

UKRAINE -v- RUSSIA

ORAL SUBMISSIONS ON BEHALF OF THE GOVERNMENT OF UKRAINE: PART 2

1. Mr. President, Members of the Court, this inter-State claim concerns a pattern of human rights violations that are alleged to have been committed by agents of the Russian Federation and their proxies in the Crimean peninsula, during the military coup of February 2014 and the unlawful occupation which followed. The victims included members of the Ukrainian military, political activists, and journalists, as well as members of the Crimean Tartar and ethnic Ukrainian communities. As the Deputy Minister has already said, the targets of this campaign of human rights violations have one thing in common. They were all actual or perceived opponents of Russia's illegal occupation.
2. The evidence establishes numerous instances of enforced disappearance and extra-judicial execution, a pattern of widespread arbitrary arrests, and many brutal assaults by paramilitaries that have gone unpunished. A number of those who were detained in the early stages of the Russian occupation were subjected to acts of torture including beatings, electrocution and mock execution. Others were subjected to inhuman and degrading conditions of detention.

3. Once the occupation was fully established, a sustained campaign of political repression then began. In an effort to stifle dissent and promote Russian hegemony, the subordinate local authorities in Crimea enacted a series of measures that entailed systematic violation of the civil and political rights of perceived opponents of the occupation.
4. From the outset, Russian citizenship was imposed on all residents of Crimea. Non-Russian media outlets, including Ukrainian and Tartar television channels, were closed down. Peaceful protests against the Russian occupation were banned. Vast swathes of private property were unlawfully appropriated without compensation.
5. Within weeks, the pattern of legal repression intensified. The use of the Ukrainian language in schools was suppressed. Ukrainian-owned banks were unlawfully closed down, and the assets of the banks themselves and the customers were seized. Private enterprises belonging to Ukrainian citizens were appropriated by the authorities without compensation. The pattern of persecution against the Tartar minority intensified. And the administrative boundary between Crimea and mainland Ukraine was turned into a *de facto* international border controlled by Russian State agents, with the result that numerous Ukrainian citizens have been refused permission to return to their homeland.
6. Ukraine's pleadings provide clear supporting evidence of all these practices, drawn from credible reports by inter-governmental organisations and reliable international NGO's, together with first hand witness testimony.
7. Abuses by security and paramilitary forces have continued largely unabated since the occupation began. Murders and disappearances of political

activists opposed to the Russian occupation have become relatively common over the past five years, and there has been a steady stream of arbitrary arrests and arbitrary raids on private homes and places of worship. Political and religious leaders have been harassed and intimidated.

8. In a reports published in 2017 and 2018, the UN High Commissioner for Human Rights recorded compelling evidence of a pattern of violations that included extra-judicial executions, enforced disappearances, arbitrary arrests and arbitrary searches of private property – all targeted as perceived political opponents of the Russian takeover. Overall, the UN reports describe a dramatic worsening of the human rights situation in Crimea since the Russian occupation began, together with serious accountability vacuum in relation to human rights violations committed against dissenters by the security forces, and other pro-Russian elements in Crimea. Based on regular monitoring, the assessment of the UN High Commissioner for Human Rights was encapsulated in the 2018 report in these words (and I am quoting now):

“Grave human rights violations affecting the right to life, liberty and security have not been effectively investigated. The judiciary has failed to uphold the rule of law and exercise proper administration of justice. There is an urgent need for accountability for human rights violations and abuses and providing victims with redress.”

The domestic accountability vacuum identified by the High Commissioner provides a succinct explanation of the reason this Court now needs to intervene, and to hold the Russian Federation to account.

9. In 2014, the Council of Europe Commissioner for Human Rights heard evidence of numerous grave human rights violations targeted at dissenters, together with a deliberate policy of intimidation and harassment of

journalists, activists, ethnic Ukrainians and Tartars. He also confirmed the UN High Commissioner's conclusion that there was a prevailing culture of impunity for serious politically-motivated crimes that had reportedly been committed by Crimean paramilitaries.

10. And in 2016, the Parliamentary Assembly of the Council of Europe adopted a resolution recording many of these concerns, and expressing the ominous conclusion that the level of discriminatory repression in Crimea had by then become so serious that it threatened the very existence of the Tartar community as a distinct ethnic, cultural and religious group.
11. These are serious and credible allegations which require a thorough examination on their merits. As I will seek to show, the evidence establishing this pattern of persecution is more than sufficient to cross the admissibility threshold required in an inter-State case.

Jurisdiction

12. So let me now turn then to the Court's questions, starting with the issue of jurisdiction. From Ukraine's perspective, there is no jurisdictional dichotomy between the period *before* the illegal annexation and the period *since then*. The legal basis for Russia's Article 1 jurisdiction has remained the same throughout. Ever since the military coup, Russia has been exercising extra-territorial jurisdiction for the purposes of Article 1 of the Convention. This is based on Russia's effective overall control of a portion of Ukraine's sovereign territory. Russia is legally answerable for the pattern of human rights violations – not as the territorial sovereign – but as an occupying power. That remains the position to this day.

13. So the first question the Court is called upon to decide at this stage of the proceedings is whether there is at least *prima facie* evidence that Russia was in *effective overall control* of Crimea during the period between 27 February and 21 March 2014.
14. We say it is obvious that Russia took effective overall control over Crimea when it mounted a military coup on 27 February of that year. That was the intended purpose of the military coup, and that was its result. The Court's test of effective control was explained in its 2011 judgment in the *Al-Skeini* case. Effective control is to be judged primarily by reference to the strength of the occupying State's military presence in the territory. But the Court will also take into account the extent of the occupying power's military, economic and political support for a subordinate local administration, and whether this amounts to a relationship of *de facto* dependency, so as to provide the occupying power with influence and control over the region.
15. That is the Court's orthodox approach, and we say it the approach which should be followed in the present proceedings.
16. Mr. President, the evidence shows that there were significant covert and unauthorised troop deployments in the weeks leading up to 27 February. But on the day of the coup itself, and the days which followed, Russian troops *openly* flooded into Crimea – by air, land and sea. They seized control of Crimea's semi-autonomous Parliament, dismissed its Council of Ministers and set up a puppet regime in its place. They disabled and then disarmed the Ukrainian military, and blocked the deployment of reinforcements from the mainland.

17. The operation had obviously been carefully planned in advance, and we invite the Court to infer that it must have been centrally co-ordinated. It was put into effect in the very early hours of the morning on 27 February, with the first troop movements being recorded shortly after 04:00 am. Russian forces, operating with the paramilitary forces of the Crimean Self-Defence Forces (the so-called CSDF), surrounded Ukrainian military installations, including naval and air force bases. They took strategic positions blocking access to ports and airports, and stationed powerful military deployments on all the main access roads onto the Crimean peninsula.
18. The designation and specific deployments of the Russian armed forces in Crimea are identified in our written submissions. The paramilitary formations of the CSDF operating alongside the Russian troops included members of the notorious Berkut forces – the group that had shot and killed pro-democracy protesters during the Euromaidan protests in Kiev – as well as Russian Cossacks, and various criminal elements from the Russian Federation.
19. At around 04:30 am in the morning, Russian special forces stormed the building of the Supreme Council of Crimea and the Council of Ministers. The Russian flag was raised above the Parliament building, and heavily armed Russian soldiers were stationed around the perimeter. Russian snipers took up positions on the roof. We would urge you to watch the video footage of these events. It will leave you in no doubt that this was a professional military operation against the institutions of democratic self-government in Crimea. A military coup, in other words.
20. The CSDF paramilitaries rounded up members of the Supreme Council from their homes and brought them at gunpoint to the Parliament building. Shortly

after 10:00 am, the building was disconnected from external communication with the outside world. Once they were forcibly assembled, under duress from armed Russian military personnel, and without the requisite quorum, the Supreme Council adopted a resolution immediately dismissing all members of the Council of Ministers, and appointing Sergeii Aksionov as Chief Minister, and head of the regional Government. Aksionov had been the leader of the Kremlin-backed Russian Unity party. Democratic government in Crimea was quite literally broken over the barrel of a gun.

21. As the day progressed, 500 further Russian troops arrived in Crimean ports by boat, and 4,500 Russian personnel were transported into Crimea by military aircraft. By nightfall on 27 February:

- The legitimate civilian authorities had been forcibly removed, and replaced with a puppet regime installed by the Russian Government.
- Russian troops had successfully prevented the Ukrainian military from leaving their barracks during the day, and had begun an operation to disarm them.
- Reinforcements from mainland Ukraine had been unable to enter Crimea during the day because the Russian forces and the CSDF were in unassailable military control of all the major access points by land, air and sea.
- In just one day, Russia had occupied Crimea militarily, and assumed effective overall control of the territory. It had successfully installed a subordinate local administration that was entirely dependent upon Moscow for its military, economic and political survival.

- Directly, and through this new subordinate administration, Russia was undeniably in a position to wield decisive influence and *de facto* control over the territory of Crimea.
22. There can be no doubt that Ukraine lost control of the territory on the day of the coup. This was not the result of unilateral action by armed separatists. It was the result of a military invasion by the armed forces of the Russian Federation, aided and abetted by pro-Russian political and paramilitary proxies in Crimea.
 23. Over the following month, Russia consolidated its control of Crimea, with additional troop deployments arriving on the peninsula through every available point of entry. The Russian FSB supplied AK-47 assault weapons and ammunition to the CSDF, and operated in close co-ordination with them, blockading Ukrainian military positions. Joint operations were common. The Ukrainian forces remained confined to barracks by force, encircled and subdued by overwhelmingly superior military force.
 24. It is therefore clear beyond argument that Russia was exercising extra-territorial jurisdiction in the *Al-Skeini* sense from 27 February onwards. Article 1 of the Convention applied to Russia's actions during this period on the basis of its effective control of territory outside its national boundaries.
 25. That is our answer to the Court's first question. Russia is answerable to this Court for the violations that were committed by its own forces, and for those committed by its local subordinates, from the day of coup onwards. It is answerable not only for the acts of physical violence which occurred in the

weeks immediately following the coup, but also for the campaign of political repression that was subsequently implemented by its puppet regime in Crimea.

26. The Russian Government argues that the Court should recognise Russia as the territorial sovereign, although it does not seem quite sure when this supposed territorial sovereignty began. At one point, Russia argued that it began from 21 March. It now seems to be saying that it began on 18 March. Either way, it's necessary for Court to focus on the sequence of events that led up to the illegal annexation.
27. Immediately after the coup, the new leadership set about forcing through a raft of measures designed to give the Russian occupation a spurious veneer of legality. The aim was to provide pretextual legal justification for the planned annexation.
28. Russia's new puppet regime in Crimea announced its intention to hold a referendum, which was both unconstitutional and undemocratic. The so-called referendum that was held on 16 March was in flagrant violation of the relevant international standards, and was marred by intimidation and vote-rigging. The options on the ballot paper did not include maintenance of the *status quo*. There were numerous irregularities in the process, and there was no effective screening of voter registration. Armed paramilitaries were stationed at the polling booths, and opponents of the annexation were declared *persona non grata*. National minorities and groups opposed to the annexation boycotted the referendum because they rightly thought it was illegal. Other groups were effectively disenfranchised by force.

29. Recognising the illegitimacy of the whole process, the OSCE declined to provide international observers, and the referendum was subsequently condemned by the Venice Commission on the basis that it had been both unlawful and incompatible with the applicable European standards of democracy. The referendum was subsequently declared unconstitutional and void by the competent domestic courts in Ukraine.
30. The *de facto* authorities of Russia's puppet regime nevertheless announced a 97% majority vote in favour of annexation, on a recorded turnout of 83%. These figures were almost immediately rejected by all relevant international organisations as implausible. The United Nations General Assembly adopted a formal resolution declaring the referendum invalid, and confirming the position of the United Nations that the referendum could not form the basis of any alteration in the legal status of Crimea as a constituent part of the sovereign territory of Ukraine. Resolutions to the same effect were adopted by the European Union, the Committee of Ministers of the Council of Europe and the Parliamentary Assembly.
31. None of this stopped the process of unlawful annexation. The day after the referendum, the Supreme Council, now fully under Russia's control, proclaimed Crimea's independence from Ukraine. It then issued a proclamation purporting to terminate the authority of the Ukrainian State in Crimea, and unlawfully transferring all its property, powers and facilities to the so-called Republic of Crimea. This even extended to the physical property belonging to Ukrainian trade unions and other public organisations.
32. On 18 March 2014, representatives of the subordinate administration and the Russian Federation co-signed a piece of paper which they called a Treaty of Unification. This pretended international agreement purported to

designate all residents of Crimea as Russian citizens. It also purported to absorb the Crimean institutions of government into the state apparatus of the Russian Federation, and to apply Russian legislation throughout the territory of Crimea. This bogus international treaty was subsequently ratified by the Russian State Duma on 20 March 2014.

33. It is on the basis of these self-serving instruments that Russia now argues that Crimea was absorbed into the sovereign territory of the Russian Federation on 21 March. Relying on this transparent legal fiction, Russia asserts its jurisdiction over Crimea on the basis of territorial sovereignty.
34. Ukraine invites the Court to hold that these pseudo-legal instruments should be given no legal recognition whatsoever. As I said at the outset, Ukraine's case is that since the coup Russia has exercised extra-territorial jurisdiction over Crimea as an occupying power with effective control over the territory of another sovereign state, and that it continues to do so today.
35. The military coup, the undemocratic referendum, the bogus treaty and the unlawful annexation have all been roundly condemned as illegal by the international community, and as having no effect on the status of Crimea as part of Ukraine. Speaking with one voice, the United Nations General Assembly, the European Union, and the Council of Europe have all refused to recognise Russia's occupation and annexation of Crimea.
36. Each of these international institutions has condemned Russia's acts of aggression against a neighbouring State, and unequivocally re-affirmed the sovereignty and territorial integrity of Ukraine. The Parliamentary Assembly of the Council of Europe suspended Russia's voting rights for five years, and the EU Council imposed targeted sanctions on various Russian

officials in connection with actions aimed at undermining the territorial integrity and sovereignty of Ukraine.

37. Yet Russia asks this Court to rule that it is sovereign over Crimea – a proposition that has been unequivocally rejected by the entire international community and its representative institutions, who have been steadfast in their refusal to accord any form of legitimacy or recognition to the bellicose actions of the Russian Federation.
38. At the risk of stating the obvious, we say that accepting Russia’s claim to sovereignty over Crimea would undermine a critical cornerstone of international law – the prohibition on the use of force by one nation on the sovereign territory of another without its consent, without a resolution of the United Nations Security Council, and in the absence of any possible claim to self-defence. Russia’s argument is a direct and frontal attack on one of the most basic precepts of public international law.
39. Russia’s stance also involves a veiled attack on the institutional integrity of the Council of Europe itself. Both the Parliamentary Assembly and the Committee of Ministers have condemned Russia’s actions, and refused to accord them any legal recognition or validity. But Russia is today asking the *judicial branch* of the Council of Europe to reach the opposite conclusion to the Parliamentary and Executive branches of the organisation, and to legitimatise its decision to take part of Ukraine’s sovereign territory by force. Like the international community of which it forms a part, the Court should roundly reject this submission.
40. Since Ukraine remains the sovereign State for the purposes of international law, it follows that Russia’s Article 1 jurisdiction is extra-territorial in

character and is premised upon its continuing effective control of territory outside its national boundaries, directly and through its wholly subordinate local administration.

Administrative Practice

41. Mr. President, members of the Court, I turn now to the question whether there is *prima facie* evidence of an administrative practice in this case. In an inter-State application, it is no part of the Court's function under Article 35 to conduct a preliminary assessment of the merits, of the kind that might be appropriate at the admissibility stage of an individual application. Russia can only succeed in its admissibility challenge under this head if it is able to establish that the alleged administrative practice is wholly unsubstantiated or lacking the requirements of a genuine allegation. Arguments concerning the merits of the allegations, or the strength of the evidence, are exclusively reserved to the post-admissibility phase of the proceedings in an inter-State case.

42. As I said in my opening remarks, the evidence of the alleged administrative practice comes from two sources. First, we invite the Court's attention to a series of reports from entirely reliable international sources confirming the pattern of violations alleged. These include the two reports by the United Nations High Commissioner for Human Rights which together cover the period from the date of the military coup up to the end of September of last year. They are based on regular reporting compiled by the UN Human Rights Monitoring Mission in Ukraine, which began work two weeks after the coup.

43. The OHCHR reports state in terms that they have only recorded allegations that could be verified and corroborated. The reports paint a dystopian picture of the Russian Government's authoritarian grip over the population of Crimea. They record a full range of human rights violations, occurring more or less consistently over the reporting period, and targeted against all those who oppose – or are perceived to oppose – Russia's unlawful occupation. The reports are a direct and forthright condemnation of an administrative practice of human rights violations.
44. The most recent report records human rights violations committed against 167 separate victims in the space of a year. These included torture involving the use of electrocution and sexual violence by State agents on people in custody. The High Commissioner also reported systematic problems of accountability and a lack of impartiality in the administration of justice, which was said to be ongoing this time last year.
45. A very similar picture emerges from the 2014 report of the Council of Europe Commissioner for Human Rights, and the 2014 Human Rights Watch report, *Rights in Retreat*. The pattern of allegations is also consistent with the findings of the Russian Ombudsperson. In her annual report for 2014, she recorded 37 cases of enforced disappearance in one year, all of them either Crimean Tartars or ethnic Ukrainians.
46. These reports and others like them led the Parliamentary Assembly of the Council of Europe to conclude in 2016 that Crimea was operating under a "climate of severe intimidation" arising from a consistent pattern of human rights violations and an absence of effective accountability mechanisms. Taken together, these objective analyses comprise the first source of evidence of an overall administrative practice.

47. The other source of evidence is the collection of witness statements appended to Ukraine's written submissions, which provide credible primary evidence of human rights violations attributable to the Russian Federation. I want to briefly highlight one or two specifics.
48. The first of these concerns the ill-treatment of military and civilian personnel in two principal detention facilities in the weeks immediately following the coup. The first facility was the Russian Military Prison in Sevastapol. The evidence describes the detention of three Ukrainian colonels at that facility, and several civilian activists and journalists, who were all reportedly subjected to various forms of torture and ill-treatment by their Russian captors.
49. Even more barbaric acts of torture were inflicted on the detainees held by the CSDF paramilitaries at the Military Commissariat in Simferopol. One of those detained in this building was a man called Andrii Shchekun. He had been a prominent activist in the Euromaidan movement. Mr. Shchekun was initially arrested by CSDF paramilitaries, blindfolded with duct tape, and taken to the Military Commissariat, where he was then unlawfully detained for 11 days. During this time Mr. Shchekun, says he was cut with a knife, electrocuted, subjected to mock execution, and forced to sit naked for many hours with his hands and feet bound to a chair. He also described the torture of other detainees.
50. On of the other people detained at the Military Commissariat was a man called Reshat Ametov. He was a Crimean Tartar activist, who appears to have been initially detained at a pro-Ukrainian demonstration in Simferopol. After Mr. Ametov was taken to the Military Commissariat, he disappeared.

His body was discovered 5 days later, showing obvious signs of torture. His head had been bound with duct tape, and his legs were tied together.

51. The Military Prison in Sevastapol was a Russian Government facility staffed by Russian soldiers. And although the Military Commissariat in Simferopol was staffed by CSDF paramilitaries, the perimeter was guarded by Russian forces, authority for the eventual release of these prisoners was given by the Russian Ministry of Defence. It is clear that the Russian Government is answerable for all of these crimes.
52. The primary evidence also records many instances of enforced disappearance, and a number of other confirmed cases of homicide. It provides first-hand evidence concerning the unlawful appropriation of property; the unlawful seizure of private enterprises; the revocation of banking licences and the confiscation of customers assets; the adverse effects of compulsory passportisation; harassment of ethnic Ukrainians and those loyal to the Ukrainian State; the persecution of religious leaders, and the persistent intimidation and harassment of the Tartar community.
53. Viewing the direct witness testimony against the backdrop of the consistent international reports, the overall picture is clear. Russia stands credibly accused of an accumulation of related Convention violations – violations which share a common political purpose – the suppression of political opposition to the unlawful occupation – and which are sufficiently numerous and inter-connected to amount to a pattern or system. We say this pattern of persecution plainly meets the Court’s definition of an administrative practice.

54. Russia also stands credibly accused of *official tolerance* in relation to these targeted human rights violations – the second element of an administrative practice identified in the Court’s case law. The evidence as a whole demonstrates that in the face of numerous reports, from unimpeachable international sources, confirming this pattern of persecutory human rights violations, the relevant authorities have failed to take any effective action, either to prevent the continuing commission of violations, or to punish the perpetrators. They have failed even to investigate the alleged violations in a manner that conforms to the requirements of the Convention. Overall, this has resulted in a culture of impunity that goes well beyond the Court’s threshold of official indifference, and bears the hallmarks of tacit State policy.
55. What other explanation could there be for the decision to grant a blanket immunity to the CSDF paramilitaries? These forces had been responsible for the most brutal human rights violations in the immediate aftermath of the coup, and were also prime movers in the continuing pattern of harassment and violence towards perceived Ukrainian loyalists.
56. Despite repeated calls for the units to be disbanded and held accountable for their crimes, the Russian authorities granted them an immunity for their crimes, and formalised their position in the new administrative structures. Russia has offered no explanation for this general amnesty. In the absence of a plausible justification for this shocking policy decision, the obvious inference is that the Russian authorities were unwilling to hold the perpetrators accountable for crimes they had committed in the service of the Motherland.

57. This also sends an unmistakable message to those who might otherwise be contemplating political opposition. The chilling message is that resistance to the occupation is not only futile but also extremely dangerous – because the rule of law will be applied selectively. Those who support the Russian regime are free to commit criminal acts against those who oppose it, safe in the knowledge that their crimes will almost certainly go unpunished. There is abundant evidence before the Court establishing that Russia has wilfully persisted in neglecting its obligations to bring the perpetrators of these crimes to justice. There has been a chorus of complaints about this deficit of accountability, from all the competent international institutions.
58. This was the clear conclusion reached by the former United Nations High Commissioner for Human Rights. In his 2017 report, he said this (and I am quoting from the report now):

“The Russian Federation authorities in Crimea have failed to investigate most allegations of human rights violations committed by the security forces or armed groups acting under the direction and control of the State. Failure to prosecute these acts and ensure accountability has denied victims a proper remedy, and strengthened impunity, potentially encouraging the continued perpetration of human rights violations.”

(End of quotation)

59. The High Commissioner’s concerns about the culture of impunity, have been a constant refrain from the international human rights monitors. The same point was made by the Council of Europe Commissioner for Human Rights, and by Human Rights Watch. It was also reflected in the 2016 resolution of the Parliamentary Assembly which contains this finding (again, I am quoting verbatim):

“As far as the people of Crimea are concerned, fear of retribution affects the independence of the courts and, in particular, the willingness of the police and prosecution service to hold to account perpetrators of crimes against perceived or actual Ukrainian loyalists.”

Mr. President, the plain fact is that Crimea has become an accountability wasteland for those seeking accountability for those opposing the Russian State occupation. That is no accident. It is evidence of a tacit policy.

60. The Russian Government’s last minute attempt to cobble together a late written submission on this point, and to submit a clutch of judicial decisions looks very much like a desperate eleventh-hour attempt to muddy the waters, and an acknowledgement of the force of Ukraine’s complaint on this front.

61. The OHCHR and others have been consistently reporting on the accountability vacuum in Crimea since the beginning of the occupation. The Russian Government has failed for five years to respond in any convincing way. With just days to go before today’s hearing, the Russian Government has thrown together a few random rulings of judges who (no doubt) suffer from the same systemic lack independence and impartiality that has been repeatedly recognised by the Parliamentary Assembly, the UN High Commissioner and the Council of Europe’s Commissioner for Human Rights. This really drives home the point about the obvious lack of accountability, and Russia’s last minute written submission has rightly been rejected as having been submitted out of time.

Exhaustion of Domestic Remedies

62. This brings me to the question of domestic remedies. I can deal with this shortly. Ukraine invokes the fundamental principle that the non-exhaustion rule does not apply in cases concerning the existence of an administrative practice. Where there is a *prima facie* case of pattern or system, coupled with official tolerance, it is not necessary for the applicant State to establish that there have been individual or collective attempts to exhaust domestic remedies.
63. The apparent existence of a common political purpose behind the violations is one of the defining features of an administrative practice. The principal objective of Ukraine's application is to put a stop to this pattern of violations, and to prevent its recurrence. Ukraine is *not* asking the Court to reach individual decisions on each separate violation, or to award just satisfaction to the each of the individual victims. Instead, Ukraine asks the Court to take account of the whole pattern of violations disclosed on the totality of the evidence, and to find the Russian Federation responsible for an administrative practice, committed in order to consolidate its stranglehold over the population and territory of Crimea.
64. As the Court held in its *Georgia v Russia* decision, the rule requiring the exhaustion of domestic remedies does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Court to give a decision on each of the cases put forward as proof or illustrations of that practice. That description precisely corresponds to Ukraine's position in the present inter-State application.

65. Putting the same point in a slightly different way, Ukraine submits that such remedies as are shown to exist in principle, are theoretical and illusory in the context of violations committed by Russian State agents in Crimea against perceived opponents of the illegal occupation. That is an alternative reason for rejecting Russia's arguments on non-exhaustion objection. Those who have been victims of human rights violations are not obliged to make use of theoretical remedies that provide no realistic likelihood of success, particularly where there are credible reasons for doubting the independence and impartiality of the domestic courts. The findings of the OHCHR, the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe and of Human Rights Watch, all equally underline the futility of seeking to make use of domestic judicial or administrative remedies for the category of violations that are in issue in this case.

Timing Issues

66. Mr. President, I turn finally to the Court's additional question concerning the scope of Ukraine's application, and the relevance of the six month time limit in these proceedings. This question was added to the list of issues in July, and refers to two of the Court's previous decisions. At first glance, the question appears to raise a complex interplay between different strands of the Court's jurisprudence. But, in our submission, on a closer analysis the answer is very simple, and involves a straightforward application of the Court's usual practice on the application of the six month time limit.

67. The general rule, expounded by the Court in the *Radomilja v Croatia* case, an individual application, is that the scope of a case before the Court is circumscribed by the facts as set out in the originating application. The Court

is not limited by the *legal* qualification given to those facts by the applicant. It can examine the facts against any provision of the Convention, and not merely the provisions that the applicant has invoked.

68. But in a case where the violation is finite in time, and does not amount to an ongoing situation, the Court is limited to the facts that were pleaded by the applicant at the time the application was first introduced to the Court. The applicant may clarify or elaborate on the facts pleaded in the original application, but this flexibility does not extend to allowing an applicant to introduce a wholly new complaint outside the six month time limit.
69. That proposition is clear enough when it is applied to a *finite* set of facts or to a *situation* that has definitively come to an end. In relation to a violation that has a fixed end date, it is possible to calculate the time limit. But the principle in the *Radomilja* case cannot apply to an inter-State complaint involving an *ongoing* administrative practice. This is a straightforward application of the well-settled principle in the Court's case law to the effect that the six month time limit has no application to *ongoing* situations that are alleged to violate the Convention. Where a violation is properly regarded as an *ongoing situation*, the six month rule only starts to bite after the *situation* in question has come to an end. We respectfully submit that the same approach holds good for an *ongoing administrative practice*.
70. The correct approach in a case of an *ongoing* administrative practice is for the Court to define the scope of the case in its admissibility decision, on the basis of the submission before it at that stage of the proceedings. This is precisely how the Court approached the issue in the inter-State case of *Cyprus v Turkey* which is the other judgment referred to in the Court's question.

71. Applying this approach to the present case, the Court's admissibility decision will define the scope of the case to be considered during the merits phase. Evidence of continuing events occurring *after* the admissibility decision may nevertheless be relevant and admissible to assist the Court to determine whether the administrative practice is *still ongoing* at the time of the final merits hearing in the Court.

Conclusion

72. Mr. President, Members of the Court, that concludes our submissions for this first round of pleadings.

Ben Emmerson QC