] As the definition in Article II indicates, the actual destruction of the protected group, be it in whole or in part, is not necessary. Thus, at least theoretically, an isolated act may suffice.[38] Genocide does not require that the individual act be part of a genocidal campaign or a systematic or widespread attack on a protected group.[39] This is the correct view under the Convention notwithstanding the fact that the Elements of Crimes to Article 6 of the ICC Statute explicitly require that '[t]he conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction'.[40] This provision should be understood as establishing a merely procedural requirement related to the jurisdiction of the ICC rather than adding an additional material element to the definition of genocide.[41]

A related and controversial issue is the question whether genocide requires a genocidal policy or plan.[42] Some writers contend that any act of genocide would presuppose a policy or at least a collective activity of a state or a group.[43] Other commentators distinguish between acts under subsections (a) and (b) and acts under subsections (c) to (e). Only in the latter cases some sort of collective or even organized action necessarily would be present.[44] Even though it is difficult to imagine 'imposing measures' and maybe also 'inflicting conditions of life' as isolated acts of a single individual, and even though typically these

actions need to be carried out on a large scale and involve many individuals, the definition does not include a policy or collective action as a distinct and additional element. This view has been expressed by the ICTY Appeals (p. 96) Chamber: 'The existence of a plan or policy is not a legal ingredient of the crime.'[45]

4.1 Killing Members of the Group

Under Article II(a) killing members of a protected group is genocide if committed with the required intent.[46] Killing means causing the death of a person.[47] The killing must be intentional;[48] negligent homicide, therefore, is no basis for genocide. Initially, there was some confusion, created by the different wording in the French and English versions of the Convention and other Statutes which followed it, such as the ICTR Statute. While the French version requires 'meutre de membres du groupe', the English one requires 'killing members of the group'. Although nobody ever seriously considered unintentional killings to be covered by either the Convention or other related statutory provisions, in *Akayesu*[49] the ICTR Trial Chamber expressed the opinion that the term 'killing' used in the English version would be too general, since it could 'very well include both intentional and unintentional homicides', whereas the term 'meurtre', used in the French version, would be more precise. The Chamber concluded in light of the presumption of innocence and the need to apply the version more favourable to the accused that genocide under subsection (a) would require that death has been caused with the intention to do so. Hence, in the jurisprudence of the *ad hoc* (p. 97) Tribunals, the term 'killing' has been equated with murder.[50] Subsequently, in *Kayishema and Ruzindana*, an ICTR Trial Chamber used a slightly different argument by stating that there would be 'virtually no difference between the two terms' since 'killing' is linked to the intent to destroy as spelled out in the operative part of the Article.[51] This view, which appears to confuse general and specific intent, has, however, been confirmed by the ICTR Appeals Chamber which, rightly, added that 'it would construe them both as referring to intentional but not necessarily premeditated murder'.[52] As of today, it is firmly settled in the jurisprudence of international tribunals that there is no requirement to prove a further element of premeditation in the killing.[53]

The view—which is somewhat contrary to the wording of the provision—that killing one individual may suffice is not only firmly established in the jurisprudence of the *ad hoc* Tribunals[54] but also explicitly confirmed in the Elements of Crimes to Article 6(a) of the ICC Statute.

4.2 Causing Serious Bodily or Mental Harm to Members of the Group

Article II(b) requires that the perpetrator have intentionally caused serious bodily or mental harm to at least one member of the group.[55] According to the general standards of liability, the harm must be inflicted intentionally.[56] The elements of the definition have been further specified by international tribunals, most noteworthy by the ICTR Trial Chambers in *Akayesu* and *Kayishema and Ruzindana*.[57]

(p. 98) As regards the infliction of bodily harm, it is to be noted that the original wording ('impairing the physical integrity of members of the group') was replaced by the Sixth Committee for being too vague.[58] According to international case law, serious bodily harm means serious damage to health, causing disfigurement, and serious injuries to external or internal organs or senses.[59] As examples the *Akayesu* judgment listed, among other things, mutilation and use of force, beating with rifle butts, and injuries inflicted with a machete.[60]

The inclusion of mental harm was controversial in the negotiations of Article II.[61] Causing serious mental harm does not require a physical attack or any physical effects of mental harm.[62] This interpretation is supported, first of all, by the wording of the definition, which places the two modalities of conduct on an equal footing. Second, causing serious mental harm as such to members of the group can have a significant effect on the group's social

The prohibited act encompasses permanent transfer done with the intention of destroying the group's existence. The provision is based on the assumption that children, when transferred to another group, cannot grow up as part of their group of origin, or become estranged from their cultural identity. The language, traditions and culture of their group become or remain alien to the children.

4.6 Ethnic Cleansing as a Genocidal Act?

While it had been used by Yugoslav media since 1981, the term 'ethnic cleansing' was used internationally since 1992 in connection with the war in former Yugoslavia.[100] The expression 'ethnic cleansing' is not a legal, but a factual term that describes a complex phenomenon, a policy whose implementation (p. 104) is accompanied by serious human rights violations geared toward forcing an ethnic group out of a certain region to change the ethnic composition of the population.[101] In the context of the war in former Yugoslavia, the term was used to describe the practice of Serb forces in Bosnia-Herzegovina to expel Muslims and Croats from their traditional areas of settlement. This practice aimed at creating ethnically homogeneous territories. In fact, such 'cleansing operations' included massacring and mistreating civilians, acts of sexual violence, the bombardment of cities along with the destruction of places of worship, and confiscation of property. The Security Council's Commission of Experts on Violations of Humanitarian Law During the Yugoslav War also counted among the employed methods: torture, arbitrary arrest and detention, and extra-judicial executions.[102]

Whether and to what extent so-called ethnic cleansing can be classified as genocide depends on the individual circumstances of the case.[103] For instance, the German Constitutional Court held in *Jorgic* that 'systematic expulsion can be a method of destruction and therefore an indication, though not the sole substantiation, of an intention to destroy'.[104] An ICTY Trial Chamber, early in the Tribunal's history, inferred genocidal intent from the gravity of certain acts of 'ethnic cleansing'.[105] Later, the Trial Chamber in *Krstic* held that 'there are obvious similarities between a genocidal policy and the policy commonly known as ethnic cleansing '.[106]

The blanket qualification of ethnic cleansing as genocide that one occasionally encounters is incorrect.[107] Classification as genocide can fail because the primary aim of 'ethnic cleansing' is to expel a population group from a certain area, but not to exterminate the group as such. In addition, not all conduct that takes place in the course of ethnic cleansing can be subsumed under the heading of genocide; this is the case, for example, for the destruction of houses or churches. Still, frequently 'ethnic cleansing' exhibits genocidal features, and in such cases it can be punished accordingly as genocide.[108] Thus, the extent (p. 105) of killing operations and the choice of victims based on ethnicity can suggest that the perpetrators' purpose is not just expulsion, but also extermination of the group.[109] Even acts that do not fall under the definition of the crime can be important evidence of genocidal intent.[110]

5. Genocidal Intent

As it was already mentioned, the key element of the definition of genocide is the intent to destroy a protected group. It is this element which lends the crime of genocide its international dimension: in order to amount to genocide each of the individual acts described in subparagraphs (a) through (e) must be committed with the intent to destroy a protected group. Being part of the mental element, the intent to destroy a protected group complements the general intent requirement which pertains to the material elements of the individual genocidal act. Unlike the general intent requirement, the mental state required for the intent to destroy does not necessarily correspond to the objective facts. Thus, the intent to destroy a protected group is commonly referred to as specific intent.[111] By assigning the destruction of a protected group to the subjective requirements of the crime

and thus to the perpetrator's mental state, the definition of genocide makes it clear that genocide, contrary to popular belief, does not imply that a protected group is actually destroyed.

5.1 The Meaning of Intent

The definition of genocide requires that the individual acts are 'committed with intent'. The meaning of intent is still a matter of controversy. While the majority of commentators and international tribunals favour a purpose-based approach, some scholars suggest a knowledge-based approach.

According to the majority view and particularly to the jurisprudence of the *ad hoc* Tribunals and the ICC, genocidal intent requires that the perpetrator acts with the aim, purpose or desire to destroy a group.[112] While no prior (p. 106) planning on the perpetrator's part is required,[113] the destruction of the group in whole or in part must be the perpetrator's (preliminary) goal. Mere knowledge on part of the perpetrator that his acts contribute to the destruction of a protected group is not sufficient. In cases in which the perpetrator does not personally aim at the destruction of the group, he may, however, still be criminally responsible for genocide, but, according to this view, not as a principal perpetrator but as an aider and abettor to the crime.[114] The opposing view argues that genocidal intent already exists if the perpetrator knew of the organized attempt to exterminate the group.[115] The argument runs as follows: in systematic crimes, the goals, preconditions and effects cannot be distinguished. In this constellation, therefore, the perpetrator's certain knowledge of the destructive intent of the main or organizational perpetrators should be sufficient to find the requisite mental element.[116]

While the wording of the provision ('intent to destroy') allows for both readings, the better reasons support the purpose-based approach. In particular, the preparatory work of the Convention shows that the drafters envisaged genocide as an enterprise whose goal, or objective, was to destroy a human group, in whole or in part. Not only the Secretariat's Draft but also the subsequent developments reveal that only those cases were to be included.[117] Thus, (p. 107) the perpetrator's certain knowledge that he or she is participating in an extermination campaign against a group may indicate the presence of an intent to commit genocide, but cannot replace it.[118]

5.2 Destruction of the Group

To commit genocide, the *génocidaire* does not need to succeed and actually destroy the group.[119] The destruction of the group is subject to the mens rea only. It is a matter of controversy, however, whether the perpetrator must aim at the physical or biological destruction of the (members of the) group or whether it suffices if he intends to eliminate its existence as a social entity, e.g. through dissolution of the group.[120] While there is national case law referring to the social concept of the group,[121] international jurisprudence points towards a stricter understanding of the term based on physical destruction.[122] Again the wording of the Convention allows for both readings. In support of a broad understanding of genocidal intent, including the (intended) destruction of the group as a social entity within the concept of genocidal intent, it is argued, that Article II includes genocidal acts which do not require the actual killing of group members; such a broad understanding would also be in line with Lemkin's concept of genocide.[123] On the other hand, the preparatory work of the Convention clearly points towards an interpretation of the intent to destroy which is restricted to the (intended) physical or biological annihilation of the protected group.[124] Thus, the perpetrator has to aim at the physical (p. 108) destruction of the group; aiming at the dissolution does not suffice nor does the intent to remove the group from a region where it lives.[125]

32 UN Doc. A/C.6/SR.73. For details of the debate see Schabas, *supra* note 15, at 216 *et seq.*

33 See also the Commentary (§ 11) on the 1996 ILC Draft Code, which used the same wording; but see the 1954 ILC Draft Code which used the word 'including' to indicate an illustrative rather than an exhaustive list.

34 See ICTR, Judgment, *Prosecutor v. Kayishema and Ruzindana*, Appeals Chamber, 1 June 2001, § 170.

35 See Werle, *supra* note 3, marg. no. 588.

36 See, e.g., Robinson, *supra* note 9, at 62; Schabas, *supra* note 15, at 158; Werle, *supra* note 3, marg. no. 588.

37 See, e.g. Werle, *supra* note 3, marg. no. 606.

38 A. Cassese, in A. Cassese, P. Gaeta, and J.R.W.D. Jones, *The Rome Statute of the International Criminal Court—A Commentary* (Oxford: Oxford University Press, 2002), Vol. I, 335, at 349; G. Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford: Oxford University Press, 2005), at 245.

39 See ICTR, Judgment, *Prosecutor v. Kayishema and Ruzindana*, Appeals Chamber, 1 June 2001, § 163. But see ICTY, Judgment, *Prosecutor v. Krstić*, Trial Chamber, 2 August 2001, § 682: '[T]he acts of genocide must be committed in the context of a manifest pattern of similar conduct, or themselves constitute a conduct that could in itself effect the destruction of the group, in whole or in part, as such'.

40 In the Introduction to the Elements, it is clarified though that 'the term "in the context of"' would 'include the initial acts in an emerging pattern'.

41 See Werle, *supra* note 3, marg. no. 609; but see ICC, Decision, *Prosecutor v. Al Bashir*, Pre-Trial Chamber, 4 March 2009, § 124.

42 See Cassese, *supra* note 2, at 140 *et seq*, and see also Chapter 6 in this volume.

43 See, e.g. C. Kress, 'The Darfur Report and Genocidal Intent', 3 *Journal of Int'l Criminal Justice* (2005) 562.

44 See, e.g. Cassese, *supra* note 2, at 140 *et seq.*, and see also Chapter 6 in this volume.

45 ICTY, Judgment, *Prosecutor v. Jelisić*, Appeals Chamber, 5 July 2001, § 48.

46 See, e.g. ICTY, Judgment, *Prosecutor v. Krstić*, Trial Chamber, 2 August 2001, § 685. See also Mettraux, *supra* note 38, at 236; Schabas, *supra* note 20, at 158; Werle, *supra* note 3, marg. 589; see also Article 6 of the German Code of Crimes against International Law.

See generally on Art. II(a): Cassese, *supra* note 2, at 133; C. Kress, 'The Crime of Genocide under International Law', 6 *Int'l Criminal Law Review* (2006) 461, at 480; Lippman, The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later, *supra* note 20, at 456; B. Lüders, *Die Strafbarkeit von Völkermord nach dem Römischen Statut für den International Strafgerichtshof* (Berlin: Berliner Wissenschafts-Verlag, 2004), at 173; Mettraux, *supra* note 38, at 236 *et seq.*; A. Paul, *Kritische Analyse und Reformvorschlag zu Art. II Genozidkonvention* (Berlin, Heidelberg, London: Springer, 2008) 177; Schabas, *supra* note 15, 157; G. Verdirame, 'The Genocide Definition in the Jurisprudence of the *ad hoc* Tribunals', 49 *Int'l and Comparative Law Quarterly* (2000) 578, at 598.

47 See also footnote 2 to the Elements of Crimes to Article 6(a) of the ICC Statute

Judgment, *Prosecutor v. Musema*, Trial Chamber, 27 January 2000, § 159; ICTR, Judgment, *Prosecutor v. Kayishema and Ruzindana*, Trial Chamber, 21 May 1999, § 118.

99 See also Elements of Crimes to Article 6(e) of the ICC Statute.

100 See also Schabas, *supra* note 15, at 189 *et seq.*

101 See Werle, *supra* note 3, marg. no. 604 (with further reference).

102 UN Doc. S/25274 (1993), § 56.

103 See for details Werle, *supra* note 3, marg. nos. 604–5.

104 See Bundesverfassungsgericht, 12 December 2000, *Neue Juristische Wochenschrift* (2001) 1848, at 1850.

105 See ICTY, Review of Indictment Pursuant to Rule 91, *Prosecutor v. Nikolić*, Trial Chamber, 20 October 1995.

106 ICTY, Judgment, *Prosecutor v. Krstić*, Trial Chamber, 2 August 2001, § 562.

107 See Cassese, *supra* note 2, at 134 *et seq.* For a nuanced treatment, see also G. Dahm, J. Delbrück, and R. Wolfrum, *Völkerrecht* (2nd edn., Berlin: de Gruyter, 2002), Vol. I/3, pp 1082 *et seq.*

108 In the same vein Werle, *supra* note 3, marg. no. 605.

109 *Ibid*.

110 See ICTY, Decision, *Prosecutor v. Karadzić and Mladić*, Trial Chamber, 11 July 1996, § 94.

111 See e.g. ICJ, 2007 Judgment, *supra* note 2, § 187.

112 See, e.g., ICC, 2009 Decision, *supra* note 41, § 139; ICTY, Judgment, *Prosecutor v. Krstić*, Appeals Chamber, 19 April 2004, § 134; Judgment, *Prosecutor v. Jelisić*, Appeals Chamber, 5 July 2001, §§ 46, 50 *et seq.*; Judgment, *Prosecutor v. Rutaganda*, Appeals Chamber, 26 May 2003, § 524; Judgment, *Prosecutor v. Akayesu*, Trial Chamber, 2 September 1998, § 520; K. Ambos, *Internationales Strafrecht* (2nd edn., München: Beck Verlag, 2008), 212, marg. no. 151; R.S. Clark, 'Subjektive Merkmale im Völkerstrafrecht', 114 *Zeitschrift für die gesamte Strafrechtswissenschaft* (2002) 372, at 396; Drost, *supra* note 63, at 82; Schabas, *supra* note 15, at 227; C. Tournaye, 'Genocidal Intent before the ICTY', 52 *Int'l and Comparative Law Quarterly* (2003) 447, at 453.

113 See Judgment, *Prosecutor v. Krstić*, Trial Chamber, 2 August 2001, § 572; Drost, *supra* note 63, at 82; Lippman, 'The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later', 15 *Arizona Journal of International and Comparative Law* (1998) 415, at 455; Robinson, *supra* note 9, at 60. For a different view, see Judgment, *Prosecutor v. Kayishema and Ruzindana*, Trial Chamber, 21 May 1999, § 91.

114 See also Judgment, *Prosecutor v. Krstić*, Appeals Chamber, 19 April 2004, § 134; Kress, *supra* note 46, at 493. For details, see Chapter 8, § 3.2 in this volume.

115 See A. K. A. Greenawalt, 'Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation', 99 *Columbia Law Review* (1999) 2259, at 2265 *et seq.*; A. Paul, *Kritische Analyse und Reformvorschlag zu Art. II Genozidkonvention* (Berlin: Springer, 2008), 255 *et seq.*; O. Triffterer, 'Kriminalpolitische und dogmatische Überlegungen zum Entwurf gleichlautender "Elements of Crimes" für alle Tatbestände des Völkermordes', in B. Schünemann et al. (eds), *Festschrift für Claus Roxin* (Berlin: De Gruyter, 2001) 1415, at 1440 *et seq.*; H. Vest, *Genozid durch organisatorische Machtapparate* (Baden-Baden: Nomos, 2002) 104, at 107. For a similar approach see R.W.D. Jones, ' "Whose Intent is it

Annex 26

Robert Kolb, *The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ*, *in* THE UN GENOCIDE CONVENTION: A COMMENTARY (Paola Gaeta, ed., Oxford University Press 2009)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Part VI Enforcing the Convention Through the United Nations, 22 The Scope Ratione Materiae of the Compulsory Jurisdiction of the ICJ

Robert Kolb

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> [in] such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the Convention.[32]

3. The Scope Ratione Materiae of the Jurisdiction of the Court

3.1 Interpretation, Application or Fulfillment of the Convention

The dispute submitted to the Court under the compromissory clause must concern, or at least be directly related, to the interpretation, application or fulfillment of the Genocide Convention. This is an aspect of subject-matter jurisdiction (jurisdiction *ratione materiae*).[33]

The preliminary question as to whether a dispute truly concerns the 'interpretation, application or fulfillment' of the Convention or not, is included in the reach of the jurisdictional power of the Court. This solution flows from the fact that in cases of contested jurisdiction, the Court alone decides definitively on the existence or non-existence of its jurisdiction, in accordance with Article 36(6) of the ICJ Statute (*compétence de la compétence, Kompetenzkompetenz*).[34] Any other construction would deprive the compromissory clause of all its intended effectiveness: a state could simply contest that the dispute turns on a point of 'interpretation, application or fulfillment' in order to escape the jurisdiction of the Court.

The three terms under scrutiny are cast in the alternative ('or', not 'and'). It is thus sufficient that a dispute concerns interpretation, *or* application, *or* fulfillment in order to trigger the jurisdiction of the Court. This corresponds to the aim of the compromissory clause, which is to open the Court as largely as possible to all disputes touching upon the Convention. Moreover, as the three terms largely overlap, it would be completely artificial to require cumulating the three: interpretation is directly relevant for application, since application (p. 452) supposes and contains interpretation; and fulfillment is largely a form of application. Hence, in a certain sense, each treaty dispute always turns at least indirectly on interpretation, application *and* fulfillment at once. On the substance, the three terms mentioned differ more or less slightly in their emphasis.[35]

'Interpretation' turns on the discovery of the legal meaning and content of a provision. In a classical conception, interpretation logically precedes any application: the first determines the meaning and content of a legal provision, the second draws the consequences of that preliminary process in a series of acts of practical implementation of the provision at stake.[36] On the other hand, an interpretation is always implicit in any act of application: to implement in a particular way is to imply that the Convention requires precisely this action and not a different one. This, in turn, reveals the meaning that a party attaches to the terms or content of the provision. 'Application' is the practical implementation of a Convention. This term (or that of fulfillment) may cover many aspects linked to the implementation, e.g. the consequences of a breach of the treaty. 'Fulfillment' (or 'execution' or 'implementation', as many other compromissory clauses stipulate) is normally considered to be a specific form of application, namely that type of application directed at satisfying the obligations undertaken by the treaty or its general object and purpose. Hence, the term 'fulfillment' adds little to the term 'application', since the latter already contains it. One could however maintain, as the Indian delegate had underlined during the preparatory works,[37] that the word 'application' included the study of circumstances in which the convention should or should not apply, while the word 'fulfillment' referred to the compliance or non-compliance of a party with the provisions of the Convention.[38] Hence, as the PCIJ formulated it in the *Mavrommatis Jerusalem Concessions* case, '"application" is a wider, more elastic and less rigid term than "execution"'.[39] It includes the term 'execution'. The use of the term 'execution' (or 'implementation' or fulfillment', as the case may be) in alternative to 'application' seems to be due in part to a usage in the 1920s and 1930s: in this epoch, the term 'execution' was often used in compromissory clauses. This tradition seems to have

influenced the drafters of treaties after the war, even if the term ‘execution’ was more rarely (p. 453) used at that juncture than the now more popular terms ‘implementation’ or ‘fulfillment’.[40]

Overall, the reason for inserting all the three alternative terms, as does the Genocide Convention, was to give a coverage as exhaustive as possible to the compromissory clause. The aim was thus to close down all possible loopholes weakening the jurisdictional reach of the Court. The purpose pursued in 1948 was to grant the Court a jurisdiction as wide as possible in the life of the Convention, forestalling all the potential subtle arguments denying jurisdiction on account of an insufficient link with that Convention. As the Court explained in the *Chorzów Factory* case:

> [F]or a jurisdiction of this kind [excluding important aspects of the implementation of the treaty such as the consequences of its breach], instead of settling a dispute once and for all, would leave open the possibility of further disputes.[41]

The Court since then often insisted on the importance of giving interpretations to the compromissory clause enabling it to decide the whole dispute with finality and efficiency (‘*vider le différend*’). It attempted carefully to leave no undecided inflammable material in the relations between the parties to the dispute.[42] This aim underlying the compromissory clause calls for an extensive interpretation of the three terms ‘interpretation, application or fulfillment’: all disputes linked with the ‘life of the Convention’ shall, according to the will of the parties, be capable of unilateral submission to the ICJ. On the other hand, only disputes directly linked with the Convention shall be submitted to the Court. That is a further, and extremely important, aspect of subject-matter jurisdiction, to which it is time to turn.

3.2 Scope of the Convention and Other Related Rules of International Law

The compromissory clause refers back to all the provisions of the Genocide Convention. Thus, all the substantive rights and obligations, as set out in the various provisions of the Convention, are covered by the jurisdiction of the ICJ in case of disputes as to their interpretation, application or fulfillment. On the other hand, the compromissory clause itself is of adjectival nature; it does not create further substantive rights for the parties; the rights to be (p. 454) vindicated through the Court must be found elsewhere in the provisions of the Convention. Thus, the compromissory clause does not expand the jurisdiction of the ICJ to areas not covered in the other provisions of the Convention. In the *South West Africa* cases, the Court has consequently pointed out that

> in principle, jurisdictional clauses are adjectival not substantive in their nature and effect; [they] cannot simultaneously and per se invest the parties with substantive rights the existence of which is exactly what they will have to demonstrate in the forum concerned… . Jurisdictional clauses do not determine whether parties have substantive rights, but only whether, if they have them, they can vindicate them by recourse to a tribunal.[43]

This *renvoi* of the compromissory clause to the provisions of the convention in which it is inserted determines the most peculiar feature of the Court’s related jurisdiction: contrary to optional clause jurisdiction under Article 36(2) of the ICJ Statute, which is in principle unlimited (i.e. opening access to the Court for all disputes on international law), compromissory jurisdiction under Article 36(1) is in principle limited (i.e. opening access to the Court only for disputes as described in a special agreement or as enclosed within the four corners of a particular convention).

Annex 27

Daniel Thürer & Thomas Burri, *Secession*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (June 2009)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

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Secession

Daniel Thürer, Thomas Burri

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secession—and with it, it seems, the pro-secession argument as a whole—is very limited. In no case should it be taken as more than just one element to be considered when weighing and balancing the options in a conflict.

C. The Legality of Secession

13 In an ideal legal order, legitimacy and legality are always the same. With secession, however, such a general congruency is unlikely from the outset, because views differ on what is legitimate and what is not. Furthermore, it can be suspected that international law adheres to the States' perspective of legitimacy, for it is mainly States and not → *peoples*, which make international law. Unsurprisingly, international law, as will be seen below, does indeed deal with secession in a way that emphasizes the stability of existing States. Nevertheless, the oppression argument has found its way into positive international law.

14 In brief, the international legal situation seems to be that secession in the strict sense of the term is not explicitly forbidden. It is not illegal. But it runs counter to the principle of territorial integrity and the latter ultimately prevails. International law provides no unambiguous basis for a right to secession.

15 In detail, the principle of self-determination enshrined in Art. 1 (2) → *United Nations Charter* as one of the purposes of the UN—'[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'—could be considered as a legal basis for a right to secession. The right to self-determination, looked at in isolation, certainly means that a people has a right to its own State, for the people that truly determines itself may also choose a State as the appropriate vessel for its fate. However, such an unrestricted reading of the principle of self-determination does not find much support. Rather, the principle is to be balanced with the territorial integrity and sovereignty of existing States. Hence, the → *Friendly Relations Declaration (1970)*, after having elaborated in detail on the principle of self-determination, limits it:

> nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UNGA Res 2625 [XXV] [24 October 1970] Principle V).

16 The clause was probably intended as a monument to the territorial integrity of States. But one cannot help but notice its fallacy: it essentially holds that the principle of self-determination does not enable any assault on the sovereignty of a State ('nothing in the foregoing paragraph'), provided that the principle of self-determination is complied with ('conducting themselves in compliance'). In other words, when the principle of self-determination is *not* complied with, it may allow the dismemberment of a State, which may well be the opposite of what the drafters of the clause originally intended. In spite of this equivocality, the most common reading of self-determination, typically advocated by proponents of States, upholds the territorial integrity of States and thus restricts the principle of self-determination to an internal dimension. Construed in this way, the principle of self-determination perhaps entitles a people to minority rights and structures enabling

→ *autonomy* or similar arrangements, such as those in → *federal States*, but does not give them a right to secession.

17 However, a more progressive interpretation of the clause in the Friendly Relations Declaration is possible, one which puts more emphasis on the second part of the paragraph. According to this reading, external self-determination—ie the right to secession—is usually dormant, but may be activated in exceptional circumstances. Such an exception would notably apply when internal self-determination is violated. In this understanding, the right to secession is a conditional right, with the violation of the principle of (internal) self-determination being the condition. As a consequence, the right is endowed with a punitive character in the sense of 'if you misuse your power, you lose it'. The idea of forfeiture is obviously prominent in this approach. Such reasoning is, however, on the fringes of legal analysis and is strongly inspired by legitimacy considerations. Indeed, there is little support for it in positive law. The formula in the Friendly Relations Declaration—'possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour'—is in fact the only positive legal basis. Note that the formula was repeated on the occasion of the → *Vienna World Conference on Human Rights (1993)* in the Vienna Declaration and Programme of Action ([25 June 1993] UN Doc A/CONF.157/23, Sec. 1, para. 2) and again in the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations ([24 October 1995] UNGA Res 50/6 GAOR 50th Session Supp 49, 13, para. 1). It is based on the idea of representation and, in an *e contrario* argument, can be understood as asserting that if a government does not represent the whole population without discrimination, the part of the population that is not represented may be entitled to a right to secession. A lack of appropriate representation as a violation of internal self-determination is thus understood to be a catalyst for the right to secession. Apart from this positive—though indirect—manifestation, other reasons for the activation of the right to secession can be found, if free associative reasoning is applied. As early as 1921, the Commission of Rapporteurs in the Åland islands dispute found that it is possible to reach a different conclusion, ie to recommend the separation of the Åland islands from Finland to the benefit of the Åland islanders, 'when a State lacks either the will or the power to enact and apply just and effective guarantees' (The Aaland Islands Question 28). The Supreme Court of Canada in *Reference re Secession of Quebec* identified three potential circumstances in which external self-determination may be considered: decolonization, the case of alien 'subjugation, domination or exploitation' (para. 133, based on the passage of the Friendly Relations Declaration, ie 'and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination], as well as a denial of fundamental human rights, and is contrary to the Charter' Principle of equal rights and self-determination of peoples), and 'when a people is blocked from the meaningful exercise of its right to self-determination internally' but then only 'as a last resort' (para. 134). The last circumstance was not given clear consideration by the Court, however. Moreover, when human rights are seriously and persistently violated —when the oppression of a people is extreme, for example—this is widely perceived in academia as activating the right to secession, although only as an *ultima ratio* (for instance Tomuschat [2006] 35 [with further references]).

18 As to such a right to secession, three comments are in order. First, it is important to stress that the impact of such a right to secession would be limited *ab initio*. Situations in which secession is at stake are highly politicized, and a whole plethora of political arguments are used to support or undermine secessionist claims. In such a setting, a right to secession, while certainly bolstering the position of that part of the State that wishes to secede, would be only one argument among many and its concrete application would be

subject to fierce debate. Therefore, a higher, impartial implementing authority would be at least as important as the right itself.

19 Second, apart from the tenuousness of the legal basis, the right to secession in the sense of a 'remedial secession' (Buchheit 222) raises other serious concerns. A remedial right to secession based on external self-determination would have to tackle all the difficulties of the right to self-determination, such as the questions of what is 'a people', who belongs to 'a people', and how the will of 'a people' is determined (see → *Self-Determination*). Then there are the concerns that are very familiar from the debate on → *humanitarian intervention*: serious issues relating to threshold levels would have to be addressed if one needed to fix the level of oppression—the seriousness of human rights violations, the degree of the lack of participation, etc—that would entitle a people to secession. The *ultima ratio* qualification of the right to secession—as a last resort—would not clarify things very much, for the ultimacy of a measure could always be disputed. It probably only indicates that, in general, the threshold would have to be high. The duration of the oppression needed in order to activate the right would pose additional challenges. In particular, it would be necessary to answer the intricate question as to whether the right to secede would continue to exist, once the oppression had ended.

20 Third, there is another fundamental argument which militates strongly against a right to secession. It is clear that secessionist claims are born out of difficult, multi-faceted circumstances. In such circumstances, it seems that various options would be available to address the underlying issues and, in most cases, secession would only be one of these options. Here, a right to secession seems to be a crude device—a black and white instrument applied to an area dominated by shades of grey. The right would confirm a bias in favour of one solution, namely secession, in a situation where many options should be available on an equal footing. This argument is clearly not against the legitimacy of action in face of oppression, but the crux is that there must be different means of addressing situations in which secessionist claims arise. To limit the options a priori to secession, even if only as an *ultima ratio*, seems to be an unbalanced approach that does not take the complexity of such situations into account. It sends out the wrong signals to the parties involved. And it includes a threat: the loss of a part of sovereignty in the event that basic international obligations, such as human rights etc, are not complied with. One would expect that there are more subtle ways of ensuring compliance than via a threat to break down territorial integrity—note the similar argument discussed in *Reference re Secession of Quebec* (para. 91).

21 The Supreme Court of Canada showed a way to address these concerns in the first, lesser-known part of its opinion in *Reference re Secession of Quebec*. Here, it held that Quebec's—and probably any other Canadian province's—clear will to secede from Canada would entail an obligation to negotiate the separation bona fide, based on Canadian constitutional law. The Constitution would not prescribe the outcome of these negotiations (see para. 17 above). Clearly, this approach is tailored to the case of peaceful relations between the State and the part wanting to secede (→ *Peaceful Change*). Yet, it is equally clear that, even in case of oppression, it is very difficult to reach a solution without negotiations. One can conclude from this that it might be an option to shape international law following Canada's example. For those who are unable to adhere to such a solution because the possible sacrifice of State unity is too costly, it might still be acceptable to condition the remedial right to secession in the way proposed in UN → *Special Envoy* Martti Ahtisaari's plan for Kosovo, (UN Special Envoy for the Future Status Process for Kosovo, 'Comprehensive Proposal for the Kosovo Status Settlement'; see paras 37–38 below).

Annex 28

Robert Kolb, GOOD FAITH IN INTERNATIONAL LAW (Hart 2017)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

Good Faith in International Law

Robert Kolb

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of the civilian population on the other. The law here tries to find some equilibrium between the competing principles of *neminem laedit qui suo jure utitur* and *sic utere tuo ut alienum non laedas.*[111] In a robust vision of this function of the law, it has been said: 'There is such an abuse of right each time the general interest of the community is injuriously affected as the result of the sacrifice of an important social or individual interest to a less important, though hitherto legally recognised individual right'.[112] It is on the basis of this conception of abuse of rights that whole branches of international law have been developed, especially the principle that the use of a territory should not lead to the infringement of the rights of other states or to the creation of excessive harm on the territory of the latter.[113] The *Lake Lanoux* arbitration (1957) is a typical example of this balancing-up approach concerning the use of water and the effects of unilateral conduct on neighbouring territory.[114] The same approach has been followed in many other cases, as for example in the *Pulp Mills* (*Argentina v Uruguay*) case (2010)[115] or the *Indus Waters Kishenganga* arbitration (*Pakistan v India*) (2013).[116] State authorities have used the same principles in order to judge the legality of extraterritorial US legislation in the context of trust law.[117] Similarly, article 51, § 5, letter b, of Additional Protocol I of 1977 to the four Geneva Conventions of 1949, which condemns attacks causing excessive civilian collateral damage in regard of the military advantage anticipated,[118] responds to the same logic of a prohibition of abuse of rights. The issue is manifestly one of balancing up. The only collateral damage declared to be unlawful is the one which appears to be 'excessive' with regard to the military advantage anticipated.

4. *Arbitrary action, unreasonable conduct and fraud*: there is a last and more general sphere of abuse of rights. It encompasses arbitrary, unreasonable and fraudulent acts. Arbitrary conduct rests on acts which are manifestly unjustified with regard to the facts, objectively shocking exercises of a right, acts injuring the elementary legal conscience or certain discriminatory exercises

[111] See the many references in L Oppenheim (R Jennings and A Watts, eds), *International Law*, 9th edn (London, 1992) 408ff. See also among many others J Barboza, 'International Liability for the Injurious Consequences of Acts not Prohibited by International Law and Protection of the Environment' (1994-III) 247 *RCADI* 319ff.

[112] H Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933) 286.

[113] See *Corfu Channel* (1949) 223 *ICJ Reports* 223 and *Trail Smelter* (1941) III *RIAA* 1963, from where the main principles of modern environmental protection law have developed.

[114] *Lake Lanoux* (1957) XII *RIAA* 281ff.

[115] *Pulp Mills* (*Argentina v Uruguay*) (2010-I) *ICJ Reports* 55–56, § 101, harm to the environment by construction of industrial installations.

[116] *Indus Waters Kishenganga* arbitration (*Pakistan v India*) (2013) 154 *ILR* 171ff.

[117] See W Meng, *Extraterritoriale Jurisdiktion im öffentlichen Wirtschaftsrecht* (Berlin, 1994) 416.

[118] Considered to be indiscriminate is: '(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'. On this provision, see eg Y Sandoz, C Swinarski and B Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, 1987) 613ff.

of rights.[119] Unreasonable acts are those which are beyond the pale of a sharable justification. Finally, fraudulent acts are those which seek to circumvent a legal prohibition by recourse to subtle formal constructions. In a sense, the pragmatic common lawyer will refrain from seeking an excessively precise distinction between these concepts. As was graphically stated by FA Mann: 'I am not going to weary the Court with the somewhat unprofitable problem of drawing the line between abuse, arbitrariness and discrimination. These terms are often used interchangeably and all of them indicate the same idea, the same principle...'.[120] There are whole branches of international law which are based on the prohibition of 'arbitrary' action, notably in the context of human rights.[121] Thus, famously, article 6, § 1, of the Covenant on Civil and Political Rights (CCPR) of 1966 holds that 'no one shall be arbitrarily deprived of his life'.[122] It is true that to a large extent these notions have become autonomous from the concept of abuse of rights. In effect, the latter notion is not mentioned when 'arbitrary' acts are stigmatised. However, we should not ignore the fact that all these special rules have flown from a polymorph galaxy centred on good faith and the prohibition of abusive action. We may also recall the jurisprudence of the ICTY, holding that the UN Security Council could not indulge into arbitrary action.[123] Another example verging on fraud and circumvention is the modification of municipal law with a view to extract certain valuable assets from the mass of items to be transferred by state succession.[124] Similar issues have arisen in the context of fraudulent nationality in the UN Claims Commission for Iraq in the 1990s.[125] Finally, we may also emphasise that article 17 of the ECHR of 1950, under the title 'abuse of rights', is a saving clause against activities or acts aimed at the destruction of rights and freedoms provided for in the Convention.[126] This is a special type

[119] On the link between abuse of rights and arbitrary action, see eg BO Iluyomade, 'The Scope and Content of a Complaint of Abuse of Right in International Law' (1975) 16 *Harvard International Law Journal* 84ff; S Jovanovic, Restriction des compétences discrétionnaires des Etats en droit international (Paris, 1988) 193ff. Further literature in Kolb, *Bonne* 468.

[120] Pleadings by FA Mann (Belgium), *Barcelona Traction* case, VIII *ICJ Pleadings* 58.

[121] On arbitrary deprivation of nationality, see already the old statement in W Schiffer, *Repertoire of Questions of General International Law before the League of Nations, 1920–1940* (Geneva, 1942) 85, no 214.

[122] See M Nowak, *UN Covenant on Civil and Political Rights*, Commentary, 2nd edn (Kehl, 2005) 127ff; W Kälin and J Künzli, *The Law of International Human Rights Protection* (Oxford, 2009) 102–03. There are also other areas where the standard is 'arbitrariness' eg the issue of the prohibition of arbitrary interference with privacy: see the *Toonen v Australia* case, UN Human Rights Committee under CCPR, Communication no 488/1992, (1994) 113 *ILR* 340–41, § 8.3.

[123] *Tadic* (Jurisdiction) case, Appeals Chamber (1995) 105 *ILR* 465, § 28.

[124] See B Stern, 'La succession d'Etats' (1996) 262 *RCADI* 344–46.

[125] P d'Argent, *Les réparations de guerre en droit international public* (Brussels, 2005) 355. It has also been held by a Greek tribunal that the pleading of jurisdictional immunity in the face of a massacre committed by one's own military forces amounted to an abuse of rights: d'Argent, ibid, 799, but the ICJ has judged differently on that issue: *Jurisdictional Immunities of the State* (2012-I) *ICJ Reports* 100ff.

[126] See eg Y Arai, 'Article 17' in P van Dijk, F van Hoof, A van Rijn and L Zwaak (eds), *Theory and Practice of the European Convention on Human Rights*, 4th edn (Antwerp, 2006) 1083ff; FG Jacobs,

> of abuse of rights: it aims at protecting the rights listed in the Convention and to safeguard the democratic institution against totalitarian and similar movements 'abusing' the rights granted with the aim of destroying human rights. In short words: no acceptance of use of human rights to destroy human rights; herein precisely lies the abuse. By the same token, there are special rules on abuse of rights within EU law.[127]

A question that has been asked is whether the notion of abuse of rights supposes a damage for a subject of the law, as does the concept of estoppel. There are different distinctions to be made here. First, there are certain types of abuse of rights which by definition suppose a damage, such as above-mentioned category 3), the disproportion of interests issue. The point is there to prohibit a certain behaviour, or to ensure reparation, when an excessive *harm* has been inflicted on another subject. A harm obviously encompasses or is in itself a damage. Conversely, there are other notions based on the abuse of rights doctrine which do not in themselves include a damage, eg the prohibition of fraudulent acts or of *détournement*. Second, much depends on the function the abuse of rights is called to display: when the issue is to claim pecuniary reparation for an unlawful act, a damage must be shown; conversely, when the abuse is claimed to obtain the nullity of a certain act, no damage must be shown.[128] Similarly, as long as the abusive act has not been executed, the claim can be geared only towards its prevention and no damage is required; once the abusive act is executed, issues of responsibility will normally be prominent and the damage may become a material consideration.[129] Overall, it cannot be said that the element of damage is an inherent requirement of the doctrine of abuse of rights.

We may conclude this chapter with some general examples of the prohibition of abuse of rights in the case law. At the PCIJ, one of the leading cases is the *Certain German Interests in Upper Polish Silesia* (1926). There the Court limited the right of Germany to dispose of certain assets in a territory where a plebiscite would be held on its remaining within Germany or shifting to Poland, by affirming that in case of an abuse of rights, the transfer or alienation of assets would amount to a violation of international law.[130] Another interesting case is the *Free Zones* case of 1930 and 1932. The Court held that France kept its full sovereignty over the free zones around Geneva and that it could therefore install any type of

RC White and C Ovey, *The European Convention on Human Rights*, 5nd edn (Oxford, 2010) 122ff; D Harris, M O'Boyle and C Warbrick, *Law of the European Convention on Human Rights*, 3rd edn (Oxford, 2014) 852ff; WA Schabas, *The European Convention on Human Rights—A Commentary* (Oxford, 2015) 611ff, with a bibliography. See also JF Renucci, *Droit européen des droits de l'homme*, 2nd edn (Paris, 2012) 885ff.

[127] See *Hungary v Slovak Republic* (2012) 153 *ILR* 118–19 (CJEU).

[128] See the Rejoinder by Guatemala in the *Nottebohm* case, (1955) I *ICJ Pleadings* 511.

[129] P Guggenheim, 'La validité et la nullité des actes juridiques internationaux' (1949-I) 74 *RCADI* 253–54.

[130] *Certain German Interests in Upper Polish Silesia* (1926) PCIJ ser A, no 7, pp 30, 37–38.

Annex 29

James Crawford, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (Oxford University Press, 9th ed. 2019)

Pursuant to Rules of the Court Article 50(2), this annex is comprised of such extracts of the whole document as are necessary for the purpose of the pleading. A copy of the whole document has been deposited with the Registry.

OXFORD PUBLIC INTERNATIONAL LAW

Oxford Scholarly Authorities on International Law

Part II Personality and recognition, 5 Creation and incidence of statehood

James Crawford SC, FBA

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James Crawford

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Security Council Resolutions 242, 338, and 1397 and entailing 'two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security'. The Roadmap was endorsed by the Security Council in November 2003.[69] However, the parties still failed to agree on final status. In November 2007, the Israeli–Palestinian Joint Understanding declared the intent of the parties to 'immediately launch good-faith bilateral negotiations in order to conclude a peace treaty, resolving all outstanding issues, including all core issues without exception, as specified in previous agreements', '[i]n furtherance of the goal of two states, Israel and Palestine, living side by side in peace and security'.[70] The parties also committed to implement their respective obligations under the Roadmap.[71] Peace talks stalled after Israel refused to extend a ten-month freeze on settlement activity in the occupied Palestinian territory. That decision prompted the Palestinian Authority to withdraw from direct talks with Israel, which had only resumed a few weeks earlier after a two-year hiatus.

Though the parties had not reached a final status agreement, Palestine applied for admission to membership in the UN on 23 September 2011.[72] The Security Council Committee on the Admission of New Members was unable to recommend action to the Security Council and instead adopted a report noting deep divisions within the Council.[73] Palestine had previously been accepted into membership in the Non-Aligned Movement, the Organization of Islamic Cooperation, the Economic and Social Commission for Western Asia, the Group of 77, and UNESCO.[74] As at 1 July 2018, some 137 states have recognized Palestine as a state. In 2012, the General Assembly accorded Palestine 'non-member observer State status',[75] but a real solution to the Palestine problem seems as distant as ever.[76]

(C) Kosovo

Another unresolved case is that of Kosovo. States submitting observations in the *Kosovo* advisory proceedings addressed, inter alia, the right to self-determination (outside the colonial context), and some posited that a state might be created under a right (p. 130) to 'remedial secession'.[77] However, the Court found that it was 'not necessary to resolve these questions in the present case', as the General Assembly had requested the Court's opinion on a narrower question—that is, whether the declaration of independence was in accordance with international law. The Court concluded that 'general international law contains no applicable prohibition of declarations of independence'. Accordingly, the 'declaration of independence of 17 February 2008 did not violate general international law'.[78] The Court found that Security Council Resolution 1244 (1999) did not address the authors of the declaration of 17 February 2008 and so did not constrain them from issuing a declaration of independence either. The authors of the declaration were not acting as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather were representatives of the people of Kosovo acting outside the framework of the interim administration.[79] Nor did the resolution reserve the final determination of the status of Kosovo to the Security Council.[80] The Court chose not to address the consequences of such a declaration of independence—whether a new state had been created or whether other states would be obliged to recognize (or to refrain from recognizing) it. As at 1 July 2018, some 116 states had recognized Kosovo.[81]

4. Achieving Independence: Secession and Self-Determination

If independence is the decisive *criterion* of statehood,[82] self-determination is a principle concerned with the *right* to be a state.[83] A key initial development was the reference to 'the principle of equal rights and self-determination of peoples' in Articles 1(2) and 55 of the UN Charter.[84] Many saw these references as merely hortatory, but the practice of UN organs powerfully reinforced the principle—in particular the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by (p. 131) the General Assembly in 1960 and referred to in a long series of resolutions since.[85] The Declaration treats the

principle of self-determination as one of the obligations stemming from the Charter: it is in the form of an authoritative interpretation.[86] The right to self-determination of 'all peoples' was subsequently included as Common Article 1 of the two human rights covenants of 1966.[87]

Means of achieving self-determination include the formation of a new state through secession, association in a federal state, or autonomy or assimilation in a unitary (non-federal) state.[88] It is generally accepted that peoples subjected to colonial rule have a right to elect independence under international law, but the question of secession, and self-determination more generally, has been highly controversial outside the colonial context.[89] In practice, a marked distinction has developed between full ('external') self-determination and qualified ('internal') self-determination. This was perhaps definitively formulated by the Canadian Supreme Court:

> We have also considered whether a positive legal entitlement to secession exists under international law in the factual circumstances contemplated by Question 1, i.e., a clear democratic expression of support on a clear question for Quebec secession. Some of those who supported an affirmative answer to this question did so on the basis of the recognized right to self-determination that belongs to all 'peoples'. Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the 'people' issue because … a right to secession only arises under the principle of self-determination of peoples at international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principle of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.[90]

(p. 132) Questions of internal self-determination and remedial secession are left open here and remain controversial. The International Court did not address submissions on remedial secession in the *Kosovo* opinion.[91] In 2014, the Autonomous Republic of Crimea and the City of Sevastopol declared independence, mentioning *Kosovo* in support of their contention that this was lawful and would result, subject to a favourable referendum outcome, in the creation of an independent state (which would subsequently propose itself to form 'a new constituent entity of the Russian Federation').[92] The process has not been recognized, any more than the attempted secession of Catalonia.[93] A possible case of remedial secession is South Sudan, although (like Eritrea) it could also be analysed on a more traditional basis as a case of separation by agreement after intractable conflict.[94]

5. Identity and Continuity of States

The term 'continuity' of states is not employed with any precision, and may be used to preface a diversity of legal problems.[95] Thus, it may introduce the proposition that the legal rights and responsibility of states are not affected by changes in the head of state or the internal form of government.[96] This proposition can, of course, be maintained without reference to 'continuity' or 'succession', and it is in any case too general, since political changes may result in a change of circumstances sufficient to affect particular types of treaty relation. More significantly, legal doctrine tends to distinguish between continuity (and identity) and state succession. The latter arises when one international personality takes the place of another, for example by union or lawful annexation. In general, it is

assumed that cases of ‘state succession’ are likely to involve important changes in the legal status and rights of the entities concerned, whereas if there is (p. 133) continuity the legal personality and the particular rights and duties of the state remain unaltered. The distinction is examined in more detail in chapter 19.

6. Conclusion

After rapid expansion in the number of states in the period 1948–60, and again in the 1990s, and despite several subsequent attempts at secession, the total number of states has not increased much in the past 20 years. The international system remains opposed to secession and the few putative states which have been widely recognized after unilateral declarations of independence—Kosovo, South Sudan—still struggle. The main example of what might be termed ‘remedial recognition’ is Palestine, currently recognized by a two-thirds majority of UN members (137); the two-state solution to the Palestine dispute is as remote from achievement as ever. With that exception, it appears that the future of peoples, even insular and discrete minorities, lies within their state of origin.

Footnotes:

1 Generally: 1 Whiteman 221–33, 283–476; Guggenheim, 80 Hague *Recueil* 1; Higgins, *Development* (1963) 11–57; Fawcett, *British Commonwealth in International Law* (1963) 88–143; Marek, *Identity and Continuity of States in Public International Law* (2nd edn, 1968); Verzijl, 2 *International Law in Historical Perspective* (1969) 62–294, 339–500; Rousseau, 2 *Droit International Public* (1974) 13–93; Arangio-Ruiz, *L’État dans le sens du droit des gens et la notion du droit international* (1975); Lauterpacht, 3 *International Law* (1977) 5–25; Grant, *Recognition of States* (1999); Crawford, *Creation of States* (2nd edn, 2006); Caspersen & Stansfield, *Unrecognized States in the International System* (2011); Vidmar, *Democratic Statehood in International Law* (2013) 39–138, 202–41; Dugard (2013) 357 Hague *Recueil* 9, 45–69; Coleman, *Resolving Claims to Self-Determination* (2013) ch 2; Vidmar (2015) 4 *CJICL* 547. On UN membership: Grant, *Admission to the United Nations* (2009); Duxbury, *Participation of States in International Organisations* (2011); Charlesworth (2014) 371 Hague *Recueil* 43, 79–81.

2 Oppenheim, 1 *International Law* (1st edn, 1905) 99–101; cf 1 Oppenheim 120–3.

3 Convention on Rights and Duties of States adopted by the Seventh International Conference of American States, 26 December 1933, 165 LNTS 19.

4 E.g. Fitzmaurice (1957) 92 Hague *Recueil* 1, 13; Higgins (1963) 13; Fawcett (1963) 92.

5 Grant (1999) 37 *Col JTL* 403.

6 *Deutsche Continental Gas-Gesellschaft v Polish State* (1929) 5 ILR 11; *North Sea Continental Shelf (Federal Republic of Germany/Netherlands; Federal Republic of Germany/Denmark)*, ICJ Reports 1969 p 3, 32; *In re Duchy of Sealand* (1978) 80 ILR 683. Further: Badinter Commission, *Opinion No 1* (1991) 92 ILR 162; *Opinion No 10* (1992) 92 ILR 206.

7 On Albania: Ydit, *Internationalized Territories* (1961) 29–33; Crawford (2nd edn, 2006) 510–12.

8 See Jessup, US representative in the Security Council, 2 December 1948, quoted in 1 Whiteman 230; also SC Res 69 (1949), GA Res 273(III), 11 May 1949.

9 On the European micro-states generally: Duursma, *Fragmentation and the International Relations of Microstates* (1996). On micro-states as UN Members: Crawford (2nd edn,

Annex 30

Direct Line with Vladimir Putin, President of Russia (17 April 2014)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

Direct Line with Vladimir Putin

The annual special Direct Line with Vladimir Putin was broadcast live by Channel One, Rossiya-1 and Rossiya-24 TV channels, and Mayak, Vesti FM and Radio Rossii radio stations.

April 17, 2014 15:55 Moscow

Especially popular in the course of the discussion were questions about Crimea, including the socioeconomic situation in Russia's new regions – the Crimean Republic and Sevastopol, the development of Russia's Black Sea Fleet, and the situation regarding the Crimean Tatars. There were also questions about the situation in Ukraine, and the assessment of the developments in the southeast of the country.

The discussion also touched upon international issues, such as relations with the West and NATO, the deployment of US anti-missile defence systems in Europe, the situation with Transnistria, and economic issues related to the global oil and gas markets. Vladimir Putin answered questions not only from citizens of Russia, but of other countries as well, for instance from experts of the Valdai Club from Germany, the US and Hungary, and a question from Edward Snowden.

Numerous questions dealing with the country's life were raised, including those related to healthcare, housing and utility services, relief efforts following the largest ever flood in the Far East last year, prospects for the future use of Olympic facilities in Sochi, as well as ways of instilling patriotism, and building relations with the opposition.

There were also a few personal questions. In the final part of the Direct Line, the President answered questions of his own choice.

During the live television broadcast that lasted 3 hours 54 minutes, the President responded to a total of 81 questions and appeals.

* * *

Direct line programme host Kirill Kleymenov: Good afternoon,

You are watching Direct Line with President Vladimir Putin. Here in the studio today are Maria Sittel and Kirill Kleymenov.

Direct line programme host Maria Sittel:

Good afternoon,

I could say that we are having today yet another conversation with Vladimir Putin, however the situation is different since the country we are talking to now has changed. After waiting for 23 years, since the breakup of the Soviet Union, Crimea and Sevastopol have joined Russia. For this reason, every question today will be directly or indirectly related to Crimea.

We will discuss a number of issues today, including healthcare, army, taxes, agriculture and, naturally, Ukraine. There is no doubt that we'll discuss developments in Ukraine's southeast and the genocide that was unleashed in this region. Ukraine is sliding into civil war.

Kirill Kleymenov: Our colleagues Olga Ushakova, Valeriya Korableva, Tatyana Stolyarova and Dmitry Shchugorev will assist us during today's broadcast, while Tatyana Remizova and Anna Pavlova are working in the call and SMS processing centre.

I would like to remind you that you can watch us live on Channel One, as well as on Rossiya-1 and Rossiya-24 TV channels, and on Russia's Public Television channel, where interpretation into sign language will be available for people with impaired hearing. Radio listeners can join our conversation on Mayak, Vesti FM and Radio Rossii stations.

We are live with President Vladimir Putin.

Tatyana Remezova: Good afternoon, colleagues! Hello, Mr President.

Our call centre has been working for a week, and we will continue to take calls during the Direct Line broadcast. You can call us at the toll-free number 8 (800) 200–4040 or send text messages to 04040. There is a separate Moscow number, which is also toll free, for residents of the Republic of Crimea and Sevastopol: +7 (495) 539–2442. People from other countries can call us at the number you can see on the screen.

Over the past eight days, our call centre has received over two million questions, or 17,500 per minute – we are definitely going to set a new record – and many callers just say, "Thank you for Crimea."

Anna Pavlova: Good afternoon. I'd like to remind you that this year you can send video questions to the President from your PC or any mobile device. Our operators continue to accept your messages on the websites www.moskva-putinu.ru and москва-путину.рф. There is still time to record and send your questions.

I'd like to tell you that this is the first time that this programme will be broadcast with a sign-interpreted version on our website. These new options have been introduced to increase the audience.

Maria, Kirill, back to you.

Kirill Kleymenov: So, about Ukraine. Events are unfolding there with an incredible and sometimes alarming speed. Indeed, two months ago, during the Olympic Winter Games on February 17, no one thought that Crimea would reunite with Russia and that people in eastern Ukraine would stop armoured convoys sent from Kiev with their bare hands.

Mr Putin, the first question is perfectly obvious: What do you think about the events underway in the Lugansk and Donetsk regions?

President of Russia Vladimir Putin: Before I answer your question, I'd like to go back a little to review recent events in Ukraine. As you know, President Yanukovych refused to sign the Association Agreement with the EU. No, he did not refuse to sign it, but said

that he could not sign it on the EU conditions, because it would dramatically worsen the socioeconomic situation in Ukraine and affect Ukrainians. Yanukovych said that he needed more time to analyse the document and to discuss it together with Europeans. This provoked public unrest that eventually culminated in an unconstitutional coup, an armed seizure of power. Some liked it, and some did not. People in eastern and southeastern regions of Ukraine were worried about their future and the future of their children, because they saw a rapid growth of nationalist sentiments, heard threats and saw that [the new authorities] wanted to invalidate some of the ethnic minorities' rights, including the rights of the Russian minority. On the other hand, this description is relative, because Russians are native persons in Ukraine. But an attempt was made to invalidate all decisions regarding the use of the native language. This alarmed people, of course. What happened next?

Instead of starting a dialogue with these people, Kiev appointed new governors – oligarchs and billionaires – to these regions. People are suspicious of oligarchs as it is. They believe that they earned their riches by exploiting people and embezzling public property, and these oligarchs have been appointed to head their regions. This only added to the public discontent. People chose their own leaders, but what did the new government do to them? They were thrown into prison. Meanwhile, nationalist groups did not surrender their weapons, but threatened to use force in the eastern regions. In response, people in the east started arming themselves. Refusing to see that something was badly wrong in the Ukrainian state and to start a dialogue, the government threatened to use military force and even sent tanks and aircraft against civilians. It was one more serious crime committed by the current Kiev rulers.

I hope that they will see that they are moving into a deep hole, and that they are pulling their country along. In this sense, the talks that will start today in Geneva are very important, because I believe that we should get together to think about ways out of this crisis and to offer people a real, not sham, dialogue. The current Kiev authorities have travelled to the eastern regions, but who do they talk to there? They talk to their appointees. There's no need to go to Donbass for this, because they can summon them to Kiev for a meeting. They should talk with people and with their real representatives, with those whom people trust. They should release the arrested [opponents], help people to express their opinion in an organised manner, suggest new leaders and start a dialogue.

People in the eastern regions are talking about federalisation, and Kiev has at long last started talking about de-centralisation. But what do they mean? To be able to understand what they mean, they should sit down at the negotiating table and search for an acceptable solution. Order in the country can only be restored through dialogue and democratic procedures, rather than with the use of armed force, tanks and aircraft.

Kirill Kleymenov: So far the dialogue has started between diplomats: top diplomats from the United States, Russia, the European Union and Ukraine are meeting in Geneva at this very moment. Russia is represented by Foreign Minister Sergei Lavrov. Could you outline Russia's stance at the talks in just a few words?

Vladimir Putin: I just did exactly that. We feel strongly that this should not be a sham dialogue between representatives of the authorities, but a dialogue with the people to find the compromise I was talking about.

Kirill Kleymenov: How would you respond to the statements coming from both Kiev and the West about Russia being behind the protests in eastern Ukraine, allegedly staged and financed by "Moscow's hand"? They even claim that certain Russian armed units are there.

Vladimir Putin: Nonsense. There are no Russian units in eastern Ukraine – no special services, no tactical advisors. All this is being done by the local residents, and the proof of that is the fact that those people have literally removed their masks. So I told my Western partners, "They have nowhere to go, and they won't leave. This is their land and you need to negotiate with them."

Maria Sittel: I'm sure we'll get back to the events in the southeast later in the course of this conversation. Now let's talk about Crimea and how you took the decision. You never gave as much as a hint about Crimea over the course of your political career. You must have thought about it, but you never even mentioned Crimea in private talks.

So how was this decision made? Can you tell us again? Was this opposed by any members of your team? What was your assessment of the possible risks, from international sanctions to the civil war we are watching unfold now?

Vladimir Putin: The most obvious risk was that the Russian speaking population was threatened and that the threats were absolutely specific and tangible. This is what made Crimean residents, the people who live there, think about their future and ask Russia for help. This is what guided our decision.

I said in my recent speech in the Kremlin that Russia had never intended to annex any territories, or planned any military operations there, never. Quite to the contrary, we were going to build our relations with Ukraine based on current geopolitical realities. But we also thought, and have always hoped, that all native Russians, the Russian-speaking people living in Ukraine, would live in a comfortable political environment, that they would not be threatened or oppressed.

But when this situation changed, and Russians in Crimea were facing exactly that, when they began raising the issue of self-determination – that's when we sat down to decide what to do. It was at this exact moment that we decided to support Crimeans, and not 5, 10 or 20 years ago.

I discussed this problem with the Security Council members, and no one objected. In fact all of them supported my position. And I'm more than happy now that all the steps in the action plan were taken in a very precise manner, quickly, professionally and resolutely.

Kirill Kleymenov: I would say the way the plan was executed was unique and unparalleled in history.

Mr Putin, we who live in Russia are very well aware of how things are done here. But indeed, this was done very quickly – a complicated referendum was organised in the shortest time possible, security issues addressed, and Ukrainian units disarmed – that really gave the impression of a long-planned and prepared action.

Vladimir Putin: No. This had not been pre-planned or prepared. It was done on the spot, and we had to play it by ear based on the situation and the demands at hand. But it was all performed promptly and professionally, I have to give you that.

Annex 31

BBC News, *The Prosecutor General's Office Opened Proceedings Against Russian Investigators* (30 September 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

[BBC NEWS UKRAINE]

The Prosecutor General's Office opened proceedings against Russian investigators

30 September 2014

Ukrainian military near Debaltseve

The Prosecutor General's Office of Ukraine has launched criminal proceedings against employees of the Investigative Committee of Russia, whom it suspects of supporting militants in the Donbas and interfering in the activities of Ukrainian law enforcement agencies.

The day before, the Russian Investigative Committee opened a criminal case on the “genocide of the Russian-speaking population” in Luhansk and Donetsk regions.

Advisor to the Ministry of Internal Affairs Anton Gerashchenko told BBC Ukraine that the Russians are trying to “justify the separation” of Donbas from Ukraine.

Reaction of Kyiv

The Prosecutor General's Office has initiated criminal proceedings against Russian investigators for "facilitating a terrorist organization" and "interfering in the activities of a law enforcement officer and a statesman."

According to the Prosecutor General's Office, in May-June, a special department was created as part of the Investigative Committee of the Russian Federation to investigate crimes related to the use of prohibited means and methods of warfare. In particular, the Russian agency has launched criminal proceedings against servicemen of the Armed Forces of Ukraine, the National Guard and activists of the “Right Sector”.

The Prosecutor General's Office of Ukraine calls these proceedings groundless and believes that their objective is to support the activities of the so-called “DPR” and “LPR” and prevent representatives of [Ukrainian] state bodies and [Ukrainian] public figures from performance of their duties.

"The commission of these criminal offenses encroaches on the interests of the state, its sovereignty and territorial integrity protected by international treaties and laws of Ukraine," the Prosecutor General's Office said in a statement.

Moscow's accusations

The day before, the Russian Investigative Committee opened a criminal case on the “genocide of the Russian-speaking population” in Luhansk and Donetsk regions. The investigation established that from 12 April 2014 and until now ... unidentified persons from the top political and military leadership of Ukraine, the Armed Forces of Ukraine, the National Guard of Ukraine and the "Right Sector" gave orders aimed at the complete eradication of Russian-speaking citizens living in the Donetsk and Luhansk republics", - the Russian agency said in a statement.

According to Russian investigators, the "killings of Russian-speaking citizens" were carried out using the "Grad" and "Uragan" systems, unguided missiles and other heavy weapons.

According to Russia's Investigative Committee, at least 2,500 people died as a result of these actions.

“PR noise for the separation of Donbas”

In a comment to the BBC Ukraine, Adviser to the Minister of Internal Affairs Anton Gerashchenko said that the opening of this case was "outright nonsense." "This kind of case is a PR noise made specifically to justify the elections in Donbas to completely separate Donbas from Ukraine," Mr. Gerashchenko said.

According to him, all this coincides in time with the elections announced last week “to the so-called governing body of the Donetsk and Luhansk People's Republics.”

“For the same purpose, mass burials of civilians were announced, who were allegedly shot by representatives of the Ukrainian army. This is just an addition to the PR noise, a justification for the fact that the so-called "Novorossiya" is separating from Ukraine," said the adviser to the Minister.

Earlier, Kyiv repeatedly accused Moscow of military support for the so-called "DPR" and "LPR" separatists.

Annex 32

Lyubov Chyzhova, *It is Putin Who Should be Tried for Genocide—Adviser to the Head of the Ministry of Internal Affairs of Ukraine*, RFE/RL (1 October 2014)

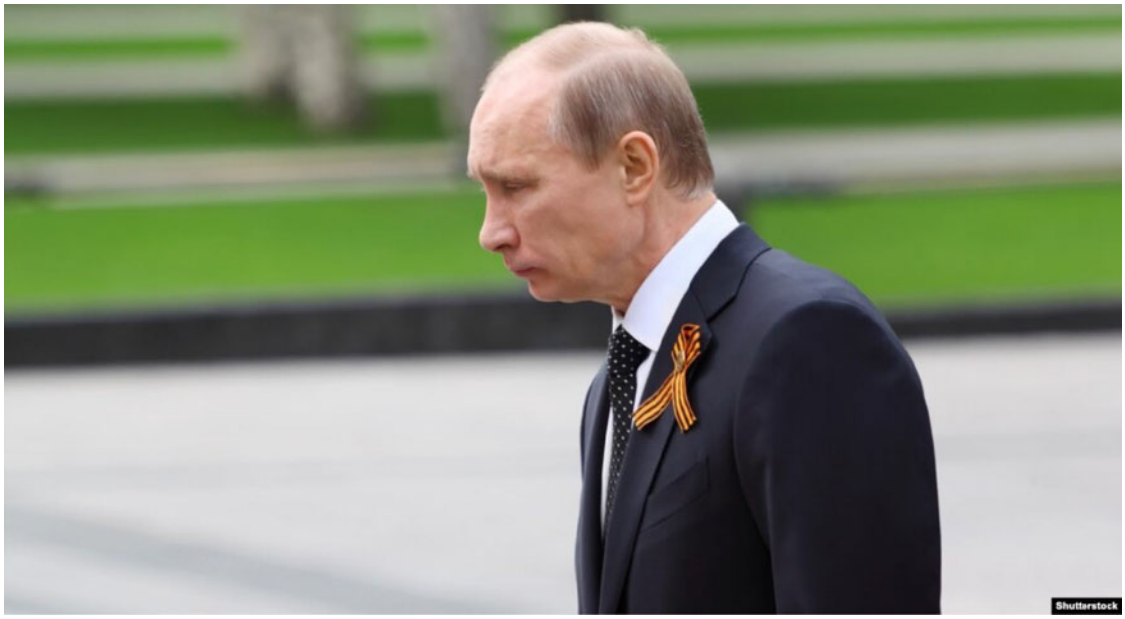
This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

Radio Svoboda

POLITICS

It is Putin who should be tried for genocide — Advisor to the Head of the Ministry of Internal Affairs of Ukraine

01 October 2014, 18:39 Lyubov Chyzhova



Volodymyr Putin. Archive photo

The Prosecutor General's Office of Ukraine has initiated criminal proceedings against a number of representatives of the Investigative Committee of Russia. Shortly before, the Investigative Committee opened a case on the "genocide" of Russian-speaking residents of Donbas against high-ranking Ukrainian officials and the military. Specific surnames are not listed. Russian investigators "suspect" that the Ukrainian military and politicians have issued orders violating the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and aimed at eradication of the Russian-speaking population, according to the website of the Investigative Committee of Russia. Lawyers believe that the case of genocide opened by the Investigative Committee of Russia was initiated for propaganda purposes and has no serious legal prospects.

According to the Investigative Committee of Russia (the IC of Russia), *"an unidentified group of Ukrainian politicians and law enforcement officials*" took part in the genocide of Russian-speaking residents of Donbas. They, according to investigators, should be prosecuted under Article 357 of the Criminal Code of the Russian Federation titled "Genocide". The staff of the IC of Russia found that *"the killing of Russian-speaking citizens were carried out with the use of multiple rocket launchers "Grad" and "Uragan", aviation unguided missiles that have a cassette head unit, tactical missiles "Tochka-U", as well as other types of heavy offensive weapons of indiscriminate action. As a result of these actions, at least two and a half thousand people died."*

According to the official representative of the IC of Russia **Vladimir Markin**, facts have already been collected that confirm "violations by Ukrainian politicians and law enforcement officers of not only Russian but also international law." Those responsible for these crimes may face punishment of up to 20 years in prison or the death penalty, the Investigative Committee warned.

. . .

Adviser to the Minister of Internal Affairs of Ukraine, politician and lawyer **Zoryan Shkiryak** believes that a criminal case on the genocide of the Ukrainian people should be initiated against Russian President Vladimir Putin.

"I have to tell you that commenting on another nonsense of the Investigative Committee of the Russian Federation is a thankless task. Especially when they use terms like genocide. Speaking frankly about the genocide, today it is really necessary to raise the issue of bringing the President of the Russian Federation Putin to the international tribunal for genocide, including of the genocide of Ukrainian people, the consequences of which affect us today. First of all, we are talking about the war unleashed by the Russian Federation on the territory of Ukraine, in Luhansk and Donetsk regions. We could talk about Chechnya, we could also mention Georgia," Shkiryak said.

"The masters of genocide are sitting in the Kremlin today. They are those who act by the method of destroying those who disagree with Putin's imperial policy. Of course, this will not have any serious consequences because there are no legal or any other grounds to even raise this issue. This is another kind of information fake of the current Russian propaganda and the information terror unleashed by the Russian Federation against Ukraine. Therefore, the matter can only be in an attempt to escalate the conflict again in the conditions of the so-called "truce", which is violated daily and hourly by terrorist gangs created by Putin on the territory of Ukraine. But even the fragile so-called peace, which today makes it possible to exchange prisoners of war and hostages who are in torture chambers in the territory of Donbas, even such a peace may be broken. This is a very serious precedent, and it is not just about the statements of the Investigative Committee. The Prosecutor General's Office of Ukraine, for its part, has initiated a criminal case against the Investigative Committee of Russia, and this is the response of the Ukrainian side to the blatant facts, if you will, of the legal schizophrenia demonstrated by the Russian imperial government today", says the Adviser of the Minister of Internal Affairs of Ukraine.

Annex 33

BBC News, *Investigative Committee of Russia Accused the Military Leadership of Ukraine of "Genocide"* (2 October 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

BBC NEWS | Ukraine

Investigative Committee of Russia accused the military leadership of Ukraine of "genocide"

02 October 2014

Minister Geletey is also accused of organizing killings and banned methods of warfare

The Investigative Committee of Russia opened a criminal case against Defense Minister Valeriy Geletey and Chief of the General Staff of the Armed Forces Viktor Muzhenko, accusing them of "genocide" and other crimes.

Brigade commanders and other representatives of the Ukrainian army were also under investigation.

Earlier, the Investigative Committee of Russia opened a criminal case about the "genocide of the Russian-speaking population" in Luhansk and Donetsk regions and accused a soldier of the Ukrainian battalion "Dnipro" of killing civilians in the east of Ukraine.

In response, the Prosecutor General's Office of Ukraine launched criminal proceedings against employees of the Investigative Committee of Russia for supporting militants in the Donbas and interfering with the activities of Ukrainian law enforcement officers.

Responsibility is inevitable

According to the official representative of the Investigative Committee of Russia Vladimir Markin, in addition to Valeriy Geletey and Viktor Muzhenko, the commander of the 25th Brigade Oleh Mykas, "unidentified persons from among the commanders of the 93rd Brigade and a number of senior officials from the military leadership of Ukraine" were under investigation.

They are accused of organizing killings, using prohibited means and methods of warfare and "genocide".

“Geletey, Muzhenko, Mykas and the commanders of the 93rd Brigade, who led the fighting near the Donetsk airport from 3 July to 5 September, intentionally violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and other international legal acts which condemn genocide, gave orders to completely eradicate the national group of Russian-speaking people living in the self-proclaimed Luhansk and Donetsk People's Republics," Markin said in a statement published on the website of the Investigative Committee of Russia.

He argues that as a result of the execution of orders of the leadership of the Ukrainian army, more than 3,000 civilians were killed, more than 5,000 civilians were injured, and more than 500 residential buildings, communal facilities, hospitals, children's and general educational institutions were completely or partially destroyed and burned.

"Until now, despite the declared truce, civilians are dying in Donbas every day. And it is quite obvious that this is due either to the direct orders of the Minister of Defense or with his tacit consent. And he will bear responsibility for this, and no trick of signing the oath with a pen with a closed cap will not save him" said Vladimir Markin, noting that "such crimes have no statute of limitations."

Response of the Prosecutor General's Office of Ukraine

Earlier this week, the Investigative Committee of the Russian Federation stated that it had opened a criminal case on the "genocide of the Russian-speaking population" in Luhansk and Donetsk regions, allegedly committed by "unidentified persons from the top political and military leadership of Ukraine."

Russia's Investigative Committee also said that Serhii Lytvynov, a private in the Dnipro Ukrainian battalion, allegedly "came to Russia under the guise of a civilian to go to a hospital in the Rostov region." He was accused of killing civilians in eastern Ukraine.

Private Lytvynov allegedly testified about how he "personally committed the killings of civilians" in the villages of Milove, Shyroke, Makarov and Komyshne.

The Ministry of Foreign Affairs of Ukraine reported that the information about the fighter is being checked. The Dnipropetrovsk Regional State Administration stated that the Dnipro Battalion had never been stationed in the cities as was claimed by the Investigative Committee of the Russian Federation.

After those steps of the Investigative Committee of the Russian Federation, the Prosecutor General's Office of Ukraine initiated criminal proceedings against employees of the Investigative Committee, whom it suspects of supporting militants in Donbas and interfering in the activities of Ukrainian law enforcement agencies.

According to the Prosecutor General's Office of Ukraine, the Russian agency has initiated criminal proceedings against servicemen of the Armed Forces of Ukraine, the National Guard and activists of the “Right Sector.”

The Prosecutor General's Office of Ukraine calls those proceedings groundless and believes that they are aimed at supporting the activities of the so-called "DPR" and "LPR."

Advisor to the Ministry of Internal Affairs Anton Gerashchenko told BBC Ukraine that the Russians are trying to “justify the separation” of Donbas from Ukraine.

Russia's Investigative Committee called the actions of the Prosecutor General's Office of Ukraine "an inadequate protective response."

Earlier, Kyiv repeatedly accused Moscow of military support for the so-called "DPR" and "LPR" separatists. Moscow denies the allegations.

Annex 34

Ria Novosti, *Investigative Committee Accuses the Ukrainian Military of 374 Crimes Against Residents of Donbas* (28 June 2019)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

RIA Novosti

17:38 06/28/2019

Investigative Committee accuses Ukrainian military of 374 crimes against residents of Donbas

[*Photo*]

MOSCOW, June 28 - RIA Novosti. The Investigative Committee of Russia has charged Ukrainian servicemen with 374 episodes of crimes against the civilian population of southeastern Ukraine. These are the use of prohibited means and methods of warfare, genocide, murder, and kidnapping, said the chairman of the Investigative Committee Alexander Bastrykin.

"Three hundred and seventy-four episodes of criminal activity we impute today to the servicemen of the Armed Forces of Ukraine. These are the use of prohibited means and methods of warfare, genocide, murder, and kidnapping," Bastrykin said.

According to the official representative of the department, Svetlana Petrenko, Bastrykin made such a statement at an international scientific and practical conference at St. Petersburg State University.

Petrenko noted that in his speech, the head of the state entity spoke about the application of the norms of international law by the IC to the actions of the armed forces of Ukraine in the south-east of the country.

At the same time, Bastrykin explained that "while recording the episodes of these crimes, as well as crimes against humanity in South Osetia, the investigators of the Investigative Committee are guided by the norms of international law."

In April 2014, the Ukrainian authorities launched a military operation against the self-proclaimed LPR and DPR, which declared independence after the coup in Ukraine in February 2014. According to the latest UN data, about thirteen thousand people became victims of the conflict.

The issue of resolving the situation in Donbas is being discussed, including during meetings of the contact group in Minsk, which since September 2014 has already adopted three documents regulating steps to de-escalate the conflict. However, even after the armistice agreements between the parties to the conflict, skirmishes continue.

Annex 35

Ria Novosti, *Gryzlov Called Putin's Decree on Donbas a Response to Kyiv's Actions* (18 November 2021)

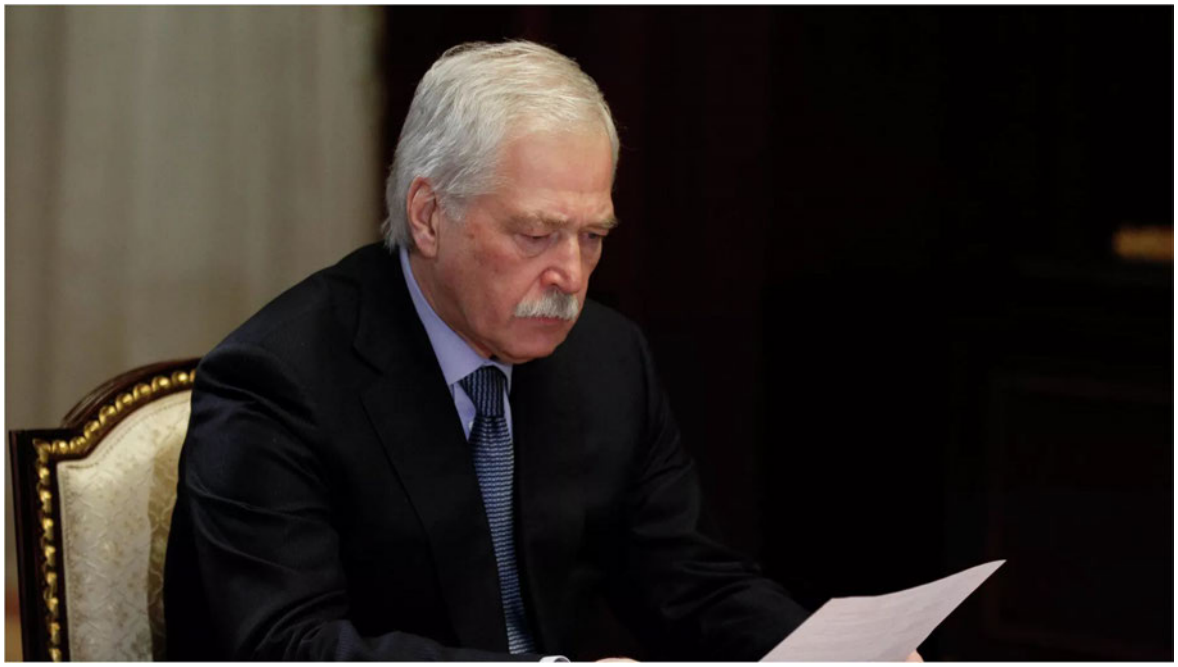
This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

RIA NEWS

15:21 18.11.2021

Gryzlov called Putin's Decree on Donbas a response to Kyiv's actions

Gryzlov: Putin's Decree on Donbas is a response to Kyiv's actions to escalate the conflict



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Read ria.ru at

MOSCOW, Nov 18 - RIA News. The Decree of the President of the Russian Federation Vladimir Putin on providing humanitarian support to the self-proclaimed DPR and LPR is a forced response of Moscow to the actions of Kyiv, the authorized representative of Russia in the contact group on the settlement of the situation on the east of Ukraine Boris Gryzlov told reporters.

"The Decree of the President of Russia is a forced response to Kyiv's actions, which are aimed at escalating the conflict and actually fall under the UN Convention On the Prevention of Genocide. It is necessary that the Ukrainian authorities begin to fulfill their obligations on the settlement and bear responsibility for their aggressive actions. The purposeful escalation of the conflict by Ukraine is a dead end, from which there is no way out," Gryzlov told the reporters.

He recalled that the Decree provides for the provision of equal terms for the access of goods from Donbas to participate in Russian public procurement, and also removes quotas for the movement of goods across the customs border.

"In fact, this is the path to the revival and recovery of economies of Donetsk and Luhansk, having significant resource potential, and opportunities in the fields of metallurgy, energy and mechanical engineering. This is the strengthening of economic cooperation with the regions of the Russian Federation in accordance with the (Minsk) package of measures," Gryzlov added.

Putin on Monday signed a Decree on providing humanitarian support to the self-proclaimed DPR and LPR, according to which certificates of origin of goods issued in the DPR and LPR are recognized in the Russian Federation, the admission of goods on a par with Russian ones to public procurement is allowed. The document also cancels export and import quotas for goods transported from Russia to the DPR/LPR and back. The Ministry of Foreign Affairs of Ukraine regarded this as gross interference in the affairs of the country and sent a note of protest to the Russian Federation. Commenting on the Decree, the DPR authorities noted that this is an important humanitarian step, which, in particular, will contribute to the creation of jobs.

Ukrainian Foreign Minister Dmytro Kuleba said that the Decree of the President of Russia contradicts the Minsk agreements. Kuleba noted that he expects France and Germany to condemn the actions of the Russian Federation. The official representative of the Ministry of Foreign Affairs of the Russian Federation Maria Zakharova said that Russia's assistance to Donbas is not a violation of the Minsk agreements.

Annex 36

Ria Novosti, *The Situation in Donbas Meets All the Signs of Genocide, Says Moskalkova* (23 February 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

RIA NEWS

Special military operation in Ukraine

20:01 23.02.2022 4147

The situation in Donbas meets all the signs of genocide, says Moskalkova

Commissioner for Human Rights Moskalkova said that the situation in Donbas meets all the signs of genocide

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Commissioner for Human Rights of the Russian Federation Tatyana Moskalkova at a meeting of the Federation Council of the Russian Federation

MOSCOW, Feb 23 - RIA News. The situation that has developed in Donbas meets all the signs of genocide that are enshrined in international documents and national legislation, said Tatyana Moskalkova, the Commissioner for Human Rights of the Russian Federation.

"We must admit that the situation that has developed there meets all the signs of genocide that are enshrined in international documents and national legislation. Since 2014 we have been observing a whole chain of events, including the prohibition of pension payments, the prohibition of benefit payments. And how can a person exist if he does not receive the minimum subsistence level that will provide him with a normal life situation. Even those people who moved from the territory of Luhansk and Donetsk, they were caught and punished absolutely intentionally and purposefully by the normative act and document of Ukraine of the highest level," Moskalkova said in an interview with Russia 24 TV channel.

According to her, the politicians did not want to accept the choice of the people and did not take measures to create appropriate conditions for the people.

“The people made their decision, it was possible to work with them as with a person who decided to leave the family: he is persuaded to return, he has created those conditions that are attractive to him in this territory. But if today there is a mass exodus of women and children, it means that each of them felt a threat to life and they leave their homes to save the lives of their children, to pray for their husbands," Moskalkova said.

She also noted that the male part of the population, who remained in their homeland to defend their position, has such a right in accordance with general international principles.

Annex 37

Interfax, *Lavrov: Moscow Considers the Attitude of the Ukrainian Authorities Towards the Residents of Donbas as Genocide* (25 February 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

MAIN EVENTS

25 February 2022 1:01 PM

Lavrov: Moscow considers the attitude of the Ukrainian authorities towards the residents of Donbas as genocide

SOURCE Events in Ukraine

© RIA Novosti. Evgeniy Odinokov

25 February. Interfax-Russia.ru - Russian Foreign Minister Sergey Lavrov intends to discuss practical tasks arising from the agreements signed with the republics with representatives of the DPR and LPR.

“Today we have our first meeting with you. And, obviously, we will pay the most attention to discussing the practical tasks that follow from the treaties between the Russian Federation and your countries on friendship, cooperation and mutual assistance,” he said on Friday, opening a meeting with LPR Foreign Minister Vladislav Deynego and First Deputy Foreign Minister of the DPR Sergey Peresada.

Lavrov also noted that the Russian side considers the attitude of the Ukrainian authorities towards the residents of Donbas as genocide. “Throughout this period, the population of your republics was subjected to humiliation, annual shelling by the Kyiv regime, which openly embarked on the path of Russophobia and genocide,” he said.

The Head of the Ministry of Foreign Affairs of the Luhansk People's Republic Vladislav Deynego, in turn, said that the special operation of the Russian Federation should give a powerful effect to normalize the situation in Ukraine.

"For eight years now, Donbas has been living under the shelling of Ukrainian nationalists, and I hope this decision brings much closer the date when this shelling will stop," Deynego said at a meeting with Russian Foreign Minister Sergei Lavrov on Friday.

Deynego noted that the demilitarization operation is “an effective tool, the result of which should lead Donbas to a peaceful life.”

Also, the representative of the Ministry of Foreign Affairs of the LPR handed to Lavrov a book titled “The Shot Childhood of Donbas”, which, according to him, vividly describes the situation in Donbas.

Annex 38

RBC, *Lavrov Announced Non-Recognition of the Democratic Government of Ukraine* (25 February 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Lavrov announced non-recognition of the democratic government of Ukraine

rbc.ru/politics/25/02/2022/6218abd19a79479b432acb07

Russia does not recognize as democratic a government that carries out "genocide" of the population and calls the inhabitants of one of the territories "not people, but inhumans," Lavrov said. According to him, Ukraine is now "under complete external control."

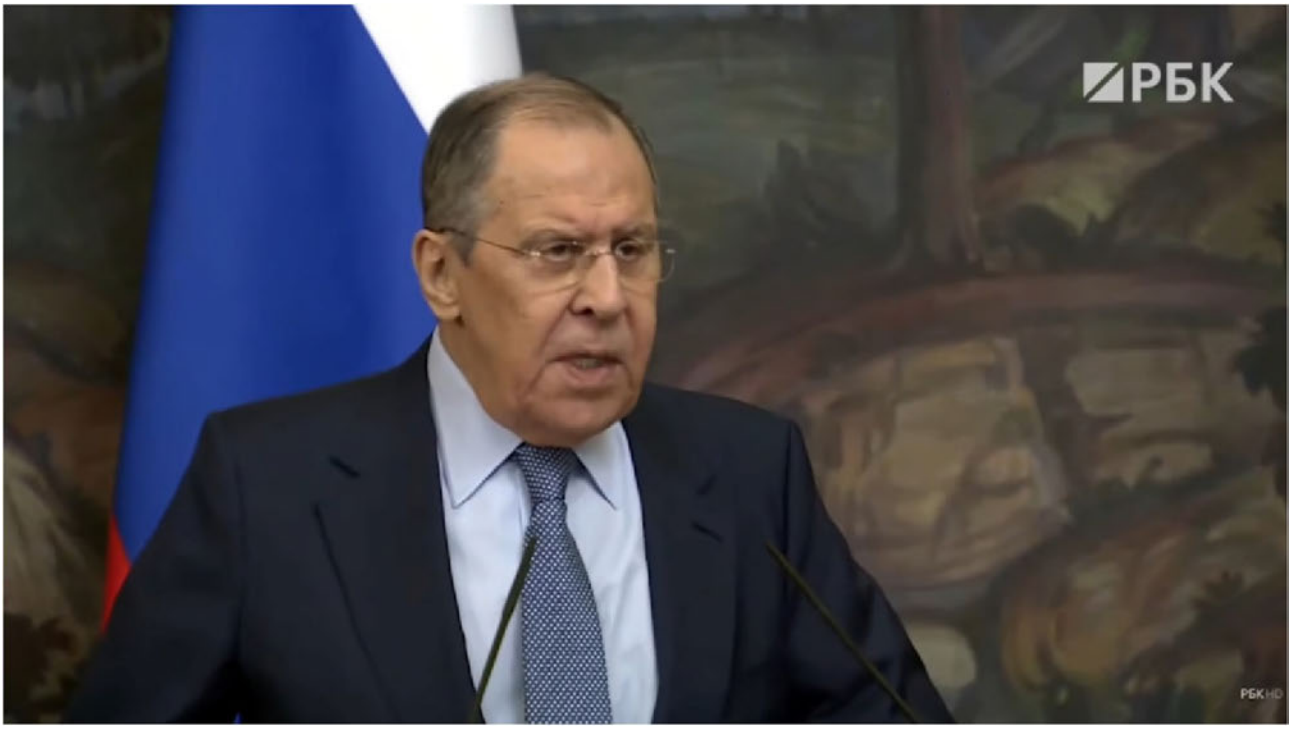
Sergey Lavrov (Photo: Vladislav Shatilo / RBK)

Russia does not see an opportunity to recognize the current government of Ukraine as democratic, said Foreign Minister Sergey Lavrov.

"We see no way to recognize as democratic a government that oppresses and uses methods of genocide against its own people," he said.

The Minister asked whether it would be forbidden in a democratic society to use the language "spoken by the majority of the population" in everyday life, and whether it would be forbidden "to educate in Russian, in any language spoken by society, starting, let us say, from the fifth grade".

“And is it customary in democratic societies to say that people who are now in one part of the territory, in this case of Ukraine, are not people, but inhumans, or specimens, as President [Vladimir] Zelenskyi called them?” Lavrov said.



According to him, the former president of Ukraine Petro Poroshenko also promised to treat his people well after his election, and said that "there will be everything: schools and prosperity." However, that president also said that "these people – he pointed a finger at Donbas – will sit and rot in basements," Lavrov said.

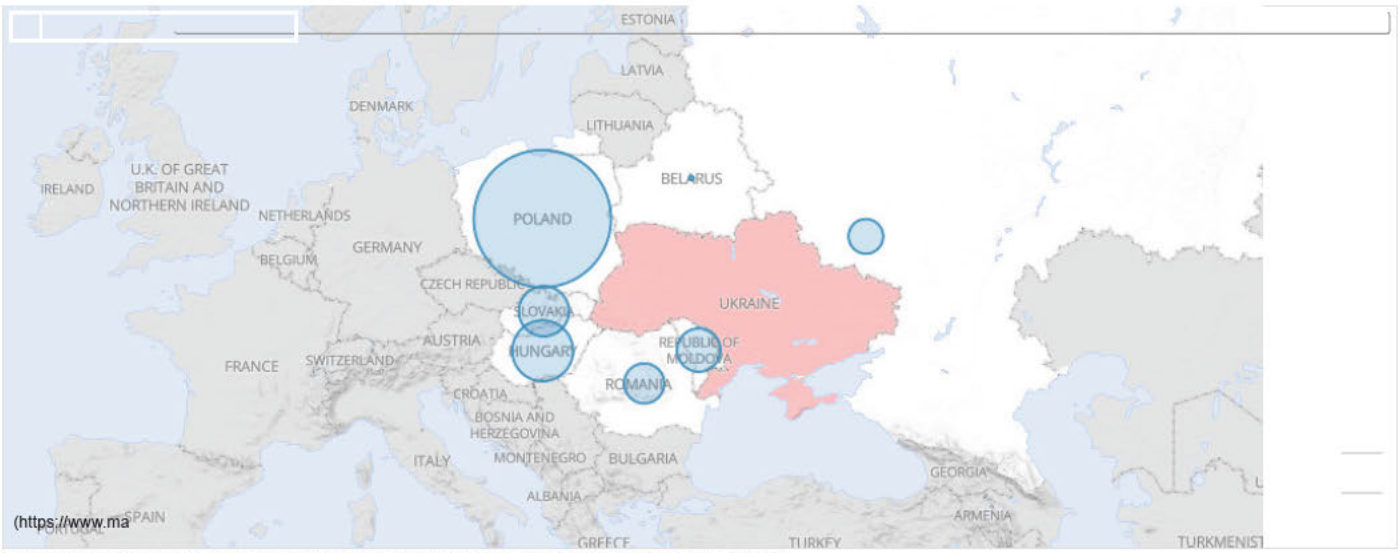
Something similar, according to the Minister, was said by the current President Zelenskyi, who “demanded those related to the Russian culture get out of Ukraine.”

Annex 39

U.N. Human Rights Council, Ukraine Refugee Situation: Operational Data Portal (as of 5 March 2022)

JSON https://data2.unhcr.org/population/get/sublocation?geo_id=0&forcesublocation=1&widget_id=283573&sv_id=54&color=%233c8dbc&color2=%23303030&population_group=5460)

OPERATIONAL DATA PORTAL
UKRAINE REFUGEE SITUATION
(/)



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

The military offensive in Ukraine has caused destruction of civilian infrastructure and civilian casualties and has forced people to flee their homes seeking safety, protection and assistance. In the first week, more than a million refugees from Ukraine crossed borders into neighbouring countries, and many more are on the move both inside and outside the country. They are in need of protection and support. As the situation continues to unfold, an estimated 4 million people may flee Ukraine. In light of the emergency and paramount humanitarian needs of refugees from Ukraine, an inter-agency regional refugee response is being carried out, in support of refugee-hosting countries' efforts. The regional refugee response plan brings together UN, NGO and other relevant partners and primarily focuses on supporting the host country governments to ensure safe access to territory for refugees and third-country nationals fleeing from Ukraine, in line with international standards. It also focuses on the provision of critical protection services and humanitarian assistance, while displacement dynamics and needs continue to grow exponentially.

By country**

JSON (https://data2.unhcr.org/population/get/sublocation?widget_id=283575&sv_id=54&population_group=5459,5460&forcesublocation=0&fromDate=1900-01-01)

Location name	Source	Data date		Population
Poland		5 Mar 2022	57.7%	885,303
Hungary		5 Mar 2022	11.0%	169,053
Other European countries		5 Mar 2022	10 2%	157,056
Slovakia		5 Mar 2022	7.4%	113,967
Republic of Moldova		5 Mar 2022	5.5%	84,067
Romania		5 Mar 2022	4.7%	71,640
Russian Federation		3 Mar 2022	3.5%	53,300
Belarus		4 Mar 2022	0 0%	406

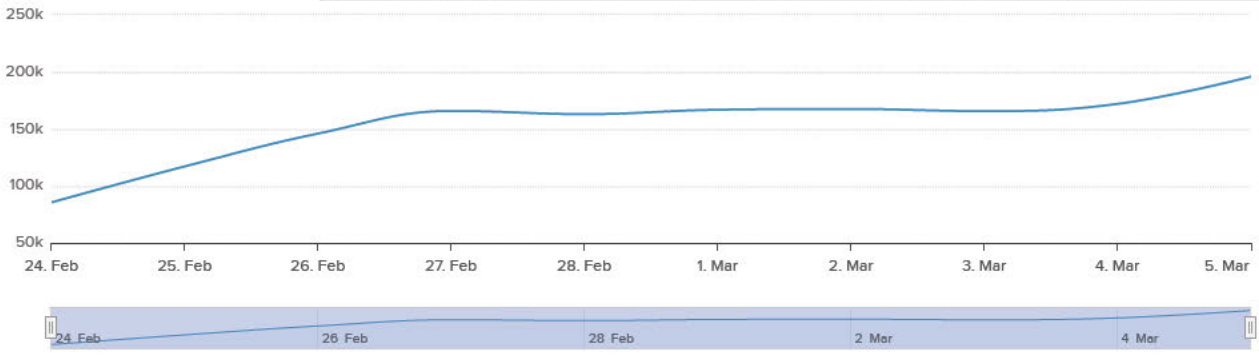
**Where possible, statistics reflect further movements of refugees, to avoid double counting, such as in the Republic of Moldova and Romania.

As data continues to be triangulated and refined, the total number of refugees from Ukraine in the Republic of Moldova has been adjusted according to the number of exits recorded. Since 24 February, and as of 6 March 2022 00:00 CET, the Republic of Moldova had welcomed in its territory 235,000 refugees coming from Ukraine, including some 207,000 Ukrainians. Over 123,000 Ukrainian refugees have since then proceeded to Romania.

By date

JSON (https://data2.unhcr.org/population/get/timeseries?widget_id=283577&sv_id=54&population_group=5457&frequency=day&fromDate=1900-01-01)

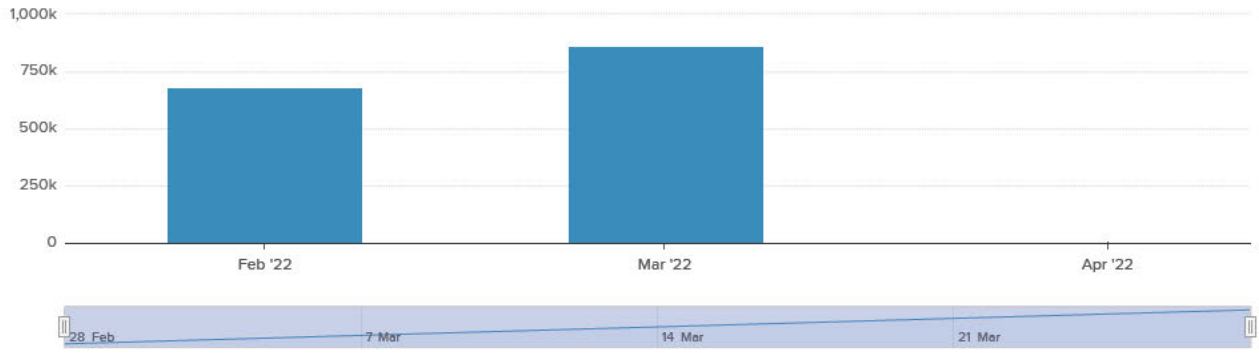
CSV (https://data2.unhcr.org/population/get/timeseries?export=csv&widget_id=283577&sv_id=54&population_group=5457&frequency=day&fromDate=1900-01-01)



Source - UNHCR, Government

By month

JSON (https://data2.unhcr.org/population/get/timeseries?widget_id=283578&sv_id=54&population_group=5457&frequency=month&fromDate=1900-01-01)



Source - UNHCR, Government

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News

UNHCR welcomes EU decision to offer Temporary Protection to Refugees fleeing Ukraine

UNHCR, 04 Mar 2022

(/en/news/22633) Chisinau, Moldova – Yesterday's unprecedented decision by the European Union (EU) to offer Temporary Protection to Refugees fleeing Ukraine will provide immediate protection in the EU for Ukrainians and third country nationals with refugee or permanent residence status in Ukraine. Read more (/en/news/22633)

News Comment: 1 million refugees have fled Ukraine in a week

UNHCR, 03 Mar 2022

(/en/news/22632) In just seven days, one million people have fled Ukraine, uprooted by this senseless war. I have worked in refugee emergencies for almost 40 years, and rarely have I seen an exodus as rapid as this one. Read more (/en/news/22632)

UN seeks US$1.7 billion as humanitarian needs soar in Ukraine and neighbouring countries

UNHCR, 01 Mar 2022

(/en/news/22628) The United Nations and humanitarian partners today launched coordinated emergency appeals for a combined US$1.7 billion to urgently deliver humanitarian support to people in Ukraine and refugees in neighbouring countries. Read more (/en/news/22628)

UNHCR mobilizing to aid forcibly displaced in Ukraine and neighbouring countries

UNHCR, 01 Mar 2022

(/en/news/22630) Around 660,000 refugees have now fled Ukraine to neighboring countries in the past six days, according to the latest government data compiled by UNHCR, the UN Refugee Agency. At this rate, the situation looks set to become Europe's largest refugee crisis this century, and UNHCR is mobilizing resourc... Read more (/en/news/22630)

People across Poland show solidarity with refugees from Ukraine

UNHCR, 01 Mar 2022

(/en/news/22631) From overflowing donation centres near the border to offers of transport and accommodation around the country, Poles offer a warm welcome to people forced to flee. Read more (/en/news/22631)

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Refugee arrivals from Ukraine (since 24 February 2022)*

JSON (https://data2.unhcr.org/population/?widget_id=283581&sv_id=54&population_group=5459,5460&year=latest)

1,534,792

Last updated 05 Mar 2022

Data is updated daily by 12:00 CET.

*Information is compiled from a variety of sources. While every effort has been made to ensure that all statistical information is verified, figures on some arrivals represent an estimate. Triangulation of information and sources is performed on a continuous basis. Therefore, amendments in figures may occur, including retroactively.

An additional 96,000 people moved to the Russian Federation from the Donetsk and Luhansk regions between 18 and 23 February.

Ukrainian Refugees and Asylum seekers

World	in UNHCR Europe Region
53,474 (as of 30 June 2021, UNHCR)	**36,492**

Ukrainian diaspora:

World	in UNHCR Europe Region
6.1 Million (as of 30 June 2020, UNDESA)	**5.0 Million**

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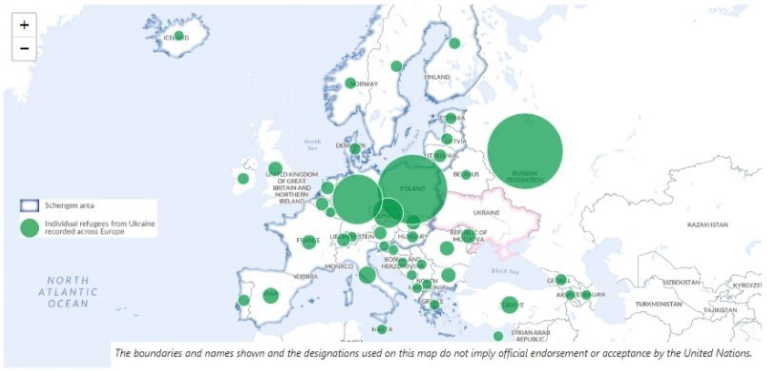
Annex 40

U.N. High Commissioner for Refugees, Ukraine Refugee Situation: Operational Data Portal (as of 21 June 2022)



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

The escalation of conflict in Ukraine has caused civilian casualties and destruction of civilian infrastructure, forcing people to flee their homes seeking safety, protection and assistance. Millions of refugees from Ukraine have crossed borders into neighbouring countries, and many more have been forced to move inside the country. They are in need of protection and support. In light of the emergency and the scale of humanitarian needs, an inter-agency regional refugee response is being carried out, in support of the efforts of refugee-hosting countries. The Regional Refugee Response Plan brings together UN, NGO and other relevant partners and focuses on supporting host country governments to ensure safe access to territory for refugees and third-country nationals fleeing from Ukraine, in line with international standards. It also prioritizes the provision of critical protection services and humanitarian assistance.

Countries neighbouring Ukraine

Country	Data Date	Individual refugees from Ukraine recorded across Europe	Refugees from Ukraine registered for Temporary Protection or similar national protection schemes	Border crossings from Ukraine*	Border crossings to Ukraine**
Russian Federation***	21 June, 2022	1,305,018	Not applicable	1,305,018	Data not available
Poland	21 June, 2022	1,180,677	1,180,677	4,146,144	2,073,052
Republic of Moldova	21 June, 2022	85,797	Not applicable	507,552	138,488
Romania	21 June, 2022	82,733	40,202	691,413	370,707
Slovakia	21 June, 2022	78,972	78,782	525,620	254,316
Hungary	21 June, 2022	25,042	25,042	814,607	Data not available
Belarus	20 June, 2022	9,006	Not applicable	16,660	Data not available
Total		**2,767,245**	**1,324,703**	**8,007,014**	**2,836,563**

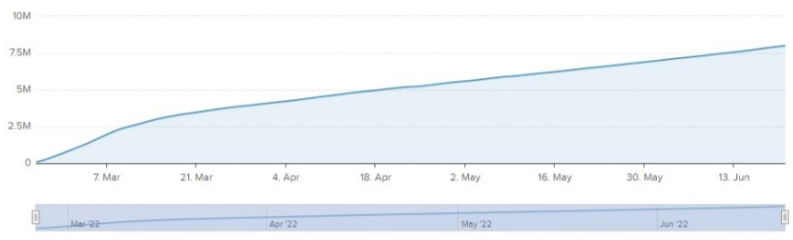
****The figure for individual refugees recorded in the country is an estimate as potential further movements or returns cannot be factored for the time being.*

Other European countries

Country	Data Date	Individual refugees from Ukraine recorded across Europe	Refugees from Ukraine registered for Temporary Protection or similar national protection schemes
Germany	16 June, 2022	780,000	662,274
Czech Republic	21 June, 2022	379,669	379,524
Türkiye	19 May, 2022	145,000	Not applicable
Italy	21 June, 2022	137,385	127,362
Spain	20 June, 2022	124,052	123,973
France	13 June, 2022	87,972	87,972
United Kingdom	20 June, 2022	82,100	82,100
Bulgaria	21 June, 2022	82,071	116,581
Austria	20 June, 2022	72,715	72,715
Netherlands	20 June, 2022	65,550	65,550
Lithuania	21 June, 2022	57,175	47,504
Switzerland	21 June, 2022	54,796	54,710
Belgium	21 June, 2022	48,118	47,493
Portugal	21 June, 2022	44,033	43,938
Estonia	21 June, 2022	43,048	28,046
Sweden	20 June, 2022	40,340	38,572
Ireland	20 June, 2022	36,759	38,742
Latvia	21 June, 2022	32,810	32,921
Denmark	19 June, 2022	30,608	28,612
Finland	20 June, 2022	26,629	28,735
Georgia	17 June, 2022	21,145	Not applicable
Norway	21 June, 2022	18,994	18,994
Greece	5 June, 2022	14,887	14,887
Croatia	20 June, 2022	14,642	14,641
Cyprus	19 June, 2022	12,478	13,451
Montenegro	21 June, 2022	8,893	4,355

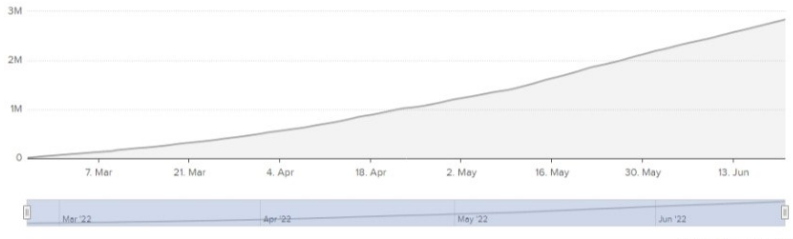
Microsoft Power BI

Border crossings from Ukraine (since 24 February 2022)*



Source - UNHCR, Government

Border crossings to Ukraine (since 28 February 2022)**



Source - UNHCR, Government

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Source - UNHCR, Government
Last updated 21 Jun 2022

Refugees from Ukraine registered for Temporary Protection or similar national protection schemes in Europe JSON
3,514,970
Source - UNHCR, Government
Last updated 21 Jun 2022

Border crossings from Ukraine (since 24 February 2022)* JSON
8,007,014
Source - UNHCR, Government
Last updated 21 Jun 2022

Border crossings to Ukraine (since 28 February 2022)** JSON
2,836,563
Source - UNHCR, Government
Last updated 21 Jun 2022

Data is updated weekly on Friday by 12:00 CET.

Statistics are compiled mainly from data provided by authorities. While every effort has been made to ensure that all statistical information is verified, figures represent an estimate. Triangulation of information and sources is performed on a continuous basis. Therefore, amendments to figures may occur, including retroactively.

*This figure reflects cross-border movements (and not individuals).
An additional 105,000 people moved to the Russian Federation from the Donetsk and Luhansk regions between 18 and 23 February.

**This figure reflects cross-border movements (and not individuals). Movements back to Ukraine may be pendular, and do not necessarily indicate sustainable returns as the situation across Ukraine remains highly volatile and unpredictable.

Explanatory Note

Before using the information in this portal, please read this Explanatory Note.

Ukrainian Diaspora:

(as of 30 June 2020, UNDESA)

World	in UNHCR Europe Region
6.1 Million	5.0 Million

Working Groups

- Regional Protection Working Group - Ukraine Refugee Situation
  - Regional Child Protection Sub-working Group - Ukraine Refugee Situation
  - Regional Gender-Based Violence Sub-working Group - Ukraine Refugee Situation
- Regional Cash Working Group - Ukraine Refugee Situation

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