

What violations of international human rights law did Russia commit during its annexation of the Crimea and what remedies are available for the victims?

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Abstract:

Today the world is still in shock, after the unprecedented decision of President Putin to annex the Crimea territory. Was it Russia's attempt to awaken its neo-imperialism or a simple case of assertion of national sovereignty? The question posed to the people was now whether a new road to the European Union and the West, or a pursuit of the historic ties with Russia was the right answer? Furthermore, this paper examines the arguments put forward by the alienated Russian doctrine of International Law. I argue, that Russia's annexation of Crimea was a violation on a range of complex and intricate principles of International Law which serves to guarantee Ukraine's territorial integrity and security. In the course of this paper it will become apparent that the arguments made by Russia are indefensible, and are in stark contrast to previous Russian doctrinal approaches in terms of self-determination and territorial integrity. This paper will attempt to provide reasonable evidence to support its claim that Russia had no right to interfere within Ukraine's territorial integrity nor to facilitate actions against it.

Key words: *Annexation of the Crimea, human rights, responsibility to protect, minority group, Tatars.*

Introduction

On the 21st March 2014, the President of the Russian Federation, Vladimir Putin, signed into force legislation formalising the Russian annexation of the Ukrainian territory of Crimea. This annexation, as a matter of fact and Russian domestic law, seized territory which had previously been Ukrainian and established it as a Russian 'federal district'. These events followed a period of civil war and strife in Ukraine concerning the country's future direction: towards greater integration with the European Union and the Western world, or remaining with historic ties with Russia. In the midst of this strife, Russian-associated militiamen occupied Crimean government buildings in February 2014, and on the 6th March 2014, the Crimean Parliament voted that the region should become a federal district of Russia. This followed a widely criticised pro-separation referendum result from the Crimean people.¹ On any measure, this was a significant event; for the Russians, the Crimeans, the Ukrainians, and the international community.

As Jerry Mankoff (2014) noted at the time, this was the largest seizure of one country's territory by another since the Nazi occupation of Poland during World War Two.² Not only this, this one event looks set to determine the tone of the relationship between Russia and the West for decades to come. Prior to this, it was thought that Russia could be slowly induced into the European and Western family of nations, especially via its membership of the European Court of Human Rights and possibly even the European Union. But this display of aggression by Russia has now made much of the Western world incredibly sceptical of Russia and

¹ <http://www.bbc.co.uk/news/world-europe-31796226> (28th February 2016).

² J Mankoff, 'Russia's Latest Land Grab' (2014) 5 Foreign Affairs 512.

its ambitions, and has dramatically soured peaceful relations. This has been described as a ‘New Cold War’.³ Given the global importance of these events, it is all too easy only to examine the annexation through the prism of international relations, but we must not forget that individual men, women, and children would have suffered; military action has consequences. Therefore, it is essential that we consider the perspective of the victims who suffered because of the annexation, and identify what remedies they may have to hold the Russian state to account.

The purpose of this essay is to examine what violations of international human rights law may have occurred, and to identify what remedies that victims may have. To this end, the essay shall be separated into three connected sections: the first will discuss the right to life and the right not to be subjected to torture or inhuman or degrading treatment or punishment. This topic is given its own section because these constitute among the most egregious violations of human dignity.

The second section will discuss violations of more qualified rights, such as the freedom of the press and freedom of religion. And the third section will discuss what specific remedies might be available to victims in international law.

The Right to Life and the Right Against Torture

As the European Court of Human Rights stated in *Makaratzis v Greece*,⁴ ‘...the right to life...and the prohibition of torture...rank as the most fundamental provisions in the Convention, which enshrine the most basic values of democratic societies...’⁵ Therefore, violations of these rights by Russia would be especially egregious and serious. To begin, we must identify what international legal instruments that Russia has ratified that protect an individual’s right to life and not to be tortured. After all, as Articles 12-15 of the Vienna Convention on the Law of Treaties 1969 remind us, a state party is not regarded as being bound by an international agreement unless it has signed, ratified, or otherwise acceded to the document.⁶

The most notable for European lawyers is the European Convention on Human Rights, specifically Articles 2 and 3. Article 2 declares that everyone has the right to life and that no-one shall be deprived of his life except by a lawful order of a court, by action in defence of others’ safety, by a lawful arrest, or through the quelling of a riot.⁷ Article 3 declares that no-one will be subject to torture or inhuman or degrading treatment or punishment.⁸ According to the website of the European Court of Human Rights, Russia ratified the Convention in 1998.⁹

Similar provisions are found in the Universal Declaration of Human Rights 1948. Article 3 declares that everyone has the right to life, liberty and security of person, and Article 5 declares that no-one shall be subjected to torture or to cruel, or inhuman treatment or punishment.¹⁰ According to the website of the UN Treaty Collection, Russia signed the Declaration in 1968 and ratified it in 1973.¹¹ Moreover, Article 6 of the International Covenant on Civil and Political Rights declares that everyone has the inherent right to life and that no-one shall be arbitrarily deprived of their life. This precedes Article 7, which declares that no-one shall be subject to torture, or cruel or inhuman treatment or punishment.¹² This Covenant was ratified by Russia in 1968.¹³

Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines ‘torture’ as the intentional infliction of severe pain or suffering, whether physical or mental, on a person. Article 2 declares that no justification can be provided for torture, and Article

³ <https://newcoldwar.org/> (21st February 2016).

⁴ [2004] EHRR 56.

⁵ *Ibid* (n.4).

⁶ <http://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm> (30th April 2016).

⁷ <http://www.hri.org/docs/ECHR50.html#C.Art2> (28th February 2016).

⁸ <http://www.hri.org/docs/ECHR50.html#C.Art3> (28th February 2018).

⁹ http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf. (29th April 2018).

¹⁰ <http://www.un.org/en/universal-declaration-human-rights/index.html> (29th February 2018).

¹¹ https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en (29th April 2018).

¹² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (28th February 2018).

¹³ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en (28th February 2018).

12 requires a prompt and efficient investigation where allegations of torture emerge.¹⁴ This Convention was ratified by Russia in 1987.¹⁵

Therefore, Russia is party to several international conventions and treaties which prohibit the use of torture and inhuman treatment. This section will now seek to identify, through the examination of primary material from observers, victims and witnesses, whether Russia has violated these rights during their actions in Crimea. Because of the wealth of case law defining and interpreting these rights from the European Court of Human Rights, we will particularly focus on whether these actions violate Articles 2 and 3 of the European Convention.

From the moment that Russia entered Crimea, applications were quickly brought before the European Court by both individuals and the Ukrainian state itself. In *Ukraine v Russia (IV)*,¹⁶ Ukraine purports that from February 2014 when Russian militia entered Crimea, there were systemic violations of Articles 2 and 3, including beatings of Ukrainian civilians and military personnel, mistreatment of prisoners of war, summary executions, and humiliation techniques used against captives.¹⁷ In *Ukraine v Russia (III)*,¹⁸ Ukraine alleges targeted ill-treatment contrary to Article 3 by Russian agents against the Tatar minority in Crimea, particularly through random assaults and beatings.¹⁹

Most compelling are reports compiled by international organisations such as Human Rights Watch,²⁰ Amnesty International,²¹ the UN Human Rights Commissioner,²² the Council of Europe,²³ and the foreign policy think-tank, Chatham House.²⁴ The observations from witnesses in these reports are notably similar, including electrocution, humiliation, mock executions, beatings and hooding of captives, as well as pain tactics such as stress positions being used. There are also allegations of confessions being induced by torture by Russian militiamen. Summary executions by Russian militiamen of those combatting the occupation, especially of Ukrainian military personnel, are further reported. This was accompanied by threats against the lives of human rights monitors from the UN, and severe overcrowding in Russian controlled prisons, as well as lack of food and medicine being given to captives.²⁵

Starting with the Article 2 right to life, the European Court in *McCann v United Kingdom*²⁶ decided that state agents may only kill in circumstances where it is absolutely necessary for their own safety or for the safety of others. The strictness of this test was demonstrated by the result in *McCann*. Three terrorists from the IRA were suspected of having a remote controlled bomb in a public place, and they were killed by British military officers for this reason. The court decided that, because the operation could have been planned to avoid casualties, there had been a violation of Article 2.²⁷ Also note the result in *Putintseva v Russia*,²⁸ where a Russian soldier shot and killed a recruit while he was trying to escape from mandatory military service. Despite the recruit's actions being unlawful, the court found a violation of Article 2, because the recruit could have been prevented from escaping without lethal force. Moreover, the recruit posed no direct threat at the time to the soldier or to others, so the killing was not absolutely necessary.²⁹

¹⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (28th February 2018).

¹⁵ <http://indicators.ohchr.org/> (28th February 2018).

¹⁶ [2015] ECHR 15.

¹⁷ *Ibid* (n.16).

¹⁸ [2015] ECHR 14.

¹⁹ *Ibid* (n.18).

²⁰ <https://www.hrw.org/news/2014/11/17/crimea-human-rights-decline> (21st February 2018).

²¹ <https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/> (21st February 2018).

²² <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>. (30th April 2018).

²³ <http://www.coe.int/en/web/moscow/-/council-of-europe-human-rights-mission-returns-from-crimea?inheritRedirect=true> (21st February 2018).

²⁴ <https://www.chathamhouse.org/event/political-landscape-russia-one-year-after-crimea> (21st February 2018).

²⁵ *Ibid* (n.20-24).

²⁶ [1995] ECHR 97.

²⁷ *Ibid* (n.25).

²⁸ [2012] ECHR 212.

²⁹ *Ibid* (n.27).

The Human Rights Watch report gives a flavour of the allegations surrounding Article 2. Sometimes, Russian agents are accused of killing Ukrainian soldiers or militia during armed fighting where both parties intend to kill or at least injure. Other times, Russian agents are accused of the summary murder of Ukrainian soldiers with no mutual battle involved. At page 22, for instance, the report notes an allegation that a Russian sniper killed three Ukrainian soldiers guarding a check-point on the Crimean border. They posed no direct threat and one was not even armed at the time.³⁰ The latter case would plainly be a violation of Article 2; there would be no justification for the killings whatsoever as the soldiers were not a threat to the sniper's life at the time. It would be similar to the conclusion in *Putintseva*, where the escapee recruit was no threat to the soldier at the time.

The result would be more complex in mutual fighting cases. In *McCann*, it was not certain that the IRA terrorists had a bomb; it was just suspected that they did. Therefore, their threat level was not certain. Moreover, given that the terrorists wished to negotiate, there was enough time to plan an operation that did not involve taking their lives.³¹ This very much contrasts with the facts alleged by Human Rights Watch of live gunfire between Russian and Ukrainian forces. Here, there would be a definite and immediate threat to the Russian agents; they could be shot and killed at any moment. Therefore, it probably would be regarded as absolutely necessary to shoot to kill. In Russian agent's summary executions, then, we find a violation of Article 2, but in mutual gunfire between Russian and Ukrainian forces, there probably would be no violation.

Turning to the Article 3 prohibition of torture and inhuman or degrading treatment, the European Court has been active in defining the concepts of 'torture' and 'inhuman or degrading treatment'. There are several cases where the court has found violations in the past which have factual similarities to allegations against Russia in Crimea. In *Shishkin v Russia*,³² for example, Russian prison officers were found to have violated the prohibition on degrading treatment by beating captives in their custody through punches, kicks, and slaps on various parts of the body, including the face, legs, and stomach.³³ This is nearly identical to accusations found in several reports in Crimea. Amnesty International, for example, accuses Russian militia of punching, slapping, and kicking five Ukrainian military captives around the face and in the stomach.³⁴

The hooding of captives, deprivation of food, and use of pain tactics such as stress positions occurring in Crimea are reminiscent of the actions of British military personnel in *Ireland v United Kingdom*, where violations of Article 3 were found.³⁵ The denial of pain medication and the provision of only one small meal a day was found to violate Article 3 in *Moisejevs v Latvia*.³⁶ Similarly, Chatham House reports that a captured Ukrainian officer was denied pain medication for a bullet wound, and was only given bread and water once a day. The same report alleges that Russian agents mocked the officer's appearance and sought to humiliate him.³⁷ In *Tyrer v United Kingdom*, the court determined that people should not be humiliated beyond that inherent in an institutional, controlled environment. *Tyrer* involved a person being required to take down their trousers in front of their father, which was plainly not inherent in the environment.³⁸ Similarly, mockery of a person's appearance is not inherent or necessary in a custodial environment.

Therefore, it is very likely that there are violations of Article 3 by Russian agents through inhuman or degrading treatment of captives, as well as violations of Article 2 through summary executions.

Violation of Qualified Rights

Having considered the most egregious violations of international human rights by Russia, this section shall examine the situation regarding violations of more qualified rights in international law. Particularly, we mean rights such as the right to liberty, the right to a fair trial, the right to respect for one's private and family life,

³⁰ Ibid (n.20).

³¹ Ibid (n.25).

³² [2011] ECHR 4.

³³ Ibid (n.31).

³⁴ Ibid (n.21).

³⁵ [1978] ECHR 1.

³⁶ [2006] ECHR 22.

³⁷ Ibid (n.24).

³⁸ [1978] ECHR 72.

freedom of religion, freedom of expression, freedom of association, and the prohibition on discrimination. These are considered to be ‘more qualified’ because the circumstances where they may be interfered with are typically broader in scope, rather than the narrow cases where the right to life may be taken, and the non-existent cases where torture and degrading treatment is permissible. Rather than attempt to discuss every qualified right, this section shall concentrate on three rights specifically: the right to liberty, freedom of religion, and the prohibition on discrimination. This is because plausible violations of these rights are most noticeable and prevalent in the observer reports.

In terms of the right to liberty, Article 5 of the European Convention on Human Rights declares that everybody has the right to liberty and security of person. It continues that no person may be deprived of their liberty save through conviction, arrest, a lawful order of a court, or other similar procedures prescribed by law. Article 3 of the Universal Declaration of Human Rights declares the right to life, liberty and security of person, and Article 9 of the Declaration adds that no-one shall be subject to arbitrary arrest, detention or exile.

So far as freedom of religion is concerned, Article 11 of the European Convention states that everyone has the right to freedom of thought, conscience and religion. This freedom includes the right to manifest a religion in worship, teaching, practice, and observance. Similarly, Article 18 of the Universal Declaration of Human Rights declares that everyone has the right to freedom of thought, conscience and religion, including the right to manifest that religion.

In terms of the prohibition on discrimination, Article 14 of the European Convention states that the enjoyment of the rights in the Convention shall be secured without discrimination on the basis of sex, race, colour, language, religion, political opinion, national or social origin, minority status, birth, or other status. Article 7 of the Universal Declaration further reads that all are equal before the law. Most powerfully, in Article 3 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination 1965, we find a prohibition on all forms of racial segregation.³⁹

As with violations of Article 2 and 3, the Ukrainian state has already pursued cases in the European Court alleging violations of Articles 5 and 9, sometimes taken with Article 14. In *Ukraine v Russia (II)*,⁴⁰ the Russian state is alleged to be involved in violating the Article 5 rights of Ukrainian children by abducting and forcibly transferring them to Russia on four occasions.⁴¹ In *Ukraine v Russia (III)*,⁴² the Russian state is accused of violating the Article 5 and 14 rights of Crimean Tatars by segregating them within a Tatar village.⁴³ Moreover, in *Savchenko v Russia*,⁴⁴ a servicewoman of the Ukrainian air force alleges that she was unlawfully abducted and detained by Russian militia in Donetsk.⁴⁵

Many very similar are found within the observer reports. Observers from the office of the UN Human Rights Commissioner, for example, record at least ninety kidnappings of Ukrainians in Crimea, followed by their arbitrary detention and arrest without charge or trial. The vast majority of these detainees were not told of the basis for their arrest, were never brought before a tribunal to challenge their detention, and have not been informed of a time-limit for their detention. Most sinisterly, the observers confirm allegations that Russian agents have sought to segregate members of the Tatar community within their own village in Crimea by policing armed guards around the exits to the village. Tatars are physically prevented from leaving if they wish to.⁴⁶

³⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> (29th February 2018).

⁴⁰ [2015] ECHR 13.

⁴¹ Ibid (n.40).

⁴² [2015] ECHR 15.

⁴³ Ibid (n.42).

⁴⁴ [2015] ECHR 296.

⁴⁵ Ibid (n.44).

⁴⁶ Ibid (n.22).

In *Steel v United Kingdom*,⁴⁷ the European Court decided that, for detention to be lawful, each requirement of Article 5 must be strictly complied with as far as is practical. Under Article 5(1)(c), the captive must have been arrested for an actual offence, under Article 5(2) the captive must be informed of the reasons for their detention, and under Article 5(3) they must be brought promptly before a court to challenge their detention.⁴⁸ In many of the detention cases reported by the Human Rights Commissioner, none of these requirements have been met; the Russian agents did not purport to arrest the captives for any offence, the prisoners were not informed of the reasons, they were not brought before a court, and were not given an opportunity to challenge their detention. These appear to be classic cases of unlawful and arbitrary arrest and detention, and there would certainly be a violation of Article 5 by Russian forces.

In the segregation of the Tatars, we have the possibility of a violation of Article 5 in combination with Article 14. In *Ukraine v Russia (III)*,⁴⁹ Ukraine argues that Russian forces segregated Tatars on the basis of their racial or ethnic origin, or because they are Muslim.⁵⁰ In Article 14, both race and religion are characteristics on which a state is not entitled to discriminate. Therefore, if Russia has prevented the free movement of Tatars on these bases, they have violated Article 5 in association with Article 14. This segregation, if on the basis of race, would also violate Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination mentioned above, which prohibits the segregation of people on the basis of their race. Simply to rule it out, we should mention that, in *Austin v United Kingdom*,⁵¹ the court decided that, even where detainees had not been convicted or arrested, they could be physically prevented from free movement to keep the peace and to protect property.⁵² There is no suggestion that the segregation of Tatars has this justification, so Russia cannot claim this in their support.

So far as freedom of religion, Human Rights Watch records that Russian militia have been observed interfering with Tatar mosques, including through looting from the buildings, smashing windows and religious objects, and even arson.⁵³ This seems a reasonably obvious violation of the freedom of religion. In *Islamic Community of Bosnia v Bosnia and Herzegovina*,⁵⁴ the European Court found such a violation in a nearly identical scenario. The judges decided that the desecration of Islamic buildings by Bosnian forces during civil war violated freedom of religion, as Islamic communities were left unable to effectively manifest their religion together. These desecrations included smashing windows, breaking religious items, and arson.⁵⁵

Therefore, we have rather clear cases of violations of the right to liberty taken with the prohibition on discrimination, and of freedom of religion.

Remedies

Given these violations of international human rights, this section shall examine the range of potential remedies available to the victims. Since we have dealt most especially with the European Convention on Human Rights, we shall start with remedies available through the European Court of Human Rights. Under Rule 47 of the Rules of the Court, the applicants must fill out the relevant application form and provide the information on what Articles are said to have been violated and how.⁵⁶ If the claimants wish to seek monetary compensation, the Rules of the President of the Court on 'just satisfaction' advise that there should have been a serious violation of a human right which must be vindicated by compensation. Otherwise, the court will merely provide a declaration that an unlawful action has occurred.⁵⁷

⁴⁷ (1998) 28 EHRR 603.

⁴⁸ *Ibid* (n.47).

⁴⁹ *Ibid* (n.42).

⁵⁰ *Ibid* (n.42).

⁵¹ [2012] ECHR 459.

⁵² *Ibid* (n.51).

⁵³ *Ibid* (n.20).

⁵⁴ [1995] ECHR 67.

⁵⁵ *Ibid* (n.54).

⁵⁶ <http://www.echr.coe.int/Pages/home.aspx?p=applicants> (28th February 2018).

⁵⁷ http://www.echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf (30th April 2018).

Here, the violations of human rights have been notably serious: summary executions contrary to Article 2, various acts of inhuman and degrading treatment contrary to Article 3, segregation of Tatars on the basis of race contrary to Articles 5 and 14, and destruction of places of worship contrary to Article 9. These have not been technical or trivial breaches of the Convention; as such, the claimants are likely to receive monetary just satisfaction.

However, the claimants should bear in mind the powers of the organisation that ultimately ensures obedience to the European Court: the Council of Europe. The Council can eject members for failure to abide by judgments, particularly in very serious cases, or where the member systematically refuses to abide by the Convention. But the Council has no enforceable power to fine or compel obedience to the judgments.⁵⁸ Therefore, if Russia were to refuse to abide by adverse judgments in favour of Crimeans, there is little that the claimants could do in law. Even worse, in 2015 the Russian Constitutional Court issued a judgment declaring the supremacy of Russian national law over European Court judgments.⁵⁹ Therefore, even with an adverse judgment against Russia, the European Court route may prove difficult to produce concrete relief and remedies, if Russia was determined to ignore and reject the judgment.

Apart from the European Court, Article 17 of the United Nations Convention Against Torture could be of use in the torture and inhuman and degrading treatment cases. This Article establishes the 'Committee Against Torture', consisting of ten human rights experts. Article 20 states that if the Committee receives reliable information regarding torture in a country's territory, the Committee shall invite the country to co-operate in an examination of that information. Article 20(2) permits the Committee to designate members to carry out a confidential investigation into the alleged torture and degrading treatment. With the consent of the country, Article 20(3) permits a visitation by the Committee to the location concerned. But with respect to the Committee, this remedy appears as concrete and reliable as the Council of Europe. The visitation can only occur with consent, and the Committee ultimately has no power to compel the payment of compensation or to compel any changes in policy in the guilty country.

Article 28 of the International Covenant on Civil and Political Rights suffers from the very same issue. Article 28 establishes the 'Human Rights Committee', a panel of experts whose duty it is to investigate human rights violations reported to it. Article 41 permits one state party to apply to the Committee regarding another state party for an investigation into breach of the rights.⁶⁰ But, again, the Committee has no real powers of enforcement or compulsion to produce a guaranteed remedy.

Consequently, while the claimants have several avenues of redress open to them - most especially the European Court of Human Rights - these avenues cannot produce guaranteed remedies and compensation. If Russia is determined to avoid liability for its violations of Articles 2, 3, 5, 9, and 14, it realistically could do in international law.

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⁵⁸ http://www.coe.int/t/dghl/monitoring/execution/default_en.asp (28th February 2018).

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