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## The Trajectory of Crimean Flight 2014: Falling through the Cracks between the Rock of Refugee and the Hard Place of Internally Displaced Person

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## The Trajectory of Crimean Flight 2014: Falling Through the Cracks Between the Rock of “Refugee” and the Hard Place of “Internally Displaced Person”

IRYNA ZAVERUKHA\*

### Introduction

The Russian annexation of Crimea in March 2014 and the Russian military invasion of the eastern regions of Ukraine have caused the flight of nearly 1.3 million people to other areas of Ukraine.<sup>1</sup> As of May 2015, approximately 20,000 of them fled Crimea.<sup>2</sup> Utilizing the definition of “refugee,” this article identifies the various vulnerable groups of the Crimean population who have fled and/or who have a strong tendency to leave the peninsula, bound for other parts of Ukraine or abroad. This article explores the historical, social, and political context of the Crimean population, the reasons for the flight, and the theoretical framework within the law of forced migration that both the international community, as well as national authorities, need to consider to solve the consequences of this mass exodus. Considering the stream of displaced people in Ukraine and their refugee-like situation, this research raises the conundrum of the definition of the status of people who have found themselves subject to foreign occupation.

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1. Internal Displacement Monitoring Center, *Ukraine IDP Figures Analysis*, <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis> (last visited July 2, 2016); UNHCR, *Ukraine Situation: UNHCR Operational Update* (Sept. 7, 2015), available at <http://unhcr.org.ua/attachments/article/1299/UNHCR%20UKRAINE%20Operational%20update%2007SEP15.pdf>.

2. *Id.* (Besides internal displacement, external displacements of Ukrainians have taken a place as well. The total number of people seeking asylum or other forms of legal status in neighboring countries now stands at 1,123,800).

While the United Nations High Commissioner for Refugees (UNHCR) and Ukrainian authorities treat the category of those who fled Crimea to the Ukrainian mainland as internally displaced persons (IDP), this article raises the question of whether the concept of internally displaced persons described in the Guiding Principles on Internal Displacement<sup>3</sup> should apply to displaced persons who flee foreign occupation. The issue of *de jure* and *de facto* jurisdiction of the state and of the occupying power, and the location and regime of the international border, raise substantial doubts whether international law offers an adequate criterion to classify these displaced persons. The article argues that people who have fled foreign occupation remain in a unique situation compared to refugees or other categories of internally displaced persons.

This article also suggests that the Crimean example demonstrates the lack of an adequate system of protection for such displaced persons. It also addresses the uncertainty that characterizes the security and military measures of a state that is subject to intervention and occupation, the issue of liability for abuse of human rights in occupied territory, and the reasons that led people to flee their homeland. Domestication of the liability for this international conflict is inappropriate and misleading. Such a construct is a deficient framework for the solution of the issue and ignores the essential peace-building process. The Guiding Principles on Internal Displacement are not technically applicable to those who flee occupied territory because they have limited capacity to solve or otherwise to deal with international conflict. An appropriate system of reparations should be imposed on the occupying power for causing such flight, which should include compensation to those who have actually been displaced.<sup>4</sup>

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3. U.N. Secretary-General, *Addendum: Guiding Principles on Internal Displacement: Rep. of the Secretary-General*, Annex ¶ 2, U.N. Doc. E/CN.4/1998/53/Add.2, (Feb. 11, 1998), available at <http://www.un-documents.net/gpid.htm> [hereinafter *Guiding Principles*].

4. Even though reparation is not the subject of this article, the author considers reparation as a part of the peace-making process, and essential to establish social justice and the rule of law in post-conflict society. Thus, appropriate characterization of the nature of the conflict, and of the status of the actors are essential for the choice of the most efficient remedies, and for the implementation of the most efficient process of reparation. *See generally* Rep. of the Comm. on Human Rights, 55th Sess., June 16, 2003, U.N. Doc. E/CN.4/Sub.2/2003/11; Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY J. INT'L LAW. 462 (2010); Charles Philpott, *Though The Dog is Dead, The Pig Must Be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees*, 18 J. REFUGEE STUD. 1 (2005); Rhodri C. Williams, *Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice*, 37 N.Y.U. J. INT'L L & POL. 441 (2005); Giulia Paglione, *Individual Property Restitution: from Deng to Pinheiro - and the Challenges Ahead*, 20 INT'L J. OF REFUGEE L. 1 (2008); Charles B. Philpott, *From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina*, 18 INT'L J. REFUGEE L. 30 (2006).

## **I. Historical Background of Crimea and Its Current Population**

### **A. THE HISTORY OF THE LAND**

Geographically, Crimea is a peninsula on the southern coast of Ukraine (25,880 sq. km.).<sup>5</sup> The peninsula's western and southern borders are on the Black Sea; to the north and east is the Azov Sea.<sup>6</sup> The Perekopsky Isthmus connects the northern peninsula with the mainland of Ukraine.<sup>7</sup>

Historically, the Crimean Peninsula was under the jurisdiction of Ancient Greece (7th-6th century BC); of the Roman Empire (6th-4th century BC); of the Byzantine Empire (until the 12th century CE); of the Ottoman Empire (1475-1744); of the Russian Empire (1744-1917); of the Russian Socialist Federative Soviet Republic, later the Union of Soviet Socialist Republics (U.S.S.R.) (1917-1954); of the Ukrainian Socialist Soviet Republic (1954-1991); and, finally, of Ukraine since 1991, when it became an independent republic.<sup>8</sup> The issue of current jurisdiction will be discussed further.

The historical background of the territory and population of Crimea is important to understand and to consider in this discussion. At the same time, it is essential to distinguish and separate those historical events that are legal in nature (*viz.* manifested by law or international agreements that legitimately establish the legal rights of the states and the duties of those who are subject to their dominion). Unfortunately, politicization of historical events sometimes leads to speculation, assumptions, and prejudices.

There are three historical periods that highlight the land of Crimea and illuminate the Crimean Crisis: first, is the history of Crimea under Russian jurisdiction, both during the Russian Empire, and during the Soviet regime—a history that has been utilized as an argument by Russians to justify the annexation of Crimea in March 2014; second, is the legal ground and rationale of transferring the Oblast of Crimea from the Russian Soviet Socialist Republic to the Ukrainian Soviet Socialist Republic in 1954, a transfer that has been grossly distorted by Russian mass media and in populist speeches; and third, is the territorial demarcation of the former Soviet Republics after the dissolution of the U.S.S.R.<sup>9</sup>

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5. Bykova T.B., *Krym: Perebig Osnovnykh Doistorychnykh ta Istorychnykh Podiy na Pivostrovi Krym [Crimea: Course of Major Prehistoric and Historical Events on Peninsula of Crimea]* Encyclopedia of the History of Ukraine (2008), <http://www.history.org.ua/?termin=krim>.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

1. *Crimea under Russian Jurisdiction during the Russian Empire and during the Soviet Regime*

The Russian intervention in Crimea takes its roots from the end of the seventeenth century, when the Russian Empire initially attempted to occupy the Tatar Khanat (a jurisdiction within the Ottoman Empire whose capital was in Crimea (1768 - 1774)) and later, during the Russian-Turkish war.<sup>10</sup> In 1744 the Tatar Khanat acquired independence from the Ottoman Empire, but in April 1783 Catherine the Great annexed Crimea through her Manifest, including Crimea within the state of Russia ("All-Russia").<sup>11</sup> From that time, Crimea remained under the jurisdiction of Russia and ultimately became part of the Russian Soviet Federalist Socialist Republic, which was one of fifteen Soviet Republics in the U.S.S.R.<sup>12</sup>

Russian "sensitivity" to the Crimea peninsula is conveniently connected to the Russian military presence in the Black Sea (ultimately, virtually the entire Russian Fleet). The political and military value of Crimea has generated Russian propaganda, which has had a great influence on the social perspectives of Russian citizens. Historians and political scientists have tried to explain the so-called Sevastopol and Crimea "phenomenon" in historical accounts in the Russian Empire and the U.S.S.R. Professor Serhii Plokhy employs two principal concepts for that purpose: "territorialization of memory" and "historical myth as an important element of national memory."<sup>13</sup> In his book the author analyzes the complexity of historical interpretations related to the defense of the city during the Crimean War of 1853-1856, which is examined in its relation to the history of Russian national identity.<sup>14</sup> Despite the controversy of whether there indeed was a

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10. *Id.*

11. *Id.*

12. Bykova T.B., *supra* note 5.

13. "The study takes as its point of departure Anthony Smith's definition of the territorialization of memory as 'a process by which certain kinds of shared memories are attached to particular territories so that the former ethnic landscapes (or ethnoscares) and the latter become historic homelands,' and John A. Armstrong's definition of myth as 'the integrating phenomenon through which symbols of national identity acquire a coherent meaning.'" SERHII PLOKHY, *UKRAINE AND RUSSIA: REPRESENTATIONS OF THE PAST* (2008), available at [http://books.google.com.kw/books?id=7itWI-x8l-MC&pg=PA184&dq=Ukrainian+referendum+54%25+Crimea+Sevastopol&hl=NL&ei=WodYTaqiO8adOsz3pbkF&sa=X&oi=book\\_result&ct=result&redir\\_esc=y#v=onepage&q=Ukrainian%20referendum%2054%25%20Crimea%20Sevastopol&ffalse](http://books.google.com.kw/books?id=7itWI-x8l-MC&pg=PA184&dq=Ukrainian+referendum+54%25+Crimea+Sevastopol&hl=NL&ei=WodYTaqiO8adOsz3pbkF&sa=X&oi=book_result&ct=result&redir_esc=y#v=onepage&q=Ukrainian%20referendum%2054%25%20Crimea%20Sevastopol&ffalse).

14. "The war resulted from international conflict over the partition of the Ottoman Empire. In 1853, St. Petersburg began a successful campaign against the Turkish protectorates of Moldavia and Wallachia, but very soon the Ottomans received crucial support from two powerful West European states, Britain and France. Neither of these powers wanted Russia to strengthen its position in the Balkans or take control of the Black Sea straits. . . In 1854 the allies invaded the Crimea and besieged Sevastopol, the main base of the Imperial Black Sea Fleet. . . . The Russian fleet could not withstand that of the allies and was forced to retreat to the Sevastopol harbor. The only factor that helped the Russian Empire in the war and rescued it from immediate defeat was the heroism of the defenders of Sevastopol. . . . In 1855, after a long and exhausting siege, the imperial army had no choice but to withdraw from Sevastopol.

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Russian “victory,” the myth regarding the glory of the Russian fleet and the glory of Sevastopol remain a part of Russian national identity, actively utilized by both Russian politicians and by the Russian academy, which has done its bidding, and continues to do so in the present.<sup>15</sup>

This article does not purport to prove any historical facts, unless they are legal in nature and relevant to the current situation. Social beliefs or public speeches do not create any legal grounds for a claim over the territory of Crimea. As the Russian Soviet Socialist Republic became the successor of the Russian Empire, the Crimean peninsula and the eastern regions of Ukraine became a part of the new Soviet State. Not until 1939 was the western part of Ukraine occupied by the Soviet Army, on the eve of World War II, and forcibly annexed by the U.S.S.R.<sup>16</sup> Although the circumstances were unfortunate, the territory of Ukraine was united into the Ukrainian Socialist Soviet Republic.

a. The Transfer of the Crimea Oblast to the Jurisdiction of the Ukrainian S.S.R.

In 1954, the Crimean peninsula, called at that time the Oblast of Crimea,<sup>17</sup> was transferred from the Russian Soviet Republic to the Ukrainian Soviet Republic, *de jure* and *de facto* remaining within the same state – the U.S.S.R.<sup>18</sup> Although Russian sources and others misleadingly perpetuate the Soviet myth that transfer of Crimea from Russia to Ukraine was a “gift” of Nikita Khrushchev, First Secretary of the Communist Party of the Soviet Union between 1953 and 1964.<sup>19</sup> A simple reading of the law that effectuated the transfer conclusively demonstrates that such a transfer was based on logistics and terms that benefited the people of Crimea, as well as the U.S.S.R. as a whole. The issues of electricity and water supply, communications, transportation, as well as a variety of political actions, such as the election process, were more efficient within the borders of the

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The war was over. Russia was forced to sign a humiliating Paris peace treaty with the allies that did not allow it to maintain a Black Sea fleet or fortresses on the shores of the Black Sea. This military defeat, the first on such a scale since the Muscovite-Polish wars of the seventeenth century, created the atmosphere in which the Sevastopol myth came into existence.” *Id.* at 187.

15. Vladimir Putin, President, Russian Federation, To the deputies of the State Duma, members of the Council of the Federation, leaders of the regions of the country, and representatives of the civil society related to the address of the Republic of Crimea and Sevastopol on annexation to the Russian Federation (Mar. 18, 2014), *available at* <http://praguepost.com/eu-news/37854-full-text-of-putin-s-speech-on-crimea>.

16. Bykova T.B., *supra* note 5.

17. An oblast is an administrative unit in the administrative and territorial divisions of the U.S.S.R., and in most of the post-Soviet republics. The jurisdiction of an oblast includes smaller units, called “raions,” that are comprised of country land, villages, and towns, as well as cities or towns that were designated as of “oblast subordination.” *Oblast*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Oblast> (last visited June 26, 2016).

18. Konstitutsiia SSSR (1936) [Konst. SSSR] [USSR Constitution] art. 22-23.

19. Even some American academics have adopted this characterization. *See, e.g.,* Maria Nudelman, Note, *Who Owns the Scythian Gold? The Legal and Moral Implications of Ukraine and Crimea's Cultural Dispute*, 38 *FORDHAM INT'L L.J.* 1261, 1266 n.22 (2015).

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Ukrainian Soviet Socialist Republic. The Ukrainian Soviet Socialist Republic, as well as the other Soviet Republics, had nominal sovereignty. The U.S.S.R. was the only political entity that *de jure* and *de facto* enjoyed the power of the state. Thus, such a transaction was subject to the supreme power of the U.S.S.R., which *de facto* represented Russian interests. The Oblast of Crimea, which is a peninsula, was not, and still is not, self-sufficient territory in terms of infrastructure. Union with the Ukrainian Republic was a pragmatic decision made by the high Soviet authorities.

There were three official (legal) components of the transition of the Oblast of Crimea (Crimean Peninsula). The first was the law issued by the Presidium of the Supreme Council of the Russian Soviet Federal Socialistic Republic (R.S.F.S.R.) relating to the transition of the Oblast of Crimea from the Russian S.F.S.R. to the Ukrainian S.S.R., issued February 5, 1954.<sup>20</sup> The second step was the law issued by the Presidium of the Supreme Council of the Union of the Soviet Socialist Republics with the same title, issued February 19, 1954.<sup>21</sup> Both documents stated that the reasons for the transfer of the Oblast of Crimea were the common economy, territorial closeness, and intertwined economic and business relations between the Oblast of Crimea and the Ukrainian S.S.R. The third component of the transition occurred when the legislature of the U.S.S.R., on April 26, 1954, issued the Law on Transition of the Oblast of Crimea from the Russian S.F.S.R. to the Ukrainian S.S.R.<sup>22</sup> The law approved the initiative expressed in the aforementioned documents; reflected the decision to transfer the Oblast of Crimea from the Russian S.F.S.R. to the Ukrainian S.S.R.; and made appropriate changes to Articles 22 and 23 of the Constitution of the Soviet Union (U.S.S.R.).

In sum, it was a pragmatic decision to transfer the Crimean Peninsula to the Ukrainian S.S.R.; it was accomplished in accordance with all procedural requirements and was founded on relevant sources of law, including the Constitution of the U.S.S.R., the Constitution of the Ukrainian S.S.R., and other legal instruments.

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20. Postanovlenie Presidiuma Verkhovnogo Sovieta RSFSR o Peredache Krymskoi Oblasti iz Sostava RSFSR v. sostav Ukrainskoi SSR [Regulation of the Presidium of the Supreme Council of the RSFSR on Transition of the Oblast of Crimea from the Russian SFSR to the Ukrainian SSR], *available at* [http://www.archives.gov.ua/Sections/Crimea\\_50/photos\\_03.php?2](http://www.archives.gov.ua/Sections/Crimea_50/photos_03.php?2).

21. Ukaz Prezidiuma Verkhovnogo Soveta SSSR o Peredache Krymskoi Oblasti iz Sostava RSFSR v. Sostav Ukrainskoi SSR [Decree of Presidium of Supreme Council of SSSR on Transition of the Oblast of Crimea from the Russian SFSR to the Ukrainian SSR], *Vedomosti Verkhovnogo Sovieta SSSR [VVS SSSR] [Bulletin of the USSR Supreme Council] 1954, No. 4, Item 64, available at* <http://docs.cntd.ru/document/765702366>.

22. Zakon SSSR o Peredache Krymskoi Oblasti iz Sostava RSFSR v. sostav Ukrainskoi SSR [Law USSR on Transition of the Oblast of Crimea from the Russian SFSR to the Ukrainian SSR], *Vedomosti Verkhovnogo Soveta SSSR [VVS SSSR] [Bulletin of the USSR Supreme Council] 1954, No. 10, Item 211, available at* <http://docs.cntd.ru/document/901982301>.

b. Territorial Demarcation of the Former Soviet Republics after  
Dissolution of the U.S.S.R.

Putting aside the analysis of the Soviet administrative, territorial, and migration policy, the fact is that the dissolution of the U.S.S.R. left most of the former Soviet Republics with borders that existed at that time.<sup>23</sup> Consequently, Crimea became a part of independent Ukraine.<sup>24</sup>

Given the desire for autonomy of the population of Crimea, as a result of long negotiations a legal and political compromise was established between the government of the independent Republic of Ukraine and local Crimean authorities, as set forth in the Ukrainian Constitution. According to the Constitution, Ukraine includes the unitary state of the Autonomous Republic of Crimea, which has its own parliament, and governs with powers over agriculture, public infrastructure, and tourism.<sup>25</sup> Crimean legislation, therefore, must be consistent with the Constitution of Ukraine. To date, this remains the law in Ukraine.

2. *The History of the People of Crimea: The Evolution of Their Social and Political Perspectives*

The native population of Crimea is comprised of Crimean Tatars. The demographic situation in the peninsula has changed through the centuries, mirroring changes of authority and state jurisdiction. One of the most dramatic changes happened during Stalin's leadership in 1944. Between

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23. Zakon Ukrainy pro Pravonastupnyctvo Ukrainy [Law of Ukraine On Succession of Ukraine], Vidomosti Verkhovnoi Rady Ukrainy [VVR] [Bulletin of Verkhovna Rada of Ukraine] 1991, No. 46, Item 617; According to Art. 5, the original State border of the Union of the Soviet Socialist Republics demarcates the territory of Ukraine and distinguishes it from the other states; and the demarcations of the borders between the Ukrainian SSR and the Byelorussian SSR, the Russian Soviet Federal Republic, and the Republic of Moldova as of July 16, 1990, established the current state borders of Ukraine. The Alma-Ata Declaration, signed by eleven heads of states on Dec. 21, 1991, confirmed the dissolution of the USSR, and in its Preamble it provides that the respective states will continue "recognizing and respecting each other's territorial integrity and the inviolability of the existing borders." The Alma-Ata Declaration pmbl., Dec. 23, 1991, *available at* <http://www.bits.de/NRANEU/START/documents/alma-ata91.htm>.

24. The dissolution of the USSR and proclamation of the independence of Ukraine were the highlights of 1991. On Dec. 1, 1991, Ukraine held its first democratic referendum and at the same time its first democratic election of the President of Ukraine. The only question the referendum asked was whether voters supported the Act of Proclamation of the Independence of Ukraine (which was adopted on Aug. 24, 1991). The text of that document was attached to the bulletin. The turnout for the Referendum was 84.18% of the population of Ukraine. Of those who voted, 90.32% of voters favored independence. The results of the voting in regions (oblasts) varied between 83.86% in Lugansk oblast in favor up to 98.67% in Ternopil oblast; however, only 54.19% of Crimeans and 57.07% of the inhabitants of Sevastopol (a city with special status) supported independence in Ukraine. Vidomist pro Resultaty Vseukrainskogo Referendumu, [Information on Ukrainian Referendum] (Dec. 1, 1991), *available at* [http://www.archives.gov.ua/Sections/15r-V\\_Ref/index.php?11](http://www.archives.gov.ua/Sections/15r-V_Ref/index.php?11).

25. Konstitutsiia Vseukrainskogo (2004) [Ukraine Constitution].

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May 18 and May 20, 1944, security forces under Stalin's command deported the entire Crimean Tatar population to Siberia and Uzbekistan.<sup>26</sup> According to Stalinist propaganda, the deportation was a response to collaboration of Crimean Tatars with Nazis during World War II.<sup>27</sup> More than 230,000 persons were crammed into cargo trains and sent to Central Asia.<sup>28</sup> Thousands perished during the long trip in overcrowded railcars without adequate food and water.<sup>29</sup> In subsequent decades, many Crimean Tatars returned to their homeland. According to the census, by 2001 the Crimean Tatar population increased more than 6.3 times, compared to 1989.<sup>30</sup> It has never, however, reached the number of Crimean Tatars who inhabited Crimea before 1944.

The last census in Ukraine took place in 2001.<sup>31</sup> It revealed that the general population of the Autonomous Republic of Crimea was about 2,024,000 people.<sup>32</sup> Among them were Russians – 1,180,400 (58.3 percent); Ukrainians – 492,200 (24.3 percent); and Crimean Tatars – 243,400 (12 percent).<sup>33</sup> Other national minorities included Belarusians, Tatars, Armenians, Azerbajdzanis, Moldavians, Jews, and Poles.<sup>34</sup>

The Soviet regime destroyed the national, ethnic, and cultural identity of the Crimean people. Instead of recognizing national and ideological diversity, Soviets implemented a policy of scapegoating, persecution, extermination, disinformation, and mass deportation of those who differed from the ideal image of Soviet citizen.<sup>35</sup> It was Soviet strategic policy to mix different ethnic groups within the territory of neighboring states and to settle Russians extensively all over the territory of the Soviet Union.<sup>36</sup>

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26. Ron Redmond, *Ukraine: Soviet mass deportations of Tatars remembered*, UNHCR (May 19, 2000), <http://www.unhcr.org/3ae6b820d4.html>; Jeff Rathke, *71st Anniversary of the Deportation of Crimean Tatars*, U.S. DEP'T OF STATE (May 18, 2015), <http://www.state.gov/t/pa/prs/ps/2015/05/242558.htm>.

27. Redmond, *supra* note 26.

28. Rathke, *supra* note 26.

29. *Id.*

30. *National Composition of Population*, STATE STATISTICS COMMITTEE OF UKRAINE, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality> (last visited July 2, 2015).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. Jeffrey Mankoff, *Russia's Latest Land Grab: How Putin Won Crimea and Lost Ukraine*, 93 FOREIGN AFF. 60, 61-62 (2014), available at <http://www.foreignaffairs.com/articles/141210/jeffrey-mankoff/russias-latest-land-grab>.

36. *Id.* ("From 1922 to 1940, Moscow formed the largest of these units into the 15 Soviet socialist republics; these republics became independent states when the Soviet Union dissolved in 1991. Although designed as homelands for their titular nationalities, the 15 Soviet socialist republics each contained their own minority groups, including Azeris in Armenia, Armenians in Azerbaijan, Abkhazians and Ossetians in Georgia, Uzbeks in Kyrgyzstan, and Karakalpaks in Uzbekistan, along with Russians scattered throughout the non-Russian republics. Such diversity was part of Stalin's plan. Stalin drew borders through ethnic groups' historical territories (despite the creation of Uzbekistan, for example, the four other Central Asian Soviet

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Russians brought the Russian language with them as a common language of communication, as well as Soviet ideology and culture.<sup>37</sup> They also instituted the Soviet system of education as well as systems of governance in political, economic, and social affairs according to the instructions of the Communist Party.<sup>38</sup>

The increase in the Russian population and the dramatic decrease in the indigenous population in Crimea are documented. In 1760-1770, before Catherine the Great annexed Crimea in 1783, the Crimean Tatars and Turkish population in Crimea comprised 92.6 percent of the total.<sup>39</sup> In 1939, that number was reduced to 19.4 percent; and in 1944 it was 0 percent.<sup>40</sup> The latest data indicate that the percentage rose slightly from the 1970s until 1989, but it never reached more than 1.6 percent during that period.<sup>41</sup> Only in 2001 did Crimean Tatars reach 12 percent of the population of Crimea.<sup>42</sup>

Disinformation, propaganda through the education system, and the media have distorted the true history of Crimea. Ironically, decades later, the people who live in the regions that experienced the strongest humanitarian crises because of persecution, extermination, famine, and other repression fail even to recognize or admit the events as fact.

A prominent example is the story of the Crimean Tatars. Even after Stalin's death in 1953, Crimean Tatars were prevented from going back to their homeland, which occupies a strategic position in the Black Sea and had become a popular vacation and recreation spot for Soviet officials.<sup>43</sup> Those deportees who tried to return to the peninsula were deported anew. New Crimean inhabitants did not recognize any land titles of the deportees, nor their right to return. It was only with the weakening of Soviet central control in the late 1980s that the Crimean Tatars steadily started streaming home.<sup>44</sup> The process of return was technically difficult and was often painful. Many Crimean Tatars had become stateless, while others held

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republics were left with sizable Uzbek minorities) and included smaller autonomous enclaves within several Soviet republics (such as Abkhazia in Georgia and Nagorno-Karabakh in Azerbaijan). From Azerbaijan to Uzbekistan, the presence of concentrated minorities within ethnically defined Soviet republics stoked enough tension to limit nationalist mobilization against Moscow. The Ukrainian Soviet Socialist Republic already had sizable Russian and Jewish populations, but Soviet Premier Nikita Khrushchev's decision to give the republic the Crimean Peninsula in 1954 added a large, territorially concentrated Russian minority.")

37. *Id.*

38. *Id.*

39. Andrii Illarionov, *Etnichnyi Sklad Naselennia Krymu za Try Stolittia* [Ethnic composition of the population of Crimea for three centuries] NEZALEZNYJ KULTOROLOGICZNYJ CHASOPYS "Ji" [Indep. Cultur. J "Ji"] (2014) (Ukr.), available at [http://www.ji-magazine.lviv.ua/anons2014/Illarionov\\_Etnichnyj\\_sklad\\_Krymu.htm](http://www.ji-magazine.lviv.ua/anons2014/Illarionov_Etnichnyj_sklad_Krymu.htm).

40. *Id.*

41. *Id.*

42. *Id.*

43. Natalia Prokopchuk, *Helping Crimean Tatars feel at home again*. UNHCR (June 8, 2005), <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=42a710bf2&query=Crimea>.

44. *Id.*

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citizenship in Uzbekistan or other former Soviet republics to which they had no real ties.<sup>45</sup> Upon their arrival in Crimea, they found their homes occupied by new owners or completely destroyed.<sup>46</sup>

The return of a substantial number of so-called “formerly deported people” (about 250,000) became a big challenge for newly-independent Ukraine.<sup>47</sup> In addition to legal challenges, the local community of Crimea did not welcome the returnees. Statements like “go back where you came from” made the process of integration into society even more difficult. The issue of property and rights to land caused sporadic conflicts with local authority as well.<sup>48</sup> Such circumstances fueled nostalgia of Russians for Soviet rule and order. The UNHCR took an important role in supporting the Ukrainian government in drafting a new law of citizenship, negotiating citizenship issues between Uzbekistan and Ukraine, and supporting the integration process of Crimean Tatars into Crimean society.<sup>49</sup>

Despite remaining difficulties that Crimean Tatars experienced prior to March 2013, the main legal issues relating to citizenship, social security, and other economic, political, and cultural rights of Crimean Tatars were mostly resolved.<sup>50</sup> The Crimean Tatars had been enjoying their own unofficial parliament, the Mejlis, which stated as its purpose the promotion of the rights and interests of the Crimean Tatars.<sup>51</sup>

Crimean Tatars demonstrated strong loyalty to the Ukrainian state and remained a part of the progressively-oriented population of Ukraine.<sup>52</sup> They supported the pro-western policy of Ukraine, particularly its move toward integration with the European Union and toward association with NATO.<sup>53</sup> Crimean Tatars were active protesters during the Orange Revolution (2004), as well as during Euromaidan (the mass protests in Kyiv in 2013-2014), which resulted in the abdication of president Yanukovich.<sup>54</sup> In contrast,

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45. *Id.*

46. *See id.*

47. See Arthur C. Helton, Refugees Magazine Issue 98 (After the Soviet Union) - Bitter legacy of banishment, UNHCR (1994), <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b541e0a4&query=Crimea>.

48. *Id.*

49. Press Release, Public Information Section, *High Commissioner Visit to Ukraine*, U.N. Press Release (Sept. 2, 1997), *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=Search&docid=3ae6b8133e&query=crimea>.

50. Waleed Ziad & Laryssa Chomiak, *A lesson in stifling violent extremism*, CHRISTIAN SCI. MONITOR (Feb. 20, 2007), <http://www.csmonitor.com/2007/0220/p09s02-coop.html>.

51. *Id.*

52. Oxana Shevel, *Who are the Crimean Tatars, and why are they important?*, WASH. POST, (Mar. 1, 2014), <https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/01/who-are-the-crimean-tatars-and-why-are-they-important/>.

53. *Crimean Tatar Leader Backs EU, NATO Membership For Ukraine*, RADIO FREE EUROPE RADIO LIBERTY (Dec. 5, 2009), [http://www.rferl.org/content/Crimean\\_Tatar\\_Leader\\_Backs\\_EU\\_NATO\\_Membership\\_For\\_Ukraine/1896014.html](http://www.rferl.org/content/Crimean_Tatar_Leader_Backs_EU_NATO_Membership_For_Ukraine/1896014.html).

54. Justyna Prus & Konrad Zasztowt, *How the Crimean Tatars Spoil Putin's Annexation Myth*, 117 THE POLISH INST. OF INT'L AFFAIRS POLICY PAPER 3, (2015), *available at* [https://www.pism.pl/files/?id\\_plik=19825](https://www.pism.pl/files/?id_plik=19825).

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some ethnic Russians in Crimea, especially elderly people who were Soviet citizens during the regime of the U.S.S.R., view Russia as the successor of the U.S.S.R., and refused to recognize the crimes against Crimean Tatars; they supported the candidacy of Victor Yanukovich in the presidential election in 2010; and they were opposed to closer links with the European Union and NATO.<sup>55</sup>

There is a strange nostalgia that Russian ethnic Crimeans embrace about Soviet times, which they remember as a time of stability and security. The primary language of communication in Crimea continues to be Russian, and the prevailing culture among the general population is more “Soviet” than Ukrainian.<sup>56</sup> Responding to the accusation of discrimination against Russians by the Ukrainian government, the leader of the Crimean Tatars, Mustafa Jemilov, stated:

Media published in Crimea, including those that are publicly funded, are in Russian. Ethnic Russians make up no less than 90% of the executive leadership in Crimea. Of around 60 schools or educational institutions in Crimea, in only 14 is instruction given in the Crimean Tatar language, and in 7, Ukrainian, all others teach in Russian.<sup>57</sup>

Russian propaganda, together with the unwillingness of local (Crimean) authorities to popularize the history of Ukraine and Crimea, eventually led to disinformation about the history of Ukraine, including the events in Kyiv, Maidan (November 2013 – February 2014).<sup>58</sup> As a result, many Crimeans were perplexed during the political crisis in Ukraine. President Putin, controlling this perplexity through the media, used it as an excuse for the military intervention.<sup>59</sup> But, as international experts state:

[. . .] when authorizing use of force, the Russian State Duma referred to protecting Russians in Crimea. However, no evidence shows that Russians have been under a real physical threat; there was no humanitarian or human rights crisis. Russia could in no way invoke a doctrine of humanitarian intervention in order to justify its intervention. Only extreme cases of gross violations against a people could legitimize it to invoke the right to self-determination under international law to mean self-rule. This is clearly not the case in Crimea.<sup>60</sup>

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55. *Id.* at 7.

56. *Why Crimea is So Dangerous*, BBC NEWS (Mar. 11, 2014) <http://www.bbc.com/news/world-europe-26367786>.

57. Mustafa Jemilev, Address to the UN Security Council, Arria Formula Meeting, New-York, (Mar. 31, 2014), available at <http://qtm.org/en/news/4432-mustafa-jemilev-it-is-an-absurd-to-decide-issue-of-belonging-of-any-territory-region-or-settlement-to-any-state-on-referendum>.

58. Prus & Zashtowt, *supra* note 54, at 1-2.

59. *Id.*

60. Norwegian Helsinki Committee, *Ukraine, Russia Crisis: Q&A: breaches of international law and human rights issues*, Policy paper 1 (Mar. 20, 2014), <http://www.nhc.no/no/nyheter/?action=Article.publicShow;id=1283;module=Articles;template=print>.

B. THE ILLEGALITY AND ILLEGITIMACY OF THE “REFERENDUM” IN  
CRIMEA

The political unrest in Kyiv from November 2013 – February 2014 was the political excuse for the Kremlin to intervene, first in Crimea, and then in the eastern part of Ukraine.<sup>61</sup> Through utilization of the “propaganda machine,” Russian authorities declared the necessity and obligation “to protect ethnic Russians.”<sup>62</sup> On March 1, 2014, President Putin requested authorization by the State Duma of the Russian Federation to use military force until “the normalization of the political situation.”<sup>63</sup>

The new Crimean Government, led by extremists and advised by the Russian political establishment, issued a Resolution on March 6, 2014.<sup>64</sup> The Resolution defined questions for the referendum and addressed to the President and Federal Council of the State Duma of the Russian Federation the request to initiate the procedure of accession of Crimea to the Russian Federation.<sup>65</sup> The illegitimate referendum on the region’s annexation by the Russian Federation was carried out in an expedited manner on March 16; and on March 18, the Russian President signed an annexation treaty.<sup>66</sup>

The referendum in Crimea was illegal in many respects. These include:

- The legislative referral was made by impostors and self-proclaimed local politicians. The building of the legislature and Cabinet of Ministers was seized by Russian insignia armed forces, beginning on the night of February 26, 2014.<sup>67</sup> Some of the members of the legislature could not get into the building and they, therefore, could not and did not vote.<sup>68</sup>

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61. *Id.*

62. Timothy Heritage, *Putin Vows to Protect Ethnic Russians Abroad after Ukraine Truce Expires*, REUTERS (July 1, 2014), <http://www.reuters.com/article/us-ukraine-crisis-putin-russians-idUSKBN0F646620140701>.

63. *Obrashenie Vladimira Putina v Sovet Federacii Federalnogo Sobrania Rossiiskoi Federacii*, [President Vladimir Putin, Address to the Federal Assembly of the Russian Federation] (Mar. 1, 2014), *available at* <http://kremlin.ru/events/president/news/20353>.

64. *Postanovlenie Verhovnoi Rady Avtonomnoi Respubliki Krym o Provedenii Obshekrymskogo Referenduma* [Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea on the Holding of the all-Crimean Referendum], (Mar. 6, 2014), *available at* <http://www.rada.crimea.ua/act/11689>. (According to the Resolution, the bulletin for the “referendum” stated two questions: First, “Are you in favor of the reunification of Crimea with Russia as a subject of the Russian Federation,” and “Are you for the restoration of the 1992 Crimean constitution of the Crimean Republic and the status of Crimea as a part of Ukraine?”)

65. *Id.*

66. Michael Kelly, *Putin: Crimea is a Part of Russia*, BUS. INSIDER (Mar. 18, 2014), <http://www.businessinsider.com/live-putin-speaks-about-crimea-2014-3>.

67. Simon Shuster, *Putin’s Man in Crime Is Ukraine’s Worst Nightmare*, TIME (Mar. 10, 2014), <http://time.com/19097/putin-crimea-russia-ukraine-aksyonov>; Marie-Louise Gumuchian et al, *Gunmen seize government buildings in Ukraine’s Crimea, raise Russian flag*, CNN (Feb. 27, 2014), <http://edition.cnn.com/2014/02/27/world/Europe/Ukraine-politics>.

68. Shuster, *supra* note 67.

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- On March 14, 2014, the Constitutional Court of Ukraine decided that the referendum in Crimea is illegal.<sup>69</sup> The Constitutional Court held that, according to the Constitution of Ukraine, the territorial structure of Ukraine and the legal regime of the state border shall be determined exclusively by the law of Ukraine.<sup>70</sup> Any changes to the territory of Ukraine shall be resolved exclusively by an all-Ukrainian referendum.<sup>71</sup> Authority to call an all-Ukrainian referendum on issues indicated in the Constitution of Ukraine belongs exclusively to the Verkhovna Rada of Ukraine (parliament).<sup>72</sup>
- During the voting, substantial breaches of procedural law for elections and referenda took place. As Ukraine's Ambassador to the U.N., Yuriy Sergeyev, stated: "some ballots had been distributed to unregistered voters, and Russian citizens had been allowed to vote. People unable to leave their homes had been forced to vote by mobile teams, and additional lists of voters included citizens who were not qualified to vote."<sup>73</sup> The results of the illegal referendum were also doubtful because of a decision to boycott the vote by Crimean Tatars, numbering some 300,000 people, and ethnic Ukrainians, an additional half a million.<sup>74</sup> Further, "the referendum had offered only two questions, neither of which would clearly state an option for maintaining Crimea's autonomous status."<sup>75</sup>

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69. Конституційний Суд України [Constitutional Court of Ukraine] Mar. 14, 2014, Rishenna Konstytutsiinogo Sudu Ukrainy u Spravi za Konstytutciynym Podanniam Vykonujuchogo Oboviazky Prezydenta Ukrainy, Golovy Verkhovnoi Rady Ukrainy ta Upovnovazhenogo Verkhovnoi Rady Ukrainy z Prav Ludyny shodo Vidpovidnosti Konstytucii Ukrainy (Konstytuciynosti) Postanovy Verkhovnoi Rady Avtonomnoi Respubliky Krym "Pro provedennia zagalnokrymskogo referendumu" (sprava pro provedennia misceвого referendumu v Avtonomnij Respublitsi Krym) # 1-13/2014, vid 14 bereznia 2014 r. [Case on the Constitutional Petition of the Acting President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Ukrainian Parliament Commissioner for Human Rights Concerning Compliance with the Constitution of Ukraine (Constitutionality) of the Resolution of the Verkhovna Rada of the Autonomous Republic Crimea "On the Holding of the all-Crimean Referendum" No. 1-13/2014, of March 14, 2014], Visnyk Konstytutsiinogo Sudu Ukrainy [VKSU] [Bulletin of the Constitutional Court of Ukraine] 2014, No 2, Item 21., *available at* <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/20137-rishennya-konstitucijnogo-sudu-v-ukrajini-shhodo-referendumu-v-krimu>.

70. *Id.*

71. *Id.*

72. *Id.*

73. Yuriy Sergeyev, Address to the UN Security Council, 7144th Meeting (Mar. 19, 2014), *available at* <http://www.un.org/press/en/2014/sc1328.doc.htm>.

74. Jemilev, *supra* note 57. (According to the speech of Mustafa Jemilev at the informal meeting of the UN Security Council on the Crimean crisis by the initiative of Lithuania, Crimean Tatars totally boycotted the "referendum." It was established that only 0.5% of Crimean Tatars took part in it, and there is no evidence that they voted in favor of annexation with Russia. Some reports suggest that the general turnout at the "referendum" was not 82%, as the occupying authorities claim, but just 32.4%.)

75. Sergeyev, *supra* note 73.

Regardless of major breaches of national and international law, on March 17, 2014, Russia acknowledged the result of the so-called referendum and started the process of imposing its sovereignty in Crimea.<sup>76</sup>

## II. Refugee-Like Status of the People Who Fled Crimea

The flight caused by Russian occupation and explicit imposition of Russian (foreign) sovereignty over the Ukrainian territory and over the people who live in Crimea raises the question of the propriety of the ascription, “Internally Displaced Persons,” that has been used to describe those who fled Crimea.<sup>77</sup> The new group of migrants raises concern as to whether there is an appropriate framework within the existing body of law or, for that matter, in academic discourse, that would offer an adequate designation for the status of those who appear to be in a refugee-like status because they have fled an oppressive regime of foreign occupation.

This issue of categorization of forced migrants was to some extent addressed in a debate on the subject of “forced migration studies,” reflected in articles in the *Journal of Refugee Studies* authored by James C. Hathaway,<sup>78</sup> Roberta Cohen,<sup>79</sup> Howard Adelman and Susan McGrath,<sup>80</sup> and Josh DeWind<sup>81</sup> in 2007. The debate confirms some definitions, shapes distinctive features of “refugees” and “internally displaced persons,” summarizes some history, and discusses the role of the international community in protecting displaced persons in the general milieu of forced migration. In this debate, Professor Hathaway raised the question is “the effective marriage of ‘refugee studies’ and ‘migration studies’ in the union of ‘forced migration studies’ a good thing?”<sup>82</sup>

The legal status of Crimean migrants, as well as the phenomenon of flight from the expansion of Russian sovereignty, expands the subject of refugee studies. It is argued here that the Crimean flight of 2014 has most of the distinctive features of an exodus of refugees, and those who fled ultimately

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76. Kelly, *supra* note 66.

77. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, INTERNAL DISPLACEMENT IN UKRAINE 3 (2014), available at <http://www.osce.org/ukraine-smm/122620?download=true> [hereinafter *Internal Displacement*].

78. James C. Hathaway, *Debate: Forced Migration Studies: Could We Agree Just to “Date”?*, 20 J. REFUGEE STUD. 349 (2007), available at <http://jrs.oxfordjournals.org/content/20/3/349.full.pdf+html>.

79. Roberta Cohen, *Response to Hathaway*, 20 J. REFUGEE STUD. 370 (2007), available at <http://jrs.oxfordjournals.org/content/20/3/370.full.pdf+html>.

80. Howard Adelman & Susan McGrath, *To Date or To Marry: That is the Question*, 20 J. REFUGEE STUD. 376 (2007), available at <http://jrs.oxfordjournals.org/content/20/3/376.full.pdf+html>.

81. Josh DeWind, *Response to Hathaway*, 20 J. REFUGEE STUD. 381 (2007), available at <http://jrs.oxfordjournals.org/content/20/3/381.full.pdf+html>.

82. Hathaway, *supra* note 78, at 349.

remain in a refugee-like status.<sup>83</sup> Moreover, it is questionable whether this category of migrants fits at all in the category of Internally Displaced Persons, from a practical perspective.<sup>84</sup> “Migration studies” opens the door and gives a context for analyses, research, and appropriate solutions for those who flee foreign occupation, but who remain in the territory of their nationality. As Josh DeWind stated in his Response to Hathaway in favor of a more complex approach to forced migration studies:

Thinking about flight and protection issues from the perspective of forced migration creates an opportunity to reconceive the nature of the problem and to design alternative strategies. Considering the plight of refugees under the rubric of forced migrants brings them into the context of a broader range of people who have been compelled to move, both internationally and internally, due to being deprived of human rights. International migrants deprived of social, cultural, and economic rights – including but not limited to people displaced by ecological or developmental forces resulting from government directive or neglect – would seem to need and deserve international protection no less than refugees. The same should be said of internally displaced persons, and refugees who independently set off on their own to find asylum in third countries, including advanced industrial democracies whose governments discourage their entry. A forced migration perspective brings attention not only to these broader protective needs of individuals but also to the social and political circumstances that produce persecution and conflict and that limit access to protection.<sup>85</sup>

“Refugee-like status” derives from the definition of refugee. Pursuant to the United Nations Convention Relating to the Status of Refugees, the term “refugee” shall apply to any person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>86</sup>

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83. Adrian Edwards, *UNHCR viewpoint: ‘Refugee’ or ‘migrant’ - Which is right?*, UNHCR (Aug. 27, 2015), <http://www.unhcr.org/en-us/news/latest/2015/8/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

84. *Internal Displacement*, *supra* note 77.

85. DeWind, *supra* note 81, at 382-3.

86. Convention Relating to the Status of Refugees, Art. 1, adopted on July 28, 1951 by the UN Conf. of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under UN GA Res. 429 (V) (Dec. 14, 1950), 189 UN TS 150 (entered into force Apr. 22, 1954), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx> [hereinafter “Convention”]; Protocol Relating to the Status of Refugees, adopted by UN GA

People who fled Crimea into other parts of Ukraine share the main features of refugee status, as defined by the Refugee Convention, except for “being outside the country of his nationality or former habitual residence.”<sup>87</sup> This characteristic, which would seem to be obvious, is not easy to qualify in the context of foreign occupation. Crimean migrants share the main features of refugees that in fact distinguish them from other forced migrants.<sup>88</sup> Professor Hathaway defines two key issues in this regard. The first is related to discrimination. As he puts it:

refugees are persons who are seriously at risk because of who they are or what they believe. Refugees are therefore doubly deserving: not only is the risk they have fled profoundly serious, but their exposure to such risk is based on characteristics which are either unchangeable (like race or nationality) or so fundamental that they should not have to be renounced in order to be safe (like religion or political opinion).” Secondly, “refugee” is a “functional designation directly linked to the capacity of the international community to guarantee a remedy.”<sup>89</sup>

Another term that is under discussion is “*de facto* refugee.” The term was adopted by the International Law Association in the London Declaration of International Law Principles on Internally Displaced Persons.<sup>90</sup> The Report on the Draft Declaration acknowledges that “the theoretical and practical distinctions between refugees and IDPs have become increasingly blurred. International protection of and assistance to both categories of displaced persons have increasingly been based on needs; rather than legal status.”<sup>91</sup> Despite crossing a non-recognized international border, which will be discussed below, Crimean migrants are victims of international armed conflict.<sup>92</sup> Consequently, they are victims of the imposition of foreign sovereignty both in terms of territory and over the people within that territory.<sup>93</sup>

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Res. 2198 (XXI) (Dec. 16, 1966), Jan. 31, 1967, 606 UN TS 267 (entered into force Oct. 4, 1967).

87. Convention, *supra* note 86.

88. Hathaway, *supra* note 78, at 352-3.

89. *Id.*

90. INT’L LAW ASSOC. INT’L COMM. ON INTERNALLY DISPLACED PERSONS, DRAFT DECLARATION OF INTERNATIONAL LAW PRINCIPLES ON INTERNALLY DISPLACED PERSONS, 2 (2000), available at <http://www.ila-hq.org/en/committees/index.cfm/cid/17> [hereinafter London Declaration].

91. *Id.*

92. Kateryna Ivashchenko-Stadnik, *The impact of the current military conflict on migration and mobility in Ukraine*, EUR. U. INST. 1-2 (2015), available at <http://poseidon01.ssrn.com/delivery.php?ID=102065004071020076082015010072027077054008067084052039088087093121110005072069003065097018031059009044096126005079029007097005031069088002093022087098071064113094069071043020005072091008121125006028110083070069118008072000023078015112088006103005009113&EXT=pdf>.

93. *Id.*

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Professor Hathaway mentions a “special ethical responsibility” that “follows not just from the gravity of their predicament, but also from the fact that it is always possible to address their plight in ways that, regrettably, we still cannot for those who remain inside their own country.”<sup>94</sup> This and other features make the Crimean migrants similar in status to refugees, yet distinguishable from IDP’s, as will be discussed later. Conjunctively, such factors lead to the necessity for proper categorization of displaced persons as a predicate for offering appropriate legal remedies for their protection, which requires a new and expanded lens of forced migration.

In the context of this conflict, consideration of other parameters of “refugee” is appropriate, such as membership in a particular “social group.” This may be determined by whether there has been abuse of human rights, which is relevant to the construction of “well-founded fear” and discrimination. These criteria seem to be satisfied when applied to Crimea’s displaced persons.

**A. WELL-FOUNDED FEAR OF BEING PERSECUTED: PRESSURE AND INTIMIDATION AS A TACTIC OF RUSSIAN AUTHORITY**

Since the end of February 2014, the inhabitants of Crimea have experienced the presence of at least of five armed groups:

- The so-called self-defense group of Crimea, which acquired legal status within Crimea, led by the *de facto* “Prime Minister” of Crimea, Oleksandr Aksionov.<sup>95</sup>
- The Russian “Cossacks” (paramilitary patriots, or cultural protectors, who have crossed the border from Russia into Ukraine).<sup>96</sup>
- The so-called “Army of Crimea,” including “the Berkut,” headed by General Kuznietcov, former minister of internal affairs of Crimea.<sup>97</sup>
- The Russian military, who did not use uniforms with official insignia until Russia annexed Crimea (referred to by the media and others as “green men”).<sup>98</sup>
- Armed bandits and marauders.<sup>99</sup>

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94. Hathaway, *supra* note 78, at 353.

95. *Zakon Respubliki Krym o Narodnom Opolchenii – narodnoi druzynie Respubliki Krym* [Law of the Crimea Republic on People’s Militia – People’s Druzyna of the Republic of Crimea], Krymskiie Izvestiia [Krym. Izv.] [Crimea Laws] 2014, No. 243 available at <http://crimea.gov.ru/lawmaking-activity/laws>, [hereinafter Crimean Law on People’s Druzyna].

96. SIMON SHUSTER, *Armed Cossacks Flock to Crimea to Help Russian Annexation Bid*, Time (Mar. 12, 2014), <http://time.com/22125/ukraine-crimea-cossacks-russia/>.

97. Alessandra Prentice, *Cossacks, Berkut and other armed men dig in for Crimea stay*, REUTERS (Mar. 2, 2014), <http://www.reuters.com/article/us-ukraine-crisis-crimea-idUSBREA210VZ20140302>.

98. Steven Pifer, *Watch out for Little Green Men*, SPIEGEL ONLINE (Jul. 7, 2014), <http://www.spiegel.de/international/europe/nato-needs-strategy-for-possible-meddling-by-putin-in-baltic-states-a-979707.html>.

99. Valentyna Samar, Z Rosii. “Z ljubov’ju” [From Russia. “With Love”], MIRROR UKRAINE (Apr. 4, 2014) [http://gazeta.dt.ua/internal/z-rosiyi-z-lyubov-yu-\\_html](http://gazeta.dt.ua/internal/z-rosiyi-z-lyubov-yu-_html).

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Mustafa Jemilev, one of the leaders of the Crimean Tatars, spoke at the informal meeting of the U.N. Security Council on the Crimean crisis on March 31, 2014.<sup>100</sup> Among many issues that are matters of international concern, he pointed out:

there are paramilitary groups, organized by the authorities, patrolling who call themselves “self-defense” units or “Cossacks,” who are openly talking about the need for a second deportation of the Crimean Tatars. There is a very high possibility that bloody ethnic conflicts, or more precisely, a massacre of Crimean Tatars and ethnic Ukrainians, could break out on Crimean territory in the near future. There have been cases, and a lot has been written about this in the press, in which houses lived in by Crimean Tatars have been clearly marked with crosses or other marks by unknown persons at night. It has become quite ordinary in Crimea to beat, knife, or kill people who, in one form or another, express their opposition to the occupying regime.<sup>101</sup>

In a Briefing of Members on Events since the Crimea Vote, at the Security Council 7144th meeting (March 19, 2014), Ivan Šimonovic, Assistant Secretary-General for Human Rights, stated that he had serious concerns about the protection of human rights, having met with victims of arbitrary arrest, torture, and ill treatment.<sup>102</sup> He also expressed concern for the Tatar community and those who opposed recent political events.<sup>103</sup> Violence and rumors added to the insecurity among the population and the need for independent monitors to conduct an objective assessment and report on violations and on the implications of recent events was urged.<sup>104</sup> In the report dated March 14, 2014, Mr. Šimonovic stated:

I am gravely concerned about the situation in Crimea, where there appears to be no rule of law at present, and therefore a drastic deterioration in the protection of human rights, as well as rampant fear and insecurity due to misinformation, blocking of information and total uncertainty about what is coming next. . . . I have also met with activists and journalists who were stopped at paramilitary check points, detained between 9 and 11 March, interrogated, beaten, robbed of their equipment, harassed, humiliated and subjected to mock executions, allegedly by a Berkut unit officer. . . . I have been informed about cases of arbitrary arrest and detention, torture and ill-treatment, and other human rights violations committed by members of unidentified armed

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100. Jemilev, *supra* note 57.

101. *Id.*

102. Ivan Šimonovic, Address to the UN Security Council On Human Rights Situation in Ukraine (UN Security Council, 7144th Meeting, Mar. 19, 2014), *available at* <http://www.undp.org/content/ukraine/en/home/presscenter/articles/2014/03/19/-asg-ivan-simonovic-delivers-report-on-human-rights-in-ukraine-to-the-un-security-council.html>.

103. *Id.*

104. *Id.*

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groups. Paramilitary forces must be disarmed and the rule of law must be re-established in Crimea by those who have the power to do so.<sup>105</sup>

According to the Monitor of Journalists Investigation, from February 27 to March 30, 2014, three journalists, twelve activists, and ten officers of the Ukrainian Military were kidnapped or illegally detained. The so-called self-defense of Crimea detained victims in a basement of the Crimean military department. There is still no information about two military personnel and three activists. Those who were liberated, and made public statements, were beaten, denied food, and shot. Andriy Shekun, who was a leader of the Ukrainian community in Crimea and who was involved in organizing protests against the “referendum” and the annexation of Crimea, was tortured with an electric chair. The other activist, Yuriy Shevchenko, was shot in both of his legs, and the perpetrators also cut off part of his ear. Journalists who reported attacks on Ukrainian military bases by the Russian military were persecuted, beaten, and their equipment (cameras, etc.) was damaged or confiscated.<sup>106</sup>

The intimidation, however, did not stop after Russian jurisdiction was asserted over the people and territory of Crimea. It did not take long for Russian authorities to ban two Crimean Tatar leaders, Mr. Mustafa Jemilev and Refat Chubarov, from entering the country.<sup>107</sup> On April 22, 2014, the previous leader of the Mejlis, Mustafa Dzhemilev, was not allowed to enter Crimea from mainland Ukraine.<sup>108</sup> Law enforcement and members of self-defense units informed him that he would not be allowed to enter Crimea for five years after Russia’s Federal Migration Service (FMS) declared him a *persona non grata* in Russia.<sup>109</sup> On May 14, 2014, the authorities searched Dzemilev’s house in his absence. Dzemilev has not been charged with any offense.<sup>110</sup> Although Refat Chubarov, the Chair of Mejlis, was away from Crimea, authorities banned him on July 5, 2014 from entering the peninsula for five years, and on September 17, 2014, authorities sealed the Mejlis’ office and other Foundation, in addition to freezing the bank accounts, which effectively paralyzed the activities of the Mejlis.<sup>111</sup>

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105. Ivan Šimonovic, Speech, *Ukraine: UN deploys human rights monitors amid ‘troubling’ signs in east, Crimea* (New York, Mar. 17, 2014), [http://www.un.org/apps/news/story.asp?NewsID=47355#Vj\\_Yy0t12sg](http://www.un.org/apps/news/story.asp?NewsID=47355#Vj_Yy0t12sg).

106. Samar, *supra* note 99.

107. Eleanor Knott, *What the Banning of Crimean Tatars’ Mejlis Means*, ATLANTIC COUNSEL (May 2, 2016), <http://www.atlanticcouncil.org/blogs/new-atlanticist/what-the-banning-of-crimean-tatars-mejlis-means>.

108. *Crimean Tatar Leader Barred From Crimea Until 2019*, RADIO FREE EUROPE RADIO LIBERTY (Apr. 22, 2014), <http://www.rferl.org/content/ukraine-crimea-dzhemilev-tatar-leader-barred/25357847.html>.

109. *Id.*

110. *Rights in Retreat: Abuses in Crimea*, HUMAN RIGHTS WATCH (2014), <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>.

111. *Id.* at 14.

Former self-defense groups were ultimately transformed into the legalized units of the people's militia, which is called "people's *druzyna*."<sup>112</sup> According to Art. 1 of the law on people's militia, people's *druzyna* of the Republic of Crimea is a union created to assist the state authority of the Republic of Crimea and its law enforcement entities in maintaining social order.<sup>113</sup> The people's militia is comprised of citizens of the Russian Federation.<sup>114</sup> Art. 6 of this law states that the Head of the Crimea Republic people's *druzyna* is appointed, and can be dismissed, by the Head of the Republic of Crimea (Mr. Aksoinov).<sup>115</sup>

Human Rights Watch reported that these armed paramilitary groups have systematically been involved in unlawful detention, abduction, ill-treatment (including torture), and harassment of pro-Ukraine activists and other residents, "with complete impunity."<sup>116</sup> "Ukrainian human rights groups have reported that the units have also been involved in unlawful searches of persons and vehicles, violent dispersals of public gatherings, and attacks on journalists."<sup>117</sup> "Human Rights Watch documented the involvement of self-defense units in the abductions of at least six activists from the Euromaidan movement"; attacks and harassment of "numerous local and foreign journalists"; and dozens of attacks against "reporters."<sup>118</sup> "Ukrainian human rights groups have reported that the units have also been involved in violently dispersing demonstrations, unlawfully searching people and vehicles, especially at Crimea's administrative borders, and harassing ordinary citizens."<sup>119</sup>

Although the law on the people's militia clearly states that the self-defense units may act only in conjunction with police, other law enforcement agencies, state executive entities, or self-governance bodies,<sup>120</sup> *druzyna* have instead reportedly operated "autonomously," regularly harassing, questioning, and "sometimes beat[ing] people without the presence of police."<sup>121</sup> There is no known evidence that crimes committed by the former

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112. The phenomenon of "People's *Druzyna*" takes its roots from Soviet times and is, thus, familiar to post-Soviet society as a non-professional or voluntary local police unit that involves civilians in securing social order and reporting so called "anti-Soviet activity to the authorities." In the U.S.S.R., the function of police was carried out by "Soviet Militia." The word "police" was unacceptable to the Soviets because of its imperialistic connotation in Czarist Russia and its usage in capitalist countries.

113. Crimean Law on People's *Druzyna*, *supra* note 95, at art. 1.

114. *Id.*

115. *Id.* at art. 6.

116. *Ukraine: Activists Detained and Beaten, One Tortured*, HUMAN RIGHTS WATCH (Mar. 25, 2014), <https://www.hrw.org/news/2014/03/25/ukraine-activists-detained-and-beaten-one-tortured>.

117. *Rights in Retreat: Abuses in Crimea*, *supra* note 110.

118. *Crimea: Attacks, 'Disappearances' by Illegal Forces. Rein in Units Operating Outside Law*, HUMAN RIGHTS WATCH (Mar. 14, 2014), <http://www.hrw.org/news/2014/03/14/crimea-attacks-disappearances-illegal-forces>.

119. *Ukraine: Activists Detained and Beaten, One Tortured*, *supra* note 116.

120. Crimean Law on People's *Druzyna*, *supra* note 95, at art. 1, 3.

121. *Rights in Retreat: Abuses in Crimea*, *supra* note 110.

self-defense-groups in February – March 2014, nor any of the more recently committed abuses of human rights, have been investigated by the Russian Federation.<sup>122</sup> If any internationally recognized state possesses such evidence, it would be the Russian Federation.

Russian anti-extremist legislation brought the category of “extremist materials” into the Crimean reality.<sup>123</sup> According to the website of the Ministry of Justice of the Russian Federation, as of March 27, 2015 the “List of Extremist Materials,” as determined by the Russian courts, includes 2680 different entries.<sup>124</sup> A substantial amount of the titles can be categorized as Islamic literature.<sup>125</sup> The anti-extremism activity in Russia involves the whole spectrum of law enforcement and governmental institutions, including local authorities.<sup>126</sup>

“Combating extremism” conveniently justifies searches of the private homes of Crimean Tatars (primarily the homes of Mejlis members), journalists, leaders of NGOs, Ukrainians, and those who have supported the Ukrainian government and the European integration process.<sup>127</sup> Among public institutions, the subjects of search are primarily mosques, Islamic schools, media outlets, and NGOs.<sup>128</sup> Along with confiscation of “extremist materials” and “prohibited literature,” in some cases Russian and Crimean authorities have confiscated computers and office equipment as well.<sup>129</sup> Human Rights Watch states that these measures “were carried out by both local police and Russia’s Federal Security Service (FSB) but also involved dozens of unidentified armed, masked men.”<sup>130</sup>

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122. *Id.*

123. See Federal’nyi Zakon RF o Protivodeistvii Ekstremistskoi deiatel’nosti [Federal Law of the Russian Federation on Counteracting Extremist Activity], SOBRANIE ZAKONODATEL’SIVA ROSSIJSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2002, No. 53, Item 7580 (part I) [hereinafter *Counteracting Extremist Activity Law*].

124. *Federal’nyi Spisok Ekstremistskikh* [Federal list of extremist materials], MATERIALOV MINISTERSTVO JUSTICII ROSSIJSKOJ FEDERATSII [Ministry of Justice of the Russian Federation], [http://minjust.ru/ru/extremist-materials?field\\_extremist\\_content\\_value&page=13](http://minjust.ru/ru/extremist-materials?field_extremist_content_value&page=13) (last visited Apr. 18, 2015) [hereinafter List of Extremist Materials].

125. See *id.*; see also, Peter Roudik, *Legal Provisions on Fighting Extremism: Russia*, LIBRARY OF CONGRESS (Apr. 2014), <https://www.loc.gov/law/help/fighting-extremism/russia.php> (last updated Nov. 30, 2015).

126. Peter Roudik, *Legal Provisions on Fighting Extremism: Russia*, LIBRARY OF CONGRESS (Apr. 2014), <https://www.loc.gov/law/help/fighting-extremism/russia.php> (last updated Nov. 30, 2015).

127. *Rights in Retreat: Abuses in Crimea*, *supra* note 110.

128. *Id.* According to Human Rights Watch, between June and September 2014, law enforcement agents conducted searches for prohibited literature in eight out of the ten religious schools in Crimea.

129. *Id.*

130. *Id.*

**B. VULNERABLE GROUPS: FACTS AND CRITERIA**

The violations of human rights, described above, have pushed people to leave the peninsula. Ultimately their status is defined by the fact of whether they seek asylum in a foreign state, or whether they go to the mainland of Ukraine. Because of the cause of flight and the surrounding circumstances, the conditions that govern the law of refugee status are satisfied. They are members of targeted vulnerable groups who have been persecuted. The Crimean case raises the threshold question of the basis upon which people have been persecuted.

*1. Nationality*

Citizens of Ukraine who reside in Crimea and who refuse to accept Russian citizenship have had substantial limitations imposed on their economic, social, and political rights. In the context of the conflict between Russians and those who support Ukrainian sovereignty and territorial integrity, the latter are subject to prosecution for extremism, according to Russian criminal, administrative, and civil Law.<sup>131</sup> As Human Rights Watch states, Russia did not simply offer

Russian citizenship to residents of Crimea, but rather, Russia . . . compelled residents to choose between Ukrainian and Russian citizenship while imposing adverse consequences, directly and indirectly, on those who chose to retain Ukrainian citizenship.<sup>132</sup> In addition, as documented below, there were serious flaws in the process for Ukrainian citizens who sought to retain Ukrainian citizenship: some Ukrainian citizens were unable to exercise their choice to retain citizenship and had Russian citizenship imposed on them.<sup>133</sup> Others were subject to harassment and intimidation for not obtaining Russian citizenship.<sup>134</sup> In such circumstances, the imposition of Russian citizenship in Crimea was coercive.<sup>135</sup>

*2. Religion*

*a. Ukrainian Greek Catholic Church*<sup>136</sup>

The ideology of Russian humanitarian policy is based on the concept of “Great Russia.”<sup>137</sup> This purely imperialistic approach denies any alternative

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131. See Yulia Arkhipova and Grigory Frolov, *Russian Refugees in Ukraine: The Broken Hopes*, FREE RUSSIA (Feb. 24, 2016), <http://www.4freerussia.org/russian-refugees-in-ukraine-the-broken-hopes/>.

132. *Rights in Retreat: Abuses in Crimea*, *supra* note 110.

133. *Id.*

134. *Id.*

135. *Id.*

136. The Ukrainian Greek Catholic Church is a sect of Catholicism that worships under the auspices of the Pope.

137. Marcin A. Piotrowski, *Russia's Security Policy*, at 61, COUNCIL ON FOREIGN RELATIONS, [www.cfr.org/content/. . . /Understand\\_Russia2.pdf](http://www.cfr.org/content/. . . /Understand_Russia2.pdf).

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ideology.<sup>138</sup> For example, the Orthodox Church under the Moscow Patriarch is one of the main pillars of Russian internal and external policy in the humanitarian sphere.<sup>139</sup> Moscow uses the Russian Orthodox Church as a component of its policy to achieve the unity of all Slavic Christians under the Russian (Moscow) Patriarchate.<sup>140</sup> According to the majority of Russian Orthodox clergy, this is the only legitimate church; all other Christians are secessionists or betrayers. Strong historical reciprocal opposition exists between the Russian Orthodox Church and the Ukrainian Greek Catholic Church.<sup>141</sup> “The Ukrainian Catholic Church (Byzantine rite) was outlawed under Soviet rule from 1946 to 1989,”<sup>142</sup> during which time “many clergy were imprisoned” in Siberia “and most church properties were seized by the state or transferred to Russian Orthodox possession.”<sup>143</sup> Before the “referendum,” there were five communities of the Ukrainian Greek Catholic Church in Crimea, and they have traditionally comprised approximately ten percent of the peninsula’s inhabitants.<sup>144</sup> Since March 2014, violations of human rights on the ground of religion have occurred.<sup>145</sup>

On March 15, 2014, “Father Mykola Kvych, a pastor and Ukrainian military chaplain, was abducted by pro-Russian forces after celebrating the liturgy.”<sup>146</sup>

Fr. Kvych told the Ukrainian Greek Catholic Church’s information department that he was held and questioned for eight hours by representatives of the Crimean self-defense force and Russian intelligence officers. According to Fr. Kvych, they accused him of ‘provocations’ and of supplying the Ukrainian navy with weapons. Fr. Kvych maintained that he helped organize the delivery of food to a blockaded naval base, and that he gave two bulletproof vests to journalists.<sup>147</sup>

Fr. Kvych was threatened with the charge of “‘extremism,’ which in the Russian Federation can carry a sentence of up to fifteen years in prison.”<sup>148</sup>

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138. *See id.*

139. *Id.*

140. *Id.*

141. *Crimea: After the Annexation*, AMERICAN THE NATIONAL CATHOLIC REVIEW (Apr. 7, 2014), <http://americamagazine.org/issue/crimea-after-annexation>.

142. *Id.*

143. Jonathan Luxmoore, *In Eastern Ukraine, Church has ‘Returned to Catacombs,’ Spokesman Says*, THE DIALOG, <http://thedialog.org/tag/archbishop-sviatoslav-shevchuk-of-kiev-halych/>.

144. *Id.*

145. *Id.*

146. *Ukrainian Greek Catholic priest abducted in Crimea*, VATICAN RADIO (Mar. 15, 2014), [http://en.radiovaticana.va/news/2014/03/15/ukrainian\\_greek\\_catholic\\_priest\\_abducted\\_in\\_crimea/en-1-781855](http://en.radiovaticana.va/news/2014/03/15/ukrainian_greek_catholic_priest_abducted_in_crimea/en-1-781855).

147. Sonya Bilocerkowycz and Sofia Kochmar, *Ukrainian Catholics Experiencing “Total Persecution” in Crimea*, CATHOLIC NEWS AGENCY (Mar. 18, 2014), <http://www.catholicnewsagency.com/news/ukrainian-catholics-experiencing-total-persecution-in-crimea/>.

148. *Id.*

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“Fr. Kvych [did] not know how a trial [would] be conducted, since the national status of Crimea is in dispute.”<sup>149</sup> Thus, he left Crimea.<sup>150</sup>

In his speech to the Catholic News Service, “Father Mykhailo Milchakovskiy, a parish rector and military chaplain from Kerch, Crimea,” expressed substantial fear for Greek Catholic parishioners and priests.<sup>151</sup> He said that “officials from Russia’s Federal Security Service, or FSB, had called him in for questioning about his community and to ask whether he ‘recognized the new order.’”<sup>152</sup> Particularly, Father Mykhailo stated:

. . . [T]he new government here is portraying us all as nationalists and extremists . . . . We’re determined our Church will not close up and abandon its mission, and we hope we’ll be given permits to return. But like others, we’ve had to leave our life and work behind, not knowing when we’ll be back. This is a time of suffering and anxiety. For now, this is just a temporary evacuation until conditions are safer, but with tension and pressure now strong, many of us are afraid of being arrested. People want things to stay as they are, with freedom of religion, assembly and speech. But if they’re forced to accept Russian passports, they’ll have little choice. Our only hope lies with God and human goodwill.<sup>153</sup>

While “[r]eferring to the kidnapping of three Ukrainian Greek Catholic priests in Crimea by pro-Russian forces. . . , [he] stressed that one such case could be called a mistake, but that ‘multiple kidnappings are not an accident.’”<sup>154</sup>

**b. Ukrainian Orthodox Church**

Besides the Ukrainian Catholic Church, the Russian Orthodox Church and the Russian political elite also do not recognize the Ukrainian Orthodox Church, which is under the Kiev Patriarchate. “The Ukrainian Orthodox Church. . . broke away from the Orthodox Church led by the Moscow Patriarchate in the 1990s.”<sup>155</sup> There are about 600,000 Ukrainian Orthodox Christians who live in Crimea and align with the Kiev Patriarchate.<sup>156</sup> After the “referendum,” Crimean self-defense groups, or Russian Orthodox priests accompanied by uniformed Russian military personnel with insignia, entered Ukrainian Orthodox Churches, asked about registration documents, tried to

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149. *Id.*

150. Luxmoore, *supra* note 143.

151. Jonathan Luxmoore, *Priest: Ukrainian Catholics Flee Crimea to Escape Threats of Arrest*, CATHOLIC NEWS SERVICE (Mar. 25, 2014), <http://catholicphilly.com/2014/03/news/world-news/priest-ukrainian-catholics-flee-crimea-to-escape-threats-of-arrest/>.

152. *Id.*

153. *Id.*

154. Bilocerkowycz, *supra* note 147.

155. Katherine Jacobsen, *Crimea’s schism splits Orthodox hierarchy*, ALJAZEERA (Apr. 1, 2014), <http://www.aljazeera.com/indepth/features/2014/04/crimea-schism-splits-orthodox-hierarchy-20144110192223208.html>.

156. *Id.*

inventory their property, and predicted nationalization of churches, facilities, and land.<sup>157</sup> A priest of the Ukrainian Orthodox Church in the military town of Perevalnoye, Crimea, Fr. Ivan, commented on the visit by the Russian priest with the Russian military.<sup>158</sup> According to him, the “message was clear: The Ukrainian church that aligns with the Kiev Patriarch, Filaret, rather than the Moscow Patriarch, Kirill, would have no place in the new, Russian-controlled Crimea.”<sup>159</sup> The bishop of the Ukrainian Orthodox Church, Kliment, said: “Nobody is able to ensure the safety of Ukrainian Orthodox priests. The church in Kiev can’t protect us and Ukraine’s new government isn’t in a position to either.”<sup>160</sup> Additionally, he stated that “most priests had taken their families out of Crimea.”<sup>161</sup>

c. Islam

Crimean Tatars’ historical religious roots are aligned with Islam. A substantial percentage of “extremist materials,” as defined by the Russian courts, is Islamic literature.<sup>162</sup> According to the Law “On Combating Extremist Activity in the Russian Federation,” the production, storage, dissemination of extremist materials, or other related acts, is an infringement of the civil, administrative, and criminal law, violation of which leads to prosecution or other liability.<sup>163</sup>

“On September 17, 2014, authorities searched a mosque in Simferopol and, on September 2,” the authorities searched a mosque in Yalta.<sup>164</sup> There “[t]he deputy head of the [Religious Directorate of the Muslims of Crimea] (DUMK) told the media that the search in Yalta involved police, the FSB, and approximately thirty armed men.”<sup>165</sup> It is reported that “[t]he search lasted seven hours and resulted in the authorities confiscating several religious books.”<sup>166</sup> Human Rights Watch also reported:

on June 24, 2014, thirty armed men, including police and FSB agents, forcibly entered a school and conducted an extensive search examining, among other things, the school’s library and students’ personal possessions. According to a DUMK press service statement, law enforcement broke the front door and several windows in the school. In September 2014, authorities conducted more searches in several mosques and Islamic schools, looking for ‘extremist literature.’ On September 9, 2014, police and the FSB searched a boarding school in the Bakhchisarai area, confiscating three religious books from the

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157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *List of Extremist Materials*, *supra* note 124.

163. *See Contracting Extremist Activity Law*, *supra* note 123, Art. 9 – 16.

164. *Rights in Retreat*, *supra* note 110.

165. *Id.*

166. *Id.*

school library. Children were on the school premises at the time of the search. As reported by the Crimean Field Mission, some of the students' parents said that police asked the children to remove all items with Crimean Tatar symbols on them.<sup>167</sup>

### 3. *Membership in a Particular Social Group or Political Opinion*

"Euromaidan" is a new word that entered the Ukrainian and international lexicon in November 2013.<sup>168</sup> It is an amalgam of two words: "Euro" – which refers to Europe, and "Maidan" – which means the square, where people get together to make a collective decision on social, political, or other important community subjects. Maidan is also a part of the name of the main square in Kiev (the capital of Ukraine) – Maidan Nezaleznosti, which translates into the English language as the "Square of Independence," where the most important events occurred that led to the coining of the new term.<sup>169</sup>

Since November 2013, Maidan is not just territory that is part of the city of Kiev.<sup>170</sup> It is the focal point of political and social opposition to the external and internal policy of the former President of Ukraine, Viktor Yanukovych, and his government, particularly as it relates to corruption and abuse of human rights.<sup>171</sup>

The conflict in Kiev evolved from student protests into a mass protest of thousands of people from all walks of Ukrainian life.<sup>172</sup> The initial protests encouraged the government to collaborate with Europe, as the previously established external policy of Ukraine provided. "Euromaidan" became the ascription for the place of gathering of protesters and, ultimately, has also become the reference for the people who were involved in these dramatic events.<sup>173</sup> "Euromaidanivets" means "one who is involved in Euromaidan."<sup>174</sup>

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167. *Rights in Retreat*, *supra* note 110.

168. See *The Evolution of Euromaidan*, RADIO FREE EUROPE RADIO LIBERTY (Nov. 19, 2014), <http://www.rferl.org/media/photogallery/euromaidan-politics-ukraine/26648497.html>.

169. *Id.*

170. Carmen Scheide and Ulrich Schmid, *The EuroMaidan in Ukraine November 2013 till February 2014*, CENTER FOR GOVERNANCE AND CULTURE IN EUROPE, at 3 (Mar. 17, 2014), [http://www.gce.unisg.ch/~media/internet/content/dateien/instituteundcenters/gce/euxeinios/euxeinios%2013\\_2014.pdf](http://www.gce.unisg.ch/~media/internet/content/dateien/instituteundcenters/gce/euxeinios/euxeinios%2013_2014.pdf).

171. *The Evolution of Euromaidan*, *supra* note 168.

172. Marian J. Rubchak, *Mapping Difference: The Many Faces of Women in Contemporary Ukraine*, BERGHAIN BOOKS, 3 (Aug. 30, 2014), [https://www.berghainbooks.com/downloads/intros/RubchakNew\\_intro.pdf](https://www.berghainbooks.com/downloads/intros/RubchakNew_intro.pdf).

173. See Dr. Serhy Yekelchuk, *Why the Maidan? How the Square Became a Place of Civic Action*, UKRAINIAN RESEARCH INSTITUTE HARVARD UNIVERSITY (Mar. 17, 2016), <http://www.huri.harvard.edu/news/news-from-huri/232-how-maidan-became-a-place-of-civic-action.html>.

174. "Euromaidan" – slovo roku ukrainskoi movy [Euromaidan – the word of the year in the Ukrainian language]. According to "Mysloslovo" (mysloslovo.com), the only web-based dictionary of modern Ukrainian language and slang, written by its users, the word "Euromaidan" became the "Word of 2013." The main criterion for selection is word popularity.

The protests resulted in the flight of Yanukovych and other high government officials to Russia, but it also cost the lives of more than one hundred and twenty-three Ukrainians, and twenty-three disappearances.<sup>175</sup> Russia's propaganda labels activists of Euromaidan as Nazis.<sup>176</sup> Russian authorities and media have been consistently using this label.<sup>177</sup> Such disinformation has been used by Russia to justify the intervention in Crimea to the Russian people.<sup>178</sup> Through this tactic, the Russian government has attempted to maintain political and social unrest, spreading fear among ethnic Russians in Ukraine who believe in the Russian myth about "Banderivtci" and their fabricated ties with Nazis during World War II.<sup>179</sup> Many remain ignorant about historical facts. In this way, Russian authorities have proclaimed the necessity to protect the Russian-speaking population of Ukraine.<sup>180</sup>

As a result of Russian intervention in Crimea, and as a consequence of Russia's support (and importation) of separatist groups in Crimea and in the eastern regions of Ukraine, those who participated in Euromaidan became a target group, members of which have been persecuted for the mere fact of participation in Euromaidan and the expression of their political opinion about political, economic, and cultural integration with the European Union and affiliation with NATO. There were some tragic examples in Crimea. One of them is the death of Reshat Ametov, a Crimean Tatar and activist.<sup>181</sup> Ametov was kidnapped during a rally in Simferopol on March 3, 2014, by three unidentified people in military uniforms.<sup>182</sup> "His body was found bearing signs of torture on March 15, [2014,] near a village in the Belogorsky district."<sup>183</sup> In his talk, U.N. Assistant Secretary-General for Human Rights, Mr. Šimonovic, highlighted the cases of several activists who

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during a particular year and its social impact. "Euromaidan" - *Word of the Year Ukrainian Language*, ЗІК (Dec. 27, 2013), [http://zik.ua/ua/news/2013/12/27/jevromaydan\\_slovo\\_roku\\_ukrainskoi\\_movy\\_450269](http://zik.ua/ua/news/2013/12/27/jevromaydan_slovo_roku_ukrainskoi_movy_450269).

175. Svetlana Kozlenko & Jim Heintz, *Troubled Ukraine Marks Year Since Protest Bloodbath in Kiev*, AP (Feb. 20, 2015), <http://wayback.archive.org/web/20150221015130/http://abcnews.go.com/International/wireStory/troubled-ukraine-marks-year-protest-bloodbath-kiev-29103345>.

176. See Directorate General for External Policies Policy Dep't, *The Situation of National Minorities in Crimea Following its Annexation by Russia*, PARL. EUR. DOC. PE 578.003 (Apr. 2016) at 7, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO\\_STU\(2016\)578003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

177. See *id.*

178. See *id.*

179. See Grzegorz Rossolinski-Liebe, *Celebrating Fascism and War Criminality in Edmonton: The Political Myth and Cult of Stepan Bandera in Multicultural Canada*, KAKANEN REVISITED, at 2 (Jan. 29, 2010), <http://www.kakanen-revisited.at/beitr/fallstudie/grossolinski-liebe2.pdf>.

180. See *Putin: Russian Citizens, Troops Threatened in Ukraine, Need Armed Forces' Protection*, RUSSIA TODAY (Mar. 1, 2014), <https://www.rt.com/news/russia-troops-ukraine-possible-359/>.

181. *Rights in Retreat: Abuses in Crimea*, *supra* note 110.

182. *Id.*

183. *Human Rights at Heightened Risk in Crimea*, CIVIL SOLIDARITY (Mar. 20, 2014), <http://www.civicsolidarity.org/article/902/human-rights-heightened-risk-crimea>.

were “unaccounted for, including Andrey Shchekun, Anatoliy Koval’skiy and his son, Sergey Koval’skiy, Mr. Taneev, and Mikhail Vdovchenko.”<sup>184</sup> “He stressed that the human rights of all must be respected throughout Ukraine, including in Crimea, and particularly the right of all to participate in public affairs and political life without discrimination.”<sup>185</sup>

### **III. The Status of People Who Fled Crimea: The Conundrum of International Law**

The issue of *de jure* and *de facto* jurisdiction of the state and of the occupying power, as well as the location and regime of the international border, raises substantial doubts whether international law offers an adequate criterion to classify many displaced persons, particularly those who have fled foreign occupation.<sup>186</sup> This article argues that people who have fled foreign occupation remain in a unique situation, compared to other *de facto* refugee categories and, in particular, that their status should be distinguished from those who are categorized as internally displaced persons.

#### **A. FORCED MIGRATION IN UKRAINE THROUGH THE LENS OF THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

According to data from the Ministry of Social Policy of Ukraine, as of August 28, 2015, there were 1,459,226 internally displaced persons (IDPs) in Ukraine; and, according to the State Emergency Service of Ukraine, there are some 20,000 IDPs from Crimea.<sup>187</sup> That number might be even higher, however, because implementation of the centralized registration system has not yet been completed.<sup>188</sup>

The Republic of Ukraine does not recognize the result of the “referendum” in Crimea, nor does it recognize Russia’s annexation of Crimea.<sup>189</sup> Instead, Ukraine has declared that the status of Crimea is that of

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184. *Ukraine – UN human rights monitors deployed to assess recent and ongoing violations*, UN HUMAN RIGHTS OFF. HIGH COMM’R, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14372#sthash.FHuevIe8.dpuf>.

185. *Id.*

186. *Ukraine IDP Figures Analysis*, IDMC (Aug. 2015), <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>; see also *Internal Displacement Statistics in Ukraine*, UNCHR, <http://unhcr.org.ua/en/who-we-help/internally-displaced-people> (last visited April 18, 2015); *Global Overview 2015: People Internally Displaced by Conflict and Violence*, IDMC (May 2015), <http://www.nrc.ch/publications/2015/global-overview-2015-people-internally-displaced-by-conflict-and-violence>.

187. *Internal Displacement Statistics in Ukraine*, *supra* note 187; *Global Overview 2015*, *supra* note 186.

188. *Internal Displacement Statistics in Ukraine*, *supra* note 187; *Global Overview 2015*, *supra* note 186.

189. See *Zakon Ukrainy pro Zabezpechennia Prav i Svobod Hromadian ta Pravovyj Rezym na Tymchasovo Okupovaniij Terytorii Ukrainy* [Law of Ukraine on Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine], VERKHOVNOI RADY UKRAINY [VRU][Verkhovna Rada of Ukraine] 2014, No. 1207-VII,

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a temporarily occupied territory, the result of Russian military aggression.<sup>190</sup> In its own legal framework, Ukraine defines IDPs in its Law on Ensuring of Rights and Freedoms of Internally Displaced Persons.<sup>191</sup> According to this statute, internally displaced persons are people who permanently reside in Ukraine, and who were forced to leave or who voluntarily left their residence as a result or “to avoid the negative impact of armed conflict, temporary occupation, situations of generalized violence, mass violations of human rights, or disasters of natural or human-made origin.”<sup>192</sup>

The geography of the occupation extends from Crimea to the eastern parts of Ukraine, the Donetsk and Lugansk regions (referred to collectively as the Donbas region). But the occupation in the Donbas region differs from the one in Crimea. Crimea, being annexed by the Russian Federation, became totally subject to Russian legislation.<sup>193</sup> Consequently, the Republic of Ukraine has been divided into: (1) territory that remains under the jurisdiction of the Ukrainian government; (2) territory under Russian *de facto* and full internal *de jure* control (Crimea); (3) and territory under *de facto* control of a Russian “puppet government,” or “rebels” (as denominated by the international media; “separatists” and “terrorists” as denominated by Ukraine) who are supported by Russia with ordnance, troops, leadership, and money.<sup>194</sup> This third category eventually led to the establishment of two self-proclaimed republics: “The Donetsk Peoples Republic” and “The Lugansk Peoples Republic.”

[The modern term of occupation emphasizes not as much] the course through which the territory came under the foreign state’s control, whether through actual fighting or otherwise, but rather on the phenomenon of occupation: the exceptional exercise of public power by one state in a foreign territory and over its inhabitants. This phenomenon can be defined as the effective control of a power over territory to which that power has no sovereign title, without the volition of the sovereign of that territory. . . . [T]he territorial scope of state parties’ obligations under most human rights treaties encompass areas

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available at <http://zakon4.rada.gov.ua/laws/anot/uk/1207-18> [hereinafter Law on Occupied Territory].

190. *Id.* at art. 3.

191. See Zakon Ukrainy pro Zabezpechennia Prav i Svobod Vnutrishnio Peremishenykh Osib [Law of Ukraine on Ensuring of Rights and Freedoms of Internally Displaced Persons], VERKHOVNOI RADY UKRAINY [VRU][Verkhovna Rada of Ukraine] 2015, No. 921-VIII, available at <http://unhcr.org.ua/en/who-we-help/internally-displaced-people> [hereinafter Law on IDPs].

192. *Id.* at art. 1.

193. Dogovor mezdu Rossiiskoi Federatsiei i Respublikoi Krym o Priniatii v Rossiiskuyu Federatsiu Respubliki Krym i Obrazovanii v Sostavie Rossiiskoi Federatsii novykh sub'ektov [Agreement Between the Russian Federation and the Republic of Crimea Regarding the Annexation of the Republic of Crimea and Creating of New Subjects Within the Russian Federation] Mar. 18, 2014, available at <http://kremlin.ru/events/president/news/20605> [hereinafter Agreement Regarding Annexation].

194. *Id.*

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“under their jurisdiction” which means under their “effective control,” and occupied territories would be included under that definition. . . . According to the principle of the continuity of obligations, as endorsed by the UN Human Rights Committee, . . . the rights guaranteed under the [International Covenant on Civil and Political Rights] belong to the people living in the territory of a State party, and that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding changes in the administration of that territory.<sup>195</sup>

The Law of Occupation consists of the law of international armed conflict, which is based on the Hague Regulations of 1907, the Fourth Geneva Convention of 1949 (GCIV), the Additional Protocol to the Geneva Conventions of 1949 (Protocol I), customary international law, and the body of human rights law.<sup>196</sup> As Francois Bugnion states,

international humanitarian law has many provisions protecting refugees, stateless persons and internally displaced persons, all of whom are also covered by the general rules protecting the civilian population from the effects of the hostilities and from forcible transfers and deportation; refugees and stateless persons are further protected by rules that relate specifically to them.”<sup>197</sup>

Unlike refugees who flee their homeland because their state cannot or will not protect them or because their state itself causes them harm, Crimean Ukrainians have been seeking protection from Ukrainian authority. Crimean migrants are people who flee Russian (foreign) occupation but have features that distinguish them from other forced migrants in Ukraine. There are three reasons to distinguish Crimean people from other migrants in Ukraine:

1. Crimea is an example of direct imposition of foreign sovereignty over the territory of another sovereign state. Annexation of Crimea led to Constitutional changes in Russia; consequently, Russian legislation became binding in Crimea.<sup>198</sup>
2. Crimea has one of the most diverse populations in Ukraine, featuring an indigenous population (Crimean Tatars), one of the most vulnerable groups in the occupied territory.<sup>199</sup>

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195. Eyal Benvenisti, *THE INTERNATIONAL LAW OF OCCUPATION* 3, 14-15 (2d ed. Oxford Univ. Press. 2012).

196. See Francois Bugnion, *Refugees, Internally Displaced Persons, and International Humanitarian Law*, 28 *FORDHAM INT'L L.J.* 1397, 1399-1403 (2004). Ukraine and the Russian Federation are both parties to the aforementioned documents.

197. *Id.* at 1408.

198. *The Situation of National Minorities in Crimea Following its Annexation by Russia*, *supra* note 176, at 12, 25.

199. *Id.* at 8.

3. Russian legislation substantially limits the rights and freedoms of the indigenous people of Crimea, and those of Ukrainian citizens.<sup>200</sup>

There are at least four categories of Crimeans who comprise vulnerable or targeted groups and who remain in or have potential to acquire a “refugee-like” status.

- Crimean Tatars;
- Families of Ukrainian military personnel;
- Ukrainian nationalists and activists who were involved in “Maidan” and anti-Russian war rallies and protests;
- Priests and clergy of the Ukrainian Orthodox Church and of the Ukrainian Greek Catholic Church.<sup>201</sup>

According to the official perspective of the Ukrainian government, people who fled Crimea are citizens of Ukraine and are treated as internally displaced persons (IDPs).<sup>202</sup> Such position is absolutely consistent with the position of UNHCR.<sup>203</sup>

The status of IDPs is described in the Guiding Principles on Internal Displacement.<sup>204</sup> Regardless of its non-binding nature, the Guiding Principles is the only international document that reflects current practice and addresses “the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. . . . They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.”<sup>205</sup> The ideology of the document is expressed by Francis Deng: “The overarching rationale and foundation of the Principles is a positive interpretation of the notion of sovereignty as entailing responsibility, as stated in Principle 3: ‘[n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.’”<sup>206</sup>

The situation in Crimea, however, wherein the people who flee territories that are occupied as a result of foreign invasion, is inconsistent with the framework of “internally displaced persons,” and, in particular, with how “internally” correlates with territorial, jurisdictional, international, and citizenship dimensions. Appropriately defining the legal status of those who

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200. *Id.*

201. *See id.* at 14-7.

202. Law on IDPs, *supra* note 191, at art. 1.

203. *See* UNHCR Reg'l Representation for Belr., Mold. and Ukr., *UNHCR's preliminary comments on draft legislation regarding the rights and obligations of citizens on the territory of the Autonomous Republic of Crimea*, UNCHR (Mar. 23, 2014), <http://unhcr.org.ua/en/2011-08-26-06-58-56/news-archive/1242-unhcr-concerned-by-ukrainian-draft-legislation-affecting-the-rights-of-displaced-persons-from-crimea>.

204. Guiding Principles, *supra* note 3.

205. *Id.* at intro. n. 9.

206. Francis Deng, *International Response to Internal Displacement: A Revolution in the Making*, 11 HUM. RTS BRIEF 1, 2 (2004).

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flee foreign occupation is essential. Legal status cannot focus exclusively on needs, which are to a large degree similar for all displaced persons. Rather, it must follow from the nature of the conflict. Only then may adequate judicial remedies be determined involving the appropriate parties.

One of the most inspiring things about the London Declaration is that it “establish[es] minimum standards of responsibilities by which States, *de facto* authorities, the United Nations and other organizations, both governmental and nongovernmental, may be expected to implement those aspirations.”<sup>207</sup> The standards for establishing the responsibilities of the competent authority are the keys to the solution of such flight and its consequences.

Analysis of the political and military situation and the social and economic circumstances in Ukraine raises substantial doubts regarding consistency between the status of IDPs described in the Guiding Principles on Internal Displacement and the actual status of those who flee foreign occupation.<sup>208</sup> The significance of such inconsistency is evident when considering the Law of Ukraine on IDPs, the inability of those who fled to return safely to their home environment, and their ineligibility to be compensated in an appropriate way.<sup>209</sup> Moreover, the bureaucracy that the Law of Ukraine establishes for IDP’s is inadequate for people who have fled foreign occupation.<sup>210</sup>

For example, according to Art. 4, the fact of internal displacement is evidenced by a certificate of registration of the internally displaced person, which is valid for six months from date of issuance.<sup>211</sup> Validity of this certificate may be extended for the next six months, but the displaced person must again follow the same procedure.<sup>212</sup> Another provision imposes some obligations on IDPs, *inter alia*, to visit the relevant social protection department of the authorized state migration body once every six months; and to inform the nearest local department of the central executive body that implements state policy on migration (immigration and emigration) of Ukraine within ten days of a new residence.<sup>213</sup> Those who return to the abandoned place of previous residence in Crimea or move abroad for permanent residence lose IDP status<sup>214</sup> and along with it guarantees of compensation for the flight.<sup>215</sup> Such procedural requirements might be justified for some categories of IDPs, but not for those who fled foreign occupation. As stated in Thomas Grant’s article,<sup>216</sup> a “legal policy in

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207. London Declaration, *supra* note 90, at 10.

208. See Guiding Principles *supra* note 3.

209. See Law on IDPs, *supra* note 191.

210. See *id.* at art. 4, 9, 12.

211. *Id.* at art. 4.

212. *Id.*

213. *Id.* at art. 9.

214. *Id.* at art. 12.

215. See *id.* at art. 15.

216. Thomas D. Grant, *International Dispute Settlement in Response to an Unlawful Seizure of Territory: Three Mechanisms*, 16 CHICAGO J. INT’L LAW 3 (2015), available at: <http://chicago.unbound.uchicago.edu/cjil/vol16/iss1/3>.

response to an unlawful territorial situation is likely to be for a *longue durie*.”<sup>217</sup> Grant refers to Namibia, such status lasting for the entire “time of the unlawful continuation of South Africa’s presence there”; to Northern Cyprus, and the period “since that area’s purported separation from the Republic of Cyprus in the 1980s”; and to the policy reflected by “Russia’s presence since the early 1990s in the Transdnistria region of Moldova.”<sup>218</sup> So, considering the timing and inefficiency of international territorial dispute settlement, generations of people who fled Crimea would likely remain in the status of IDP’s, despite Crimea’s designation as “temporarily occupied territory.”<sup>219</sup> This unacceptable *status quo* ultimately will likely result in a challenge to the status of IDP for Crimeans who fled their homeland because of Russia’s territorial larceny.<sup>220</sup>

Considering the issue of *de jure* and *de facto* jurisdiction over Crimea; considering the issue of the international conflict, and questions relating to the location of the international border; considering Russian insistence on the legality of the “Crimean referendum” (and thus the purported legitimacy of the annexation of Crimea); and, finally, considering Russia’s complicity in abuses of human rights, the term “internally” is inappropriately applied to this category of people. The key characteristic here is the fact that people fled from imposition of foreign sovereignty. The question of jurisdiction is in issue as is the legal framework in which national authority functions. Annexation of Crimea prevents Ukraine from any effective control over Crimean territory, and over Ukrainian nationals who remain there. Only the Russian Federation enjoys internal effective control, although illegal in all respects. Annexation of Crimea and the city of Sevastopol, imposition of Russian sovereignty, and actual imposition of effective control over the territory and people of Crimea are all factors that lead to the ineluctable conclusion that Russia is an occupying power.

Despite the non-obligatory nature of the Guidelines and despite the threshold question of the applicability of the concept of IDP to the legal status of those who fled this foreign occupation, it is the absolute responsibility of the state to ensure and to protect the whole spectrum of human rights, and to prevent displacement.<sup>221</sup> Moreover, such is the responsibility of the state that possesses effective control over the territory.<sup>222</sup> In this case, that state is the Russian Federation.

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217. *Id.* at 8.

218. *Id.*

219. *See id.* at 3-4.

220. *See id.* at 7-8.

221. Guiding Principles, *supra* note 3.

222. *Id.* at intro. n. 4-5.

B. THE ISSUE OF AN INTERNATIONAL BORDER

As previously stated, the definition of IDPs derives from the Guiding Principles on Internal Displacement.<sup>223</sup> Accordingly,

internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and *who have not crossed an internationally recognized state border*.<sup>224</sup>

The last point in this definition is crucial. It serves as the main criterion to distinguish IDPs from other groups of forced migrants and, at the same time, unites different categories of IDPs under a similar legal regime.<sup>225</sup>

The London Declaration utilizes the same criteria; however, its authors broaden the concerns of international law to encompass all persons who have been forcibly uprooted from their homes, regardless of whether they have crossed national borders.<sup>226</sup> In the context of the Crimean crisis, one of the main questions is whether the people who fled Russian occupation, and Russia's imposition of foreign sovereignty over Crimea, remain within the borders of their habitual residence. The other critical question is whether the criterion of "internationally recognized state border" is equally meaningful for all categories of IDPs.<sup>227</sup>

There are at least three perspectives of analysis regarding the status of the border between Ukraine and Crimea: Ukrainian, Russian, and international.

1. *The Ukrainian Perspective*

Ukraine does not recognize an international border between Ukraine and the Crimean peninsula.<sup>228</sup> According to the Law "On Ensuring Civil Rights and Freedoms and the Legal Regime On the Temporarily Occupied Territory of Ukraine," Crimea remains a part of Ukraine, but has the status of "temporarily occupied territory" due to Russian military aggression.<sup>229</sup>

There are currently two inter-state applications lodged by Ukraine against Russia related to Crimea and pending before the European Court of Human

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223. *Id.* at annex n. 2.

224. *Id.* (emphasis added).

225. *See id.*

226. London Declaration, *supra* note 91; L.T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, 9 J. REFUGEE STUD. 27, 30-37 (1996); L.T. Lee, *Legal Status of Internally Displaced Persons*, 86 ASIL PROC. 631 (1992).

227. London Declaration, *supra* note 90, at 5.

228. Law on Occupied Territory, *supra* note 189.

229. *Id.* at art. 1.

Rights (ECHR).<sup>230</sup> The first case, *Ukraine v. Russia* (No. 20958/14), “lodged on March 13, 2014, concerns the events leading up to and following the assumption of control by the Russian Federation over the Crimean peninsula from March 2014, and subsequent developments in Eastern Ukraine up to the beginning of September 2014.”<sup>231</sup> The other case, *Ukraine v. Russia IV* (No. 42210/15), “mainly covers the period as from September 2014.”<sup>232</sup> It states:

[T]he Ukrainian Government maintain that Russia has exercised and continues to exercise effective control over Crimea and – by controlling separatists and armed groups there – *de facto* control over the regions of Donetsk and Luhansk. . . . The Government of Ukraine [*inter alia*] further refer to arbitrary arrests of Crimean Tatars and pro-Ukrainian activists, to searches and seizures of churches, and to the abduction and detention of priests as hostages. The Ukrainian Government state that, due to the Russian control of Crimea, the operation of Ukrainian law enforcement and judicial authorities there are suspended [notwithstanding that some of the judicial personnel continue to work there under Russian jurisdiction]. . . . There are also more than 1,400 individual applications apparently related to the events in Crimea or the hostilities in Eastern Ukraine pending before the ECHR. They have been lodged against both Ukraine and Russia, or exclusively against one of those States.<sup>233</sup>

## 2. *The Russian Perspective*

Crimea is an Autonomous Subject of the Russian Federation. On March 20, 2014, at the State Duma, the Minister of Foreign Affairs, at President Putin’s request, presented two major issues related to Crimea.<sup>234</sup> The first was the ratification of the Agreement between the Russian Federation and the Republic of Crimea regarding the annexation of the Republic of Crimea by the Russian Federation,<sup>235</sup> the second being the creation in the Russian Federation of new subjects of the federation in the Republic of Crimea and its capital city, Sevastopol.<sup>236</sup> After ratification of the Agreement and adoption of the Constitutional Law No. 475944-6 “On the Acceptance of

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230. Press Release, European Court of Human Rights, European Court of Human Rights communicates to Russia new inter-State case concerning events in Crimea and Eastern Ukraine (Jan. 10, 2015), *available at* <http://hudoc.echr.coe.int/eng-press#>).

231. *Id.* at 1.

232. *Id.*

233. *Id.* at 1, 2 (emphasis added).

234. *Speech by the Russian Foreign Minister, Sergey Lavrov, and His Answers to Questions from Deputies During the Plenary Session of the State Duma of the Russian Federation, Moscow*, MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION (Mar. 20, 2014), [http://www.mid.ru/en/web/guest/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/69626](http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/69626).

235. *Agreement Regarding Annexation*, *supra* note 193.

236. *Speech by the Russian Foreign Minister Sergey*, *supra* note 234.

the Republic of Crimea into the Russian Federation and the Creation in the Russian Federation of New Subjects Crimea and the City of Federal Importance of Sevastopol” by the Duma, President Putin signed the Law on March 21, 2014.<sup>237</sup> Four hundred forty-five deputies unanimously voted in favor of the law.<sup>238</sup> According to the new Russian Law, the border between the republic of Crimea and Ukraine is the state border of Russia.<sup>239</sup> All inhabitants of Crimea and Sevastopol became citizens of Russia unless they claimed within the period of one month following the day of the referendum that they desire to preserve other citizenship.<sup>240</sup> Russia unilaterally imposed full internal jurisdiction over the territory and over the people of Crimea.<sup>241</sup>

### 3. *The International Perspective*

On March 24, 2014, the United Nations General Assembly adopted a Resolution “calling on States not to recognize changes in the status of Crimea. . . .” (Resolution on Territorial Integrity of Ukraine).<sup>242</sup> The outcome of the voting was 100 states in favor, 11 against, and there were 58 abstentions.<sup>243</sup> As it is stated in a press release:

the Assembly called on States to “desist and refrain” from actions aimed at disrupting Ukraine’s national unity and territorial integrity, including by modifying its borders through the threat or use of force. It urged all parties immediately to pursue a peaceful resolution of the situation through direct political dialogue, to exercise restraint, and to refrain from unilateral actions and inflammatory rhetoric that could raise tensions. . . . The draft resolution broke no new legal or normative ground, but sent an essential message that the international community

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237. Federal’nyi Konstitutsionnyy Zakon RF o Priniatii v Rossiiskuju Federatsiju Respubliki Krym i Obrazovanii v Sostavie Rossiiskoi Federatsii novykh sub’ektov – Respubliki Krym i Goroda Federalnogo Znachenia Sevastopolia [Federal Constitutional Law RF on the Acceptance of the Republic of Crimea into the Russian Federation and the Creation in the Russian Federation of New Subjects Crimea and the City of Federal Importance of Sevastopol], SOBRANIE ZAKONODATEL’SIVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 6-FKZ, art. 3, *available at*, *at* [www.pravo.gov.ru/N\\_0001201412310007](http://www.pravo.gov.ru/N_0001201412310007).

238. Neil MacFarquhar, *Odd Man Out When vote Was 445-1 on Crimea*, NEW YORK TIMES (Mar. 28, 2014), <http://nyti.ms/1dAO1TE>.

239. The Voice of Russia, *Crimea is Now Part of Russia: Putin Signs Treaty*, GLOBAL RESEARCH (Mar. 18, 2014), <http://www.globalresearch.ca/cremia-is-now-part-of-russia-putin-signs-treaty/5373953>.

240. *Id.*; *see also* Federal Constitutional Law RF on the Acceptance of the Republic of Crimea into the Russian Federation and the Creation in the Russian Federation of New Subjects Crimea and the City of Federal Importance of Sevastopol, *supra* note 237, at art. 4.

241. *See* The Voice of Russia, *supra* note 239.

242. Press Release, General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region, U.N. Meetings Coverage and Press Release GA/11493 (Mar. 27, 201), *available at* <http://www.un.org/press/en/2014/ga11493.doc.htm>.

243. *Id.*

would not allow events in Crimea to set a precedent for further challenges to the rules-based international framework.<sup>244</sup>

The “referendum” in Crimea was also announced as illegitimate by the European Commission for Democracy through Law, the Organization for Security and Cooperation in Europe, and other international organizations.<sup>245</sup>

That being said, from international and Ukrainian perspectives, people who fled Crimea did not cross an internationally recognized border. They retained their nationality, and the Ukrainian government is responsible for all necessary legal, material, and social support. These factors seem to be essential if people who fled Crimea fall into the category of Internally Displaced Persons (IDPs). Current international practice and the position of UNHCR, particularly in the case of Crimea, speak in favor of this conclusion; however, such an approach is more idealistic than practical. It does not take into account existing Russian *de facto* effective control, *de facto* sovereignty, and, consequently, it does not facilitate a solution for the occupied state nor adequately determine the unique status of these displaced people.

C. THE DISTINCTION BETWEEN PERSONS WHO FLEE FOREIGN  
OCCUPATION AND THOSE DEFINED AS “INTERNALLY  
DISPLACED PERSONS”

Although the Guiding Principles are not binding, the document sets forth the priorities for international practice and is the basis for recommendations for national policies regarding IDPs.<sup>246</sup> The status of those who flee foreign occupation challenges the contextualization of this category of migrants within the concept of IDPs.<sup>247</sup> The nature of the conflict, that is, whether it is international or non-international, is determinative as to whether those who are fleeing Crimea should be subject to the Guidelines.<sup>248</sup> To answer the question whether the certain group of migrants meets the criteria of IDPs, three essential factors shall be considered.

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244. *Id.*

245. *See id.*; Eur. Comm. for Democracy Through Law (Venice Comm.), *Opinion on Whether the Decision Taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to Organize a Referendum on Becoming a Constituent Territory of the Russian Federation or Restoring Crimea's 1992 Constitution is Compatible with Constitutional Principles*, 98th Plenary Sess., Opinion No. 762/2014 (Mar. 21, 2014), available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CCDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CCDL-AD(2014)002-e); *Chair Says Crimean Referendum in its Current Form is Illegal and Calls for Alternative Ways to Address the Crimean Issue*, OSCE (Mar. 11, 2014), <http://www.osce.org/cio/116313>.

246. *Guiding Principles*, *supra* note 3, at intro. n. 9-11.

247. *See id.* at annex n. 2.

248. *See id.*

1. *The Nature of the Conflict*

Determination of the nature of the conflict is essential to identify the proper legal framework to apply to these circumstances. The status of the parties to the conflict must first be determined in assessing the nature of vulnerable groups, reasons for their flight, and the appropriate *locus* of liability and compensation.

Regardless of international non-recognition of the border that Russia postulates, the mere fact that this issue is a matter of international concern and involves an international dispute between states raises the question of the applicability of the term “*internally displaced persons*.”<sup>249</sup> The fulcrum of the dispute lies in the international relationship between the Russian Federation and Ukraine, not between Ukraine and Crimea.

The Guiding Principles do not reflect the issue of internationality, nor reparation and compensation in an international context.<sup>250</sup> On the contrary, Principle 3 (1) addresses the “primary duty and responsibility” as being reposed in the national authority.<sup>251</sup> As a practical matter, what this means is that Ukraine has the primary duty and responsibility for Crimean displaced persons within the territory under Ukrainian control.<sup>252</sup>

The Guidelines base the main responsibility for IDPs at the particular stage of the initiation of displacement.<sup>253</sup> This is grounded, for example, in Principle 7, which refers to the “decision” of the state that is identified as the impetus for displacement, and refers to the state as the “authorities undertaking such displacement . . . .”<sup>254</sup> This principle informs the process and determines the legality of a state’s decision of displacement for the purpose of protecting IDPs’ rights.<sup>255</sup> In the Crimean case, as well as in other similar situations, however, the flight of the people is not due to the internal policy of the state. The Ukrainian government did not cause the displacement of the people of Crimea. It is, rather, a spontaneous response of people to the threat of foreign aggression, and a change in the *status quo* in Crimea. The displaced people have made a conscious decision to remain under the jurisdiction of Ukraine instead of staying under the control of the Russian occupying power.

2. *De Jure and De Facto Control of the State over the Occupied Territory*

Russia established the national border with Ukraine based on the territory that had been formerly denominated the Autonomous Republic of Crimea.<sup>256</sup> Although it is nationally and internationally recognized that

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249. *See id.*

250. *See id.* at annex n. 2, princ. 3(1).

251. *Id.* at princ. 3(1).

252. *See id.*

253. *Guiding Principles*, *supra* note 3, princ. 7.

254. *Id.*

255. *See id.*

256. Agreement Regarding Annexation, *supra* note 193.

Ukraine retains its jurisdiction over the territory of Crimea, and the city of Sevastopol, the lack of control over these territories is problematic. Russia adopted its own law, taking jurisdiction over Crimea and the city of Sevastopol.<sup>257</sup> Although Russian law contradicts international law and is not recognized by the international community, Russia has effective military, political, and economic control over the territory of Crimea and its population.<sup>258</sup> Russia adopted new laws related to the national border, Crimea's political institutions, currency regulation, military service, social security, economic development, citizenship, etc.<sup>259</sup> The regime of the occupied territory requires special legal regulation from the Ukrainian legislature. The most challenging tasks for Ukrainian authority is to maintain the *status quo* of the people who live in Crimea, particularly in terms of their Ukrainian citizenship; to enable Ukrainians to enjoy the rights granted by the Ukrainian Constitution and legislation; and, at the same time, to prevent the occupying power from territorial extension and influence beyond Crimea.<sup>260</sup> Non-recognition of the border *de jure* still requires security measures related to the border with Crimea.<sup>261</sup> The Ukrainian government cannot neglect the necessity of maintaining some control over the border between Crimea and the Ukrainian mainland. It is crucial for preventing the movement of Russians and their military infrastructure to support terrorist and separatists in Donetsk and Lugansk. Such an existing *de facto* border, ironically, leads to the limitation of human rights of Ukrainian citizens, whether they are among those who fled Crimea for the mainland, or whether they are among those who have stayed in Crimea and consequently have become "disconnected" from the mainland.<sup>262</sup>

### 3. De Jure and De Facto Control of the State over the People

The reference in the Guidelines to "national authorities" encompasses not only a territorial dimension, but refers to citizenship as well.<sup>263</sup> In the context of "internal displacement," the obvious link with national authority is Ukrainian citizenship.<sup>264</sup> If those who fled Crimea are Ukrainian citizens, the concept of "internal" probably could be justified to some extent. But what if a former Ukrainian and current Russian citizen flee Crimea to Ukraine? Would such a person be treated as a refugee, or IDP? This question further underscores the inapplicability of the concept of IDPs to those who flee foreign occupation and the imposition of sovereignty by an

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257. *Id.* at art. 1.

258. *See id.*

259. *Id.* at art. 5.

260. Law on Occupied Territory, *supra* note 189, at art. 18.

261. *Id.* at art. 10, 18.

262. *Id.* at art. 4, 10, 19.

263. *Guiding Principles*, *supra* note 3.

264. *See id.*

occupying power. Imposition of Russian citizenship<sup>265</sup> contradicts the law of occupation. The rules on citizenship in Crimea are very strict and have required Ukrainian citizens to make an extremely difficult choice: maintain Ukrainian citizenship, and thereby be limited in economic, social, and political rights; or accede to Russian citizenship, and thereby accept being subject to Russian jurisdiction, with the concomitant consequence of ultimately losing any possible protection from the state of Ukraine.

### Conclusion

At this time there is no explicit governing international law on the status and rights of IDPs, and scholarly discussion on this subject raises more questions than it answers. All categories of IDPs have similar needs, and all of them do need national and international support. The rights of IDPs are very well stated in the Guiding Principles on Internal Displacement but, in the case of foreign occupation, the duties and responsibilities are addressed to the wrong party.<sup>266</sup> The rights and freedoms of those who flee foreign occupation can not be safeguarded through the application of the guidelines regarding internally displaced persons.<sup>267</sup> The Principles also lack guidance for states and international organizations.<sup>268</sup> Ultimately, application of the Guiding Principles is the wrong approach to the Crimean situation, and it does not provide an appropriate perspective for adequate legal remedies. The cause of flight and its attendant circumstances require different legal, administrative, and political action.

The definition of the status of such persons is crucial in terms of clarification of the responsible state and potential international participation in resolving their plight. The obligation of the state to protect people's rights should be proportional to the jurisdiction that the state enjoys. Analysis of the Guiding Principles leads to the conclusion that they are

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265. Agreement Regarding Annexation, *supra* note 193, at art. 5; Federal'nyi Zakon RF o Pravovom Polozhenii Inostrannykh Grazdan Rossiiskoi Federatsii [Federal Law on Legal Status of Foreign Citizens in Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2002, No. 115-FZ, art. 2, 8, 9, available at <http://archive.mid.ru/ns-osndoc.nsf/e03e22cee6f0c66e43256c630041f8ac/a052819e48402515c32575d9002c4486?OpenDocument>. Citizens of Ukraine who remain in the territory of Crimea or in the city of Sevastopol are recognized as Russian citizens. If the Ukrainians preferred to maintain Ukrainian citizenship, they had to announce such an intention within one month and actually to apply to do so not later than January 1, 2015. These people have a right to obtain residence status for five years. Each year the Russian government defines a quota of how many people can possess the status of temporary residence. In 2014 the quota was 5000 for temporary residence in Crimea, and 400 in the city of Sevastopol. See also General Administration for Migration Issues of the Interior Ministry of Russia, GUVM, MVD.RU, [http://www.fms.gov.ru/russian\\_national/dlya\\_zhiteley\\_kryma\\_i\\_sevastopolya/chst\\_zdvm\\_vprs/](http://www.fms.gov.ru/russian_national/dlya_zhiteley_kryma_i_sevastopolya/chst_zdvm_vprs/) (last updated Mar. 17, 2016).

266. See *Guiding Principles*, *supra* note 3.

267. See *id.*

268. See *id.*

inadequate to deal with the existing circumstances in Crimea.<sup>269</sup> In their stead, four essential factors are herein proposed to establish a new category comprised of those migrants who have fled foreign occupation. First, the nature of the conflict, particularly whether it is an international armed conflict, must be considered. Secondly, the state of human rights in the occupied territory must be taken into account. Thirdly, it must be ascertained which state/s have *de jure* and *de facto* control over the occupied territory. And, finally, a determination must be made as to which state/s have *de jure* and *de facto* control over the people within the occupied territory.

In short, the international legal regime must consider the plight of Crimean Flight 2014 through a new and expanded lens of forced migration. Neither the rubric/definition of “refugee” nor that of “internally displaced person” is adequate protection.

### **Epilogue**

The classification of forced migrants, their needs, and international remedies all lead to a call for a practical solution. The final consequence must include fair compensation for displaced persons at the expense of the occupying power. The longevity of the occupation, exacerbated by its denial by Russia, has led to abuses of fundamental human rights. Ultimately what is necessary is the establishment of an independent international entity that would be responsible for registration of migrants and their claims. It would act as an Ombudsman Tribunal that would formally acknowledge the claims, evaluate damages and compensation, and serve as an intermediary in resolving the issues between the victims, the occupying state, and the state that has embraced the displaced people and their interests. Such a Tribunal would indirectly minimize interstate claims, act as a safety valve to release tension between the parties, and, most importantly, protect the rights of those who fled the occupied territory, regardless of whether they fled abroad or elsewhere in the country of their citizenship.

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<sup>269</sup>. *See id.*

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