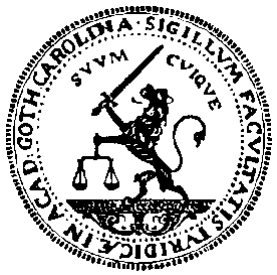

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The Children of ‘Crimean Spring’ and the Right to Education under Belligerent Occupation

JAMM07 Master Thesis

International Human Rights Law

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Table of content

Summary

Education is one of the key components in developing identity, personality and a sense of belonging in the time of peace. But when weaponized by the states as a tool of indoctrination, education becomes a highly effective instrument of war, contrary to the relevant rules prescribed by the international humanitarian and international human rights law. This weaponization of education was widely employed by the totalitarian regimes of the XXth century and is currently reinvented by the Russian Federation, which instills its “military-patriotic education” within the territory of the occupied Crimea.

This thesis aims to fill a gap in the research on scope and implementation of the right to education in light of the military indoctrination techniques employed by the Occupying Powers towards civilian populations of occupied territories. The case study of the Russian Federation’s ongoing occupation of the Crimean Peninsula with its “military-patriotic” education instilled within local institutions is used to analyze the relevant provisions of international human rights law and international humanitarian law. The main argument is built on three constitutive elements:

1) that the Crimean Peninsula is currently under belligerent occupation of the Russian Federation which exercises effective control over the peninsula;

2) consequently, the law of occupation (as a lex specialis) is applicable on its territory, together with international human rights law; the latter functions as an interpretative tool to help elucidate the specific scope of obligations of the Occupying Power towards civilian population of the Crimea, including the right to education;

3) therefore, Russia’s obligations as an Occupying Power include but are not limited to providing education consistent with the aims prescribed by the ICESCR; to ensure education consistent with the parents’ religious and philosophical convictions; and to refrain from pursuing indoctrination as a part of obligations under the right to freedom of thought and conscience.

This analysis concludes that actions of an Occupying Power (such as in the Crimean example) that alter the curricular to instill military-patriotic indoctrination in the educational institutions of the occupied territory, are contrary to international law and require an effective and prompt response. The right to be free from military indoctrination goes beyond respecting parents’ convictions or general considerations of the aims of education. Above all, education is integral to child’s overall development as a free and independent individual in terms of the freedom of thought and conscience. Education must not be weaponized by an Occupying Power in an attempt to mentally ‘legitimize’ the occupation, as it is absolutely prohibited both by international humanitarian and human rights law to pursuing the aim of indoctrination to form allegiance to the objectives of the Occupying Power.

Key words: militarization, Crimea, occupation, rights of the child, education, indoctrination, Yunarmia

Acknowledgements

This story began 5 years ago, when I've made myself a promise to obtain an LLM degree abroad. It seems like I stayed true to myself: but it would never be possible without the love and support of the best people around me.

First of all, I want to thank the Swedish Institute for choosing me as a Visby Scholarship holder and making the dream of studying in Sweden a reality. And this reality would never be so vivid, vibrant and unforgettable without the LU Law Faculty staff, teachers, classmates and especially my thesis supervisor Jessica. Dear Jessica, thank you for showing the right way whenever I felt so lost during these extremely difficult months, and for your immense support in my aspirations on writing a thesis on such an important and complex topic.

I am lucky to have the most amazing teachers throughout these years, and I wish I could have enough space to give them all a proper credit personally. I'd like to specifically express my love and appreciation to my English teacher Vera Nikolaevna who had made all possible effort to ensure that my voice sounds persuasive enough not only in my native language. I will never forget the lessons you'd taught me.

I should also say that my thesis would never look the same had I not met Iryna Siedova, whose research (conducted together with other dedicated human rights defenders of the Crimean Human Rights Group) on militarization on childhood in the occupied Crimea had a decisive influence on the topic of this thesis.

Of course, I am most grateful to my GRC team, who had been my source of motivation and inspiration for the past year, and especially to Anna. Anna, thank you for being the best mentor one could possibly wish for.

And I could not wish for the better friends, who happen to have more faith in me than I possibly could and who always find the right words both in dark and happy times. Irene, Olena, Yana and many more than I can possibly mention – thank you. I honestly have no idea how you manage to tolerate me for so many years, but I know how lucky I am to have you all in my life.

But ultimately, all roads lead to home, and to my dearest family. Mom and Dad, every achievement in my life has been possible solely because of your immeasurable love and support, even (and especially) in my most parlous adventures. And I know that no matter how far I go, and how hard it can get, you will always be my safest harbour.

I dedicate this thesis to those who unfortunately cannot read it, but who would most certainly have been proud of me. My dearest grandfather Valentin and my godfather Aleksey, you are forever in my heart, as, in Dickinson's words, "unable are the loved to die, for love is immortality".

Yours truly,

Anastasiia

Abbreviations

CESCR – Committee on Economic, Social and Cultural Rights

CoE – Council of Europe

Crimea – the Autonomous Republic of the Crimea and the city of Sevastopol

ECHR – Convention on Protection of Rights and Fundamental Freedoms (European Convention of Human Rights)

ECtHR – European Court of Human Rights

ESCR – Economic, social and cultural rights

EU – European Union

GC – Geneva Convention

HR – Hague Regulations

IACmHR – Inter-American Commission on Human Rights

ICC – International Criminal Court

ICJ – International Court of Justice

IHL – International Humanitarian Law

IHRL – International Human Rights Law

OTP – Office of the Prosecutor (ICC)

OPT – Occupied Palestinian Territory

PACE – Parliamentary Assembly of the Council of Europe

UN – United Nations

UDHR – Universal Declaration of Human Rights

UNGA – United Nations General Assembly

Preface

"So, take the idea of "rights" and drip some acid on it. Even the most adult of the Ancients knew: the source of a right is power, a right is a function of power.

Take two trays of a weighing scale: put a gram on one, and on the other, put a ton. On one side is the "I", on the other is the "WE", the One State.

Isn't it clear? Assuming that "I" has the same "rights" compared to the State is exactly the same thing as assuming that a gram can counterbalance a ton.

Here is the distribution: a ton has rights, a gram has duties.

And this is the natural path from insignificance to greatness: forget that you are a gram, and feel as though you are a millionth part of the ton..."

— Yevgeny Zamyatin, We

The preface to this purely law-oriented thesis is surprisingly not from a legal document: in fact, it's an excerpt from a novel which best characterizes the context of the (post)Soviet space that the author of the book (and to some extent, the author of this thesis) had lived or grown up in. The context which is heavily built on collectivism within society and the feeling of "greatness" derives from being "a millionth part of the ton" within the government, who ultimately knows what's right for you – and will preach that to you, whether you want it or not.

The novel "We" describes a story of a man who while living in the totalitarian state commits the gravest crime by regaining his individual consciousness, in spite of the ruling party's line. The main hero asks if the individual consciousness is just a sickness, like an irritated eye or sore tooth, among the healthy – and largely unnoticed majority. Because ultimately, being different means being abnormal; being out of place; and most importantly – requiring to be "fixed", to eventually fit within this "normality".

Written in the 1920s, the novel acted as a warning[1] for the Soviet Union (hereinafter - USSR) that no efforts in brainwashing, indoctrination and wide-scale propaganda of collectivism will ever be able to suppress the "I" within an individual. The brainwashing and propaganda in the USSR were instilled from the earliest age, when children were mandated to participate in patriotic marches, frequent ideological ceremonies, and listen to educational narratives based on division between "us" (as the "happy communist state") and "them" (as the "evil envious West, aiming to destroy

[1] All Answers ltd, 'Zamyatin's Warning of the Non-Ideal Government' (UKEssays.com, May 2021) <https://www.ukessays.com/essays/politics/zamyatins-warning-of-the-non-ideal-government.php?vref=1>

our prosperous reality").[2] The children were taught to be mentally (and physically) prepared for war with the 'West"[3] since the earliest age and to be ready to die defending "the bright Communist future". The futility of such efforts had been proven in 1991, when the USSR ultimately collapsed, and 15 new democratic states emerged on its ruins. Yet, the lesson had not been learned, and even 30 years after, the history of brainwashing and military-patriotic upbringing repeats itself, but now within the territory of the modern Russia, and extraterritorially – at least within the territory of the Crimean Peninsula.

The "We" quote had also been chosen in the preface for the very practical reasons – to remember, that even if the following 100+ pages are filled with numerous covenants, legal decisions, concepts etc., the limelight in this research is given to an individual. Hence, this thesis will build an argument in protecting the "I" against "We, the state" within the particular context of belligerent occupation.

The introductory chapter provides an overview of the legal issues explored within the present research; the methods used and describes which limitations and constraints have been encountered. It concludes with an outline describing the logic behind the structure and construction of legal analysis.

[2] Katya Soldak, 'This Is How Propaganda Works: A Look Inside A Soviet Childhood' (Fobes, 20 December 2017) <https://www.forbes.com/sites/katyasoldak/2017/12/20/this-is-how-propaganda-works-a-look-inside-a-soviet-childhood/>

[3] Referring to the countries outside the USSR and the socialist bloc

Introduction

1. Contextualization and clarifications

To understand the setup of the relevant context, one needs to travel back in time a bit, namely to 27 February 2014. On this day, according to the European Court of Human Rights (hereinafter - the ECtHR), the Russian Federation established effective control over the Autonomous Republic of the Crimea and the city of Sevastopol (hereinafter – the Crimea),[4] an internationally recognized part of territory of Ukraine.

In 2016 the ICC Office of the Prosecutor (hereinafter - OTP) had preliminary concluded that Crimea is currently "under temporary occupation of the Russian Federation."[5] In response to the purported annexation, the EU[6], the UN[7] and PACE[8] had repeatedly called on Russia to withdraw its forces from the peninsula and refrain from further violations of Ukrainian sovereignty.[9]

Still, as Russia exercises effective control over the peninsula, the human rights situation remains dire in most spheres, including education. On 7 December 2020 the UN General Assembly adopted resolution 75/29 which condemns, inter alia, "efforts to use the education of children in Crimea in order to indoctrinate them to join the Russian military forces" and calls upon Russia to refrain from

> establishing educational institutions that provide combat training to Crimean children with the stated aim of training for military service in the Russian armed forces; establishing combat training courses at Crimean schools and to cease efforts to formally incorporate Crimean educational institutions into the "military-patriotic" education system of the Russian Federation.[10]

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[4] Ukraine v Russia (re Crimea) App no 20958/14 and 38334/18 (ECtHR, 15 January 2021), para 335

[5] ICC, Report on Preliminary Examination Activities (2016) <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf#page35>

[6] European Parliament resolution of 18 September 2014 on the situation in Ukraine and the state of play of EU-Russia relations (2014/2841(RSP); European Parliament resolution of 15 January 2015 on the situation in Ukraine (2014/2965(RSP)); European Parliament resolution of 4 February 2016 on the human rights situation in Crimea, in particular of the Crimean Tatars (2016/2556(RSP)) >

[7] General Assembly Adopts Resolution Urging Russian Federation to Withdraw Its Armed Forces from Crimea, Expressing Grave Concern about Growing Military Presence, GA/12223, 9 December 2019 < https://www.un.org/press/en/2019/ga12223.doc.htm >

[8] PACE Resolution 2132 (2016) 'Political Consequences of the Russian Aggression in Ukraine'; PACE Resolution 2198 (2018) 'Humanitarian consequences of the war in Ukraine'

[9] UNGA 'Resolution on territorial integrity of Ukrane (27 March 2014) UN Doc 68/262

[10] UNGA, Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov (7 December 2020) A/RES/75/29 <

One particular example of such practice is the functioning of the **"All-Russia "Young Army" National Military Patriotic Social Movement Association" (hereinafter – Yunarmia)** within the Crimean territory**.** Currently it enlists approximately 340 000 local children and is directly supported and funded by the Government of Russia through the Ministry of Defence and various institutions.[11] Yunarmia was initially created in 2016 as a militarized wing of the "Russian movement of schoolchildren" present in every school, and even though membership is officially "voluntary," some researchers expres serious doubts in this regard, due to the Russo-Soviet historical tradition[12] referred to in the preface. Russian Defence Minister Sergey Shoigu characterized the goal of the movement as to enable "each young army cadet to believe in his Fatherland, love his homeland, know his history, be proud of the deeds of his fathers and grandfathers, and understand what we can and should strive for".[13] DW notes that Yunarmia is a "revival" of the Soviet-era militarism with its Volunteer Society for Assistance for the Army, Aviation and Fleet (DOSAAF), a paramilitary organization that managed "facilities including pilot schools, parachute training courses and shooting ranges across the USSR".[14] In this regard, Manfred Sapper defines Soviet militarism as a "fusion of the civil and military spheres…put in place by representatives of the civil sphere, the politicians".[15]

M. Pierre Mougell also points out that despite all demagogical statements on purely peaceful nature of Yunarmia, the "official videos[16] showing children marching on Red Square, engaging in military exercises and shooting" clearly indicate its "warlike, even militaristic aspect".[17] Thus, relying on the Sapper's reasoning, he concludes that the functioning of Yunarmia within the civic sphere (such as education)

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[11]Simferopol News, 'Yunarmia – the children of Crimean Spring' (15 March 2019) <https://cfuv.ru/news/yunarmiya-my-deti-krymskojj-vesny>

[12] Sergey Sukhankin, 'Russia's 'Youth Army': Sovietization, Militarization or Radicalization?' (Jamestrown Foundation, 9 November 2016) <https://jamestown.org/program/russias-youth-army-sovietization-militarization-radicalization/>

[13] TASS, 'Shoigu: The main task of Yunarmia is to educate patriots of the Russian Federation, not the military' (28 May 2016) <https://tass.ru/armiya-i-opk/3321648>

[14] DW, Russia to build replica of the Reichstag for cadets to practice storming (22 February 2017), < https://www.dw.com/en/russia-to-build-replica-of-the-reichstag-for-cadets-to-practice-storming/a-37681179 >

[15] Manfred Sapper, "Russia's bellicose spirit: Legacy of a militarized socialism? (1917-1997)", in Culture Militaire et Patriotisme dans la Russie d'Aujourd'hui, Paris, Karthala, 2008, p. 38 (cited by M. Pierre Mougell, 'The militarization of youth in the post-Soviet space 1/3' (27 February 2019) < https://www.penseemiliterre.fr/en/-the-militarization-of-youth-in-the-post-soviet-space-1-3_725_1013077.html?fbclid=IwAR3OhOIIg3FU27pdM4UqkTYp_tWS0BWvozOPlWclelFyltGYGxfocqQ8etg>

[16] Yunarmia's official anthem can be accessed via the following link: < https://www.youtube.com/watch?v=QKg4V-vZN2Y>

[17] M. Pierre Mougell, 'The militarization of youth in the post-Soviet space 1/3' (27 February 2019) < https://www.penseemiliterre.fr/en/-the-militarization-of-youth-in-the-post-soviet-space-1-3_725_1013077.html?fbclid=IwAR3OhOIIg3FU27pdM4UqkTYp_tWS0BWvozOPlWclelFyltGYGxfocqQ8etg>

will enable the Russian political authorities to “have a powerful lever of mobilization that can be used in many ways”.[18]

However, it should be emphasized that the military-patriotic component within the Crimea goes far beyond Yunarmia and lies deep in the very foundation of the Russian Federation education system which is currently implemented on the territory of the peninsula.[19] The compulsory military-patriotic components enshrined in the Russian laws and regulations, constant propaganda and glorification of war are present in all spheres of public life and there is no escape from the “Big Brother State’s” indoctrination.

Hence, this thesis will address potential human rights violations within the particular situation of a belligerent occupation, which in itself is a violation of international law – but still, presupposed certain guarantees to the civilian population residing on the occupied territory in all spheres of public life, including education.

2. Purpose and the research questions

The purpose of this research is to shed light on the right to education during belligerent occupation, with a focus on prohibition of military indoctrination. To achieve this aim, the following **core** research questions will be addressed:

1. Does the installment of a ‘military-patriotic education’ fostering allegiance to the Occupying Power within an occupied territory violates international law?

2. Is the education provided by the Russian Federation in the Crimea consistent with the international law applicable in this context?

In order to answer this question within the context of Crimean case, the following sub-questions have to be addressed:

1) Is the Crimea occupied?

2) If yes, which law is applicable within its territory since 27 February 2014 (as the date of effective control establishment) and onwards? Is it IHL and/or IHRL, and what’s the relationship between these two branches?)?

3) How do the IHL and IHRL address and regulate the issue of education provision within belligerent occupation?

4) What are the possible remedies available?

The structure of this thesis is built based on the logical order of these sub-questions, which will be answered in the respective chapters.

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[18] ibid

[19] This statement is without prejudice to the legality of such actions, and is only reflecting the de-facto situation within the peninsula

3. Relevance

The topic of the right to education under belligerent occupation has rarely been addressed neither in academic literature nor in relevant jurisprudence.

In the aftermath of the World War II (hereinafter – WWII) at least three cases were reviewed by the courts in light of using education as a tool of propaganda, brainwashing and assimilation (including in the context of occupation).

Namely, the leader of the paramilitary "Hilter Youth" organization Baldur von Schirach was indicted under the count of "waging a conspiracy of aggressive war" for indoctrinating German youth in the spirit of supremacy of the German nation.[20] Although von Schirach was acquitted on that count, the IMT had indeed emphasized on arbitrary nature of the paramilitary "Hitler Youth" organization, as well as the brainwashing techniques employed.[21] The main architect of antisemitic propaganda Julius Streicher was sentenced to death penalty, albeit this "indoctrination in hatred" of children in educational institutions was not addressed fully and was viewed, as Eastwood notes, as only an episode of the wider antisemitic policy.[22] And finally, the gauleiter of Poland Artur Gresier was found guilty of "Germanification" of the civilian population of Poland, including via educational institutions. In casu, the Supreme National Tribunal of Poland noted the arbitrary nature of Greiser's policies during belligerent occupation and touched upon the assimilatory effects of such actions.[23] Still, the particular context of all mentioned post-WWII cases did not envisage consideration of these issues through the prism of human rights due to the lack of appropriate international instruments at the time.

Later relevant issues pertaining to using education as a tool of assimilation and also militarization of children and youth were discussed during *travaux preparatoire* to the ICCPR and ICESCR, but then were long forgotten for many years, both by jurisprudence and academia. Still, the emergence of 'military-patriotic' movement within the Russian Federation and its consequent imposition within the territory of another state under belligerent occupation, calls for reconsideration of the "old practice in modern development", but using modern tools which were not available in the 1940s through the development of international human rights and humanitarian law. And it should be mentioned that these tools were heavily influenced by the events of the WWII and thus, prohibition of indoctrination lays on the very foundation of the

[20] Michael G Kearney, *The Prohibition of Propaganda for War in International Law* (Oxford University Press 2007) 37

[21] ibid 39.

[22] Margaret Eastwood, 'Lessons in Hatred: The Indoctrination and Education of Germany's Youth' he International Journal of Human Rights, 15:8, 1291-1314, p. 1299

[23] Evelyne Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* (Cambridge University Press 2015) 168–169

international human rights law – both in the freedom of thought and conscience and the right to education.

But still, there is a gap within the existing academic literature on analyzing the issue of military indoctrination under belligerent occupation from the human rights perspective. This reconsideration will be presented in this thesis, with a focus on child's rights and the freedom of thought and conscience within the right to education.

4. Limitations

The legal analysis in this thesis is limited to the issues related to the right to education: although some more complex issues of self-identification and the right to identity come into play. However, the time and resource constraint required to narrow down the issues to the purely educational issues.

The problematic aspects of the education in the Crimea are not limited by only militaristic issues. The Anti-Discrimination Center 'Memorial' stresses that "the usage of Ukrainian and Crimean Tatar languages is severely constrained in all spheres of the public life, including education".[24] The instruction in public schools is conducted solely in the Russian language[25] which forced many teachers of Ukrainian language to requalify for teaching Russian language and literature.[26] Moreover, ADC 'Memorial' notes that the predominate curriculum in Crimean schools envisages the mandatory study of Russian and permits only elective study of other languages. These issues, although directly relevant to the right to education, are not addressed within this thesis in light of the minority and national identity issues such as culture, language and religion. Although it was noted in the dissenting opinion in Catan and others v. Moldova and Russia that the right to receive education in the native language could fall under

[24] Anti-Discrimination Center Memorial, 'Parallel Information to the Russian Federation's Report on its Implementation of the Recommendations Contained in the Concluding Observations of the Committee on the Elimination of Racial Discrimination Following Consideration of the Combined 23rd and 24th Periodic Reports on Implementation of the CERD - Situation in Crimea (July 2019) <https://adcmemorial.org/wp-content/uploads/Parallel-Information-to-Follow-Up-Situation-in-Crimea-CERD-July-2019-1.pdf>

[25] Anti-Discrimination Center Memorial, 'Alternative Report on the Russian Federation's Implementation of the International Covenant on Economic, Social and Cultural Rights in Connection with the Consideration of the Sixth Periodic State Report by the UNCESCR (2016) <https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28708_E.pdf>

[26] SOVA Center, Anti-Discrimination Centre "Memorial", '**Racism, Discrimination and fight against "extremism" in contemporary Russia.** Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination By the Russian Federation for the 93rd Session of the UN CERD' (July 31 – August 11, 2017) <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28206_E.pdf>

the protection of private life and identity,[27] such analysis would require formulation of the different argument, and a consideration of a specific legal framework.

The issue of distortion of history and usage of historical narratives for building the image of an "enemy" when referring to Ukraine and the "West" are briefly touched upon in the "aims of education" (section 3.3 of the Chapter 3), but without particular reference to the WWII narratives. That mostly relates to using the "glorious victory of the WWII" as a tool to building the sense of belonging to the victorious past and effectively weaponized within the "military-patriotic" component of the Russian education and namely, within the Yunarmia movement.[28] Yet, the detailed analysis of this issue requires a specific focus, which is absent in this thesis.

Overall, it is rightly argued by the Crimean Human Rights Protection Group analyst Iryna Siedova, that in the Crimean case, the military indoctrination part is just one element of the more systematic policy of identity alteration, aimed at destroying the bond between Ukraine and its citizens trapped under the Russian occupation.[29] However, without diminishing the worrying trends mentioned by I. Siedova, the temporal and substantive limitations have predetermined the choice of the specific topic of military indoctrination within the educational institutions under belligerent occupation.

5. Research method and principal sources

In the present thesis, several approaches to legal analysis are combined. Firstly, the contextual background is established without resorting to legal instruments in order to prepare the setting for further legal analysis.

Secondly, an overview of international legal instruments available within the context of belligerent occupation is provided, with analysis of their applicability in casu. Further, a detailed analysis of applicable international law provisions related to the right to education is conducted, with reference to the Crimean realities, which help identify (in)adequacies of IHL/IHRL in protecting children from state-sponsored indoctrination. Hence, in the course of this thesis there is no clear separation between the "law in books" and "law in action";[30] but both aspects are employed cumulatively.

The empirical material consists of the following:

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[27] Joint partly dissenting opinion of judges TULKENS, VAJIĆ, BERRO-LEFÈVRE, BIANKU, POALELUNGI and KELLER in Catan and Others v Moldova and Russia App Nos 43370/04, 8252/05 and 18454/06 (ECtHR, 19 October 2012), para 4-8

[28] Sergey Sukhankin, 'Russia's 'Youth Army': Sovietization, Militarization or Radicalization?' (Jamestrown Foundation, 9 November 2016) <https://jamestown.org/program/russias-youth-army-sovietization-militarization-radicalization/>

[29] Iryna Siedova, 'Russia Is Trying To Do Everything To Remove All Ukrainian Entirely From Peninsula' (Crimean Human Right Group, 01 September 2020) <https://crimeahrg.org/en/russia-is-trying-to-do-everything-to-remove-all-ukrainian-entirely-from-peninsula-irina-siedova/>

[30] Pound R. Law in books and law in action, 1910, 44 American Law Review 12–36

I. Legal documents, both containing rules of hard law and soft law.

1. Primary sources (per main thematic blocks)

1) The law of occupation: 1907 Hague regulations (hereinafter – HRs), 1949 Geneva Convention IV (hereinafter – GC IV).

2) The right to education: ICESCR (art. 13), CRC (art. 29) and ECHR (art. 2 Protocol 1).

3) Indoctrination: ICCPR (art. 18), ECHR (art. 9).

2. Secondary sources:

1) Judicial decisions: case-law of the ICJ (mainly, the Armed Activities case, the Nuclear Wepons and the Wall Advisory Opinions), IMT decisions on von Schirach and Streicher, PCIJ Lighthouses case, Kunarac, Naletilic and Furundžija cases of the ICTY and Al-Skeini, Valsamis, Cambell and Cosans etc of the ECtHR. The thesis also employs views of quasi-judicial bodies such as the UN HRC on the pertinent issues. These views, which are legally non-binding, have been expressed in the form of opinions, comments and recommendations.

2) Commentaries of specialized bodies, such as CESCR, Committee on the Rights of the Child, OHCHR on interpreting relevant treaties.

3) Scholarly works and articles on relevant issues:

a) The law of occupation: von Glahn G., Gaeta P., Giacca G., Clapham A., Roberts A., Pellet A. and others

b) The right to education: Bieter K., Lundly L., Kilkelly U., Tomasevski K., Hodgson H. and others

c) Indoctrination: Nachtigal T., Hammer L., Snook I. and others

For the child-specific rights analysis the author had heavily relied on the works of Freeman M., Kilkelly U. and van Bueren G.

II. Non-legal materials include, but are not limited to analytics, reports, news releases, observations of organizations and treaty bodies and non-governmental human rights organizations, required for laying out the contextual background and providing the factual basis for further legal analysis.

When analyzing the specific case of the Crimea (including both the circumstances of establishing occupation and analyzing current educational system), it was a deliberate choice of the author to employ primarily original and unabridged materials retrieved from the Russian Federation's and Crimean websites (most of which come from government-owned domains). This was done for the purposes of credibility, and also to give the reader a clearer insight into the factual issues, distorted by only one author's perception.

6. Outline of the structure

The structure of this thesis is built on deductive reasoning: namely, the first chapter will build the start of the narrative, by generally contextualizing the events of "Crimean Spring"[31] in terms of the Crimea's long-contested history and complex demographics. At the same time, the narrative of the events will rebut the presumption of the free and informed "right to self-determination" exercised by the population of the Crimea in 2014 during the so-called "Crimean spring" and subsequent purported annexation, that the Russian Federation is repeatedly appealing to. The second part of Chapter 1 is dedicated to the issues of occupation: namely, the main features of the occupation regime, as well as clarifying approaches taking by the different international tribunals in defining the situation as "belligerent occupation" with approaches and practice of the ICJ, ICC and ECtHR.

Chapter 3 then logically follows, which is dedicated to purely legalistic issues of co-applicability of the IHRL and IHL, with the focus on occupation and ESCR enforcement. This Chapter will substantiate and justify co-applicability of the IHL and IHRL in Chapter 3, which will be solely dedicated to the right to education under belligerent occupation.

Chapter 3 is thus built on the conclusions made in Chapter I and II- namely, that Crimea is currently occupied by the Russian Federation, and thus both the law of occupation and IHRL are applied within its territory. Hence, this Chapter primarily focuses on the right to education in light of 1) the particular context of belligerent occupation and the case study of the Crimean occupation; 2) its normative content, as derived from the relevant provisions of the CRC, ICESCR and ECHR. The latter is divided into the thematic blocks of the **aims of education**, **parents' possible interference** on behalf of their children and child's autonomous right to freedom from indoctrination. The Chapter concludes with possibilities of further redress available within existing legal framework. In the end, an overall conclusion is provided, as well as some reflections on the given topic.

7. Disclaimer

The views expressed in this thesis are those of the author **only** and do not necessarily reflect the position of the organization(s) with which the author is affiliated.

[31] The Crimean events of 2014 leading to "reunification" are called "Crimean Spring" by the Russian media [originally: Крымская весна], see more here: The Federal Assembly of the Russian Federation ' One history, one faith, one country: five years ago, the Crimea returned to Russia' (18 March 2019) <http://duma.gov.ru/en/news/30069/>

Chapter 1. Legal status of the Crimea

The present chapter will provide a brief contextual overview on the Crimea: namely, it will outline the main historical and demographic developments taking place on the peninsula before the 2014 events and will address the 2014 ‘crisis’ which had led to its purported annexation by the Russian Federation.

The second part of the chapter will directly refer to the question of the legal status of the Crimea, with analysis of the regime of belligerent occupation: namely, its main features, legal regime and qualification (as per relevant jurisprudence of the ICJ, the ICC and the ECtHR).

1.1. Historical and contextual background with detailed overview of 2014 events

The Crimean Peninsula lies on the South of Ukraine between the Black Sea and the Sea of Azov; separated from Russia to the East by the Kerch Strait (please consult the map below).[32]

Source: Deutsche Welle

Crimea has a long legacy of being “an apple of discord” for major world powers. Prior to the 1441 establishment of Crimean Khanate, it was inhabited by the Greek colonizers and later - by the nomads of the Golden Horde. However, in 1441 the autonomous state of Crimean Khanate was created, which was officially subjected to the Ottoman Sultan. In 1783, after a series of wars between Russia and the Ottoman Empire, the Crimean Peninsula was transferred under the rule of the Russian Empire,

[32] BBC, 'Crimea Profile' (BBC, 17 January 2018) <https://www.bbc.com/news/world-europe-18287223>

as well as some adjusting lands on the territory of the mainland Ukraine, which had gained the unofficial title “Novorossiya”.[33]

Crimean Tatars, as the indigenous population of the peninsula, constituted 34.1% of inhabitants in 1897, but after forcible deportation in 1944 by Joseph Stalin they were all banished to the remote USSR provinces.[34] At least 183 000 people were forcibly deported, of which, according to some historians, up to 46% died along the way to the Central Asia.[35] The other ethnic groups were also subject to deportation, including but not limited to Armenians, Bulgarians, Greeks, and others (declining from 20% in 1921 to less than 5% in 1959). At the same time, the population of ethnic Russians and Ukrainians inhabiting the peninsula grew steadily. As a result, in the 1950s out of approximately 1.1 million people inhabiting the peninsula around 75 % were ethnic Russian and 25 % - Ukrainian.[36]

After the 1917 Bolshevik revolution and establishment of the USSR and prior to 1954 the Crimea had officially been a part of the Russian Soviet Socialist Republic (RSSR); yet in 1954 the Crimea was transferred under the governance of the Ukrainian Soviet Socialist Republic.[37] In the official USSR Decree this transfer is justified by the territorial and economic considerations[38] and most importantly, due to the high dependence of the peninsula on water supply from the mainland Ukraine.[39] But generally, this move had little impact on political stance at that time, because the “republics” of the USSR had enjoyed little political independence and were all ultimately subjected to the central governance in Moscow.

In 1991 the Belavezha Accords have pronounced the official cessation of the USSR existence and new states have emerged, in the borders formerly delineating 15

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[33] BBC: “Russian President Vladimir Putin has spoken about it [Novorossiya] since Russia's annexation of Crimea last March, helping to stir nationalist feelings about the region”, see Dina Newman ‘Ukraine crisis: What is Novorossiya role?’ (BBC, 16 February 2015) < https://www.bbc.com/news/world-europe-31490416>

[34] Gus Lubin, 'How Russians Became Crimea's Largest Ethnic Group, In One Haunting Chart' (Business Insider, 16 March 2014) <https://www.businessinsider.com/crimea-demographics-chart-2014-3?r=US&IR=T>

[35] Sergey Khazov-Kassiya, 'Uninvited guests bring bad luck to Tatars' (New Times, 04 March 2014) <https://newtimes.ru/art.s/detail/79930/> accessed 8 May 2021

[36] Mark Kramer, 'Why Did Russia Give Away Crimea Sixty Years Ago?' (Wilson Center) <https://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago>

[37] ibid

[38] Wilson Center, 'Meeting of the Presidium of the USSR Supreme Soviet' (Digital Archive International History Declassified, 19 February 1954) <https://digitalarchive.wilsoncenter.org/document/119638>

[39] In 2014, after losing control over the Crimea, Ukraine had dammed the North Crimean Channel, ”cutting off the source of nearly 90% of the region’s fresh water and setting it back to the pre-1960s, when much was arid steppe”, see Clara Ferreira Marques ’Crimea’s Water Crisis Is an Impossible Problem for Putin’ (Bloomberg, 19 March 2021) <https://www.bloomberg.com/opinion/articles/2021-03-19/russia-vs-ukraine-crimea-s-water-crisis-is-an-impossible-problem-for-putin>

different Soviet Republics with more than 270 mln inhabitants.[40] Thus, the Crimean Peninsula remained a part of independent Ukraine, albeit the 1992 Constitution of the Republic of Crimea factually declared independence. In 1996 the Crimean governmental bodies' powers were restricted[41] and the Crimea was mentioned in the 1996 Ukraine's Constitution as an "Autonomous Republic of the Crimea and the city of Sevastopol" and enjoyed "a largely symbolic but constitutionally enshrined autonomy status".[42] Still, the Russian Federation had retained a significant political influence over the peninsula; but there were no territorial disputes regarding legal status of the Crimea as a Ukrainian territory prior to 2014. In fact, the 1994 the bilateral 'Treaty on Amity and Friendship' between Ukraine and the Russian Federation enshrined the mutual respect towards the territorial integrity of both countries and confirmed the inviolability of the existing borders at the time of signature.[43]

After the proclamation of Ukraine's independence, Crimean Tatars were finally permitted to return to the Crimea after the nearly 50-years exile in remote USSR provinces. They were not allowed to change their residency during the USSR times. Hence, in accordance with the latest data from 2001, the ethnic Russian population constituted 58.3%, Ukrainian – 24.3% and Crimean Tatar – 12.1%.[44]

According to the 1997 bilateral agreement between Russia and Ukraine, the Russian fleet was permitted to be stationed in Sevastopol until 2017, but without interference into the Ukraine's internal affairs. In 2010 the so-called 'Kharkiv Pact' was concluded between Russia and Ukraine extending the Russian lease on naval facilities in Crimea beyond 2017 until 2042. Interestingly, in the text of the treaty it was firmly established that the territory of the Crimea (including the city of Sevastopol) is an integral part of Ukraine.[45]

However, since November 2013 the relationships between Russia and Ukraine gained a new dimension, as a consequence of geopolitical tensions. Namely, the Ukrainian President Viktor Yanukovych unilaterally refused to sign the Association agreement with the EU but expressed intention to join the Russia-backed "Eurasian

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[40] President of the Russian Federation, 'The Belavezha Accords signed' (Boris Yeltsin Presidential Library , 8 December 1991) <https://www.prlib.ru/en/history/619792>

[41] Anastasiia Tatarenko, 'The Legal Status and Modern History of Crimean Autonomy' (Verfassungsblog, 02 April 2014) <https://verfassungsblog.de/the-legal-status-and-modern-history-of-crimean-autonomy/>

[42] Gwendolyn Sasse, 'Revisiting the 2014 Annexation of Crime' (*Carnegie Europe*, 15 March 2017)<https://carnegieeurope.eu/2017/03/15/revisiting-2014-annexation-of-crimea-pub-68423>

[43] 'Friendship, cooperation and partnership agreement between the Russian Federation and Ukraine' (31 May 1997)

[44] Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Ukraine (2007) <https://www.refworld.org/docid/4954ce5123.html>

[45] Agreement between the Russian Federation and Ukraine on the stationing of the Black Sea Fleet of the Russian Federation on the territory of Ukraine (concluded on 21 April 2010, denounced on 24 April 2014) <https://docs.cntd.ru/document/902225159>

Economic Union" instead (presumably, due to duress from the Russia's side). In its turn, such decision sparked a series of protests within Ukraine, that were violently suppressed by the police forces.[46] The upheaval was reached in January-February 2014 whereas first fatal victims among peaceful protestors were recorded.[47] The number of fatal victims eventually reached 104 persons with 2,500 injured during the peak of violent clashes between the protestors and the 'Berkut' special police forces during 18-20 February 2014.[48]

In late February 2014 Yanukovych fled the country and was later found at the southern Russian city of Rostov-on-Don, calling himself the "only legitimate ruler of Ukraine"[49] and appealing to Russian President for starting a full-scale invasion in Ukraine to restore the power of Yanukovych's government.[50] In its turn, according to domestic legislation, Oleksandr Turchynov (the head of the Parliament) was temporarily acting as a President of Ukraine. The Cabinet of Ministers (the main executive body) was fully refurbished (as most ministers appointed by Yanukovych fled the country), and re-elections of the President and Parliament were scheduled in the upcoming months of 2014.

It is argued that this particular political context in 2014 enabled the mobilization of pro-Russia sentiment in Crimea.[51] Namely, researchers of the RAND analytics centre emphasize on an "anti-Russian agenda and reckless nationalistic statements following the victory of the Maidan revolution in Kyiv", to be decisive factors to Russia's favor and name 2 main 'trigger events'. The first trigger was an attempt (albeit failed) to repel the legislation concerning official status of the Russian language in certain regions, including the Crimea. The second trigger event took place on 24 February 2014, when a leader of Ukrainian nationalists' party publicly threatened to bring paramilitary fighters to Crimea "to restore order".[52] In response, the leader of the Simferopol[53] branch of the 'Russian Unity party' Mikhail Sheremet had used the

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[46] Amnesty International , 'Ukraine: Freedom of Assembly crushed' (News, 30 November 2013) <https://www.amnesty.org/en/latest/news/2013/11/ukraine-freedom-assembly-crushed/>

[47] Andrew Rettman, 'Protester shot dead in Ukraine' (EUObserver, News, 22 January 2014) <https://euobserver.com/foreign/122824>

[48] RadioLiberty, 'Ukraine Marks 'Heavenly Hundred's Day' On Anniversary Of Euromaidan Bloodshed' (RFE/RL's Ukrainian Service, 20 February 2020) <https://www.rferl.org/a/ukraine-marks-heavenly-hundred-s-day-on-anniversary-of-euromaidan-bloodshed/30445178.html>

[49] Global conflict tracker, 'Conflict in Ukraine' (Ukraine, 2021) <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine>

[50] Shaun Walker, 'Russian 'invasion' of Crimea fuels fear of Ukraine conflict ' (The Guardian, 1 Mar 2014) <https://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>

[51] Sasse Gwendolyn, 'Revisiting the 2014 Annexation of Crime' (*Carnegie Europe*, 15 March 2017)<https://carnegieeurope.eu/2017/03/15/revisiting-2014-annexation-of-crimea-pub-68423>

[52] Michael Kofman and others, *Lessons from Russia's Operations in Crimea and Eastern Ukraine* (RAND Corporation 2017) 29 <https://www.rand.org/pubs/research_reports/RR1498.html>.

[53] Simferopol is a capital city of the Crimea; the city of Sevastopol holds a special status due to its military naval base and was closed to regular entrance for non-residents in the USSR times

expression “brown plague” describing an “invasion of nationalist paramilitary groups” coming from the mainland Ukraine. Anton Sirotkin, the head of the “Cossack brotherhood[54]” called for people’s mobilization to “protect the peace and tranquillity of Crimea” by “not allowing an attempt to implement the “horrors of Maidan” witnessed in Kyiv”.[55]

Starting from the late February 2014, protests against the new government in Kyiv began to build in the Crimea, fuelled by the “grassroots mobilization campaign in Crimea to counter the Maidan movement” allegedly fuelled by Russia. On 25 February 2014 the first checkpoints appeared on the Perekop isthmus, which connects the Crimea with the mainland Ukraine. According to the Crimean authorities, they were installed by the soldiers of the Sevastopol police forces to protect the peninsula against the Ukrainian nationalists. But reportedly, the Russian special forces “cooperated” with these “local forces” later backed by the Russian military personnel.[56]

On 27 February 2014, armed and uniformed individuals wearing no identifying insignia seized control of key government institutions in Simferopol, including the parliament building. The same day, in the presence of mentioned armed men, the Crimean parliament decided to appoint a new prime minister Sergey Aksenov (the head of the “Russian Unity party”) and to hold a referendum on the status of Crimea. On 1 March 2014 Russian MFA published a statement, condemning “the Kyiv administration” of an attempt to seize the government building on 26 February 2014 and praising the role of the so-called “self-defence forces”[57] in preventing the alleged seizure.

On the same day “in view of the extraordinary situation in Ukraine, the threat to the lives of Russian nationals, our compatriots and staff of Russia's Black Sea Fleet in Ukraine” Russian President V. Putin addressed State Duma[58] to allow the use of

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[54] Britannica: “Cossack paramilitary groups fought alongside Russian troops during the 2008 invasion of Georgia, and they participated in Russia’s armed annexation of the Ukrainian autonomous republic of Crimea in 2014 as well as the subsequent Russian-backed insurgency in eastern Ukraine”.

[55] Grigoriev M., Kovitidi O. ‘Crimea. The history of return’ <https://rk.gov.ru/rus/file/krim_istoriya_vozvrascheniya.pdf> pp. 120-121

[56] Kirill Mikhailov, 'Walking into Tavrida' (New Times, 15 March 2015) <https://newtimes.ru/art.s/detail/95769/>

[57] Russian Federation, 'Statement by the Russian Ministry of Foreign Affairs regarding the events in Crimea' (Ministry of Foreign Affairs, 1 March 14) <https://www.mid.ru/web/guest/maps/ua/-/asset_publisher/ktn0ZLTvbbS3/content/id/72890?p_p_id=101_INSTANCE_ktn0ZLTvbbS3&_101_INSTANCE_ktn0ZLTvbbS3_languageId=en_GB>

[58] The parliament of the Russian Federation

Russian Armed Forces in the territory of Ukraine.[59] The State Duma then unanimously voted in favor of the intervention of Russian troops into the territory of Ukraine.[60]

Afterwards armed men bearing no identifying insignia began occupying key facilities on the Crimean Peninsula. They were later branded as “polite people” by the Russian media, and “little green men” by the Ukrainian news outlets.[61] Russian head of the MFA Sergey Lavrov described them as "self-defense forces" created by local inhabitants “concerned about alleged threats against Crimea's Russian-speaking population from the new Ukrainian government”.[62] The newly appointed prime minister of the Crimea Sergey Aksenov said that as of 4 March 2014 nearly 11,000 men have signed up as members of these units which were equipped with shields, sticks, and “lawfully registered firearms”.[63]

The RAND corporation in its analyses of the ‘Crimean crisis’ claims that the Russian intelligence seized the moment which “organize self-defense units consisting of local militia, Cossacks, and former special police”.[64] RAND also notes that Russian airborne troops disguised themselves as local security forces to help keep order among the population[65] and coordinated the so-called “self-defence forces”. Overall, they conclude that the shared language, culture, and ethnicity of most Crimeans allowed the Russian military to easily blend amidst the local population.[66]

On 2 March 2014 the Crimean Supreme Council scheduled a referendum for March 16, which offered two choices: “join Russia or return to Crimea’s 1992 constitution”.[67] The latter presumed proclamation of the Crimea as an independent

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[59] Russian Federation, 'Speech by the Russian Foreign Minister, Sergey Lavrov, during the high-level segment of the 25th session of the United Nations Human Rights Council, Geneva, 3 March 2014' (Ministry of Foreign Affairs, 3 March 2014) <https://www.mid.ru/web/guest/foreign_policy/un/-/asset_publisher/U1StPbE8y3al/content/id/72642?p_p_id=101_INSTANCE_U1StPbE8y3al&_101_INSTANCE_U1StPbE8y3al_languageId=en_GB>

[60] 1tv channel, 'Senators of the Federation Council unanimously voted for the introduction of Russian troops into the territory of Ukraine' (News, 1 March 2014) <https://www.1tv.ru/news/2014-03-01/44978-senatory_sovfeda_edinoglasno_progolosovali_za_vvod_voysk_rf_na_territoriyu_ukrainy> accessed 8 May 2021

[61] Ray Furlong, 'The Changing Story Of Russia's 'Little Green Men' Invasion' (Radio Liberty, 25 February 2019) <https://www.rferl.org/a/russia-ukraine-crimea/29790037.html>

[62] Sergey Lavrov, ’Russian Federation, High-Level Segment - 1st Meeting, 25th Regular Session Human Rights Council’ (3 March 2014) <http://webtv.un.org/meetings-events/human-rights-council/watch/russian-federation-high-level-segment-1st-meeting-25th-regular-session-human-rights-council/3282328995001/?term=&lan=russian>

[63] Human Rights Watch, 'Crimea: Attacks, ‘Disappearances’ by Illegal Forces' (Europe, 14 March 2014) <https://www.hrw.org/news/2014/03/14/crimea-attacks-disappearances-illegal-forces>

[64] Kofman and others (n 52) pp.10

[65] ibid 10.

[66] ibid.

[67] Steven Pifer, 'Crimea: 6 years after illegal annexation ' (Brookings, 17 March 2020) <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation>

entity that de-jure is a part of Ukraine, but their relationships would be defined by special agreements. The Republic of Crimea, according to art. 10 of mentioned Constitution, independently enters into relations with other states and organizations, carries out mutually beneficial cooperation with them on the basis of treaties and agreements.[68] There was no option available for those wishing to maintain status quo. On the 11 March 2014 the "Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol" was adopted.[69]

The so-called referendum took place with a reported turnout of 83 % of registered population, with 96.7 % voting to join Russia, but a leaked report indicated turnout at only 30 %, with about half of those voting to join Russia.[70] Some Russian media also note that the lists of voters included people not registered or residing in the Crimea, including Russian citizens.[71]

The Russian Foreign Minister Sergey Lavrov denied any kind of Russia's involvement on numerous occasions, claiming that only the local "self-defence[72]" forces operate there, and Russia had no part in preparing a referendum. But later Vladimir Putin said that he had ordered work on "returning Crimea" to begin at an all-night meeting on 22 February when Yanukovich fled the country.[73] According to the Russian media outlet "New Times", military units from Pskov region, Rostov-on-Don, Moscow Region, Ulyanovsk, Novorossiysk, Tula and Chechnya took part in the so-called "Crimean assignment" in February-March 2014.[74]

Later, the Russian media outlet "Meduza" conducted a series of interviews with the members of the regular armed forces of Russia deployed to the Crimea in February-March 2014.[75] Some of the respondents confirmed that they were told to rip

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[68] RIA Novosti, 'Constitution of Crimea 1992' (07 March 2014) <https://ria.ru/20140307/998648819.html> accessed 8 May 2021

[69] Russian Federation, 'Statement by the Russian Ministry of Foreign Affairs regarding the adoption of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol' (MFA, 11 March 2014) <https://www.mid.ru/en/press_service/spokesman/official_statement/-/asset_publisher/t2GCdmD8RNIr/content/id/71274>

[70] Pifer (n. 67)

[71] Mikhailov (n. 56)

[72] Russian Federation , 'Speech by the Russian Foreign Minister, Sergey Lavrov, and his answers to questions from the mass media during the press conference summarising the results of the negotiations with the Spanish Minister of Foreign Affairs and Cooperation, José Manuel García-Margallo, Madrid, 5 March 2014' (MFA, 5 March 2014) <https://www.mid.ru/en/posledniye_dobavlnenniye/-/asset_publisher/MCZ7HQuMdqBY/content/id/72194>

[73] BBC, 'Crimea Profile' (BBC, 17 January 2018) <https://www.bbc.com/news/world-europe-18287223>

[74] Mikhailov (n. 56)

[75] Dmitry Pashinsky, "I serve the Russian Federation!' Soldiers deployed during the annexation of Crimea speak' (Meduza, 16 March 2015) <https://meduza.io/en/feature/2015/03/16/i-serve-the-russian-federation>

off Russian insignias and identification marks from their uniforms and were allowed to wear them again only after the so-called “referendum”. Many of them were later awarded with a government medal “For the return of the Crimea” from the Ministry of Defence of the Russian Federation.[76] Interestingly, the date engraved on the medal is “20 February 2014”[77] – but the importance of this small detail will come up in the part 1.2.4 (on the recent ECtHR decision) of this chapter.

The so-called referendum was followed by an official request by the Crimean authorities to become a part of the Russian Federation and the process of “reunification” concluded on March 18[78] via signature of the “Treaty on the Adoption of the Republic of Crimea into Russia” between local Crimean authorities and Russia[79] and subsequent ratification by the Russian parliament on 21 March 2014.[80] This date puts an end to the so-called “Crimean Spring” and marks an official beginning of “Crimean integration” via extending Russian legislation and policy on the peninsula.[81] After the so-called “referendum”, a full-scale seizure of Ukrainian military facilities had begun, and on 18 March 2014 a Ukrainian serviceman Serhiy Kokurin was shot dead by pro-Russian forces during the raid on a Ukrainian navy base in Simferopol.[82] On 17 April 2014 Putin admitted for the first time that Russian soldiers were disguised as the “green men”: “Of course, our servicemen stood behind the Crimean self-defense forces. They acted very politely, but, as I said, decisively and professionally”.[83]

In 2021 Russian representative in the OSCE stated that “the integration of Crimea into the common political, legal, socio-economic space of Russia has been completed”.[84] The rhetoric of Russian Federation remains the same for the past 7

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[76] InformNapalm, 'Award stigma of war criminals from the Russian Army, database and video overview' (OSINT Archives, 23 November 2016) <https://informnapalm.org/en/award-stigma-war-criminals-russian-army-database-video-overview/> ; InformNapalm, 'Personnel of 7057th Naval Aviation Base of the Russian Black Sea Fleet got medals for occupation of Crimea' (*OSINT Archives*, 23 April 2019) <https://informnapalm.org/en/personnel-of-7057th-naval-aviation-base-of-the-russian-black-sea-fleet-got-medals-for-occupation-of-crimea/>

[77] UA crisis media center, 'Ukraine v Russia case: Russia controlled Crimea before it illegally annexed it, the European Court of Human Rights decides ' (News, 15 January 2021) <https://uacrisis.org/en/ukraine-v-russia-case-russia-court-of-human-rights> 1

[78] Kofman and others (n 52) pp.11

[79] Human Rights Watch, 'Rights in Retreat: Abuses in Crimea' (17 November 2014) <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>

[80] Sasse Gwendolyn (b. 51)

[81] Human Rights Watch (n. 79)

[82] RadioLiberty, ‘Live Blog: UN Backs Ukraine Integrity’ (27 March 2014), https://www.rferl.org/a/live-blog-crisis-in-ukraine/25287590/lbl0lbi27201.html, Ukraine v. Russia (re Crimea), para 108a

[83] Mikhailov (n. 56)

[84] Russian Federation, 'Statement by the Head of the Delegation of the Russian Federation to the Vienna Talks on Military Security and Arms Control Konstantin Gavrilov at the 970th plenary session of the OSCE Forum for Security Co-operation' (MFA, 17 March 2021) <https://www.mid.ru/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4640723>

years: that “reunification” was conducted on the voluntary basis of Crimean population and in full conformity the right of peoples to self-determination enshrined in the UN Charter. The Crimea is referred to as a “full subject of the Russian Federation” and thus Russia “legally and in accordance with its Constitution exercises state sovereignty on the Crimean Peninsula, including measures to strengthen the country's defense and conscription”.[85] Interestingly, even in its statements published on an official MFA website to commemorate the “7-th year anniversary of reunification”, the Russian authorities still appeal to the need “to protect the interests, dignity, and life of Crimeans against the background of threats from nationalists and neo-Nazis who came to power in Kyiv as a result of an unconstitutional armed coup”.[86]

With regards to the human rights policy of the new Crimean administration, the Human Rights Watch (hereinafter – HRW) notes that since 2014 human rights protections in Crimea have been severely curtailed, as the de facto authorities have limited free expression, restricted peaceful assembly, and intimidated and harassed those who have opposed Russia’s actions. In particular, the ethnic Crimean Tatar and Ukrainian communities have been the main targets. Russian citizenship was imposed on Crimea residents through a coercive process, via the treat of expulsion and restrictions on property rights.[87] Those who refuse accepting Russian citizenship face the threat of dismissal from employment, loss of property rights, inability to travel to mainland Ukraine and elsewhere.[88]

In terms of the legal consequences of such actions, Russia has faced sanctions from the EU and the USA; and these measures have arguably 1) prevented further invasion onto Ukrainian territory in 2014 2) may have stalled Russia’s economic growth by 2.5–3% a year (about 50 billion USD per year).[89] The “annexation” or “reunification” of the Crimea is not recognized by the overwhelming majority of states, and currently the Crimea remains in de facto isolation from the outside world.

In terms of legal arguments precluding wrongfulness of Russia’s actions, one could possibly argue that Crimean residents merely exercised their right to self-

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[85] Russian Federation, 'Statement by the Head of the Delegation of the Russian Federation to the Vienna Talks on Military Security and Arms Control Konstantin Gavrilov at the 957th Plenary Session of the OSCE Forum for Security Co-operation' (MFA, 8 October 2021) <https://www.mid.ru/web/guest/maps/ua/-/asset_publisher/ktn0ZLTvbbS3/content/id/4373051>

[86] Russian Federation, 'Foreign Minister Sergey Lavrov's remarks on the Crimea 24 TV channel on the occasion of the anniversary of the reunification of Crimea with the Russian Federation, Moscow, March 16, 2021' (MFA, 17 March 2021) <https://www.mid.ru/web/guest/vnesneekonomiceskie-svazi-sub-ektov-rossijskoj-federacii/-/asset_publisher/ykggrK2nCl8c/content/id/4633771> accessed 8 May 2021

[87] Human Rights Watch (n. 79)

[88] Freedom House, 'Crimea' (Freedom in the World, 2018) <https://freedomhouse.org/country/crimea/freedom-world/2018>

[89] Anders Åslund, Maria Snegovaya, ’The impact of Western sanctions on Russia and how they can be made even more effective’ (3 May 2021) < https://www.atlanticcouncil.org/in-depth-research-reports/report/the-impact-of-western-sanctions-on-russia/ >

determination in the volatile events of 2014. Yet, even if trying to invoke the right to self-determination (which indeed exists in international law) as argued by Burke-White, the degree of Russia's involvement in the referendum organization and conduct, disables any real possibility of Crimean population to freely choose their future.[90] Later, as also mentioned by Burke-White, such "involvement" amounts to a violation of the principle of non-interference in internal affairs, prescribed in the UN Charter.

But, as a political consequence, Russia has witnessed major surge in patriotic spirit after the "return of the Crimea", whereas it was compared with the fall of the Berlin wall and reunification of Germany.[91] Russian experts called this "the Crimea effect" describing the wave of euphoria overwhelming the country, signifying the "return to past greatness".[92] In its turn, this upheaval had resulted in resurrection of military-patriotic movement in 2016, which will be addressed in detail in chapter 3 of this thesis.

So, in this introductory note the factual background is given, in order to give a reader a very brief insight into the complex history of the Crimean Peninsula that explain its long-disputed status and allegiances; yet it also provides the insight into its demographic scope and difficult political situation preceding the Russian invasion. This chapter does not aim to justify any party, or to pin the labels. Rather, it pragmatically looks to what was happening during 2013-2014 in Ukraine, and how the series of events have consequently resulted in Ukraine losing a part of its internationally recognized territory – **which is illegal in itself**, no matter what the circumstances are. Moreover, it debunks the Russian narrative of the "peaceful reunification", as at least one Ukrainian serviceman was murdered during the military operation, which is more than enough to qualify the situation as an international armed conflict (hereinafter – IAC). Yet, the information provided on the main actors and rhetoric which enabled Russia to at least in principle argue about the "right to self-determination" or even embark on a legally ambiguous concept of "responsibility to protect" does provide a basis for the further analysis of its policies implemented in the Crimea in the post-2014 period.

Based on the foregoing, it is important to address the issue of the legal status of the Crimea since 2014 in order to establish which law is applicable on its territory. Namely, the ICC Prosecutor had preliminary concluded that the 2014 events had led to an "occupation" and the ECtHR in its recent judgment had used the term "effective control" when deciding on jurisdictional issues in Ukraine v. Russia (re Crimea). Nevertheless, it is important to go into a definite conclusion on applicable regime, and this issue will be addressed in the next section.

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[90] William W Burke-White, 'Crimea and the International Legal Order' 17, 8.

[91] Yuga, 'Medvedev compared the reunification of Crimea with Russia with the fall of the Berlin Wall' (News, 21 April 2015) <https://www.yuga.ru/news/366608/>

[92] Roman Goncharenko, 'Vladimir Putin's 'Crimea effect' ebbs away 5 years on' (DW, 15 March 2019) <https://www.dw.com/en/vladimir-putins-crimea-effect-ebbs-away-5-years-on/a-47941002>

1.2. Is Crimea occupied? The legal status of the Crimea

1.2.1 General overview

The first UNGA Resolution adopted in the aftermath of the "Crimean Spring" states that the so-called "March 2014 referendum" has "no validity" and thus fails to alter the status of the region".[93] Yet, in light of what has been said earlier on in this thesis, the Russian authorities are denying any hint on illegitimacy of their actions and consistently argue that the Crimea is now fully integrated into the Russian Federation, and the latter exercises full sovereignty over the peninsula.

The acquisition of another state's territory via the use of force (such as annexation) is prohibited by international law, and the UN Charter firmly established the non-intervention principle as a basic prerequisite for lawful relationships between states.[94] Benvenisti argues that the prohibition of wartime annexation is of customary character and thus "purported unilateral annexation of territories under belligerent occupation is contrary to international law".[95] Since this is a settled prohibition of international law, in this part we will do not need to elaborate much on legality of Russia's actions, but rather focus on which rules of international law govern the situation, and which legal framework consequently applies.

In 2017 the UN in its GA Resolution has first used the word "temporary occupation of part of the territory of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation" and reaffirmed its non-recognition of annexation.[96] Therefore, as it was established that acquisition of territory by the use of force is prohibited under international law, and the word "occupation" is utilized in most official documents describing the situation in the Crimea, the relevant regulations on belligerent occupation must be reviewed.

First of all, the law of occupation is based on the general international legal principle that precludes the validity of acquisition of territory by force.[97] Benvenisti defines occupation as "the effective control of a power (be it one or more states or an international organization, such as the UN) over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory".[98] He bases this definition on the art. 42 of the Hague Regulations which states that "territory is

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[93] UNGA, 'Territorial Integrity of Ukraine: resolution' (1 April 2014) UN Doc A/RES/68/262

[94] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI,

[95] Benvenisti E, The International Law of Occupation (2nd ed, Oxford University Press 2012), p.19

[96] UNGA, 'Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine): resolution' (1 February 2017), UN Doc A/RES/71/205

[97] Orna Ben Naftali, *International Humanitarian Law and International Human Rights Law. Pas de Deux.* (Oxford University Press 2011) p. 136

[98] Benvenisti E, The International Law of Occupation (2nd ed, Oxford University Press 2012), p.4.

considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".[99] The notion of occupation has been later been expanded by common art. 2 of the 1949 Geneva Conventions including occupation that encountered no armed resistance.[100] Ferraro thus defines the law of occupation as "a normative construction essentially made up of the HRs and the GC IV" whose "scope of application is predicated entirely on the fulfilment of the conditions inferred from mentioned agreements".[101]

Ben-Naftali distinguishes three distinct features of an occupation regime:

1) **Expansiveness**: covering varied types of occupation and refuting possible resistance from the states. Thus, as argued by Ben-Naftali, a moment an occupation is installed, the normative regime of occupation (covering both IHRL and IHL) applies.[102]

2) **Inalienability of sovereignty:** occupation does not confer title over the foreign territory. This principle was established in 1925 PCIJ case of Franco-Hellenic lighthouse case".[103] Pellet argues that inalienability of sovereignty is "one point on which writers and judges agree" and concludes that under occupation "power changes hands, not sovereignty".[104]. Benvenisti notes that under contemporary international law sovereignty is vested in the population under occupation.[105]

3) **Occupation as a factual matter**: it is a phenomenon that exists once effective control is exercised by a foreign power without the volition of the occupied people. But the phenomenon of occupation is not only factual but is also normative, and thus susceptible to an assessment of its legality[106].

Ferraro argues that to define a given situation as "occupation" one must establish a territory's de facto submission to the authority of hostile armed forces.[107] Hence,

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[99] International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907

[100] Tristan Ferraro, 'Determining the Beginning and End of an Occupation under International Humanitarian Law' (2012) 94 International Review of the Red Cross 133, p. 136.

[101] ibid 137.

[102] Ben Naftali (n 97) 134.

[103]Lighthouses Case between France and Greece, PCIJ (17 March 1934), para 208

[104]Pellet A. 'The Destruction of Troy will not Take Place' in Emma Playfair, *International Law and the Administration of Occupied Territories : Two Decades of Israeli Occupation of the West Bank and Gaza Strip : The Proceedings of a Conference Organized by al-Haq in Jerusalem in January 1988.* (Clarendon 1992) p.174

[105] Eyal Benvenisti, 'The Security Council and the Law on Occupation: Resolution 1483 on Iraq in Historical Perspective' (2003) 1 Israel Defense Forces Law Review 19, p. 28.

[106] Ben Naftali (n 97) 134.

[107] Ferraro (n 100).

"effective control" is an essential concept substantiating and specifying the notion of "authority" as provided in the HR and is the main characteristic of occupation.[108] Ferraro later concludes that effective control requires **three cumulative criteria:**

1) the unconsented foreign military presence;

2) the foreign forces' ability to exercise authority over the areas in lieu of the territorial sovereign and

3) the related inability of the latter to exert their authority over the territory.[109]

In terms of the starting point for IHL applicability, Sassòli suggest that "the rules of IHL on occupied territories apply whenever, during an armed conflict, a territory comes under the control of the enemy of the power previously controlling that territory".[110] Roberts clarifies that "the military force has either displaced the territory's ordinary system of public order and government, replacing it with its own command structure, or else has shown the clear physical ability to displace it".[111]

To summarize, the occupation rules are governed both by the "Hague Law" and "Geneva Law"; and this legal regime precludes any possibility of the Occupying Power to claim the title to the occupied territory. Occupation is established once effective control is exercised by one state against the territory of another state, without the latter's consent.

Although generally it is quite widely recognized that Crimea is "occupied" in accordance with the relevant definition prescribed by the 1907 HRs, it is still necessary to clarify which particular standards are developed by the relevant international bodies apply when assessing if a given situation falls under the "occupation auspice". Hence, we'll review the practice and approaches of three international bodies relevant to the Crimean case: namely, those developed by the ICJ, the ICC and the ECtHR, as all of them will sooner or later have to review these issues within the case of Ukraine.

1.2.2. ICJ approach

The ICJ has had considered the notion of occupation in its 2004 Wall Advisory Opinion[112] and the 2005 decision on Armed Activities case (DRC v. Uganda). In both instances the ICJ relied exclusively on Art. 42 of the Hague Regulations (which are

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[108] ibid 140.

[109] ibid 144.

[110] Marco Sassòli, Antoine Bouvier and Anne Quintin, *How Does Law Protect in War* (3rd rd., 2011) Chapter VIII, 21.

[111] A Roberts, 'What Is a Military Occupation?' (1985) 55 British Yearbook of International Law 249, 300.

[112] Legal Consequences cf the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C.J. Reports 2004, p. 136, para 78

deemed as reflecting customary international law) to determine whether an occupation exist on a given territory and as to applicability of the laws of occupation.

The ICJ also applies the "authority test"[113] in considering whether a given territory is considered occupied. In this regard, in DRC v. Uganda the ICJ first carefully examined the prevailing facts to ultimaely establish whether Uganda had in fact established its authority over parts of the territory of the DRC. Specifically, it was mentioned that the Ugandan armed forces in the DRC 1) had to be stationed in particular locations 2) substitute their own authority for that of the Congolese Government.[114]

In the case of Ukraine v. Russia, Ukraine's claims regarding Crimea are based solely upon the extraterritorial obligations of Russia as a party to the Convention on Elimination of all Forms of Racial Discrimination (hereinafter – CERD). The Ukrainian government submits that since 2014 the Russian Federation had presumably engaged in a campaign directed at depriving the Crimean Tatars and ethnic Ukrainians in Crimea of their political, civil, economic, social and cultural rights and pursued a policy and practice of racial discrimination against those communities.[115] Thus, according to the ICJ, matters of purported "aggression"/ alleged "unlawful occupation" of Ukrainian territory or any other violations of international law will not be reviewed within these proceedings.[116]

As Ukraine's claims before the ICJ are based solely on the extraterritorial application of CERD, the jurisdiction phase carefully omitted (although, in fact, it did not have to *per se*) ruling on whether Crimea is under Russian occupation. Yet, in the merits phase the ICJ would still have to examine (at least in some point) Russia's de-facto governance on the territory of the peninsula, in order to establish whether it has obligations *per se*; and then – to what particular extent. Yet, the DRC v. Uganda case does imply that the current situation on the Crimea can be qualified as "occupation", as:

1) as it was indicated in the previous part, the Russian military is currently stationed in the Crimea; and

2) Russia acknowledges that the Crimea is "fully integrated" as one of the regions of the Russian Federation and regularly upholds it even in the official statements.

Even if the issue of occupation is not a core subject matter of the dispute between Ukraine and Russia, such determination will be unavoidable when establishing if

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[113] ibid

[114] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168 para 173

[115] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)

[116] Ibid, para 29

CERD is to be applied extraterritorially in casu. Still, there is enough factual basis to establish the regime of occupation as envisaged by the ICJ approach.

1.2.3. ICC approach

The International Criminal Law provides a useful framework to determine whether the territory can be considered "occupied". In the aftermath of the WWII, the IMT in the 'Hostages trial' established two basic premises of the occupation: first, that "an occupation is a question of fact"[117] and second, that the absence of "distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in occupied territory".[118] The ICTY further reaffirmed these principles in the Naletilic case.[119]

Just as the ICJ, the ICTY also referred to the effective control as a main indicator of the authority and established that the "exercise of authority in the occupied territory refers to the **ability** of foreign forces to exert authority, not the actual exercise of such authority".[120] Specifically, the ICTY in Naletilic judgment has established the "actual authority test" which includes the following guidelines to determine occupation:

> 1) the Occupying Power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly;
>
> 2) the enemy's forces have surrendered, been defeated or withdrawn.
>
> 3) the Occupying Power has a sufficient force present, or the capacity to send troops within a reasonable time;
>
> 4) a temporary administration has been established over the territory;
>
> 5) the Occupying Power has issued and enforced directions to the civilian population.[121]

With regards to the ICC, it should be noted that the preliminary examination of the situation in Ukraine was opened on 24 April 2014 with regards to ongoing alleged crimes committed on the territory of Ukraine from 20 February 2014 onwards.

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[117] Hostages Trial: Wilhelm List and others (case # 47), US Tribunal of Nuremberg, Vol. VIII, (8 July 1947 - 19 February 1948) The United Nations War Crimes Commission, Law Reports of Trials of War Criminals, vol. VIII, 1949<http://www.worldcourts.com/imt/eng/decisions/1948.02.19_United_States_v_List2.pdf, p. 55

[118] ibid p. 59

[119] Prosecutor v. M. Naletilic and V. Martinovic, Trial Chamber Judgment, IT-98-34-T, International Criminal Tribunal for the former Yugoslavia (31 March 2003), para. 211

[120] Ibid, para 217.

[121] ibid

In 2016, the ICC OTP preliminary evaluated the Crimean situation as an international armed conflict between Ukraine and the Russian Federation since at least 26 February 2014. But most importantly, it noted that the situation within the territory of Crimea factually amounts to 'an ongoing state of occupation' which triggers relevant analysis of crimes alleged to have occurred in the given context under the ICC statute.[122] And most importantly, the latter does not require the evaluation of presumed "lawfulness" Russian actions preceding the occupation.[123]

Considering that in 2020 the ICC OTP had announced that there will be a full investigation on the situation in Ukraine,[124] it can be argued that the ICC in its investigation and possible trial phase will be using the "actual authority test" developed in Naletilic case mentioned above. And *in casu*, the established facts clearly allow to draw the preliminary conclusion that this standard will most likely be satisfied. Namely, the Russian Federation authorities do not deny their exercise of "full sovereignty" over the peninsula, in both civil and military matters; the Russian forces are openly being stationed in the peninsula while the Ukrainian forces had left their units since 2014. Neither Ukrainian authorities, nor even international monitoring missions have access to the territory of the peninsula. Hence, the "Naletilic standard" is satisfied *in casu*.

1.2.4 ECtHR approach

The standard of control applied by the ECtHR is different from the ICJ and ICC. Namely, the ECHR obligation are based on the establishment of state jurisdiction[125] as "a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention".[126] As noted by Besson, *jurisdiction* as a condition of establishing state's duties (or lack thereof) must be distinguished from *attribution* in the context of the determination of state responsibility within the classical public international law doctrine.[127]

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[122] ICC, 'Ukraine, Report on Preliminary Examination Activities (2017) <https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf>

[123] ibid

[124] ICC, 'Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine" (11 December 2020) < https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine >

[125] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

[126] Al-Skeini and Others v the United Kingdom App No 55721/07 (ECtHR, 7 July 2011), para 13

[127] Samantha Besson, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To' (2012) 25 Leiden Journal of International Law 857.

In short, the analysis of the ECtHR practice helps distinguish three constitutive elements of state control must be qualified to establish jurisdiction:

1) it should be effective (exercised, and not merely claimed);

2) overall (should be exercised over a large number of interdependent stakes, and not one time only and over a single matter only) and

3) normative (exercised in a normative fashion so as to give reasons for action, and not as mere coercion).[128]

The relevant guidelines indicate that criteria for assessing the existence of state jurisdiction or *de facto* political and legal authority can vary and correspond to types of control.[129] In Al-Skeini it is noted that "jurisdiction may be exercised not only within the state's internationally recognized territory, but also on foreign territory"; lawfully - on invitation, or unlawfully - in the case of occupation without state consent, either by military force or through a local administration.[130] The ECHR obligations in these instances derives from the fact of such control, exercised either directly through the armed forces, or through a subordinate local administration.[131]

The cases considered by the ECtHR concern either military "occupation" in the traditional sense as defined in Art. 42 of the HR; and cases concerning the creation, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the military, economic and political support of another Contracting State.[132] In deciding whether the effective control of a given state is exercised over the foreign territory, the ECtHR generally relies on two criteria:

1) the number of soldiers deployed by the State in the territory in question and

2) the extent of importance of the State's military, economic and political support for the local subordinate administration and its subsequent influence.[133]

In January 2021 the ECtHR in its first admissibility decision on Ukraine's application against the Russian Federation (re. Crimea) has made a few important findings. First of all, the ECtHR concluded that the jurisdiction of the Russian Federation over Crimea is the "effective control over an area", which consequently

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[128] ibid.

[129] CoE, 'Guide on Art. 1 of the European Convention on Human Rights' (ECtHR, 31 December 2020) <https://www.echr.coe.int/documents/guide_art_1_eng.pdf> accessed 8 May 2021

[130] Al-Skeini and Others v the United Kingdom App No 55721/07 (ECtHR, 7 July 2011), para. 13

[131] Catan and Others v Moldova and Russia App Nos 43370/04, 8252/05 and 18454/06 (ECtHR, 19 October 2012), para 106

[132] CoE, 'Guide on Art. 1 of the European Convention on Human Rights' (ECtHR, 31 December 2020) <https://www.echr.coe.int/documents/guide_art_1_eng.pdf>

[133] ibid

triggers Russia's obligations under the ECHR towards the civilian population of the peninsula.[134]

Secondly, it concluded that Russia indeed exercises effective control over the peninsula – which is not surprising, giving that Russia regularly boasts about this in its official statements; but Milanovic argues that it's the temporal scope which is of utmost interest. Ukraine contended that the starting date of Russia's effective control will be 20 February 2014 (as engraved on the medal "For the return of the Crimea" mentioned in section 1.1.). But Russia had "incorporated the Crimea as a new Federal subject" on 18 March 2014 and celebrates the "reunification" day on March 18th. Relying on multiple evidence (and specifically emphasizing Russian President Vladimir Putin's statements that the work "on the return of Crimea to the Russian Federation" started on 22 February 2014)[135] the ECtHR found that Russia was in effective control of Crimea as from 27 February 2014, when the key government buildings had been seized by the "green men".[136] Hence, the actions of the so-called "self-defence units" and "little green men" prior to 18 March 2014 will be reviewed by the ECtHR in conjunction with Russia's significant influence over the peninsula at the given moment and with established obligations under the ECHR.

To conclude, the conceptual framework of ECHR relies solely on jurisdictional matters, which determines whether a state has obligations over a particular territory or towards a particular individual, or not. In the sense of ECtHR, the jurisdiction can be either territorial or extraterritorial: and the latter applies in terms of occupation, as envisaged by the 1907 Hague regulations. The "effective control" within the ECtHR jurisprudence should not be confused with the attribution standard developed in the Nicaragua case. The ECtHR standard does not envisage establishing state's responsibility for wrongful acts but is used to determine if a particular state exercises jurisdiction over a given person on an area and thus if obligations under the ECHR exist. The ECtHR findings on the Crimea are also of a particular significance to the "Crimean lawfare"[137] taking place within different international institutions. It is highly unlikely that the ECtHR findings will and in fact can be ignored by the ICJ or ICC, and this admissibility decision will be of important precedence to upcoming merits phase in the ICJ and full investigation within the ICC.

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[134] Marko Milanovic, 'ECtHR Grand Chamber Declares Admissible the Case of Ukraine v Russia re Crimea' (EJIL Talk , 16 January 2021) <https://www.ejiltalk.org/ecthr-grand-chamber-declares-admissible-the-case-of-ukraine-v-russia-re-crimea/>

[135] Vlagyiszlav Makszimov, 'Strasbourg human rights court presses ahead with Crimea case' (EURactive, 4 January 2021) <https://www.euractiv.com/section/all/news/strasbourg-human-rights-court-presses-ahead-with-crimea-case/>

[136] Ukraine v Russia (re Crimea) App no 20958/14 and 38334/18 (ECtHR, 15 January 2021), para 335

[137] Within the Ukrainian context, the term "lawfare" is used as "means of holding Russia accountable for its alleged wrongs", see more on Chatham House 'Webinar: Crimea – Ukraine's Lawfare vs Russia's Warfare' (16 March 2020) <https://www.chathamhouse.org/events/all/members-event/webinar-crimea-ukraines-lawfare-vs-russias-warfare>

Chapter 2. Interplay between the IHL and IHRL during occupation

"Now I no longer live in our clear, rational world;

I live in the ancient nightmare world,

the world of square roots of minus one".

— Yevgeny Zamyatin, We

The present chapter logically follows from the main points established earlier: namely, that the Russian Federation since 27 February 2014 exercises effective control over the peninsula, and thus the Crimea is considered "occupied" within the meaning envisaged by the HRs and GCs.

Hence, the status of occupation envisages quite a specific legal regime, which consists of the law of occupation and general human rights law and their applicability within the armed conflict, regime of belligerent occupation will be discussed, with a particular focus on ESCR.

2.1. IHL&IHRL: complementarity, co-applicability or irresolvable tensions?

Taking into account the ICC OTP preliminary conclusion on the existence of international armed conflict between Russian and Ukraine, it is necessary to analyse the applicability of international legal standards within the Crimean territory. The existence of IAC undoubtedly presupposes applicability of IHL – but what about the IHRL?

The debate on whether the situation of armed conflict precludes applicability of the IHRL had been persistent in the academic literature for quite some time and had been a question of concern for both adjudicators and academics. In the 1996 Advisory Opinion when deciding whether the threat or use of nuclear weapons is permitted under international law, the ICJ for the first time addressed the issue of interplay between the IHL and IHRL norms. Specifically, it noted that the right to life is also guaranteed in hostilities; and thus, applicable provisions of the lex specialis (the law of armed conflict) delineates the possible arbitrariness of deprivation of life in casu.[138] As regards the relationship of specific rights between IHL and IHRL, there are three possible situations:

1) some rights may be exclusive matters of the IHL;

2) others may be exclusive matters of IHRL;

[138] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, ICJ Reports (1996) 226, para 25.

3) others may be matters of both these branches of international law.[139]

So, the ICJ concluded that in order to resolve the issue as to applicable law, both branches should be utilized: IHRL norms are applied as lex generalis and IHL norms as lex specialis.[140] But there are a few important limitations to this conclusion. Milanovic notes that the ICJ examined the relationship between one particular IHRL norm to the relevant rules of IHL (lex specialis), but not the regimes as such.[141] Doswald-Beck thus summarizes that the 1996 Opinion signifies that "that humanitarian law is to be used to actually interpret a human rights rule. Conversely, it also means that, at least in the context of the conduct of hostilities, human rights law cannot be interpreted differently from humanitarian law".[142]

The lex specialis approach is applied only with regard to a particular rule or norm and does not define a general relationship between the two branches as such.[143] But this seemingly easy and elegant solution has unfortunately failed to resolve the issue of co-applicability of IHRL and IHL in armed conflict. To begin with, Clapham characterizes their relationships as:

> concurrent, coexisting, consistent, convergent, coterminous, congruent, confluent, corresponding, cumulative, complementary, compatible, cross-fertilizing, contradictory, competitive, or even in conflict.
>
> He concludes with the following passage: "It's contextual and it's complicated".[144]

In this regard, two main conceptions are being used: co-applicability and complementarity. Co-applicability means that "international remedies complement and catalyze individual accountability for crimes derived from serious violations of both IHL and IHRL, with the potential to clarify the law in armed conflict as it arises in the context of real concrete situations and cases".[145] Complementarity means that IHRL and IHL as "based on the same principles and values can influence and reinforce each other

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[139] ibid

[140] ibid

[141] Marko Milanović, 'Norm Conflicts, International Humanitarian Law, and Human Rights Law' in Orna Ben-Naftali (ed), *International Humanitarian Law and International Human Rights Law* (Oxford University Press 2011) p.98

[142] Louise Doswald-Beck, 'International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons' (1997) 37 International Review of the Red Cross 35, p.51

[143] Derek Jinks and others, *Part VI Key Issues in Times of Armed Conflict, Ch.26 International Human Rights Law in Time of Armed Conflict* (Oxford University Press 2014) p. 656

[144] Andrew Clapham and others, *Part I Cross-Cutting Issues and Common Provisions, D The Geneva Conventions in Context, Ch.35 The Complex Relationship Between the Geneva Conventions and International Human Rights Law* (Oxford University Press 2015) p. 736

[145] Ziv Bohrer, Janina Dill and Helen (Law teacher) Duffy, *Law Applicable to Armed Conflict.* (CUP 2020) p. 100–101

mutually and enshrines the idea of international law understood as a coherent system".[146]

Droege suggests using lex specialis as a conflict solving method and to use "complementarity" where the harmonious interpretation is possible, including when one norm is the more specific interpretation of the general norm[147]. In this way IHRL is a general law, while its certain provisions (arbitrary deprivation of the right to life or arbitrary detention) provide "portals, gateways, or windows to the detailed, more specific or specialized rules of IHL[148]".

But why is this co-applicability so complicated? Pellet argues that the IHL is based on the balance between military necessity and humanitarian considerations, but these criteria are vague and undefined, and "more is required in order to determine whether the certain action is lawful or not, especially in military occupation[149]". He furthers notes than a certain rule may appear to relate the two main principles, such as a balance between military exigencies (a matter of fact) and the protection of human persons (a matter of conscience). But Pellet concludes that often both are "found to inspire the same rule: and the compromise can be achieved not by the opposition of two distinct norms, but through "the heart of the norm".[150]

Pellet's considerations find their confirmation at the ICTY jurisprudence. As established in Kunarac, IHRL and IHL had fused in certain aspects and their general resemblance "in terms of goals, values and terminology" allows using IHRL when determining the content of customary international law in the field of humanitarian law[151]. The example provided by the ICTY is based on the use of torture in armed conflict: while it is prohibited in absolute terms by IHRL (the law of peace), no detailed provision on such prohibition can be explicitly found in the IHL.[152] So, to close this possible impunity gap, the ICTY had turned to IHRL for detailed interpretative guidance of such prohibition[153]. At the same time, the ICTY specified that "notions developed in the field of human rights can be transposed in international humanitarian law only if they take into consideration the specificities of the latter body of law".[154]

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[146] Cordula Droege, 'The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2007) 40 Israel Law Review 310, p. 337.

[147] ibid 340.

[148] ibid.

[149] Pellet A. 'The Destruction of Troy will not Take Place' in Emma Playfair (n 102) p. 171.

[150] Ibid, p. 170

[151] *Prosecutor v Kunarac*, Trial Judgment, IT-96-23-T International Criminal Tribunal for the former Yugoslavia (22 February 2001) para 467

[152] *Prosecutor v Furundžija*, Trial Chamber Judgement, IT-95-17/1, International Criminal Tribunal for the former Yugoslavia (10 December 1998), para 159

[153] Ibid, para 162.

[154] *Prosecutor v Kunarac* (n. 151) para. 471

IHL and IHRL are not mutually exclusive regimes but co-exist in complementarity. While IHL is the *lex specialis*, the human rights protection does not cease in case of armed conflict. However, the exact application of various provisions found in both IHL and in human rights instruments, as well as its impact on the occupied territory, is still unclear.[155] The relationship between norms of IHRL and IHL needs clarification in terms of its scope[156] and must be examined in relation to specific norms[157] which coexist in a constant reciprocal nourishment called "a synergy or norms".[158]

But the complementarity approach also has its difficulties and ambiguities in practice. Namely, it fails to effectively and ultimately solve possible tensions in relationships between specific IHL and IHRL norms.[159] For example, the determination of priority of norms in case of conflict between them can be resolved either through the lex specialis construct or a 'more nuanced approach' that stresses and harmonizes the co-applicability of primary and secondary norms.[160] In this regard, Milanovic notes the instances when the "irresolvable contradictions within two branches will lead to a political choice as to priority between the conflicting norms.[161]"

But it is hardly possible that such contradiction can arise in relation to children's rights. For the specific application of children's rights provisions in armed conflict, it is evident that the IHRL detailed guidance in terms of treaty provisions, case law and doctrine cannot be ignored by the states. In this regard, Popovski emphasizes on the simultaneous merger of norms and rules applicable to all circumstances concerning children on the one hand and significant differences between the two bodies of law on the other hand. Hence, to ensure protection of children in armed conflict, he calls for "cumulative application of both IHL and IHRL" when children are concerned. He concludes that all protection measures need to be based "on mutual re-enforcement of the norms and procedures of IHL and IHRL".[162]

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[155] Orna Ben-Naftali and Yuval Shany, 'LIVING IN DENIAL: THE APPLICATION OF HUMAN RIGHTS IN THE OCCUPIED TERRITORIES' 37 ISRAEL LAW REVIEW p.103

[156] Robert Kolb, 'The Relationship between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions' (1998) 38 International Review of the Red Cross .

[157] Robert Cryer, 'The Interplay of Human Rights and Humanitarian Law: The Approach of the ICTY' (2009) 14 Journal of Conflict & Security Law 511, p.514

[158] Koldo Casla, 'Interactions between International Humanitarian Law and International Human Rights Law for the Protection of Economic, Social and Cultural Rights.' [2012] REVISTA ELECTRÓNICA DE ESTUDIOS INTERNACIONALES 17, 16.

[159] H Krieger, 'A Conflict of Norms: The Relationship Between Humanitarian Law and Human Rights Law in the ICRC Customary Law Study' (2006) 11 Journal of Conflict and Security Law 265, p.269

[160] Ziv Bohrer, Janina Dill and Helen (Law teacher) Duffy, *Law Applicable to Armed Conflict.* (CUP 2020) p. 72

[161] Milanović (n 138) p.124

[162] Vesselin Popovski, 'Chapter XIV. Protection of Children in International Humanitarian Law and Human Rights Law' (Brill | Nijhoff 2008) p. 401–402

To conclude, there is no doubt that both IHRL and IHL are applied during armed conflict. However, the difficulties arise as to exact methods and to use to resolve conflicts between certain provisions where they mutually contradict each other. The mentioned ICJ conclusion in the 1996 Nuclear Weapons opinion on lex specialis/lex generalis dichotomy has not put an end to this debate, but virtually opened Pandora's box of misunderstandings, contradictions and further confusion. The complementarity which calls for "mutual enrichment and reinforcement" due to the "shared values and ideas" partially resolves the problem when norms do not contradict each other substantially but fails to take into account the individual-oriented nature of the IHRL, and the realities of armed conflict provided in the IHL norms. Hence, as Milanovic argues, certain realities of armed conflict will eventually call not for legally substantiated, but more politically appropriate decisions.

Yet, the "heart of the norm" approach proposed by Pellet can definitely be applied in terms of the children's rights protection in both IHL and IHRL. In this regard, the "best interest" approach developed in IHRL can be a useful guidance for interpretation of IHL norms dedicated to care and protection of children during armed conflict. The unique vulnerabilities of the child and specific protection afforded by both regimes call for cumulative application by taking up "the best of both worlds" in all cases concerning children. Therefore, after resolving the general issue of IHL and IHRL applicability in armed conflict, the contextual situation of belligerent occupation in the Crimea calls for a specific analysis, taking into account the distinct features of the occupation regime.

2.2. IHL& IHRL during occupation

Even though some argue that historically the practice of Occupying Powers "reflects their vigorous resistance to the idea of the applicability of IHRL",[163] the nature of belligerent occupation clearly illustrates the importance of co-applicability of both branches. Even the absence of an explicit mention of armed conflicts in human rights law and reference to human rights in IHL documents do not preclude the protection available to individual in times of armed conflict. The law of military occupation clearly confirms this point, by creating a "balance between the interests of the local population and those of the occupying army" and taking these two opposing facets into account simultaneously.[164]

The ICJ in *DRC v Uganda* observed that as an Occupying Power Uganda was responsible for violations of human rights law and IHL. Orakhelashvili notes that the findings of the ICJ confirm that "even if the protection in one of the fields is found to be

[163] ICRC, Tristan Ferraro, 'Occupation and Other Forms of Administration of Foreign Territory' p.117

[164] Danio Campanelli, 'The Law of Military Occupation Put to the Test of Human Rights Law' (2008) 90 International Review of the Red Cross 653, p.667

less than in the other field, the applicability of the latter will thus not be prevented".[165] In the 2004 Wall opinion the ICJ resorted to IHRL concurrently with IHL as the lex specialis during belligerent occupation and ruled on extraterritorial applicability of the ICCPR, ICESCR and CRC.[166]

Generally, the regime of belligerent occupations presumes that all functions of government must be provisionally assumed by the Occupying Power in order to guarantee normal life for the civilian population.[167] But these powers are not absolute, as according to Pellet "the rights of the occupier… find their absolute limits in the respect of the sovereign rights of the people whose territory is occupied".[168] Moreover, IHRL remains in force during occupation due to reciprocal nature of obligations of the population to abide to the regulations of occupying authority, which in its turn triggers the obligations of the latter to "respect such standards under Art. 43 in its treatment of the population of the occupied territory".[169] Therefore, human rights law can provide a normative clarification, with its extensive practice (lacking under IHL), in addressing specific guidance for interactions between the occupant's administration and the civilian population in the context of ordinary life.[170]

In DRC v. Uganda the ICJ concluded that the Occupying Power is under an obligation "to restore and ensure… public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force". The ICJ also assumed full responsibility of the Occupying Power for any lack of vigilance in preventing violations of human rights and IHL by its military or other actors on the occupied territory.[171]

The Occupying Power generally has a limited capacity under IHL to undertake major changes to the status quo of the territory as part of their duty to protect the welfare of the population.[172] The perceived "temporary" nature of occupation also perfectly highlights inadequacy of occupation law to effectively ensure an "indigenous ecosystem" as the occupant may only pursue military interests and is not allowed to

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[165] Alexander Orakhelashvili, 'The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?' 22, p.163

[166] Legal Consequences cf the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C.J. Reports 2004, p. 136, para 105–113

[167] Marco Sassòli, 'Legislation and Maintenance of Public Order and Civil Life by Occupying Powers' (2005) 16 European Journal of International Law 661, p.663

[168] Pellet A. 'The Destruction of Troy will not Take Place' in Emma Playfair (n 102) p.174

[169] Conor McCarthy, 'Chapter IV. Legal Reasoning and the Applicability of International Human Rights Standards During Military Occupation' (Brill | Nijhoff 2008) p. 126–127

[170] Gilles Giacca, *Economic, Social, and Cultural Rights in Armed Conflict.* (Oxford University Press 2014) p. 187

[171] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168, para 178-179

[172] Steven R Ratner, 'Foreign Occupation and International Territorial Administration: The Challenges of Convergence.' (2005) 16 European Journal of International Law 695, p.711

make any changes to the institutional, legal, political or economic structure of the occupied territory.[173]

But even a "purely statist and conservationist regime of the occupation" still permits a degree of permissible transformation which is nevertheless limited by the IHRL constraints.[174] In terms of welfare in a socio-economic stance, Benvenisti notes that the occupant should be "an involved regulator of activities and provider of services", which derives from the relevant provisions of the GC IV. He specifically refers to facilitating the proper working of all institutions devoted to the care and education of children (Art. 51), providing specific labor conditions (Art. 52), ensure food and medical supplies of the population (Art. 55), maintain medical services (Art. 56), and agree to relief schemes and to facilitate them by all means at its disposal (Art. 59).[175]

But in terms of the scope of obligations, it is disputed whether the Occupying Power would possess have negative and positive obligations and to what extent. Some argue that IHL is presupposed to governs short-term occupations while IHRL is applied the longer the occupation lasts. Yet, there is no authoritative assessment to decide whether a given situation is short-term or already long-term and such divisions can create different legal regimes for the same situations.[176]

Nevertheless, such division can be justified by the realities of modern-day occupations, such as the situation in the Occupied Palestine's Territory (hereinafter – OPT) which lasts more than 40 years. In this situation "the duty of good governance" would be of particular importance: the longer the occupation lasts, the more extensive are the duties of the Occupying Power to ensure the well-being of the population.[177] Roberts argues that the longer the occupation exists, the heavier is the weight to be accorded to the human rights of the occupied population.[178] Hence, the (il)legality of the certain actions of the Occupying Power must be viewed in complementarity regimes of IHL and IHRL with contextual approach.[179]

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[173] Gilles Giacca and Ellen Nohle, 'Positive Obligations of the Occupying Power: Economic, Social and Cultural Rights in the Occupied Palestinian Territories', Human Rights Law Review, Volume 19, Issue 3, November 2019, p.26

[174] Gerd Oberleitner, *Human Rights in Armed Conflict: Law, Practice, Policy.* (Cambridge university press 2018).

[175] Benvenisti E, The International Law of Occupation (2nd ed, Oxford University Press 2012) referring to Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

[176] Oberleitner (n 174).

[177] Michael Bothe and others, *C Geneva Convention IV, 5 Occupied Territories, Ch.69 The Administration of Occupied Territory* (Oxford University Press 2015) p. 1467

[178] Adam Roberts, 'Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967' (1990) 84 American Journal of International Law 44, p.97

[179] Noam Lubell, 'Human Rights Obligations in Military Occupation' (2012) 94 International Review of the Red Cross 317, p.337

And ultimately, Russia's obligations under the IHRL towards the residents of the Crimea were reiterated in the 2015 Concluding Observations of the UN Human Rights Committee. Namely, the Committee had emphasized on the obligations to secure freedom of expression and information, investigate all allegations of serious human rights violations, ensure freedom of religion and belief and freedom from discrimination based on citizenship and ethnic origins.[180] Hence, there is little doubt as to existence of Russia's obligations towards civilian population of the occupied Crimea.

Without prejudice to the fact that belligerent occupation *per se* constitutes a violation of international law, and is of a temporary nature, it does not preclude the Occupying Power from its obligations towards the civilian population. The GC IV does include a basic set of requirements for the Occupying Power with regards to the treatment of the civilian population within the occupied territory. Yet, these requirements were mostly tailored on the premise of the temporary nature of occupation, and thus do not envisage occupations spanning decades, as in situation of Palestine (and potentially, the situation of the Crimea). Although there are no definite criteria on establishing the "protracted" or "long-term" nature of occupation, it can still be argued that degree of control and absence of constructive dialogue as to the future of the peninsula allow us to regard this situation as "long-term". Hence, in terms of administration of the Crimea, Russia would be bound not only by the IHL rules, but also by the IHRL, which places additional burden on the Occupying Power to ensure full scope of rights and freedoms to the population of the peninsula subjected to its effective control.

2.3. ESCR during occupation

The realities of armed conflict dictate the importance of a special focus on ESCR, as even though IHL imposes certain obligations with regard to education, health, food, or work, the meaning and content of these obligations are actually far more developed in IHRL.[181] Mottershaw argues that the establishment and exploration of the link between the latter and the specific situation of armed conflict can help address possible issues properly.[182] As noted earlier, IHRL finds its applicability within the occupied territories, but the need for special consideration in ESCR applicability is required when dealing with prolonged occupation spanning decades.[183]

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[180] CESCR, Concluding observations on the Russian Federation (28 April 2015), CCPR/C/RUS/CO/7

[181] Gilles Giacca, *Economic, Social, and Cultural Rights and International Humanitarian Law* (Oxford University Press 2014) p.319

[182] Elizabeth Mottershaw, 'Economic, Social and Cultural Rights in Armed Conflict: International Human Rights Law and International Humanitarian Law.' (2008) 12 International Journal of Human Rights 449, p. 465

[183] Roberts (n 175) p.71

Vite notes that the nature of ESCR whereas only some minimum (or core) obligations are of immediate effect and most objectives are of the vague "progressive realization" do not exempt the occupier from its responsibility towards the civilian population under its effective control.[184] Hence, the occupant must ensure the compliance with relevant human rights obligations to the fullest extent possible.

But as to their extraterritorial applicability, it should be noted that the ICESCR in its original text has no explicit reference to its temporal or jurisdictional scope of application.[185] The CESCR's General Comment 1 refers to "individuals within its territory or under its jurisdiction".[186] In this regard, the case of Israel and the occupied Palestinian territories is of utmost relevance. Namely, the CESCR in 1998 the noted that the "the State's obligations under the Covenant apply to all territories and populations under its effective control".[187] In 2003 it was concluded that "'basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law and are also prescribed by IHL".[188] The obligations of the Occupying Power also include the "right to take part in cultural and religious life, without restrictions other than those that are strictly proportionate to security considerations and are non-discriminatory in their application, in accordance with IHL".[189] In the Wall opinion, the ICJ noted that the rights of the ICESCR are "essentially territorial", but "it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction[190]" and granted the Covenant a substantial weight as a means of defining the rights.[191]

Giacca notes that protracted occupation can lead to stagnation of all aspects of civilian life, including the protection of ESCR and challenges the adequacy of occupation law to effectively ensure an adequate standard of living due to presumably temporary character of occupation.[192] The protections afforded by ESCR may also affect the assessment of the content of the obligations derived from IHL.[193] In

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[184] Sylvain Vite, 'The Interrelation of the Law of Occupation and Economic, Social and Cultural Rights: The Examples of Food, Health and Property' (2008) 90 International Review of the Red Cross 629, p. 631–632.

[185] Mottershaw (n 182).

[186] UN Human Rights Committee (HRC), CCPR General Comment No. 1: Reporting Obligation (27 July 1981), para.3

[187] CESCR, Concluding Observations on Israel, (4 December 1998) UN Doc. EC.12/1/Add.27, para.5.

[188] CESCR, Concluding Observations on Israel, (26 June 2003), UN Doc. E/C.12/1/Add.90, para. 31.

[189] CESCR, Concluding Observations on Israel, (16 December 2011) UN Doc. E/C.12/ISR/CO/3, para. 36.

[190] Legal Consequences cf the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C.J. Reports 2004, p. 136, para 112

[191] Mottershaw (n 182).

[192] Giacca and Nohle (n 173).

[193] ibid 500.

prolonged occupation the needs and welfare of the inhabitants in an occupied territory can be interpreted in light of the human rights law regime. As such, human rights law can provide a normative clarification in addressing specific guidance for interactions between the occupant's administration and the civilian population in the context of ordinary life.[194] But Giacca also acknowledges that the very fact of occupation is incompatible with human rights and the best way to respect ESC rights of the population in the occupied territory would not be to further encourage the occupier's engagement through positive obligations, but rather to insist on a full withdrawal. However, this does not invalidate the Occupying Power's existing responsibility before civilian population under both IHL and IHRL.[195] He concludes that "the spirit of complementarity" proves that although ESCR rights and IHL rules are different in nature, the recourse is possible to both regimes to afford "the most effective and enhanced protection to an individual".[196]

The CESCR also has a strong position on Russia's obligations towards Crimeans. Namely, the CESCR in its concluding observations on Russia has noted thar as it exercises "effective control over the territory of Crimea and the city of Sevastopol", it must "uphold Covenant rights in all areas under its effective control, without discrimination". In particular, the CESR referred to the Crimean Tatars' and ethnic Ukrainian ESCR including the rights to work, social security, health, education and culture, without undue restrictions.[197]

Hence, ESCR call for specific consideration in terms of belligerent occupation as their deceitfully dispositive nature can cause confusion in terms of the Occupying Powers' obligations. As a matter of an immediate effect, the Occupying Power is bound to ensure the minimum core obligations pertaining to the socio-economic well-being of the population; yet these obligations are not limited to its core content but go far beyond. The envisaged temporary premise of occupation was not well-tailored for the situation of the so-called "prolonged occupation", and as argued by Giacca, even though the first and foremost obligation of the Occupying Power is to withdraw, the reality of occupation which lasts decades requires more proactive actions on behalf of the occupier to ensure ESCR observance.

The Crimean case can also arguably fall under the "protracted occupation" auspice, even in the absence of established delineating criteria. Still, its proactiveness can be derived from the statements of Russian officials confirming "full integration of

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[194] Gilles Giacca, *Economic, Social, and Cultural Rights and International Humanitarian Law* (Oxford University Press 2014) p. 187

[195] Giacca and Nohle (n 173) p. 515

[196] Gilles Giacca, *The Relationship between Economic, Social, and Cultural Rights and International Humanitarian Law* p. 342 in Eibe Riedel, Gilles Giacca, and Christophe Golay 'Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges' (Oxford University Press 2014)

[197] CESR, Concluding observations on the sixth periodic report of the Russian Federation (16 October 2017), UN Doc. E/C.12/RUS/CO/6

the peninsula into the Russian Federation” and full denial of the Russian authorities to qualify the situation as “occupation” as such. Although these statements do not alter the legal qualification of Crimean status and in any case fail to legitimize the occupation, they clearly signal that the conflict is far from being over, and the occupation can potentially last for decades. *In casu*, the CESCR of the population of the Crimea must be duly guaranteed by Russia as the Occupying Power. Yet, as the 2017 CESCR concluding observations indicate, Russia fails to uphold its obligations in terms of access to employment, property rights and education.

Hence, the next chapter will primarily focus on the latter, with regards to the military component installed in educational institutions of the peninsula since 2017.

Chapter 3. The right to education under occupation: general remarks, application and problem areas

“Children are the only bold philosophers.

And bold philosophers will always be children.

So you're right, it's a child's question, just as it should be.”
— Yevgeny Zamyatin, We

This part provides an analysis of scope and normative content of the right to education under occupation, as well as highlights existing deficiencies within the IHL and IHRL. The Chapter begins with description of the normative content of the right to education and analyzes its scope within the specific situation of a belligerent occupation.

The chapter examines the following components of the right to education: mainly, the aims of education; parent’s rights in directing children’s education and children’s individual freedoms within the educational processes - all under the umbrella of military indoctrination prohibition. The Chapter will also provide overview of the current situation in Crimea in light of all three mentioned elements and thus highlight deficiencies and failures of existing jurisprudence in dealing with possible indoctrination.

The chapter concludes with the remarks on possible redress, as well as considerations for further developments within the existing international human rights law, international criminal law and the law of occupation.

3.1. Normative content

The right to education is one of the undisputable claims which exist in international human rights law. But for a full analysis of its substantive essence, it would be necessary to first provide an understanding of what education is as such; what function the right to education has; and lastly, how different treaty provisions interpret the substance of the right to education.

To begin with, we need to define the term “education” as understood in the international legal instruments. It first should be noted that the text of neither the CRC nor the ICESCR explicitly establishes the definition of education and thus the form and content of what exactly constitutes “education” is open to debate and may be subject to definitional difficulties. UNESCO defines “education” as:

> the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and

international communities, the whole of their personal capacities, aptitudes and knowledge[198] .

The ECtHR had defined education as “the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development[199]”. Moreover, the ECtHR has also noted that a generally accepted understanding of “education” extends beyond classroom theoretical instruction and includes “the development and molding of a child’s character, which may take place in other situations, including in society generally”.[200]

UNESCO has established that “learning to live together”, “learning to know”, “learning to do” and “learning to be” are the four pillars of education.[201] It thereby “contributes to the development of personality and enables individuals to act with greater autonomy, judgement, critical thinking and personal responsibility.”[202] The inclusion of non-formal education as in the notion “education” as going beyond the formal schooling has been reconfirmed the CRC committee in its General Comment 1.[203] Therefore, “education” as understood within the international human rights law discourse, pertains to a broader understanding of human development.

In terms of the relevant provisions of human rights treaties, Delbruck refers to education in a double sense: first, as the provision of basic skills, and second, as the development of the intellectual, spiritual, and emotional potential of the young person or in other words the broader development of his or her personality.[204] Such a uniform dual understanding is prescribed in all international legal instruments which contain provisions on education. Firstly, it was enshrined in the 1966 ICESCR; then in 1989 CRC and in Art. 2 of Protocol No. 1 to the ECHR. Taking into account that both Russia and Ukraine are parties to all mentioned agreements, the legal analysis will be based primarily on their provisions.

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[198] Art 1(a) UNESCO, Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, UNESCO General Conference, 18th Session, Paris, 1974.

[199] Campell and Cosans v UK App no No 13590/88 (ECtHR, 25 March 1992) para 33

[200] ibid

[201] Delors Jacques, UNESCO, Learning: Learning: the treasure within; report to UNESCO of the International Commission on Education for the Twenty-first Century (highlights) <https://unesdoc.unesco.org/ark:/48223/pf0000109590.locale=ru>

[202] Manisuli Ssenyonjo and Ebooks Corporation, *Economic, Social and Cultural Rights in International Law.* (Hart Publishing Ltd 2009) p. 357

[203] UN Committee on the Rights of the Child), General comment No. 1: Art. 29 (1), The aims of education (17 April 2001), UN Doc CRC/GC/2001/1, para 2

[204] Jost Delbruck, ‘The Right to Education as an International Human Right’ 14, 35 German Yearbook of International Law, p.99

Moreover, due to the “societal function that education performs in making child citizens' participation effective”,[205] the right to education can be characterized primarily as “an individual right" but with a very specific "social function of developing people as full citizens of their society".[206] Thus, education is recognised both as a right itself and an important means for the realisation of other human rights, “enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”.[207]

It can also be argued that the right to education has an “empowerment function”, as it “provides and individual with a control over the course of his/her right and in particular, control over the State[208]” which means the ability to claim one’s right against the State. It is an “empowerment right” as it accentuates the unity and interdependence of all human rights.[209] In other words, it enables a person to experience the benefit of other rights and is an important precondition to exercise civil and political rights, as well as most of the freedoms.[210]

Thirdly, for the purposes of this analysis, it may be necessary to proceed with an overview of the main human rights instruments relevant to the right to education. In this regard, the ICESCR was the first comprehensive binding document to enshrine the right to education upon its adoption in 1966 (and subsequent entry into force in 1973). It contains two provisions on subject, namely art. 13 (spilling out main provisions and regulations) and 14 (stipulating obligations of metropolises to secure free primary education in the colonies). Art. 13 is the longest provision in the ICESCR and is arguably the most wide-ranging and comprehensive relevant provision.[211]

The 1989 CRC sets out the rights of the child in a comprehensive manner, bringing specific and child-friendly outlook into the human rights discourse. According to Kilkelly, all CRC provisions are informed by the four guiding principles:

1) non-discrimination (art. 2),

2) the best interest of the child (art. 3),

3) the right to life, survival and development (art. 6) and

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[205] Fazilah Idris and others, ‘The Role of Education in Shaping Youth’s National Identity’ (2012) 59 Procedia - Social and Behavioral Sciences 443, p.444

[206] Katarina Tomasevski, Human Rights Obligations in Education: The 4A Scheme, (Woolf Legal Publishers 2012) p.7

[207] Katarina Tomasevski, *Education Denied : Costs and Remedies.* (Zed Books 2003) p.7

[208] Jack Donnelly and Rhoda E Howard, ‘Assessing National Human Rights Performance: A Theoretical Framework’ (1988) 10 Human Rights Quarterly 214, 215.

[209] Coomans “In search of the core content of the right to education”, in Chapman A and Russell S, Core Obligations: Building Framework for Economic, Social and Cultural Rights. (Intersentia 2002), p. 221

[210] OHCHR: Protection of economic, social and cultural rights in conflict <https://www.ohchr.org/Documents/Issues/ESCR/E-2015-59.pdf> para 52

[211] CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 2

4) the right to be heard and have his/her views taken into account in all relevant matters in accordance with the child' s age and maturity.

She groups the remaining provisions are grouped according to the categories of protection (from all forms of harm); participation (to be heard and to freely exercise their opinions and belief) and provision (ensuring child's basic needs).[212] As to the scope of personal protection under its umbrella, it is applicable to "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".[213] Due to its exclusive focus on children, CRC takes into consideration their unique vulnerabilities and development needs, enabling to become full-fledged members of the society. And, of course, within the CRC education is given a special focus in light of these considerations.

Just like the ICESCR, the CRC contains two provisions related to the right to education: art 28 (recognizing the right as such, is progressive realization and equal opportunity) and art. 29 (stating specific aims of education). Specifically, in line with art. 28(1) CRC states parties recognise the right to education addressing to the primary, secondary and higher education, respectively, and are comparable to art. 13(2)(a) to (c) ICESCR.[214] Accordingly, in line with the CRC logic, Verheyde defines "education" as*:*

> the process of developing the child's personality, talents, mental and physical abilities; developing the child's respect for human rights, fundamental freedoms and the maintenance of peace, respect for his or her parents, national values of his or her country and those of other civilizations; developing the child's ability to participate in a free society in the spirit of mutual tolerance; and developing the child's respect for other civilizations, cultures, religions, sexes and for the natural environment.[215]

With regards to the content, Art. 28(1) refers to both formal and non-formal education[216] and consequently, states are under obligation to harmonize both education systems to a required standard. But why does CRC matter so much in terms of the right to education? The answer is pretty straightforward: the ICESCR fails (and to be fair, is *per se* not intended to) to acknowledge the "special meaning of childhood

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[212] Ursula Kilkelly, 'The Child's Right to Religious Freedom in International Law: The Search for Meaning', *What is right for children?: The competing paradigms of religion and human rights* (2009) 24

[213] Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Art. 13 of the International Covenant on Economic, Social, and Cultural Rights* (Martinus Nijhoff Publishers 2006) p.115

[214] Hodgson, 1998, p. 46.

[215] Mieke Verheyde, *Art. 28 : The Right to Education.* (Martinus Nijhoff Publishers 2006) 12

[216] Ibid

and adolescence that calls for different approach in implementing children's rights".[217] The CRC also acknowledges that the capacity of children to exercise each of their rights normally evolves as they age.[218] For this reason, the age and maturity of children is relevant when analyzing issues involving their rights in education, including potential conflicts with the goals and interests of their parents, educators, policy makers, or the government in general.[219]

Of course, the CRC is far from perfect and thus it's is unable to provide a perfect solution or recipe for the realisation of children's rights as it "was drafted about, but not by, children".[220] Nevertheless, according to Freeman, it is the first instrument to "shift the paradigm and recognize children as beings".[221] However, despite all possible shortcomings, it remains the "most comprehensive, widely known and generally accepted articulation of school children's rights across the world".[222] Taking into consideration that CRC continues to apply during occupation,[223] a question that was examined in chapter 2 of this thesis, this analysis will heavily rely on its provisions too.

And lastly, ECHR with its Protocol No. 1 also stipulates the right to education, albeit its formulation is distinguished by its negative wording.[224] Hence, the right to education within the meaning of the ECHR, does not prescribe a clear obligation to provide education of any particular type or at any particular level, unlike the ICESCR and the CRC. Still, this provision certainly concerns a right with a certain substance and establishes obligations arising from it. Moreover, art. 2 of Protocol No. 1 must be read in light of art. 8 and 9 of the ECHR,[225] which will be analyzed in terms of prohibition of indoctrination in educational institutions in sections 3.3.-3.5 of this chapter. Moreover, ECtHR has heavily relied on both the ICESCR[226] and CRC to

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[217] Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R (ser. A) No. 17, para 46

[218] Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3

[219] Fernando Mendez Powell, 'Prohibition of Indoctrination in Education - A Look at the Case Law of the European Court of Human Rights' (2015) 2015 Brigham Young University Education and Law Journal 597, p.604

[220] Ursula Kilkelly and Laura Lundy, 'Children's Rights in Action: Using the UN Convention on the Rights of the Child 1989 as an Auditing Tool' (2011) 18 Child and Family Law Quarterly p.338

[221] Michael DA Freeman, *A Magna Carta for Children? : Rethinking Children's Rights.* (Cambridge University Press 2020) p. 119

[222] Laura Lundy, 'Children's Rights and Educational Policy in Europe: The Implementation of the United Nations Convention on the Rights of the Child' Oxford Review of Education, Vol. 38, No. 4 (August 2012), pp.393-394

[223] Legal Consequences cf the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C.J. Reports 2004, p. 136, para 113

[224] CoE, 'Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights' <https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf>

[225] Folgerø and Others v Norway App no 15472/02 (ECtHR, 29 June 2007), para 84

[226] Catan and Others v Moldova and Russia App Nos 43370/04, 8252/05 and 18454/06 (ECtHR, 19 October 2012), para 77-81

interpret the notions contained in Art. 2 of Protocol No. 1. As both Russia and Ukraine are parties to the ECHR, and its extraterritorial application is also beyond any disputes, it will also form the part of the basis of the legal argument concerning violation of the right to education in the occupied Crimea.

To conclude, the term "education" is not limited to only its formalistic understanding as a pure transmission of knowledge and skills. In fact, it broadens to encompass all aspects of human development due to its well-established role as instrument of socialization, participation in community and provision of skills to become a full-fledged member of the society. The right to education can thus be viewed twofold: first, as a right in itself, and one of the so-called "empowerment rights", integral for realization of all other civil and political rights. Such understanding is reinforced by the relevant provisions of international human rights treaties, which prescribe the right to education as such, but also emphasize its interdependence with other human rights.

With regards to the normative understanding, the analysis will be based on the relevant provisions of the ICESCR and CRC, with a focus on the latter, due to its child-specific and child-centred approach. The ECtHR practice will also be substantially relied on, also taking into account that ECtHR is widely utilizing the CRC and ICESCR when interpreting relevant obligations of the states, especially in the child-related aspects.

Hence, after having reviewed the main legal frameworks within the educational discourse within the general context, it is important to address the content of the right to education within the specific situation of belligerent occupation and identify how IHL as *lex specialis* will interact will *lex generalis* of the IHRL *in casu*.

3.2. Education under occupation

The importance of the right to education has thus been established as an international legal right with reference to international human right law – and this goes far beyond any dispute. However, how do also the rules of the IHL address the issue of education, and in particular – do the rules of occupation have a say on the matter? To answer this question, three main points will be considered 1) the rules of the IHL; 2) IHL and IHRL on the right to education; and 3) the significance for the analysis on the situation in the Crimea.

First, it is indisputable that children in armed conflict are more vulnerable than adults and thus, child-specific and child-friendly steps must be taken in regard to their needs. Additionally, "*all cultures recognize adolescence as a highly significant period in which young people learn future roles and incorporate the values and norms of their*

societies".[227] Moreover, Kuper notes that adolescents require special care in times of armed conflict which could duly address their particular needs.[228] Thus, due to the importance of education in the development of children and youth, the right in focus calls for special protection in times of armed conflict and belligerent occupation.

Based on the analysis performed in the chapter 1, it should be reiterated that Crimea is viewed as a territory under belligerent occupation. Therefore, in this part, it will be argued that although the right to education gets little attention in the GCs or HRs, it is still sufficient to conclude that the obligations of the Occupying Power preclude any possibility installing a new curricular or alter it in a way which would be inconsistent with the one existing at the moment of occupation.

But above all, it is necessary to clarify possible discrepancies between the understanding of "children" in IHL and IHRL contexts. Namely, the GCs refer to children as those below 15 years of age when referring to recruitment into armed forces,[229] while under the CRC, a "child" is an "every human being below the age of 18 years.[230] As argued by Giacca, the current international standards allow to include those below the age of 18 under the child-specific IHL protection umbrella.[231]

Turning to the specific provisions of GCs on the matter, the following should be noted. Firstly, according to the art. 50 GC IV, children's personal status is not subject to any alterations (for example, citizenships, birth certificates, or names).[232] Moreover, children in the occupied territory cannot be involuntarily enrolled into any type of organizations under the authority of the Occupying Power (this issue will be addressed in p. 3.5 of this chapter, on involuntary enlistment of Crimean orphans into Yuniarmia). Plattner proposes to interpret this prohibition in the light of the WWII events "where a great many children were automatically made members of organizations and movements devoted primarily to political ends…for instance, political movements took place."[233]

Secondly, when describing possible enlistment in official or semi-official armed forces of parties to the conflict, Heintze notes that art. 51 GC IV prohibits such

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[227] G.Machel, Report on the impact of armed conflict on children, 1996 < https://childrenandarmedconflict.un.org/1996/08/1996-graca-machel-report-impact-armed-conflict-children/>

[228] J. Kuper, Children and armed conflict: some issues of law and policy in *Revisiting Children's Rights : 10 Years of the UN Convention on the Rights of the Child.* (Kluwer Law International 2000)s.

[229] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

[230] Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3

[231] Gilles Giacca and others, *C Geneva Convention IV, 5 Occupied Territories, Ch.70 Economic, Social, and Cultural Rights in Occupied Territories* (Oxford University Press 2015) <

[232] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

[233] Denise Plattner, 'Protection of Children in International Humanitarian Law' (1984) 24 International Review of the Red Cross 140, 147.

practices and also refers to the "past experiences of war, with the powers of propaganda machinery still in mind" special measures are required to "to prevent the separation of that child from his or her roots."[234] The concludes that "although great emphasis is placed on the maintenance of the child's environment and educational development", GC IV leaves no detailed guidance as to its implementation.[235]

It should be noted that both IHRL and IHL ensure the right to education during conflicts and provide general and specific protection for educational facilities. This is confirmed by the general obligation under the IHL provided by the 50 (1) of GCIV: "*the Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children".*[236] Moreover, as it was established in the previous chapter, the relevant IHRL provisions do not cease to apply during an armed conflict, including specific provisions on education. Bieter notes that the GC IV relates in particular to pre-school, primary and secondary educational institutions and with respect to right of parents to ensure their children's religious and moral education in accordance with their own convictions.[237]

In this regard, art. 43 of the HRs stipulates the Occupying Power's obligation to take all measures to restore and ensure public order and safety, while at the same time respecting the existing laws of the country.[238] The GCs and their APs also contain several provisions protecting children's right to education during armed conflict, including for orphaned or separated from their families (Art. 94 GCIV), interned children and young people (Art. 78(2) AP), and evacuated children (Art. 78(2) AP I).[239]

The ICRC Commentary to Art. 50(1) GC IV provides no legal guidance as to the exact legal obligations an Occupying Power has to the materials and resources that it should devote to educational facilities.[240] The wording is limited to the rather vague notion of "proper", which gets no further elaboration under the IHL. Consequently, such actions up to this point have been based more on the "whim, generosity, and self-

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[234] Hans-Joachim Heintze and others, *C Geneva Convention IV, 3 Specific Protection, Ch.62 Special Rules on Children* (Oxford University Press 2015) 1298

[235] ibid

[236] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 28

[237] Beiter (n 213). pp 127

[238] Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907

[239] Aptel C, 'The Protection of Children in Armed Conflicts' in Ursula Kilkelly and Ton Liefaard (eds), International Human Rights of Children (Springer Singapore 2019) p.442

[240] GC IV Commentary, art. 50 <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/380-600057?OpenDocument>

interest of the Occupying Power".[241] Hence, it is necessary to apply IHRL in order to clarify the scope of obligations, as it would be able to provide more guidance.

But to what extent could an occupant legitimately interfere with the educational system of a territory under control? The emphasis on the principle of non-interference with education, advocated by Von Glahn and Garner, is related to the fact that occupation is meant to be temporary.[242] Thus, Horowitz furthers this idea, claiming that "the occupation law presupposes that educational facilities function in accordance with the native attitudes and laws and the wishes of the displaced national government".[243] However, the accepted rules of international law are unfortunately silent on this point and little has actually been contributed toward the solution of this very real and important problem in the "age of ideological conflicts".[244]

Von Glahn, referring to previous works of Garner, reiterates the occupant's right to exercise supervision over the schools in occupied enemy territory; but the extent of such lawful supervision and control remains unclear. Garner specifies "seditious teaching calculated to provoke and incite hostility to his authority", as being subject to reasonable restrictions in casu. But any "assumption that the temporary right of occupation is assimilable to the right of sovereignty" is "inadmissible".[245] Possible interference in educational process beyond the mentioned criteria would be in violation of the 1907 HRs. Hence, von Glahn sees no legitimate possibility of the occupant allowing to interfere with educational matters in occupied enemy territory beyond those which "affect directly the military occupation and the conduct of hostilities".[246]

However, state practice may suggest otherwise, as even mentioned by von Glahn referring to the XX century history, in "almost every single major belligerent occupation…a temporary or lasting elimination of large portions of an educational system was perpetrated".[247] For example, Goodman notes that parents' right to control the education that their children receive "was completely ignored" during German and Japanese administrations during the WWII; as well as during Russia's occupation of Poland in 1940s. He notes that a bigger focus on "a significant voice in the curriculum" given the parents, could be effective in preventing indoctrination of children on

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[241] Jonathan Horowitz, 'Human Rights, Positive Obligations, and Armed Conflict: Implementing the Right to Education in Occupied Territories' (2010) 1 Journal of International Humanitarian Legal Studies 304, 316.

[242]Gilles Giacca, Economic, Social, and Cultural Rights in Occupied Territories in Andrew Clapham and others (eds), *The 1949 Geneva Conventions: A Commentary* (First edition, Oxford University Press 2015).

[243] Jonathan Horowitz, 'Human Rights, Positive Obligations, and Armed Conflict: Implementing the Right to Education in Occupied Territories' 26, 315.

[244] Gerhard Von Glahn, *The Occupation of Enemy Territory... : A Commentary on the Law and Practice of Belligerent Occupation.* (University Microfilms International 1981)

[245] Garner in 'Law of Belligerent Occupation', Ann Arbor (Michigan) 290. pp 62

[246] Von Glahn (n 244).

[247] ibid

occupied territories (as the latter is in itself contrary to international law).[248] This point will be further raised in part 3.4 of this chapter.

Hence, there is very little legal guidance concerning the nature and substance of educational provision within the law of occupation and in time of von Glahn's writing the body of IHRL has not been yet developed in such sophisticated form. However, contemporary IHRL adds substantive duties to those found in IHL, since the latter may be silent on a number of questions related to ESCR rights and civil and political rights, such as the right to education.[249]

As IHL says nothing on the content of education, which may be a particular problem in conflict settings with "their often-divided societies", IHRL provides guidance on how education needs to be directed towards non-discrimination, participation of all in a democratic society and the promotion of understanding and tolerance and thus can clarify the obligations of Occupying Powers in this respect.[250] In its modern development IHRL provides a contemporary understanding of the educational needs in a modern society in terms of availability, accessibility, and quality of education.[251]

Horowitz proposes a reliance on a *lex specialis - lex posterior approach* that prioritizes harmonization, according to which the international obligations and standards concerning the right to education should be read into the education provisions in IHL. He notes that this interpretive model "carefully balances the importance of IHRL and principles of occupation law".[252] McCarthy notes that a range of issues concerning the nature and substance of educational provision may arise during an occupation which are not addressed by the laws of military occupation, such as the use of ideology in the course of education, which is prevalent in conflict-affected societies.[253] He refers to the well-established standard prescribed by the aims of education within the ICESCR, which prohibit instalment of hostile ideologies within the curricular. McCarthy concludes that failure to meet mentioned standards "could possibly amount to violation of Art. 43 HR in respect of territories where the ICESCR is in force".[254]

The case law on the right to education during belligerent occupation is also unsurprisingly rather scarce. From a European perspective it is limited by the ECtHR case of Cyprus v Turkey on the situation arising out of Turkish military operations in

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[248] Davis P Goodman, 'The Need for Fundamental Change in the Law of Belligerent Occupation' (1985) 37 Stanford Law Review 1573.

[249] Giacca, *Economic, Social, and Cultural Rights and International Humanitarian Law* (n 181).

[250] Gerd Oberleitner, *Human Rights in Armed Conflict : Law, Practice, Policy.* (Cambridge university press 2018) pp 227

[251] Giacca, *Economic, Social, and Cultural Rights in Armed Conflict.* (n 170) 184.

[252] Horowitz (n 46) p. 327.

[253] McCarthy (n 169) 127.

[254] ibid 129.

Northern Cyprus in the 1970s.[255] The submissions included the right to be educated in one's native language, but they did not relate to the content of the curricular *per se*. Specifically, only the failure of the occupation authorities to make continuing provision for the education in the native language at the secondary-school level was "considered in effect to be a denial of the substance of the right at issue.[256] The extent of the right to education and possible permissible interference with the curriculum was not the subject in casu.

To conclude, the IHL provisions do not provide detailed regulation of the right to education under occupation. It however could be argued that due to the obligation to preserve *status quo ante* on the occupied territories, the occupation authorities are limited in their legitimate interferences with the educational system on the occupied territories. Specifically, von Glahn argues that such interferences are limited to the prevention of disobedience or hostility in the educational institutions, but without significant alteration of substantial part of the curriculum. However, the relevant practice indicates that the law is silent on this point, and this lacuna has not been yet resolved.

This lacuna can be addressed with reference to the relevant IHRL provisions, which can act as lex specialis to the rather scarce wording of GC IV. Specifically, IHRL spells out clear obligation to the states with regards to operation of educational facilities under their jurisdiction, which do not lose their relevance during belligerent occupation.

Generally, the information relating to the Crimea confirms that local schools must use the Russian state curriculum,[257] and accordingly schoolchildren in the Crimea are exposed to Russian military propaganda and received basic military training per Russian educational curriculum.[258] Therefore, the argument on the Crimean case can also be built twofold:

Firstly, any imposition of Russian Laws and regulation, including alterations of educational curriculum, constitute a violation of the obligation of preserving status quo ante on the occupied territory.

Secondly, even if **some** alterations are introduced, they should 1) serve the purpose of preserving public order on the occupied territory – e.g. prevent disobedience/raise hostility; and 2) adhere to the requirements set by the ICESCR, CRC and ECHR, including in terms of not only what is taught, but how it is taught, and most importantly – for what particular purpose.

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[255] Cyprus v Turkey App No 25781/94 (ECtHR, 12 May 2014), para 14

[256] Ibid, para 278.

[257] Freedom House, 'Crimea' (Freedom in the world, 2017) <https://freedomhouse.org/country/crimea/freedom-world/2017>

[258] Freedom House, 'Crimea' (Freedom in the world, 2021) <https://freedomhouse.org/country/crimea/freedom-world/2021> 1

Based on the mentioned above, the following sections will focus on the 1) aims of education; 2) parent's rights to ensure education of their children consistent with their philosophical and moral convictions; and lastly, prohibition of indoctrination as an integral part of the right to freedom of thought, conscience and religion.

3.3 Aims of education

In this part, the aims of education as envisaged by the ICESCR and CRC will be analyzed: first, in the general terms; second – in regard to a type of permissible curriculum and lastly – in the specific case of the Crimea.

3.3.1. General analysis

Lile argues that the laws on the aim of education "define the basic values of a society"[259]. Moreover, he further reiterates that education is "at some level a type of indoctrination of certain values" and the rule of law depends on whether the aims of education correspond with the essential values of the laws".[260]

Lile also emphasizes on the example of Nazi Germany where education mismatched with the basic value of the law had produced "disastrous results" and thus predetermined the importance of the aims of education as being greater "that of all the other articles of the Declaration [UDHR]".[261] Moreover, upon deliberations on provisions related to the education, the member of the World Jewish Congress argued that contextualizing the right to education in the right values is a necessity, as "education was the main cause of the two world wars".[262] Hence, the legal gap in this provision which left the aims of education unspecified, had led to the disastrous consequences in the 20th century.

Special Rapporteur on the right to education had stressed that "education is an important socialization space that enables individuals to understand and build their own identities and teaches acceptance of the identities of others".[263] In this regard, the "ABCDE framework" establishes the goals of *acceptance, belonging, critical thinking,*

[259] Hadi Strømmen Lile, *International Law on the Aims of Education : The Convention on the Rights of the Child as a Legal Framework for School Curriculums.* (Routledge 2021) 13

[260] ibid

[261] Strømmen Lile (n 259) 12.

[262] ibid 11.

[263] Special rapporteur on the right to education, 'The role of the right to education in the prevention of atrocity crimes and mass or grave human rights violations (29 July 2019) UN Doc A/74/243

diversity and empathy setting out key conditions for ensuring the full deployment of the preventive potential of the right to education.[264]

Hodgson reiterates that education is based not only on a mere skillset, but it strives to achieve specific objectives for the mutual benefit of the individual and communities.[265] And international instruments have sufficiently elaborated the objectives to which education should be directed. Accordingly, the ICESCR interprets the aims and objectives of education identified in art. 13 (1) in light of the World Declaration on Education for All, the Convention on the Rights of the Child, the Vienna Declaration and Programme of Action, and the Plan of Action for the United Nations Decade for Human Rights Education.[266]

Specifically, art. 13 of the ICESCR obliges states parties to direct all education towards the aims and objectives identified in art. 13(1) which reflect the fundamental purposes of the UN. However, art. 13 additionally requires education to be directed to the development of human personality and the sense of dignity, in order to "enable all persons to participate effectively in a free society", and to promote understanding among all nations and all racial, ethnic or religious groups. These aims and objectives have further been expounded in several other instruments,[267] which "reflect a contemporary interpretation of art. 13(1)"[268] – including the CRC.

Most scrutiny to the aims and objectives of education is given within the CRC framework. Specifically, art. 29 provides the basic and long-range vision for the development of persons through education such as development of the child's personality; respect for human rights; respect for the child's parents, culture and others; respect for the natural environment; and preparation for life in a free society.[269] Moreover, it is this focus on the development of a child's "fullest potential" which has led the CRC Committee to proclaim that the aims of education under art. 29 are intended to "promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights.[270] In this sense,

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[264] ibid

[265] Douglas Hodgson, 'The International Human Right to Education and Education Concerning Human Rights' (1996) 4 International Journal of Children's Rights 237. 251

[266] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/1, para 5

[267] Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law.* (2. ed., Hart 2015). pp. 370

[268] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/1, para 5.

[269] Convention on the Rights of the Child, 7 March 1990, E/CN.4/RES/1990/74

[270] UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, para 72

Tobin notes that art. 29 can be seen to "affirm and embody the spirit of the Convention".[271]

In addition, art. 29(1)(c) refers to education which develops the respect of the child for various persons/states/cultures. Mention is made of respect for 1) the child's parents, 2) his own culture, 3) the national values of the country in which he lives, 4) the country from which he may originate, 5) civilizations different from his own.[272] All of mentioned aims must be effectively operationalized in a culturally appropriate way to make sure that the education remains "the medium for ensuring responsible citizenship, with school curricula reflecting community goals."[273]

Although the aims and values enlisted above are stated in quite general terms, they all must be duly reflected in legislation or in administrative directives, as confirmed by the CRC Committee[274]. Curricula, teaching materials and school policies must be revised accordingly. Moreover, the school environment must be set up in conformity with the aims listed in art. 29.1 CRC[275] and states bear the 'heavy burden' to

1) adopt appropriate legislative and regulatory measures to ensure school curricula and school environments are consistent with art. 29;

2) ensure appropriately training of teaching professionals; and

3) disseminate the awareness of the art. 29 to the broader community including parents and children.[276]

Moreover, although international law prescribes in detail the many and varied aims of education, it fails to provide any guidance as to the relative importance of each aim.[277] But it should be emphasized that all educational aims are of an equal value and it's not open to state party to selectively implement only some of them.[278] And lastly, even beyond the educational institutions, all child-focused organizations and community resources should be formulated and integrated in ways that protect the rights and serve the formal and informal education needs of the developing child.[279]

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[271] John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (First edition, Oxford University Press 2019) 1118.

[272] Laura Lundy, Karen Orr and Harry Shier, 'Children's Education Rights' 17, 366.

[273] Cynthia Price Cohen and others, 'An International Conference and an Open File' (1999) 29 Prospects 167.

[274] UN Committee on the Rights of the Child), General comment No. 1: Art. 29 (1), The aims of education (17 April 2001), UN Doc CRC/GC/2001/1, para 17

[275] Ibid, paras 17–19.

[276] Tobin (n 271) 1122.

[277] Douglas Hodgson, *The Human Right to Education.* (Dartmouth 1998) 74

[278] Geraldine Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff 1998) pp. 253

[279] Cohen and others (n 273) 9.

To sum up, the purposes of education embodied in Art. 29 of the CRC can and must be operationalized; education and learning must be pursued in and beyond school settings in deliberate, co-ordinated ways; schools must respect the human rights of all persons in order to effectively achieve the rights of the child.[280] The aims of education, although formulated quite broadly, put limits on what is taught, and how it is taught at the same time. But most importantly, the aims of education purport the general development of the child, enables them to nurture mutual understanding, respect and belonging. They are the cornerstone which must be enshrined in all educational programs, either formal or non-formal.

With regards to the specific case of occupation, the relevant provisions of the IHL are silent on the matter. Yet, the IHRL provides that the information included in the curriculum be conveyed "in an objective, critical and pluralistic manner', and that the religious and philosophical convictions of parents be respected".[281] Accordingly, the Occupying Power cannot alter the curriculum in a manner that interferes with, for instance, the cultural, ethnic, or religious traditions prevalent within the occupied territory, and is absolutely prohibited from pursuing an aim of indoctrination.[282]

Within the Crimean case, in terms of aims of education, a specific emphasis should be made on the curriculum which is installed in the local schools by the occupation authorities; and how much the alterations introduced in the educational institutions are consistent with the objectives prescribed in the ICESCR and CRC.

3.3.2. Curriculum

Art. 28(1) CRC does not spell out the content of the curriculum at primary, secondary and higher levels which is left to the wider discretion. But the curriculum must at all levels of education be "acceptable to the child", which means that the substance of education should be relevant, culturally appropriate and of good quality[283] and adhere to the objectives as enumerated in art. 29(1) of the CRC.[284]

The objectives on the art. 29 are formulated in a way which allows each culture to tailor the curriculum in an appropriate way, which are nevertheless consistent with the spirit of the CRC. This approach enables the curricular to be 'adaptable' in order

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[280] ibid 4–5.

[281] Kjeldsen, Busk Madsen and Pedersen v Denmark App no 5095/71, 5920/71, 5926/72 (ECtHR, 7 December 1976), para 53

[282] Murray, Part II, 10 Occupation in Daragh Murray and Dapo Akande, *Practitioners' Guide to Human Rights Law in Armed Conflict* (Oxford University Press ; Royal Institute of International Affairs (Chatham House) 2016).

[283] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 6

[284] Verheyde (n 215). 27

to complement the needs of changing societies and different students within their diverse social and cultural settings.[285] The last aspect calls in other words for "differentiated education"[286] as art. 29.1 CRC is not only about the content of education, but also about the process and approach through which the right to education is realized.[287]

An education with its contents firmly rooted in the values of art. 29 (1) is an "indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena."[288] Curricula for secondary education should be designed to equip adolescents[289] for active participation, develop respect for human rights and fundamental freedoms, promote civic engagement and prepare adolescents to lead responsible lives in a free society.[290]

The wording of the art. 29 CRC which explicitly mentions "responsible life in a free society in the spirit of understanding, peace, tolerance"[291] calls a generally relevant atmosphere within the educational institutions. The General Comment elaborates that the school environment itself must "thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in art. 29 (1) (b) and (d)".[292] This refers to all situation, including conflict.

Yet, Nillson notes that the political manipulation of education in conflict situation can be weaponized in cultural repression; use history for political purposes, encouraging hate; and use textbooks as a propaganda tool.[293] Hence, in order to be

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[285] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10 <https://www.refworld.org/docid/4538838c22.html> para. 6.

[286] P. Meyer-Bisch, The right to education in the context of cultural rights (UN Doc. E/C.12/1998/17, 1998), para. 12

[287] *ART. 29: AIMS OF EDUCATION* (Edward Elgar Publishing 2019) 300

[288] UN Committee on the Rights of the Child), General comment No. 1: Art. 29 (1), The aims of education (17 April 2001), UN Doc CRC/GC/2001/1, para 3

[289] According to the CRC General comment 20, adolescence is implied as period from 10 to 18 y.o., see in UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20

[290] UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, para 72

[291] Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3

[292] Committee on the Rights of the Child, General Comment No 1, para 12.

[293] Ann-Charlotte Nilsson, *Children and Youth in Armed Conflict* (Martinus Nijhoff Publishers 2013). pp. 307

able to provide peace, prosperity and stability,[294] the curriculum in the conflict situation needs to be carefully tailored in an appropriate way.

The UN Special Rapporteur on the right to education has separately addressed the question of education in conflict-related context. She acknowledges that "schools can be used as tools to disseminate military ideologies" or "constructing an image of the enemy" or even "becoming training grounds where children are directly taught military ideologies."[295] Moreover, image of the "other" formed during educational processes[296] can ultimately result in the "long-lasting image of the essentialized, dehumanized, caricatured enemy" through the school curriculum and narratives or through the so-called hidden curricula.[297] Education is thus used to create division between people, with emphasized and weaponized differences between the "hostile neighboring nations".[298] Therefore, the situation of conflict not only fails to justify non-compliance with the art. 29 requirements in terms of curriculum content and its "hidden narratives", but requires even more scrutiny towards mentioned elements.

The ICESCR framework clearly emphasize the arbitrary nature of military ideologies implemented in school curriculums, being inconsistent with the aims of education enshrined in the art. 29 CRC and art. 13 ICESCR. The perils of the insensitive content utilized during armed conflicts are further emphasized by the Special Rapporteur, who specifically highlights arbitrariness of using schools as instruments of military ideologies and creating division between "us and them". The education which is inconsistent with the aims can (and unfortunately) be effectively weaponized in the ideological war, but such practices are clearly in violation of the international human rights law.

3.3.3 Application in casu

The Crimean case highlights the deficiencies of hard-law regime to properly addressed issues of curriculum consistent with aims of education in armed conflicts due to the following.

To begin with, since 2014 and the so-called "Crimean euphoria", the coordinated and systematic policy on militarizing youth and fostering hostile attitude towards the "West[299]" is conducted within the Russian Federation. For example, the 2014 Military

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[294] ibid. pp. 310

[295] Special rapporteur on the right to education, 'The role of the right to education in the prevention of atrocity crimes and mass or grave human rights violations (29 July 2019) UN Doc A/74/243, para 52

[296] Ibid, para 52

[297] Ibid, para 53

[298] Ibid, para 58

[299] Referring to general perception of countries outside of the Eurasian Economic Union

doctrine of the Russian Federation identifies “influence of subversive information activities over the Russian youth aimed at undermining historical, spiritual and patriotic traditions related to the defense of the Motherland”[300] as one of the major military threats. Moreover, since 2014 the education system had been subjugated to the Russian educational objectives and standards, which list preservation of the “Russian civic identity” and “formation of the “Russian patriotic consciousness in difficult conditions of economic and geopolitical rivalry” among the educational purposes.[301]

The military component in “patriotic education” includes enhancement of the prestige of service in the Armed Forces of the Russian Federation and law enforcement agencies. This must be achieved via “formation of young people 's moral, psychological and physical readiness to defend the Fatherland and creating conditions for the successful recruitment of the Armed Forces of the Russian Federation, law enforcement agencies and other structures”.[302] The efficiency of the program is measured using 14 parameters, including “the number of young people called to serve in the Armed Forces of the Russian Federation” (the program stipulates this number should grow by 10 percent) and “the number of Russians who are proud of their country” (this number should increase by 8 percent by 2020).[303]

The methodological manual on implementing this policy also puts emphasis on the interaction between educational organizations and military formations and units in military-patriotic education of children and youth. These measures are intended to form in children and young people a “high patriotic consciousness, a sublime sense of loyalty to their Fatherland with readiness to defend it in battle and love for Russian military history and service, pride in Russian weapons, preservation and enhancement of glorious military traditions”.[304] The Manual also refers to combatting “pacifist sentiments in children and youth” as one of the key objectives in military-patriotic education.[305] In July 2020 Russian President Vladimir Putin signed the amendment into the Law "On Education in the Russian Federation" which now places “the formation of a sense of patriotism in students…to their citizenship, respect for the

[300] 'Military doctrine of the Russian Federation' (2014) <http://static.kremlin.ru/media/events/files/41d527556bec8deb3530.pdf>

[301] Government of the Russian Federation, 'On the state program "Patriotic education of citizens of the Russian Federation for 2016 - 2020"' (30 December 2015) <http://static.government.ru/media/files/8qqYUwwzHUxzVkH1jsKAErrx2dE4q0ws.pdf>

[302] ibid

[303] Meduza, 'Russia’s littlest soldiers. How the government teaches kids to love the Motherland and to fight for it' (16 July 2015) <https://meduza.io/en/feature/2015/07/16/russia-s-littlest-soldiers>

[304] VP Golovanov , 'Development of interaction of educational organizations and military-patriotic associations with military units: a methodological guide for educational organizations' (Ministry of education and science, 2017) <http://school-zaozernoe.ru/files/shefstvo_voinskikh_chastey.pdf>

[305] Ibid, pp 9

memory of the defenders of the Fatherland and the heroic deeds of the Heroes of the Fatherland[306] as an integral part of all educational programs.[307]

It should be emphasized that application of such measures within the internationally recognized borders of the Russian Federation is not per se a subject of this thesis. Although, an episode of hunger strike declared by a student from St. Petersbug school in protest against Yunarmia's mandatory conscription is definitely worth mentioning.[308] Still, the present analysis concerns solely the effects and consequences on the territory and over the civilian population of the occupied Crimea. And in relation to the Crimea, such actions and regulations imposed in educational spheres are aimed into two objectives: bringing up a generation which has no mental and political affiliation with Ukraine as such, and consequently identify themselves solely as "Russian nationals"; and secondly, secure voluntary conscription to the Russian army, as stated in the "Federal program on education" and Russian military doctrine.[309]

Specifically, after the so-called "reunification", a new decree was adopted by the de-facto Crimean administration, according to which the activity of patriotic education in the so-called "Republic of the Crimea" is supposed to be carried out within the framework of the national policy pursued in the Russian Federation and is based on federal laws, regulatory legal acts of the President of the Russian Federation, the Government of the Russian Federation, the federal state program for the patriotic education of citizens of the Russian Federation, laws and other regulatory legal acts of the Republic of Crimea, regional programs in the field of patriotic education in the Republic of Crimea.[310] Thus, the executive bodies of the Republic of Crimea were tasked to "promptly recreate the system of patriotic education, which has been consistently formed in the Russian Federation since 2001" and ensure its effective functioning.[311] The Concept note included objectives such as "overcoming the gap between national and local practice in ideological characteristics between the Republic of Crimea and the Russian Federation; and building in the Republic of Crimea a system of patriotic education, accepting "the fate of the Fatherland as his own" and "aware of responsibility for the present and future of the country". The **goals** of patriotic

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[306] Russian Federation, 'Federal Law 'On amending the 'Law on education' on the issues of student's upbringing'' (24 July 2020) <http://edu53.ru/np-includes/upload/2020/08/12/15845.pdf>

[307] TASS, 'The implementation of the project on patriotic education will begin in Russia from January 1' (21 November 2020) <https://tass.ru/nacionalnye-proekty/10066837>

[308] Anton Guskov, Alexander Glebov, 'In St. Petersburg, a high school student went on a hunger strike against the Yunarmiya movement in schools. What did he achieve' (Currenttime, 2 July 2019) < https://www.currenttime.tv/a/school-hunger-strike-young-army/30033227.html>

[309] Siedova (n. 29)

[310] Head of the republic of Crimea, 'Order on approval of the Concept of patriotic and spiritual and moral education of the population in the Republic of Crimea' (18 December 2014) <https://monm.rk.gov.ru/file/1_Указ%20Главы%20РК.pdf>

[311] ibid

education in the Republic of Crimea are the “formation of patriotic feelings and consciousness of the citizens of the Russian Federation living in the Republic of Crimea”.[312]

One of the core objectives is the “formation of high personal responsibility to fulfil military duty in the ranks of the Armed Forces of the Russian Federation”. Activities within this area are focused on fostering loyalty to the military and heroic traditions of the Russian army, raising the level of prestige of service in the Armed Forces of the Russian Federation and establishing a conscious attitude in society towards fulfilling the constitutional duty of protecting the freedom and independence of the country, ensuring its sovereignty.[313] In turn, these measures strive to “enhance prestige of service in the Armed Forces of the Russian Federation and law enforcement agencies.” Albeit the legitimacy of such aims is not questioned in terms of their application within the internationally recognized Russian border, the pursuit of such measures is contrary to the obligations of the Occupying Power as with regards to the Crimean residents.

Specifically, the so-called “Council of Ministers of the Republic of Crimea” has enacted the 2015 "State program of patriotic education of citizens of the Russian Federation for 2016-2020" on the territory of the Crimea.[314] The consequent Action Plan included the events like: “All-Russian flashmob "We are citizens of Russia!"; participation of Crimean children in the All-Russian competition for the best knowledge of the state symbols of the Russian Federation (aimed at increasing “citizens' respect for the symbols of Russia and distinguished Russians”) and in the All-Russian competition of the military poster "Our Army" and interregional pre-conscription competitions for “the best preparation of citizens of the Russian Federation for military service, organization and conduct of conscription” and even conducting events on the territory of the “Republic of Crimea” as part of the youth-patriotic action "Day of the future conscript”.[315] Such actions are now furthered in the subsequent action plans for 2020.

The 2020 Resolution on the state youth policy by the so-called “Council of Ministers of the Republic of Crimea” once again reiterated the formation of ideological attitudes towards the readiness of citizens to defend the Fatherland and increasing the

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[312] ibid

[313] Head of the republic of Crimea, 'Order on approval of the Concept of patriotic and spiritual and moral education of the population in the Republic of Crimea' (18 December 2014) <https://monm.rk.gov.ru/file/1_Указ%20Главы%20РК.pdf>

[314] Council of Ministers of the Republic of Crimea, 'Order No 1257-r ’On approval of the action plan for implementation on the territory of the Republic of Crimea the state program "Patriotic education of citizens of the Russian Federation for 2016-2020", approved by the Decree of the Government of the Russian Federation of December 30, 2015 No 1493' (20 October 2016) <https://monm.rk.gov.ru/file/4_Расп.%20СМ%20РК%20от%202010.2016%20№%201257-р.pdf>

[315] ibid

prestige of military service.[316] And lastly, “formation of an effective and highly organized system of patriotic education of citizens of the Russian Federation living in the Republic of Crimea included increasing the number of students of educational institutions involved in the activities of the "Yunarmia”.[317] The events dedicated to pre-conscription training and tours named “We are Russia” are also prescribed within the Yunarmia activities in 2021 and their implementation is supervised by the so-called “Ministry of education of the Crimea”.[318]

Moreover, even in the course of a regular educational training, children in schools are being taught about “the threat of Ukrainization and violation of human rights in the ethno-national sense” had Crimea not been “saved” via “reunification with the Russian Federation”.[319] The so-called “Lessons of Courage” held at the Crimean schools, emphasize the “peacekeeping and humanistic nature of Russia's actions while protecting their interests and the Russian-speaking population of Crimea and Sevastopol, who found themselves in a difficult situation as a result of the political upheaval in Ukraine”.[320] In casu such a language is being used not to convey the information of 2014 events in a neutral and objective way, but in accordance with, as the UN Special Rapporteur puts it, aims to create “a long-lasting image of the enemy”.[321] Hence, it can be concluded that such curricular is inconsistent with the aims prescribed by the CRC and ICESCR.

To sum up, this research directly concerns its compliance with the international standards on the right to education in the extraterritorial application in the Crimea. Hence, although the inclusion of “geopolitical rivalry” in regard to youth is questionable in relation to the aim of “respect for identities of other” and “preparation to live in a free society”, the issue of formation of the “Russian civic identity” and “enhancing the prestige of military service” and their application within the Russian Federation’s internationally recognized territory can hardly be qualified as a violation of ICESCR

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[316] Council of ministers of the republic of Crimea, 'Resolution of April 30, 2020 No 258 "On Approval of the State Program of the Republic of Crimea" Implementation of the State Youth Policy in the Republic of Crimea '" (07 May 2020) <http://publication.pravo.gov.ru/Document/View/9100202005070004?index=3&rangeSize=1>

[317] ibid

[318] Council of Ministers of the Republic of Crimea, Decree # 403-p ‘On the organization of events to promote the development of the Yunarmia movement in the Republic of Crimea in 2021’ (2 April 2021) < https://rk.gov.ru/ru/document/show/28076>

[319] Federal state autonomous educational institution of continuing professional education "center for the implementation of state educational policy and information technologies", 'Day of the reunification of Crimea with Russia (March 18)' (Methodological recommendations for organizing and conducting thematic lessons according to the Calendar of educational events timed to state and national holidays of the Russian Federation, memorable dates and events of Russian history and culture, 2020) <https://apkpro.ru/ckeditor_files/Календарь%20событий/MR_Krym.pdf>

[320] Mazanka school (Simferopol), 'The Lesson of courage' (News Release, 18 March 2021) <http://mazanka-school.my1.ru/news/urok_muzhestva/2021-03-18-308>

[321] Special rapporteur on the right to education, 'The role of the right to education in the prevention of atrocity crimes and mass or grave human rights violations (29 July 2019) UN Doc A/74/243, para 52

and CRC. De-jure states are not precluded from instilling patriotic education and foster the national identity, provided that the identities of others are given due value and respect. Ukraine also has a functioning program on patriotic education, which also aims to "foster readiness to defend the Fatherland' and "enhance the prestige of military service".[322] Yet, it should be noted that this program is implemented solely within the Ukraine's internationally recognized borders and does not aim to recruit foreign nationals into its Armed Forces.

The situation of Crimea with ongoing belligerent occupation calls for a look with a very different angle. Specifically, the occupation is perceived as a temporary situation, and it was previously established in this Chapter, the Occupying Power is allowed a very limited degree of possible interference in the educational facilities. Considering that since 2014 all educational institutions are subjugated to the Federal standards and regulations prescribed my Moscow with all consequent measures, values and objectives, these aims gain a wholly new dimension. Such education is not designed to foster "mutual understanding" and "peaceful coexistence": yet, the measures implemented by the so-called "administration of the Crimea" are aimed at transforming the de-jure temporary occupation into the de-facto permanent condition. And education is being used as a useful tool to secure this paradigm within the minds of the children and youth, who are more susceptible to such practices, and who are from the youngest age are educated in a feeling of loyalty to the Occupying Power.

To summarize, the aims of education are clearly prescribed in both ICESCR and CRC, and their generalized character nevertheless calls for an effective implementation within all aspects of education – formal and informal. Little has been said about their application in time of war, but Crimean case clearly highlights the importance of their observance in times of belligerent occupation. Instead of fostering "holistic development of the full potential of the child, including development of respect for human rights, an enhanced sense of identity, affiliation, understanding, tolerance and friendship among all peoples",[323] the occupation authorities are using education as a tool to bring up a generation which does not affiliate themselves with Ukraine as such – and thus serving in the Armed Forces of the Russian Federation will be perceived by this generation as a part of their "civic duty" and is a by-product of the newly installed identity. Therefore, neglecting the aims of occupation in the context of ongoing belligerent occupation can potentially lead to a de facto mental "legitimization of the occupation" – whereas in roughly 10 years a new generation will not have any ties with the host state (in casu, Ukraine) and will be mentally prepared (and well-trained) to defend the "Russian Motherland" in any attempt to lift the occupation regime.

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[322] President of Ukraine, 'Decree # 286/2019 'On the Strategy of national-patriotic education' (18 May 2019) <https://zakon.rada.gov.ua/laws/show/286/2019#Text>

[323] UN Committee on the Rights of the Child), General comment No. 1: Art. 29 (1), The aims of education (17 April 2001), UN Doc CRC/GC/2001/1, para 1

But even in these conditions, are there any reasonable possibilities to intervene, or avoid possible indoctrination under the circumstances of a belligerent occupation? As will be elaborated in the next section, in the educational context, the IHRL provides safeguards to the parents in securing education of their children consistent with family's values and convictions; and art. 18 ICCPR (as well as art. 9 ECHR) secure freedom of thought and conscience – which is also applicable to the children and youth. Hence, the following parts will be focused on these points.

3.4. Parent's rights to direct children's education

As a primary caregiver, parents are entitled to intervene on behalf of their children in matters which concern their well-being, development and upbringing. That includes the entitlement to ensure children's education in accordance with parents' religious and philosophical convictions.

In order to review the issue of parent's right and children's education, it would first be important to analyze how exactly international law resolves contradiction between individual rights of the child and possible third-party interference on behalf of their parents; how such interventions are consistent with "best interest" principle and lastly, what exemptions can be granted to satisfy parents' rights to ensure education in conformity with their religious and moral convictions.

3.4.1. Whose right is it anyway?

The right to education can be considered as imposing a duty on the State to respect the parental right to ensure education and teaching in conformity with their own religious and moral convictions.[324] According to Forster, parents acquire duties towards their child by virtue "bringing a child into the world" or taking up commitment to assume those duties.[325] These duties can derive from the rights of the child to become rationally autonomous and an effective participant in society, by shielding against possible state-sponsored indoctrination.[326] Therefore, the so-called "paternalistic rights" involve decision-making of parents on behalf of children in order to defend their rights and safeguard their interests.[327]

To begin with, there are fundamental philosophical debates on children's rights: a "will theory" which assumes that attributes the existence of certain rights to a degree

[324] Hodgson (n 277). 73

[325] Kathie Forster, 'Parents' Rights and Educational Policy.' (1989) 21 Educational Philosophy & Theory 47, 51.

[326] ibid.

[327] ibid 49.

of maturity and thus questions whether children have rights per se;[328] and "choice theory" which puts individual "interests" in the centre of the protection framework, rather than the real capability to exercise these rights.[329] But if a child (at least to a certain age) cannot be regarded as fully autonomous, then it needs some caregiver (as a parent or a state) to provide guidance consistent with the maturity and competence of the developing child, and thus some form of a "paternalistic intervention" is justified.[330]

The parental right to direct a child's upbringing is widely accepted but not absolute.[331] For example, Godwin argues that parentalistic approach which overrides the autonomy of the child "can and sometimes is used" to equally damage and protect children's interests and thus the law should also protect children's rights against parents.[332] However, with regard to the art. 14 CRC, which acknowledges the child as a right holder in terms of religion and beliefs, and art. 14 (2) explicitly links parental rights and duties with reference to "evolving capacities of the child".[333]

Therefore, children's rights are also bearing a paternalistic attitude by including specific focus on parents' right to direct education of their children in accordance with their religious and moral convictions. Hodgson argues that the absence of a reference to parental rights in education within the CRC framework is justified by its child-centered and child-oriented nature.[334] Still, the CRC has sought to "constructively deal with the tensions at stake[335]" and this can be derived from reading together art. 28(1) with art. 5 (duty of the States to respect the rights and responsibilities of parents to provide guidance appropriate to the child's evolving capacities) and 14(2) which subjects the child's right to freedom of thought, conscience and religion to appropriate parental guidance[336]. According to the CESCR, this obligation means that public school instruction in subjects such as the general history of religions and ethics should be given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression.[337]

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[328] Trevor Buck, *International Child Law.* (2. ed., Routledge 2011) 25 <

[329] ibid 26.

[330] ibid 33.

[331] Laura Lundy, 'Family Values in the Classroom - Reconciling Parental Wishes and Children's Rights in State Schools' (2005) 19 International Journal of Law, Policy and the Family 346, 356.

[332] Samantha Godwin, 'Against Parental Rights' COLUMBIA HUMAN RIGHTS LAW REVIEW 83, 80.

[333] Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief : An International Law Commentary.* (Oxford University Press) 216

[334] Hodgson (n 74) pp. 191

[335] Gerison Lansdown, 'The Evolving Capacities of the Child' (2005) <https://EconPapers.repec.org/RePEc:ucf:innins:innins05/18>.

[336] Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3

[337] Verheyde (n 215).

Although the CRC affords education rights directly to the child, Kilkelly notes a number of provisions relevant to education that attend to parents' rights, including parents' general right to advise their child in accordance with their evolving capacities (Art. 5); that education must be directed toward respect for the child's parents (Art. 29(1) (c); and that parents have a right to provide guidance and direction in relation to the child's freedom of conscience subject to the child's evolving capacity (Art. 14). Kilkelly further argues that the latter "appears to give priority to the rights of parents in the exercise of the child's right to religious freedom" and thus "limiting the child's right to freedom of thought, conscience, and religion".[338] Parental guidance, according to Eva Brems, "has to recede as the child's capacities evolve".[339] Evolving capacities can be considered as an "enabling principle"[340] that requires "parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child, taking into account his/her interests, wishes and as child's capacities for autonomous decision-making and comprehension of his or her best interests".[341]

The recognition of parental rights in this context can be considered rather unique in so far as it "provides a third party with rights vis-à-vis another individual, including right to interfere with a child's freedom, or at least to temporarily exercise it on the child's behalf".[342] Brems explains that CRC has arguably purported to shift the focus from parents to the autonomous right of the child to be free in their choice of religion or belief.[343] The CRC thus "recognizes children as direct bearers of civil and political rights and simultaneously introduces limitations on parental rights".[344] However, the recognition of parents' rights even in terms of the child-centered nature of the CRC can be dictated by pragmatic legal considerations, as legal actions regarding child's well-being will most likely be brought by the parents who "know the child best, have the child's best interests at heart, and are motivated to ensure that their children get the education to which they are entitled".[345]

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[338] Kilkelly (n 212) 249.

[339] Eva Brems, *A Commentary on the United Nations Convention on the Rights of the Child, Art. 14 : The Right to Freedom of Thought, Conscience, and Religion.*

[340] Wouter Vandenhole and Sara Lembrechts, 'Children's Rights : A Commentary on the Convention on the Rights of the Child and Its Protocols.', *Article 5: appropriate directions and guidanceconsistent with the child's evolving capacities* (Edward Elgar Publishing 2019).

[341] UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12 <https://www.refworld.org/docid/4ae562c52.html> para 69.

[342] Jeroen Temperman, Religion & Education in Silvio Ferrari and Rinaldo Cristofori (eds), *Religion in the Public Space* (Ashgate Publishing Limited 2013).

[343] Brems (n 339).

[344] Ann Quennerstedt, 'Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child' 16.

[345] Laura Lundy and Patricia O'Lynn, 'The Education Rights of Children' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer Singapore 2019) 271

Hence, parents do have a right as regards the education of their children, but this right is limited to providing guidance in the best interests of the child and is subject to child's evolving capacities.[346] Parents are thus granted certain guarantees in relation to their children's education, such as exemptions children from certain classes, availability of alternative secular or non-sectarian classes, seeking private education with particular curriculum, or home schooling.[347] Moreover, Coomans identifies the right to free choice of education without coercion by the State with respect to religious and philosophical convictions and language of instruction as being one of the "core obligation" under the art. 13 of the CESCR, which are of an equal character under the CRC.[348]

Therefore, the rights of the parents to ensure that education provided by the government is in conformity with their philosophical and religious convections stems from the ICESCR and is further elaborated by the CRC. Nevertheless, in spite of the child-centered nature of the CRC, is still acknowledges significant role of the parents in the development and upbringing of their children, albeit limits their authority in this case.

To sum up, the limits or permissible interference from the parents need to be taken into account with consideration of the "evolving capacities of the child": the more mature the child is, the less interference is permissible. Nevertheless, recognition of parents' right in this sense is justified on more practical grounds, as parents are more likely to bring claims against the state and thus shield their children from possible indoctrination in educational institutions. The parent's involvement in children's education is not only limited by evolving capacities – but further constrained by the overarching principle of "best interest" considerations, that is a paramount umbrella over all policies concerning children.

3.4.2. Best interests vs. evolving capacities

The best interest principle dictates that *"in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".*[349] But the logical question arises – who knows what the best interest of a particular child would be? Is it the inherent tension between the state and

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[346] Beiter (n 213).

[347] Fernando Mendez Powell, 'Prohibition of Indoctrination in Education - A Look at the Case Law of the European Court of Human Rights' (2015) 2015 Brigham Young University Education and Law Journal 597, 601.

[348] F. Coomans, 'In search of the core content of the right to education', in Audrey Chapman and Sage Russell, *Core Obligations. : Building Framework for Economic, Social and Cultural Rights.* (Intersentia 2002) 225–231

[349] Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3

parents/caregivers where a child is deemed as a mere object? Well, not exactly, as the art.12 CRC stipulates that child's views must be given "due weight" in the matters concerning the child.[350]

Prevailing criticisms around on the vague nature of the 'best interest' principle, characterizes it as "all things to all people".[351] Kilkelly notes that the "best interests" approach can be viewed as a paternalistic concept, where "adults assess what approach best meets the child's needs, and the education system is designed accordingly". While art. 5 referring to "evolving capacities seems like a pragmatic solution to this intergenerational tension, it also guarantees parental primacy in the exercise by children of their rights but "underscores parental authority as an implicit restriction on all children's rights".[352] To resolve this issue, Kilkelly proposes to take the child's own views as a primary consideration.[353] Van Bueren further argues that an individual right of children to participate in decisions concerning content of their education is derived from the combined reading of art. 28(1), 5, 14(2) and 12.[354]

Lundy argues that art. 12 requires meaningful participation of children, as when implemented effectively "can make a unique and powerful contribution to the creation of a children's rights culture in schools".[355] She also refers to participation as a mean to end education-related abuse as "it is difficult to imagine egregious breaches of children's rights in situations where they have been fully and effectively involved in determining the outcome of the decisions which affect them".[356] Hence, according to Sinclair, this reassessment requires children's participation to be "firmly embedded within organisational cultures and structures for decision-making to offer genuine participation to children that is not an add-on but an integral part of the way adults and organisations relate to children."[357]

Hence, even taking into account all this constructive criticism, the inclusion of parents' rights into the child-centered document is clearly not contradictory to its purpose and provisions, especially in the matters of child's development. Involvement of parents into ensuring the "best interest" in the education of their children is justified on the very bond that exist in family relationships; and simultaneously, it can possibly shield children from indoctrination in state institutions and arbitrary interference. In its

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[350] Dr Ursula Kilkelly, 'Religion and Education: A Children's Rights Perspective' 17, 5.

[351] Kilkelly and Lundy (n 220) 336.

[352] Kilkelly (n 212) 246.

[353] Kilkelly (n 350) 8.

[354] Van Bueren (n 278) 243.

[355] Laura Lundy, '"Voice" Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33 British Educational Research Journal 927, 940.

[356] ibid.

[357] Ruth Sinclair, 'Participation in Practice: Making It Meaningful, Effective and Sustainable' (2004) 18 Children & Society 106, 116.

turn, parents' authority is not absolute on the matter either, as child's right to be heard will always come into play when deciding on a specific matter.

Still, best interest considerations do not rule out the importance of participatory rights of children and in fact, art. 12 provides a safeguard to avoid an over-paternalistic perception of children's rights. Freeman also advocates for emphasizing importance of children's participation in matters which directly affect them,[358] while Lundy specifically notes on importance of such participation in educational matters.

But in a situation of a belligerent occupation, the "best interest" principle takes up a new turn in the "State-children-parents" triangle. First of all, it relates to possible interference of the Occupying Power, and parents' convictions and interest while living under the foreign rule and ensuring that their children receive appropriate an acceptable education. And in terms of occupation, the child's best interests are clearly better ensured by their parents, rather than the Occupying Power. Hence, the interference of the Occupying Power into child-related issues should be, if not excluded from this triangle completely, its permissible interference should be not more than necessary as to ensure immediate health and well-being of the child.

3.4.3. The parents and the child: whose convictions are protected?

As it was mentioned by Lundy, the parents' right to direct their children's upbringing now focuses not on parents but is aimed to serve to the benefits for children and/or the common good to be obtained from supporting parents in the exercise of this right.[359] The ECtHR has referred to pluralism in the field of education as the result of the responsibility of the state for the effectuation of the right to education as recognised in Art. 2 First Protocol of the ECtHR on the one hand and the parents' right to respect for their religion or philosophy of life on the other hand.[360] Specifically, it was noted that "safeguarding pluralism in education… is essential for the preservation of the democratic society as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised".[361]

The free choice of education in terms of the family's religious or philosophical convictions as one of the core obligations under the ICESCR: thus, as state must ensure an objective and pluralist curriculum and avoid indoctrinating students. This is important because public education entails a risk of promoting political goals and thus

[358] Freeman (n 221) 182–183.

[359] Lundy, 'Family Values in the Classroom - Reconciling Parental Wishes and Children's Rights in State Schools' (n 331) 355.

[360] Powell (n 347) 607.

[361] Kjeldsen, Busk Madsen and Pedersen v Denmark App no 5095/71, 5920/71, 5926/72 (ECtHR, 7 December 1976), para 50

avoid “the most influential philosophy of life” being promoted solely by the state.[362] But how can the parents realistically ensure that their family religious and moral convictions are respected by the state in educational activities?

In protocol 1, the art. 2 of ECHR it is states that *“in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.*[363] Under this right, parents have a recognized authority to make decisions relating to the well-being of their children,[364] and states are required to not interfere unjustifiably in the private family relations between parents and their children.[365] The reference in art. 2 to education and teaching means that the state’s obligation to respect parental convictions has a potentially wide application, relevant not only to teaching in schools, but to “all of the state-assumed functions in the formal educational system”.[366]

Duncan notes that the wording of the art. 2 of the Protocol 1 allows to conclude that “in the education and upbringing of their children, parents are superior in authority to the state”.[367] Still, such wording gives little to no in this way, the provision addresses the relationship between parents and the state vis-à-vis religious freedom, rather than that between children and their parents. in the relationship between the state and the parent, the ECHR gives little consideration to the religious autonomy of children irrespective of their parent’s views (the problems of this understanding will be addressed in the following part of this chapter).[368]

The initial concept of parental rights in relation to the education of their children was narrowed to availability of exemptions from certain classes, but now arguably evolved to an obligation of a State to “conduct public education in an objective and pluralistic manner that does not indoctrinate children into particular worldviews”.[369] In

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[362] Coomans in Chapman and Russell (n 348) 229.

[363] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

[364] Glass v. United Kingdom, 2004-11 Eur. Ct. H R 1| 74.

[365] Case ’Relating to certain aspects of the laws on the use of languages in education in Belgium’ App no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (ECtHR, 9 February 1967), ”Law” section, p. 1

[366] Kilkelly (n 212).

[367] Duncan, W. ’Law and social policy: some current problems’ (1987) Dublin University Law Journal, 19–37 cited in Kilkelly, The Child’s Right to Religious Freedom in International Law: The Search for Meaning

[368] Kilkelly (n 350).

[369] Powell (n 347) 607.

this regard the "State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions".[370]

But the wording of art. 2 is not limited to purely religious convictions: namely, Harris notes that "pacifism, atheism, communism and veganism are value-systems clearly encompassed by Art. 9".[371] In Catan and other v Moldova and Russia it was held that measures impeding the right to be educated in one's language "amounted to an interference with the applicant parents' rights to ensure their children's education and teaching in accordance with their **philosophical convictions**".[372] But to fall within the scope of art. 9 ECHR, personal beliefs must relate to a "weighty and substantial aspect of human life and behaviour" and also be such as to "be deemed worthy of protection in European democratic society.[373]

As the ECtHR held in *Lautsi v.Italy*, the state is to refrain from imposing beliefs in institutions that individuals are dependent upon. In particular, the state is required to observe neutrality in the context of public education and aim to foster critical thinking in pupils.[374] But the obligation to respect parents' rights in education "is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the functions assumed by the State".[375] Making participation in extracurricular activities such as ceremonies or functions compulsory can amount to indoctrination if they have religious or philosophical implications as there is "little justification to make participation in activities without informative value compulsory".[376]

Powel notes that the prohibition of indoctrination as such "has replaced the traditional parental right to obtain exemptions or special arrangements for their children when parents have religious or philosophical objections to elements of the education provided in the public system".[377] But, as it will be shown in the following section, this conclusion seems a bit premature, and "parental" element remains decisive in international litigation concerning the right to education.

Though the ECtHR has not examined cases concerning political indoctrination, the IACmHR has noted that such indoctrination could violate parental rights to direct

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[370] Kjeldsen, Busk Madsen and Pedersen v Denmark App no 5095/71, 5920/71, 5926/72 (ECtHR, 7 December 1976), para 53

[371] DJ Harris and others, *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights* (Fourth edition, Oxford University Press 2018) 426.

[372] Catan and Others v Moldova and Russia App Nos 43370/04, 8252/05 and 18454/06 (ECtHR, 19 October 2012), para 143

[373] Campell and Cosans v UK App no No 13590/88 (ECtHR, 25 March 1992), para 36.

[374] Lautsi v Italy App no No 30814/06 (ECtHR, 18 March 2011), para 62

[375] Valsamis v Greece App no 21787/93 (ECtHR, 18 December 1996) para 27

[376] Folgerø and Others v Norway App no 15472/02 (ECtHR, 29 June 2007), para 99-100

[377] Powell (n 347) 609.

their child's education.[378] Specifically, with respect to the right to education in Cuba, the IACmHR noted a *"further negative aspect of the educational material, which converts the system into an additional channel for political indoctrination. In this context, parents have been unjustly denied of their right to choose the type of education they consider most appropriate for their children".*[379]

To summarize, though it is argued that the child-centered approach now shifts protection focus from parents to the children, in reality the ECtHR practice remains mostly paternalistic on the matter. The ECtHR understanding of the education process and the quality of information that the children receive depends not on the objectivity and neutrality of information as such, but more on its (in) consistency with parent's convictions and beliefs. Moreover, the burden is placed on parents, and a stringent standard is put on what can constitute a "belief" for the purpose of the art. 9 application. Therefore, any case that would involve beliefs and convictions which are different from well-established standard, will be subject to tight scrutiny in order to determine its applicability under the art. 9 ECtHR.

On a positive note, although the ECtHR practice had mostly been focused on religious dimensions, it has recently been expanded to non-religious sphere. Moreover, the IACmHR position allows to conclude that the prohibition of political indoctrination in educational institutions can be justified by the parent's rights to ensure children's education in accordance with their philosophical convictions. There is a high probability that a legal action can be taken on behalf of the parents in cases of political indoctrination at schools.

Yet, no case to this date has been resolved on the matter of political indoctrination at schools; and even a seemingly well-established case law in religious indoctrination is largely problematic on the matter. In the following sections the problems with considerations of such cases will be identified and analyzed, in order to establish which particular aspects are to be taken into account upon possible strategic litigation.

3.4.4. Exemptions: are they enough?

Generally, the HRC position indicates that "public education that includes instruction in a particular religion or belief is inconsistent with art. 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians".[380] Moreover, ECtHR decisions on this matter

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[378] The Situation of Human Rights in Cuba, Inter-Am. Comm'n. H.R, OEA/Ser.L/V/11.61, doc. 29 rev 1 Conclusions, 1| 22 (1983) <http://www.cidh.org/countryrep/Cuba83eng/conclusions.htm >

[379] ibid

[380] UN Human Rights Committee, 'CCPR General Comment No. 22: Art. 18 (Freedom of Thought, Conscience or Religion)', (30 July 1993), UN Doc. CCPR/C/21/Rev.1/Add.4, para 6

seem to indicate that requiring students to participate in activities of a religious nature or with philosophical implications does not violate the prohibition of indoctrination if the possibility of exemption is provided.[381]

The main implication of non-indoctrination is the absence of the objective to promote a specific view to children in the classroom.[382] The HRC provides that alternative courses of instruction given in a neutral and objective way and respecting the convictions of parents and guardians who do not believe in any religion are enough to satisfy the requirements of art. 18.[383] ECtHR also stresses on sufficiency of the possibility to withdraw from classes to fulfil the obligation to respect religious convictions under art. 2, although Kilkelly notes that such approach "marks the child out to be different when pressure to conform is great".[384]

Nevertheless, ECtHR case law is quite contradictory on the matter. In the case Valsamis v Greece a family of Jehovah's Witnesses asked the school to exempt their child from all events contrary to their religious beliefs, including national holiday celebrations and public processions. That included the celebration of the National Day dedicated to the outbreak of the war between Greece and Italy, which the parents deemed impermissible due to the pacifist nature of their religion. This request was denied and for failing to attend this celebration, the child was punished with one day's suspension[385].

The ECtHR ruled that there had been no breach of the art. 2 Protocol 1 and with respect to art. 9. Specifically, it was held that neither the purpose of the parade nor arrangements for it could possibly offend the applicants' pacifist convictions.[386] The fact that the procession was "fully integrated in the traditional nature of Greek schooling and culture" was deemed sufficient to overturn the applicants' religious convictions.[387] Accordingly, in words of Kilkelly, even if the ECtHR had "raised a judicial eyebrow" to the compulsory nature of the parade and the penalty imposed for non-attendance, the mandatory participation in the procession did not amount to indoctrination; nor did imposition of a penalty for non-attendance violate art. 2 of the first Protocol.[388]

As Fenton-Glynn notes, the core problematic aspect of the case is that given practices were rather viewed from the point of view of an outsider, but not from the position of a genuine believer. But the supervisory role of the ECtHR is prescribed to

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[381] Valsamis v Greece App no 21787/93 (ECtHR, 18 December 1996), para 36

[382] Powell (n 347) 629.

[383] Hartikainen v. Finland, case No. 40/1978 (HRC, 9 April 1981), para 10.4

[384] Kilkelly (n 212).

[385] Valsamis v Greece App no 21787/93 (ECtHR, 18 December 1996). Para 6-10

[386] ibid., para. 31.

[387] ibid

[388] Kilkelly (n 15) pp. 256.

determine whether the religious belief or philosophical conviction is genuinely held (and the authenticity of the applicants' beliefs were not questioned by the Court). And if the belief is identified as genuine, it should be respected without questioning its perceived rationality or reasonableness, as by its nature the ECtHR is precluded from making such value judgements.[389]

Even though current legal regulations prescribe appropriate safeguards with regards to parents' rights to direct their children's education in accordance with own philosophical/religious convictions, relevant practice indicates otherwise. Specifically, although the ECtHR and ICCPR both allow parents to withdraw their children from the instructions which contradict their beliefs and convictions, or to use other alternative measures for exemptions, the ECtHR suggests otherwise. De jure, if the belief or conviction is deemed genuine, then it ultimately falls under the protection of the freedom of thought, conscience and opinion. But *de facto*, the ECtHR tends to overstep the boundaries of "judicial supervision" and make its value judgement of whether exemptions are needed or not as such. In *Valsamis v. Greece* these problematic aspects are highlighted by Kilkelly and Fenton-Glynn as follows***: first***, the ECtHR did make a value judgment of whether participation in military parade is offensive to parents – intervening in the internal aspects of the freedom of thought, conscience and belief; ***second***, even when intervening into such intimate and deep aspects, it still took the position of an "outsider" and evaluated possible interference based on its own value judgement; ***third*** – and most importantly – it totally disregarded the principle of non-penalty for non-participation in such activities, emphasizing on parents' position – but fully omitting reference to children, who faced disciplinary penalties in casu.

Hence, even though the exemptions are prescribed by the relevant legal framework, in reality the ECtHR takes quite a stringent approach in determining whether exemptions are *per se* required and thus application of this provision remains quite problematic.

3.4.5 Application in casu

With regards to the Crimea and the de-facto legislation[390] applied on its territory, the following should be mentioned.

First, the Family Code of the Russian Federation (which is currently governing family relationships on the territory of the Crimea), clearly prescribes that parent bear the primary responsibility for the well-being of their children. It specifically refers to parent's freedom in choosing an educational organization, the form of education for

[389] Claire Fenton-Glynn, *Children and the European Court of Human Rights* (Oxford University Press 2020) pp. 117

[390] The 'de-facto legislation' as referring to the 1) Russian Federation federal laws and regulations 2) acts adopted by the post-2014 administration of the Crimea

children and the form of their instructions enshrined, taking into account the opinion of the children.[391] Yet, the reality is strikingly different from provisions prescribed in the Russian legislation.

Specifically, the whole education system as such must adhere to the general educational standard prescribed by the Government. In casu, the mentioned program on "Patriotic education of citizens of the Russian Federation for 2016 – 2020" is to be implemented in all educational institutions of the Russian Federation, either public or private. The same program is being also actively implemented by the de-facto Crimean authorities, who put it into the curriculum of all schools functioning in the republic, as well as organize extracurricular activities.

Since 2021 the overall ban on the so-called "educational activities" as "carried out outside formal academic programs with the intention of disseminating knowledge, experience, the formation of skills, value systems, or competence for the purpose of a person's intellectual, spiritual and moral, creative, physical, and (or) professional development, in order to satisfy a person's educational needs and interests"[392] had been introduced. An explanatory note to the bill directly states that its goal is to combat "anti-Russian forces" and "propaganda measures" with foreign backing aimed at the "discreditation of Russia's state policy, the revision of history, and undermining of the constitutional order".[393] The Russian media has criticized it for being too broad and eventually effectively prohibiting dissemination of information not approved by the government.[394]

Secondly, participation in organizations, such as "Yunarmia" is voluntary, and parents' consent is required to secure membership. Yet, even in Russia there were numerous complaints on non-voluntary nature of participation in the movement. As one respondent noted: "Can you say no [to Yunarmia]? Well, you don't want to gain enemies".[395] However, as the "Yunarmia" detachments are being created in all schools irrespective of parents' consent, this fact also leaves little to no room in combatting possible indoctrination.[396]

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[391] 'Family Code of the Russian Federation' (29 December 1995) N 223-FZ (as amended on 02/04/2021 and 03/02/2021) <http://www.consultant.ru/document/cons_doc_LAW_8982/6ef44561bc44714ff21426ceca1e8390b9e970cf/>

[392] Meduza, 'Just say no Meduza breaks down the potential fallout from Russia's draft law on 'educational activity'' (18 March 2021) <https://meduza.io/en/feature/2021/03/18/just-say-no>

[393] ibid

[394] ibid

[395] Sergey Ezhov, 'Children of war. Who puts schoolchildren into the Youth Army and profits on state purchases?' (Sobesednik, 28 November 2018) <https://sobesednik.ru/obshchestvo/20181127-deti-vojny>

[396] Andrey Petushkov, 'High rank of the Yunarmia member' (Novaya Gazeta, 22 February 2019) <https://novayagazeta.ru/art.s/2019/02/22/79655-vysokoe-zvanie-yunarmeytsa>

Thirdly, the classes dedicated to the topics of “reunification of Crimea with Russia” do not provide exemptions to those who do not wish to participate; and the “patriotic” element cannot be evaded in any educational institution of the Crimea, either private or public. The same applies to the subjects such as “pre-conscription preparation of youth” conducted even in courses like “Fundamentals of life safety”. Namely, the employees of the so-called “Military Commissariats of the Republic of Crimea and the city of Simferopol” take part in preparing manuals of teaching on the basics of military service (including training camps) within the mentioned course[397], which is a mandatory part of the school curriculum.

However, there is little guidance within the relevant jurisprudence. Although the Folgero judgement provides little justification to make participation in activities without informative value compulsory,[398] the exemptions are still subject mostly to the state discretion. For example, the *Valsamis v Greece* judgment clearly “raises an eyebrow” as to why absence of exemptions to participation in war-celebrating procession was justified as it was “integrated in the traditional nature of Greek schooling”. The ECtHR in casu did not take the child-centered approach in assessing how penalty for non-attendance would influence the well-being on the children; and more importantly, it “made its own judgement” in assessing possible infringement of the parents’ pacifist beliefs.

The Valsamis case could be described as one that did not age well: yet, even its human-rights-dubious outcomes would not be detrimental to the legal reasoning on the Crimean situation. Taking into account that this territory is considered “occupied” by most international actors (albeit ECtHR refused to pronounce on the status of the territory and limited itself to “effective control”), the circumstances call for different contextual consideration. Hence, even if in the context of “mainland Russia”, mandatory participation in war-glorifying activates and pre-conscription preparation during the regular school curricular without possibility of exemption would not be characterized as “violation’, the reasoning would possibly be different in the context of occupation.

It can be concluded that parents in the Crimea have no real possibility to direct the education in a manner which could be inconsistent with “patriotic upbringing” or securing “Russian citizen identity”.

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[397] Crimean republican institute of postgraduate pedagogical education, 'On the peculiarities of teaching the subject "Fundamentals of Life Safety" in educational institutions of the Republic of Crimea in the 2019/2020 academic year' (23 August 2019) <https://www.krippo.ru/index.php/14-moduli/1513-2019-2024>

[398] Folgerø and Others v Norway App no 15472/02 (ECtHR, 29 June 2007), para 99-100

3.5 Prohibition of indoctrination in light of the right to freedom of thought, conscience and religion

Another reason for the prohibition of indoctrination emphasises the state's obligations to ensure pluralism in education as a part of the public interest independent of parents' rights.[399] Albeit the prohibition of indoctrination has mostly been viewed in light of the parents' rights to ensure their children's education in line with their own philosophical and religious convictions, it can be argued that the current legal framework allows us to distinguish a separate right to not be exposed to indoctrination, irrespective of the educational setting.

3.5.1. Root causes of prohibiting indoctrination as such

Tomasevski argues that fulfilment of the right to education should not be relegated to a simplistic "getting all children to school" approach. States are absolutely prohibited from "transforming [educational institutions] into institutionalized indoctrination". Hence, the question is not only if children are taught, but ***what exactly*** are they being taught.[400]

Kilkelly argues that the parents' rights in respect of their children's education were included in the human rights treaties as "a necessary and natural response to the indoctrination policies of Nazi Germany".[401] Nevertheless, since the adoption of the CRC, children's educational rights have arguably become a tool to "protect children from state indoctrination" rather than "to compel states to respect parents' wishes".[402]

The *travaux preparatoire* of the ICCPR reveal the purposes underlying the art. 18 (4) – the protection of the beliefs of parents their provision with a means to protect their children from the risk of indoctrination by the State in public schools.[403] During the drafting debates, numerous state representatives recalled the abuses of the German educational system perpetrated by the Nazis[404] and thus the formulation of the aims of education reflects the need to avoid the events of the Second World War from recurring.[405]

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[399] Kjeldsen, Busk Madsen and Pedersen v Denmark App no 5095/71, 5920/71, 5926/72 (ECtHR, 7 December 1976)

[400] Katarina Tomasevski, *Education Denied : Costs and Remedies.* (Zed Books 2003) 15.

[401] Kilkelly (n 350) 3.

[402] Lundy, 'Family Values in the Classroom - Reconciling Parental Wishes and Children's Rights in State Schools' (n 331) 357.

[403] Hodgson (n 277) 190–191.

[404] Van Bueren (n 278).

[405] Coomans F., 'Education' in Moeckli D. and others (eds), International Human Rights Law (Third edition, Oxford University Press 2018), pp. 236

Taking advantage of the nation's children through the Hitler Youth organization was a key strategy of the regime. Specifically, through 1939 the Hitler Youth organization preparing children to be obedient subjects to the State enlisted 63% of all 10- to 18-year-old children in Germany and introduction of compulsory membership in 1939 rose this number to 90%[406] And history generally shows education has been particularly effective in the militarization of boys as militaristic training signifies "transition into the manhood and glorified in history textbooks filled with sacralization of war and war heroes".[407]

The prohibition of indoctrination was put on the human rights agenda right in the aftermath of the WWII, when the memories of Nazi practices were still fresh. However, the international law is surprisingly scarce on the point, and the issue of military propaganda seems to have disappeared from the legal radar. But with the rise of Yunarmia and other militaristic organizations, which glorify war and prepare the youth to be ready to die for their leader, the images of Hitler Youth receive a new reinterpretation, and bring the seemingly long-forgotten issue back into the legal spotlight. Yet, before getting into legal analysis, it is necessary to define indoctrination as such, which will be done below.

3.5.2. Defining indoctrination

Indoctrination could be characterized as "the process of repeating an idea or belief to someone until they accept it without criticism or question".[408] According to I.A. Snook, "a person indoctrinates a proposition or a set of propositions if he teaches with the intention that the pupil believe it regardless of the evidence".[409] When analyzing Snook's conception, Nachtigal points that Snook compares indoctrination to propaganda and distinguishes the similarity between two concepts: mainly, the influence over the audience's state of mind and beliefs through dissemination of non-rational propositions."[410] Yet, the main difference is that "indoctrination necessarily takes place in an educational setting, in which an authoritative figure takes advantage of their privileged role to inculcate certain beliefs"[411] based on personal attachment to and dependence of his students. It is a student's trust in a teacher, rather than brain-washing techniques that allows the teacher to inculcate an agenda and beliefs by

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[406] Dennis Behreandt, 'Propaganda: Fight for the Minds of Children.' (2018) 34 New American (08856540) 33.

[407] Katarina Tomasevski, *Education Denied : Costs and Remedies.* (Zed Books 2003) 19

[408] Cambridge Dictionary <https://dictionary.cambridge.org/dictionary/english/indoctrination>

[409] IA Snook, *Indoctrination and Education.* (1972) pp. 106-107

[410] Tom Nachtigal, 'Responsible Education: Responsibility under International Law for Indoctrination to Hatred and Violence in Education Systems' (2018) 57 Columbia Journal of Transnational Law 600, 611.

[411] ibid.

presenting it as the truth.[412] Thus, this technique is extremely effective when employed on children.

Hammer argues that brainwashing "entails a focus on individual belief, an intention to alter that belief and the use of coercive methods that effectively deprive the individual of the capacity to make a choice whether to adopt or forsake a belief".[413] Such actions focus on one's internal thought process and disallow any rational or reasonable method of assessment, thus depriving an individual of autonomy[414] "to form an independent volition as a mental ability to desire to do something and then transform this desire into action".[415]

In the context of Crimea, military indoctrination is of particular relevance – yet the definition is found neither in relevant jurisprudence nor in academic literature. McGurk defines "indoctrination carried out by various military branches" as "the process of turning civilians into service members... which hinges on the imbuing of a particular disposition, which is intended to supersede the innately individualistic posture of civilian life".[416] Military indoctrination occurs predominantly in the training camps of the various branches of the military, yet the instilling of military doctrine continues throughout the recruit's entire enlistment.[417] Robinson and Holcomb define "indoctrination towards political extremism" as "the process of converting everyday citizens into complete, unquestioning devotees of leader and party in an authoritarian regime".[418] They further stress that "major institutions such as the educational system, the state media, and cultural establishments" are widely utilized "in order to control the public narrative about the success of the ruling political party and its leader".[419]

But in this stance, it is worthy to remember the unique nature of Soviet (or Post-Soviet militarism), mentioned by Manfred Sapper – namely, the merge of the civil and the military.[420] Hence, in the given context education and its institutions are widely

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[412] ibid.

[413] Leonard M Hammer, *The International Human Right to Freedom of Conscience: Some Suggestions for Its Development and Application.* (Ashgate 2001) p. 260

[414] ibid 261.

[415] Laura B Brown, 'He Who Controls the Mind Controls the Body: False Imprisonment, Religious Cults, and the Destruction of Volitional Capacity' (1991) 25 49.

[416] Dennis McGurk and others, 'Joining the Ranks: The Role of Indoctrination in Transforming Civilians to Service Members' (2006), in Military life: The Psychology of serving in Peace and Combat (Vol. 2: Operational Stress), pp.13

[417] Paul H Robinson and Lindsay Holcomb, 'Indoctrination and Social Influence as a Defense to Crime: Are We Responsible for Who We Are?' (2020). Faculty Scholarship at Penn Law. 2153, pp.125

[418] ibid p.121

[419] ibid.

[420] Manfred Sapper (n. 15)

used to systematically “inculcate an ideology of hatred and to encourage violence against a defined group”.[421]

To summarize, for the purpose of this analysis the focus is on the indoctrination as involving the imposition of a certain worldview by a person in a position of authority, conducted in a systematic and coercive manner. The element of educational setting as proposed by Snook is of utmost relevance to the Crimean case, as the whole idea of Soviet education inherited both by Russia and Ukraine is based on “authoritarian pedagogy” which propagates uniformity and collectivism. Albeit the post-USSR reforms were aimed at changing this paradigm and power dynamics, trying to instil different approaches to education and relationships between students and teachers, they still bear the remnants of this “authoritarian pedagogy”. Hence, the educator in such context in plays a significant authoritarian role, and the overall school culture is fostering possible indoctrination.

Based on the above, the following part will analyze the importance of the freedom of thought and conscience in combatting possible indoctrination efforts, and simultaneously emphasize on the right to be free from indoctrination.

3.5.3 Freedom of thought and conscience: prohibiting indoctrination

Bielefeldt notes that freedom of thought, conscience and religion or belief is integral for everyone’s open future development and requires State agencies to “aspire to fairness, inclusivity and diversity”.[422] Freedom of conscience refers to the right to have one’s convictions which determine to a large extent one’s way of living which is not limited to a divine’s dimension.[423] According to Patsch, freedom of thought may include even political ideas.[424]

The neutrality must persist in all spheres of public life, including education, as public educational system not premised on state neutrality is capable to result in state indoctrination. According to the ICCPR, all types of compulsive measures or policies capable of impairing one's freedom to choose or to adopt a religion or belief must be prohibited as the *right to freedom of religion or belief* includes the right not to believe.[425]

Hammer further notes that coercion within the art. 18 ICCPR is understood as “relating to individual’s internal mind whereby undue pressure and improper

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[421] Nachtigal (n 410).

[422] Bielefeldt, Ghanea and Wiener (n 332) p.219

[423] Cornelis D de Jong, *Freedom of Thought, Conscience and Religion or Belief in the United Nations (1946-1992)* (Intersentia-Hart 2000), p. 21

[424] Patsch “Freedom of conscience and expression, political freedoms” in Henkin, “The International bill of rights’, p 213-214

[425] UN Human Rights Committee (HRC), CCPR General Comment No. 22: Art. 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, para 5

inducement, including non-physical coercion are used to adopt a different religion or belief·".[426] As for the internal aspect of the right to freedom of conscience, which also includes thought, the Secretary General during the art. 18 drafting process referred to an individual's inner thought and moral consciousness, which could not be subjected to restrictions. Hence, art. 18 is providing specific protection for the internal aspect of thought and consciousness.[427]

Assim argues that "the right to believe or not believe, and to act according to beliefs or convictions is a key element of personal development and dignity"[428] as it determines how a person relates to the outside world. Schabas notes that "the development of autonomous thoughts and a conscience" must be "free from impermissible external influence, whether through indoctrination, brainwashing, influencing the conscious or subconscious mind with any mean of manipulation".[429]

Murdoch also includes various forms or types of theistic or non-theistic "religion" or "belief" under the art. 18 umbrella.[430] As to coercion, Schabas enlists not only "traditional" coercive measures of deprivation of certain benefits, but includes "privileges on account of membership in a particular religious group, whether under the public or private law".[431] It is meant to ensure that "a decision to structure his\her life in accordance with a religious or non-religious belief, including a political conviction, is free from external impact and could be reversed at any time". With regards to children, Schabas and Nowak put a great weight in their guidance and upbringing on parents; yet it is valid only until adolescence, when an individual can autonomously determine his or her convictions without impermissible influence from any party, including family and state.[432] The specific emphasis on freedom presupposes its defensive nature against impermissible interference from the state or private parties, and indicates a choice between several alternative understandings of freedom, including negative freedom.[433]

As to coercion, in the *Kang v. Republic of Korea*, the HRC found the "ideology conversion system" as well as the succeeding "oath of law-abiding system" to be in violation of art. 18 ICCPR. In casu, after his conviction, the author was held in solitary

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[426] Hammer (n 417) p.42

[427] UNGA Official records, Document A2929, Annotations on the text of the draft International Covenants on Human Rights, E/CN.4/SR116 (1955), pp. 48

[428] Usang Maria Assim, 'Civil Rights and Freedoms of the Child' in Ursula Kilkelly and Ton Liefaard (eds), *International Human Rights of Children* (Springer Singapore 2019) p. 406

[429] William A Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak's CCPR Commentary.* (3rd revised edition., NP Engel, Publisher 2019) pp. 416

[430] Murdoch, J., *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights* (Council of Europe 2012) p. 16

[431] Schabas, Nowak's CCPR Commentary (n 434).

[432] Schabas, Nowak's CCPR Commentary (n 434), p. 417.

[433] ibid p.441

confinement and classified as a communist "confident criminal" under the "ideology conversion system", a system designed to induce change to a prisoner's political opinion through the provision of favourable benefits and treatment in prison. The HRC noted that the coercive nature of "ideology conversion system" was evident by a discriminatory fashion with a view to alter the political opinion of an inmate by offering inducements of preferential treatment within prison and improved possibilities of parole.[434]

Hence, children's freedom of thought and conscience is dictated additionally by the requirements of development of the child, as well as evolving capacities, as envisaged by international child law. Freedom of thought, conscience and religion should not be narrowed down to its purely divine dimension. On the contrary, it includes a vast understanding of the different kinds of convictions a person can hold, as well as the freedom to not hold any particular belief, albeit theistic or non-theistic. It could be said to have a more general and broad process of development of a person's inner forum, and its significance is even more evident in situation of children, whose "evolving capacities" require freedom from any kind of arbitrary interferences.

Overall, indoctrination as discussed *in casu*, refers to the very inner and intimate aspects of one's existence – and therefore, it requires special scrutiny, as will be discussed further in the next section specifically dedicated to the *forum internum*.

3.5.4 Forum internum

Forum internum is the internal aspect of the right to freedom of conscience which is subject to no limitations or derogations under international human rights law and is found in ICCPR Art. 18(2). This provision assures the right to freedom from religion, which protects non-religious persons from obligatory religious oaths, ceremonies and other obligations[435] and "is absolute in the sense of being immune from any legitimate interferences whatsoever".[436] Bielefeldt further argues that *"one should see art. 18(2) in conjunction with other absolute prohibitions in human rights law, like the absolute bans on torture and slavery".*[437]

The HRC also has noted that "coercion applies to not only impairing one's right to a belief (freedom to) but also to protecting non-believers from compulsion to believe

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[434] Yong-Joo Kang v. Republic of Korea, CCPR/C/78/D/878/1999, UN Human Rights Committee (HRC), 16 July 2003, para 7.2

[435] Scheinen, Art. 18 in ed. by Asbjørn Eide, *The Universal Declaration of Human Rights : A Commentary.* (Scandinavian University Press 1992) p. 271

[436] Heiner Bielefeldt, 'Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom' (2020) 15 Religion & Human Rights, p.16

[437] ibid.

(freedom from)."[438] According to Hammer, f*reedom from* in the *forum internum* "involves the imposition of an outside belief with the purpose of impelling the individual to adopt a particular belief or to replace one belief for another."[439]

The *freedom from* aspect of the *forumn internum* is "most evident when a state is targeting a specific belief or mode of thought aiming to change it in a pro-active manner by creating a policy of desired change and forcing modification of one's internal thoughts and beliefs". The achievement of a desired result to qualify a particular behavior as a violation the mere act aimed to alter or instil a particular belief is enough.[440]

Yet, ECtHR approach might suggest otherwise, because as discussed in the previous submissions on parent's rights, even the wording of art. 2 Protocol 1 suggests a highly (of not exclusive) paternalistic nature of the right. Nevertheless, Kilkelly notes that even in quoted-above Valsamis case there is still room for a future challenge to the consistency of coercive measures with the child's right to education under the first Protocol under art. 9. Specifically, she denotes that the ECtHR "appeared critical of the practice of requiring pupils to parade outside the school on a national holiday on pain of a day's suspension from school" and implicitly notes on "more expedient educational methods better suited to the aim of perpetuating historical memory among the younger generation".[441]

The overall goal of the prohibition of indoctrination is to protect the right of children to form their own consciences and only to a certain degree - the right of parents to raise their children in accordance with their convictions. Thus, prohibition of indoctrination requires pluralism and objectivism within each school[442] and if the prohibition of indoctrination is established as an independent principle, the State is bound to conduct public education in adherence to the principles of objectivity and pluralism as such.[443]

The *forum internum* in the freedom of thought, conscience and religion includes both external and internal aspects. The latter implies the absolute prohibition of state's interference with the aim of deliberately altering one's belief or conviction via, as argued by Hammer, a part of a "policy of desired change and forcing modification of one's internal thoughts and beliefs".

To conclude, it can be argued that in regard to the *forum internum*, children enjoy protection from state's interference with their conviction or belief ***irrespective of the***

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[438] UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Art. 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para 5

[439] Hammer (n 217) p. 98-99

[440] ibid p.96

[441] Kilkelly (n 15) p. 258

[442] Powell (n 346) p.614

[443] ibid p. 611

parent's desires. Hence, forum internum does not depend on the whim of parents or governments but is the element which solely belongs to the child since the moment of birth as an individual human being, entitled to form their own views without arbitrary interferences.

3.5.5. Application in casu

The prohibition of indoctrination has historically been seen as a right of parents to direct their children's education in conformity with their own religious and philosophical convictions. However, in the situation of the Crimea, the understanding of this right calls for a particularly new reassessment, as it thus excludes children deprived of parental care and currently residing in government-sponsored orphanages based on the following.

In the methodological manual on "Development of cooperation between educational organizations and military-patriotic associations with military units, issued in accordance with the Russian Federation's Action Plan on Education, it is stated that "in order to increase the prestige of military service, it is necessary to strengthen communication between educational organizations and military units, as well as to develop the practice of patronage of military units over educational organizations".[444]

And this policy is now implemented in the occupied Crimea. In fact, since 2014 children who had been placed under the government custody, have been automatically imposed with Russian citizenship and sent for adoption to the mainland Russia (and abroad, per Russian Law). According to the Ministry of Social Policy of Ukraine, at least 4 323 orphans (+ 672 in the city of Sevastopol) were registered on the peninsula prior to 2014.[445] The latest data published by the Russian authorities for 2018 indicates that at least 4 657 children deprived of parental care were registered in the so-called "Republic of Crimea" and 560 – in the city of Sevastopol.[446] The legislative framework for protection of these children is now based on the Russian Law and also on the so-called "Law of the Republic of Crimea of September 1, 2014 No. 62-ЗРК "On the organization of the activities of guardianship bodies in the Republic of Crimea".[447] The implementation of activities aimed at protecting children's rights is entrusted to the specially authorized government body of the so-called Republic of

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[444] Golovanov et all, "Development of interaction between educational organizations and military-patriotic associations with military units: a methodological guide for educational organizations (2017), <http://school-zaozernoe.ru/files/shefstvo_voinskikh_chastey.pdf>

[445] Ukrainian crisis media center, 'Russia continues to illegally transfer orphans from the occupied Crimea ' (04 June 2015) <https://uacrisis.org/ru/25915-rosiya-vivoziti-ditej-sirit>

[446] Data: from Rosstat (Russian Statistics Agency)

[447] Republic of Crimea, 'Law No 62-ЗРК "On the organization of the activities of guardianship and trusteeship bodies in the Republic of Crimea"' (1 September 2014) <https://deti.rk.gov.ru/ru/document/show/8>

Crimea; specialized units for minors and the protection of their rights of municipal bodies; commissions for juvenile affairs and protection of their rights; Crimean republican center of social services for families, children and youth, municipal centers of social services for families, children and youth.[448]

The component of instilling "military-patriotic education of children and youth, development of the practice of patronage of military units over educational organizations[449]" had been introduced in 2016 by the so-called "Council of Ministers of the Crimea". However, in 2017 the Russian Federal Child Ombudsman launched an all-federal project called "Youth Army. Mentoring" for children deprived of parental care and orphans.[450] Consequently, the office of the children's rights ombudsman issued an order to all regional ombudsmen to sign agreements with the headquarters of the Yunarmia.

In 2018 the so-called "Ministry of Education, Science and Youth of the Republic of Crimea" launched the regional project "Youth Army. Mentoring"[451] via the order which enabled to recruit orphans and children deprived of parental care into the Yunarmia activities.[452] Then the so-called "Ombudsman for Children's Rights in the Republic of Crimea" stressed that an agreement with the Crimean branch of Yunarmia was concluded, to engage the organization into the work with the children deprived of parental care".[453] Prior to that, in its annual reports, the so-called "Crimean child ombudsman" had positively evaluated Yunarmia's efforts in instilling military-patriotic education among children and youth (noting that for 2018 at least 107 detachments of the movement are functioning on the basis of military-patriotic clubs, Cossack formations and cadet classes).[454] Eventually, "Yunarmia's work with children deprived

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[448] Republic of Crimea , 'Law No 75-ЗРК "On bodies and institutions for the protection of children's rights in the Republic of Crimea"' (15 September 2014) <https://deti.rk.gov.ru/ru/document/show/9>

[449] ibid

[450] Commissioner for the rights of the child in Crimea, '"Youth Army Mentorship" in the Republic of Crimea' (7 November 2018) <https://deti.rk.gov.ru/ru/art./show/385>

[451] Russian society of military history, 'Yunarmia Board of Trustees meeting', (07 November 2018) <https://rvio.histrf.ru/soobshestvo/post-1025>

[452] Ministry of education, 'Order # 2215 on launching the "Yunarima Mentorship" program' (*Repubic of the Crimea*, 9 October 2018) < https://monm.rk.gov.ru/uploads/monm/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/phpe4f6cs_pr2215-09102018.pdf>

[453] Russian unity party, 'In the Republic of Crimea, the all-Russian social project "Youth Army Mentoring " has been launched' (10 November 2018) <http://www.ruscrimea.ru/2018/11/10/v-respublike-krym-dan-start-vserossijskomu-sotsialnomu-proektu-yunarmiya-nastavnichestvo.htm>

[454]Commissioner for the rights of the child in the Republic of Crimea, 'Report on children's rights observance in the Crimea' (, 2018) <https://deti.rk.gov.ru/uploads/deti/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/php8mGGRU_2.pdf>

of parental care" had begun in February 2019 in the following areas: culture, creativity, sports, volunteering, patriotic work, basic military training, career guidance.[455]

In April 2021 the new plan on implementation of Yunarmia's activities was adopted by the so-called "Council of Ministers of the Republic of Crimea". In this plan the "mentorship" program is supposed to take place in at least two Crimean boarding schools and institutions for orphans and children left without parental care. This program is implemented by the so-called "State Committee for Youth Policy of the Republic of Crimea"; "Ministry of Education, Science and Youth of the Republic of Crimea"; and the "Regional Center for Training for Military Service and Military-Patriotic Education". [456]

Hence, if schoolchildren have parents who can possibly prevent the militarization of childhood (at least they need their written consent to enlist children to Yunarmia), then there is no one (institutionally or legally) able to stand for orphans who are inscribed in the state system by definition.[457] As it was noted earlier in this chapter, children in the occupied territory cannot be involuntarily enrolled into any type of organizations under the authority of the Occupying Power and this prohibition dates back to the propaganda instilled in the WWII times.[458]

In light of the presented facts, the prohibition of indoctrination in children's rights agenda requires a new interpretation, as the classic "paternalistic" model excludes children who do not enjoy a privilege of having a caregiver able to initiate legal action against the state. To be fair, the systems of institutional care in both Ukraine[459] and Russia[460] is per se not a favourable environment for the development and socialisation of children considering the isolated nature of the foster system which sanctions abuse and violence against them. However, the closed nature of the institutions, and the high degree of government control over them, creates the most favorable environment for imposing government-friendly ideologies, just like in the Crimean example. Without the recognition of children's autonomous rights vis-à-vis the state indoctrination, these

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[455] Russian society of military history , 'Yunarmia The mentorship ' (*Crimea branch* , 08 November 2018)<https://rvio.histrf.ru/soobshestvo/post-10264>

[456] Council of Ministers of the Republic of Crimea, Decree # 403-p 'On the organization of events to promote the development of the Yunarmia movement in the Republic of Crimea in 2021' (2 April 2021) < https://rk.gov.ru/ru/document/show/28076>

[457] Aleksey Tarasov, 'Childhood under a gunpoint ' (*Novaya Gazeta*, 13 March 2019)<https://novayagazeta.ru/art.s/2019/03/13/79863-detstvo-pod-ruzhie>

[458] Plattner (n 231) p.147

[459] Hope and homes for children , 'The illusion of protection: An analytical report based on the findings of a comprehensive study of the child protection system of Ukraine' (2016)<https://www.hopeandhomes.org/wp-content/uploads/2016/12/The-illusion-of-protection_eng.pdf>

[460] HRW, 'Russia: Children with Disabilities Face Violence, Neglect' (*News Release*, 15 September 2014)<https://www.hrw.org/news/2014/09/15/russia-children-disabilities-face-violence-neglect#>

violations will be left unaddressed and unanswered, and most vulnerable children will be left unprotected.

However, even existing legal framework, as analyzed in this part, allows a protection against interference from the state, based on the right to freedom of thought, conscience and belief, as prescribed in the ICCPR and ECHR, and in some form reinforced by the CRC with reference to the following.

First, it should be noted that the principle of "evolving capacities of the child" enshrined to the CRC grants children a certain degree of autonomy, proportionate with the aim of development. It is argued that this provision exists to secure the child-centered approach of the convention, as well as to protect children from possible arbitrary interferences on account of their parents. However, if the child has no parents to be "protected" from and placed under the legal guardianship of the state, who could protect him/her from the "Big Brother State"? Therefore, as children's capacities evolve, they gain more autonomy not only from parents, but from the state – and require even more autonomy in order to freely develop their views without from arbitrary interferences.

Secondly, the right to freedom of thought and conscience equally applies to children, and the reference in the ICCPR or ECHR makes no distinction with regards to the age – and in fact, prohibits any unjustified difference in treatment on this account. Moreover, as the drafting histories of the ICCPR and ICESCR provide, the anti-indoctrination considerations were in many times "inspired" by the infamous example of the Nazi Germany, where education was turned into a massive propaganda machine[461]. Hence, it can be concluded children and youth enjoy special protection from interference into their freedom of thought and conscience.

Thirdly, as interpretative guides and *travaux preparatoire* to art. 18 indicate, both religious and non-religious dimensions are covered, and the freedom of thought and conscience must be understood in their external (*forum externum*) and internal (*forum internum*) dimensions. *Freedom from* in the *forum internum* involves the imposition of an outside belief with the purpose of impelling the individual to adopt a particular belief and thus disabling to form independent belief of opinion.[462]

The *forum internum* prohibits any kinds of coercion aimed to change one's belief, the "coercion" element within the art. 18 clearly indicates that not only unfavorable, but selectively favorable conditions beneficial to holders of a particular belief can constitute violation.[463] In this regard, Yunarmia members are given preferential status for entrance into higher education, especially related to majors in "power ministries"

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[461] Eastwood (n 22).

[462] Hammer (n 413).

[463] Yong-Joo Kang v. Republic of Korea, CCPR/C/78/D/878/1999, UN Human Rights Committee (HRC), 16 July 2003, para 7.2

(e.g., military, Federal Security Service, National Guard, etc.).[464] The Russian news outlet Novaya gazeta reports that starting from 2020 at least 20 civilian universities will add points to the Yunarmia members results.[465] Taking into account the logic of the HRC conclusions in Kang v Korea, where it was noted that giving preferential treatment with the aim to facilitate conversion of certain beliefs is inconsistent with the art. 18 ICCPR, Yunarmia's methods of recruitment can also be viewed as impermissible with the freedom of thought and belief.

Taking into account the fundamental role of education in the formation of individual identity and beliefs, the obligation to convey material in a neutral and "non-indoctrinating" manner must be owed not with regards to parents, but with regard to children. Moreover, as noted by Freeman "to respect a child's autonomy us tp treat that child as a person and as a right-holder".[466] Therefore, prohibition of indoctrination in educational institutions can be described as deriving from the fundamental right to freedom of thought and conscience, which in no way can be limited by the state or any other outside actor. The protection against indoctrination must be ensured both in times of war and times of peace – yet, the Crimean example clearly adds additional efforts required for the children who got trapped in the hands of the Occupying Power.

3.6. Possible remedies

When establishing if a possible redress can be obtained for the arbitrary policies of the Russian Federation on military indoctrination of Crimean youth, it should first be emphasized that a belligerent occupation constitutes a violation of international law on its own. So basically, in casu we're looking for a redress for a violation in the context of an ongoing violation of international law. With regards to the IHL violations, there is no existing platform to seek justice for violations of GCs or HRs as such: they are usually considered within domestic courts, or in special cases by ad hoc or permanent international tribunals, operating on their own statutes, which are nevertheless usually based (an in any case, are consistent) on the provisions of HR and GC.

In the introduction of this thesis, three particular cases from the late 1940s were mentioned. Out of those, the Greiser's case is of utmost relevance, albeit it has no military indoctrination component as such. Still, it directly addresses specific educational issues under belligerent occupation. In the indictment there is a mention of the "closing down and destroying the network of Polish schools both elementary,

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[464] Ray Finch, 'Young Army Movement Winning the Hearts and Minds of Russian Youth' (Military review, 22 February 2019) <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/September-October-2019/Finch-Young-Army/>

[465] Andrey Petushkov, 'High rank of the Yunarmia member ' (Novaya Gazeta, 22 February 2019)<https://novayagazeta.ru/art.s/2019/02/22/79655-vysokoe-zvanie-yunarmeytsa> accessed 8 May 2021

[466] Freeman (n 219) p.367

middle and high" whereas Polish children were supposed to be taught (by unqualified German staff) in German, without the possibility to master the German language.[467] In establishing guilt, the tribunal used the formulation of "**exceeding the rights accorded to the occupying authority** by international law, and in particular violating… the Hague Regulations[468]" in substantiating the indictment. Schimd argues that this trial should

> serve as an interpretative aid as we understand the meaning of various specific offences in contemporary international criminal law, and, in particular, as we consider whether some of the definitions of war crimes are capable of accommodating claims related to ESCR violation. [469]

The ICC, which has an operating part on addressing violations of the laws and customs of war could be a potential option, especially considering the prospect of a full-scale investigation on the Crimean situation. However, the legal qualification of these actions within the "international crimes" framework remains problematic.

Specifically, one could argue that art. 51 of the GC IV which prohibits pressure or propaganda which aims at securing voluntary enlistment is of relevance *in casu*, influenced by the simultaneous drafting of the ICCPR. During drafting of the art. 51 GC IV, it was suggested to leave the word "propaganda", together with "pressure" due to the experiences of the WWI and WWII.[470]

However, the second sentence of art. 51 did not make its way into the final version of the art. 8 ICC statute. When discussing the travaux preparatoire to the war crime of "compelling a prisoner of war or other protected person to serve in the forces of a hostile Power" Dörmann and Doswald-Beck note that "the ICC PrepCom decided to combine the language of the grave breaches provisions of the GC with art. 23 of the 1907 HR."[471] The ICC Elements of crimes give the folloiwing interpretation: "the perpetrator coerced one or more persons protected under one or more of the Geneva Conventions, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power".[472] There is no mention of the "propaganda" part, and even if Yunarmia is in itself an effective tool to compel youth to serve in the armed forces of the Russian Federation, it unfortunately doesn't seem to fall under the international criminal law auspice at the first glance.

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[467] Trial of gauleiter Artur Greiser (Supreme National Tribunal of Poland), case # 74, pp. 80

[468] Ibid, pp. 71

[469] Evelyne Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* (Cambridge University Press 2015) p. 169–170

[470] G Alex Sinha, 'Lies, Gaslighting and Propaganda' 68 BUFFALO LAW REVIEW 81, p.1050

[471] Knut Dörmann and Louise Doswald-Beck, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (2009) pp. 97

[472] ICC, Elements of the Crime <https://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>

Still, the Ukrainian civil society is submitting relevant information on this account to the ICC, which are included "because during their studies at these schools or courses, in addition to learning how to handle weapons and getting basic military training, children develop a Russian civic identity, are also instilled with Russian military traditions and instructed in further military training for the service in the occupier's army".[473] And this reasoning finds its confirmation within the Crimean news, which describe at least one episode when the junior member of the Sevastopol gymnasium states that he is going to enroll into the Mozhaisky Academy of Military Space Forces in St. Petersburg and called himself "fully prepared for service" due to the training he had received in Yunarmia.[474] The key issue in this regard, is of course the element of "compelling" or possible "coercion" – but using the argument from the previous chapter, on the 'freedom from' aspect, one could possibly argue that the overall atmosphere on the peninsula do not allow for free and informed choices made.

One of the possible alternatives in this regard could be using the logic of the Polish tribunal in the Greiser case and qualify such conduct as "exceeding the rights accorded to the occupying authority". Yet, this could potentially come into contradiction with the *nullum crimen nullum poena sine lege* principle. Nevertheless, the legal work is being done within the ICC framework, and time (together with the ICC professionals) will eventually shed the light on the given issue.

The other possible option, which was not available at the time of Streicher's and von Schirach's trials, would be a recourse to the IHRL bodies. The system of human rights protection is intricate and sophisticated – yet, will there be a place to address military indoctrination in Crimean case?

First of all, one could logically think of using national courts situated within the Crimean territory as a legal battleground, as it is more effective, efficient and time-expedient. But since 2014 Ukraine no longer exercises control over the domestic courts on the territory of the Crimea, and local courts were displaced with those of the Russian Federation. Moreover, Russian Federation appoints judges from the federal districts to serve in the peninsula. Hence, taking into account the general detrimental situation with human rights and judiciary on the peninsula, this option would not be viable.

Also, with regards to the possible recourse to the courts on the mainland Ukraine, there are quite a few important constraints. First, Ukrainian authorities have no access to the peninsula since 2014 and although there is an ongoing investigation on militarization of children and youth within the framework of "violation of the laws and

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[473] ZMINA, 'Ukraine has filed a submission to the ICC about the illegal militarization of children in Crimea' (01 October 2020), <https://zmina.info/news/ukrayina-povidomyla-mizhnarodnyj-kryminalnyj-sud-pro-nezakonnu-militaryzacziyu-ditej-v-krymu/>

[474] NTS, 'The ranks of the "Yunarmia" of Sevastopol number more than 10 thousand young men and women' (16.02.2021) <https://nts-tv.com/news/ryady-yunarmii-sevastopolya-naschityvayut-bolee-10-33019/>

customs of war", it will take years before the guilty persons find their verdicts. The Ukrainian NGO "Crimean Human Rights Group" have conducted their own investigation and identified those who are suspected to be responsible for the implementation of Yunarmia activities within the territory of the peninsula.[475] But considering Russia' unwillingness to cooperate in any questions concerning Crimea, it is highly unlikely that these persons could be extradited to stand trial in Ukraine. Hence, the Ukrainian courts are also not an appropriate forum for such queries.

Turning to the regional instruments, the ECtHR immediately comes into mind – especially taking into account that both Ukraine and Russia and parties to the ECHR, and Russia has obligations under it, as established in the chapter 1 of this thesis. These obligations refer both to the freedom of thought, conscience and religion, as well parent's right to ensure education of their children in line with their religious and philosophical views. And in terms of the ECtHR, possible legal actions could be brought both by the parents within the art. 2 protocol 1, but also take a more child-oriented and child-centered approach, by putting more emphasis on child's autonomy in the issues of possible indoctrination. Unfortunately, the current ECtHR jurisprudence does not indicate that it is an appropriate forum for the children as such, as its practice towards implementing and interpreting the CRC is quite dubious and very paternalistic.

The international forum remains much more limited. The Committee on the Rights of the Child had just recently begun to review individual complaints, and Russian Federation had not accepted the optional protocol enabling such inquiries. Of course, the UPR can also be viewed as one of potential forums for discussing the issues of human rights in the occupied Crimea – and in fact, it is already being done by the CESCR, HRC and CEDAW. All of mentioned institutions have referred to the situation in the Crimea (without prejudice to its legal status) and emphasized on Russia's responsibility (as a State exercising effective control over the peninsula) for ensuring well-being of civilian population in all spheres, including education. UPR has been criticized quite extensively for lack of enforcement mechanisms, bureaucratization and political ineffectiveness. But Pillar notes that the latter "should not dissuade researchers from giving it more consideration, not least in light of its uniqueness"[476] and "dialogical elements" enshrined in the procedural aspects.[477] Hence, the importance of UPR should not be underestimated in the strategies for bringing up the issue of the human rights in the Crimea on the global level.

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[475] ZMINA, 'Militarization of Crimean education: which of the educators on the peninsula forms a cult of war and violence in Ukrainian children' (14 January 2021) <https://zmina.info/news/militaryzacziya-krymskoyi-osvity-hto-z-osvityan-na-pivostrovi-formuye-kult-vijny-ta-nasylstva-sered-ukrayinskyh-ditej/>

[476] Pilar Elizalde, 'A Horizontal Pathway to Impact? An Assessment of the Universal Periodic Review at 10' in Alison Brysk and Michael Stohl, *Contesting Human Rights* (Edward Elgar Publishing 2019) 20

[477] ibid 19.

The possible gateway in individual applications would be to address the issue of military indoctrination under the art. 18 ICCPR, within the HRC. Most importantly, both Ukraine and Russia are parties to protocol that enables individual complaints and thus the main difficulty remains to properly substantiate the applicability of the art. 18 to the military indoctrination cases. The possible gateways to that were discussed in the previous chapter on the forum internum and freedom of thought and conscience.

And lastly, we have reached or arrived to what was mentioned as a starting point of this thesis – namely, the UNGA resolution condemning military indoctrination of Crimean children and youth within the educational institutions. And one could heavily criticize the inefficiency of the global human rights protection mechanisms, the declaratory and seemingly futile nature of the UNGA and the consequent inability to effectively respond to the possible violations. This criticism has its validity, of course – considering that the international human rights protection system is relatively young and fragile to be able to end all injustices at once, and a lot of work is in fact being done by the international organizations, such as the UN, governments, civil society and activists who continue to seek the light of justice even in the darkest times.

To conclude, it could seem that there is little hope for a prompt and efficient response which could put an end to arbitrary practices of the Russian Federation. However, when dealing with an issue like military indoctrination which is sensitive as such, one should remember that in the Crimean situation is exacerbated by the context of belligerent occupation, which is in itself a violation of international law. In the fragile context of human rights world order, nothing is ever easy, and thus prompt and efficient solutions are constrained by the limitations of sovereignty, imbalance of power and legal lacunas.

But it doesn’t mean that just and equitable solutions are not possible per se.

Conclusion

"The flame will cool tomorrow, or the day after tomorrow... But someone must see this already today, and speak heretically today about tomorrow.

Heretics are the only (bitter) remedy against the entropy of human thought."

— Yevgeny Zamyatin

This thesis aimed to address the particular issue of military indoctrination of children and youth in the context of belligerent occupation, and in this regard a few important conclusions have been reached:

I. The law of occupation does not provide a sufficient coverage on the issue of education provision, as it does not specify the obligations of the Occupying Power in this regard sufficiently clear. This was mentioned by von Glahn in the 1950s and remains true in 2021. Therefore, IHRL can provide a useful guidance in assessing the legitimacy of the Occupying Power's actions (if discussing the questions of legitimacy in a purely illegitimate situation of belligerent occupation is viable per se) on educational issues.

II. IHRL does contain a substantive body of provisions on education, which were elaborated in the aftermath of the WWII, taking into account inter alia the indoctrination practices of the Nazi Germany in relation to children and youth. Yet, there are quite a few problematic points highlighted in the chapter III:

1) The aims of education are formulated quite broadly and thus provide too many maneuvers for the states in their implementation. Nevertheless, the education which seeks to indoctrinate children in a particular worldview, which is contrary to the spirits of the human rights, would be contrary to the aims enshrined in the art. 29 CRC and art. 13 ICESCR. That includes the usage of education as a tool of building the image of an enemy to neighboring state or nation or disseminating military propaganda among children.

2) The parent's right to ensure children's education in line with their philosophical and religious conviction remains one of the only real ways to effectively combat possible state indoctrination. As primary guardians of their children's best interests, parents are granted with an effective toolkit to protect them against arbitrary interference of any third part, including the state: by seeking exemptions from certain classes or demanding neutral and impartial curriculum as such. Albeit this concept is criticized for bearing a paternalistic attitude and possibly limiting the autonomy of the child, it still remains prevalent within the practice of most human rights institutions, such as the UN HRC and ECtHR when it comes to the issues of indoctrination.

3) The children's autonomy, which is emphasized within the CRC, is still a quite contested concept, which has little recognition within the relevant jurisprudence, albeit

the CRC has a strong emphasis on child's evolving capacities and the right to be heard. Still, children's voice is rarely heard in its individual stance, separated from the parents' convictions. This paternalistic bearing excludes those deprived of parental care from the scope of protection and thus disables seeking redress for the possible violations of the right to education under the art. 2 Protocol 1 of the ECHR. Hence, a recognition of the child's inherent individual right to freedom of thought and conscience is required, including freedom from indoctrination within the educational institutions. The case of the Crimea clearly shows relevance and urgency of all three mentioned points.

First of all, the education within the peninsula is currently built on the premise of upbringing in the patriotism and loyalty to the Russian Federation, as well as with a readiness to exercise their civic duty by serving in the Russian Federation's armed forces. Albeit this aim would probably not be contrary to international law if applied solely within the Russian Federation's internationally recognized borders (and this point has not been discussed within present research as such), the situation of extraterritorial application brings a new dimension. Namely, it is doubtful whether the Occupying Power can instill and change the curriculum to the extent that it practically transforms the minds of the persons who live under occupation and builds up the new loyalty to the occupier. Moreover, the *status quo ante* envisaged in the occupation law does not allow for such significant and drastic changes to be introduced.

Secondly, there are little to no alternatives available to the parents of Crimean children who do not wish their children to be brought up in the spirit of this 'new loyalty'. The systematic and widespread nature of military indoctrination, starting from the earliest age is prescribed as high as on the all-federal level, and is effectively implemented by the Crimean puppet "government". Hence, there is literally no escape from the Big Brother State for the 'children of the Crimean spring' and their parents.

And thirdly, the case of Crimean orphans clearly highlights the inadequacy of the current jurisprudence to recognize children as full-fledges human rights bearers. Those children have been arbitrarily imposed with the Russian citizenship in 2014; many have been sent for adoption to Russian regions, or even abroad, which is already a blatant human rights violation. Moreover, the so-called "patronage" of the paramilitary institutions such as "Yunarmia" over the state-run and state-sponsored orphanages is a vivid example of how state can effectively abuse the most vulnerable individuals, who are basically kept hostage by the system. And in casu, there is no prospect to escape state-sponsored indoctrination: especially when even the so-called "child's ombudsman" is proudly signing contracts on behalf of the orphans with "Yunarmia" and boasts about it in her annual reports.

Hence, based on the abovementioned considerations, the final recognition of children as autonomous human beings with freedom of thought and conscience irrespective of governments and parents/caregivers is a necessity. Moreover, this conclusion can be derived from the very fact of "evolving capacities" and

“development” of the child, in the importance of forming own views, without any arbitrary interference. The “freedom from” aspect is of utmost importance in casu.

As for the possible redress, it is necessary to mention that even after having highlighted all the deficiencies in the current legal regime, which falls short of enforcing the rules sufficiently to prevent such things as belligerent occupations, military indoctrinations and exploitation of orphans to take place, a purely pessimistic view should not prevail. Of course, all these detrimental consequences of belligerent occupation can be addressed most effectively when Russian Federation no longer exercises control over the peninsula and Ukraine would restore the sovereign power over its territory. Yet, this view – albeit quite logical and legally reasoned, is currently not very foreseeably implemented in the nearest future – and with occupation lasting for 7 years already, the irreversible changes are happening within the minds of the people living under the propaganda and indoctrination of the foreign rule. The new generation, brought up in full loyalty and readiness to serve in the armed forces of the Occupying Power can potentially become a powerful resistance force to deoccupation and restoration of the legitimate government in the future. Therefore, military indoctrination becomes an effective ‘transformative tool’ for the Occupying Power to mentally legitimize the occupation and turn it into ‘normality’.

Hence, IHRL and IHL must be utilized to the fullest extent possible to prevent these possibly drastic consequences. And the Ukrainian civil society and government institutions are acting quite actively and decisively on the international lawfare. Namely, the CHRG together with the Crimea’s Prosecutor’s office (located in mainland Ukraine) had prepared a submission regarding militarization of Crimean children to the ICC OTP. The Prosecutor's office mentions the Russian President Vladimir Putin, Russian Defense Minister Sergei Shoigu, the Russian General Staff, military commissars in Crimea, Dmitry Medvedev, Sergey Aksenov, and Sevastopol governor among the chief suspects .[478]

Moreover, the information on the relevant policies of the Russian Federation in the Crimea is present in the UPR submissions on Russia, prepared jointly by Ukrainian and Russian NGOs. As the reporting cycle is upcoming, it is interesting how the treaty bodies will address the issue of military indoctrination, and within which particular auspice (solely within the right to education by CESCR, or if the HRC will review it within relevant provision of the ICCPR). And lastly, the proposed usage of the art. 18 ICCPR and art. 9 ECHR in the military indoctrination cases could be another way to protect the “freedom from” aspect which is directly pertinent in casu.

Therefore, the “I” within the individual ought to be in the center of protection within all legal regimes: both in the peacetime, in the time of war and even under the foreign rule, such as under belligerent occupation.

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[478]ZMINA, ’Ukraine has filed a submission to the ICC about the illegal militarization of children in Crimea’ (01 October 2020), <https://zmina.info/news/ukrayina-povidomyla-mizhnarodnyj-kryminalnyj-sud-pro-nezakonnu-militaryzacziyu-ditej-v-krymu/>

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