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# THE EFFICACY AND IMPACT OF INTERIM MEASURES: UKRAINE'S INTER-STATE APPLICATION AGAINST RUSSIA

JULIA KOCH\*

**Abstract:** In 2013, Ukrainian President Viktor Yanukovich rejected an international agreement that had been formulated to strengthen political and economic ties between Ukraine and the European Union. A sharp divide between pro-Western and pro-Russian groups arose, and a pattern of protests and violence broke out in Kiev, spreading to the east and resulting in—among other things—the annexation of Crimea by Russia. The apparent role of the Russian government in this conflict led Ukraine to file an inter-state application against Russia in the European Court of Human Rights. Ukraine alleged that Russia was responsible for the violation of Ukrainian nationals' rights under the Convention for the Protection of Human Rights and Fundamental Freedoms. The court granted Ukraine's simultaneous request for interim measures, forbidding either Ukraine or Russia from using military action or from engaging in conduct of any kind that would violate Ukrainian nationals' Convention rights. Recent events suggest that both states have violated the order, making the interim measures seemingly ineffective. The inter-state application and interim measures are not, however, valueless as they have helped to encourage a more efficient, peaceful resolution.

## INTRODUCTION

Violence erupted across the country after Ukrainian President Viktor Yanukovich abandoned a monumental economic and political association agreement with the European Union (EU) in November 2013.<sup>1</sup> Ethnic and cultural divisions that had existed in Ukraine for centuries gave way to hostility as

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<sup>1</sup> See Will Englund & Kathy Lally, *Ukraine, Under Pressure from Russia, Puts Brakes on E.U. Deal*, WASH. POST (Nov. 21, 2013), [http://www.washingtonpost.com/world/europe/ukraine-under-pressure-from-russia-puts-brakes-on-eu-deal/2013/11/21/46c50796-52c9-11e3-9ee6-2580086d8254\\_story.html](http://www.washingtonpost.com/world/europe/ukraine-under-pressure-from-russia-puts-brakes-on-eu-deal/2013/11/21/46c50796-52c9-11e3-9ee6-2580086d8254_story.html) [<http://perma.cc/8NYL-5ELR>]; Ian Traynor & Shaun Walker, *Ukraine Violence: Dozens Killed as Protesters Clash with Armed Police*, GUARDIAN (Feb. 20, 2014, 11:00 AM), <http://www.theguardian.com/world/2014/feb/20/ukraine-protesters-force-riot-police-independence-square-kiev-battle-control> [<http://perma.cc/69HZ-4U5X>]; *Ukraine Protests After Yanukovich EU Deal Rejection*, BBC NEWS (Nov. 29, 2013), <http://www.bbc.com/news/world-europe-25162563> [<http://perma.cc/2HJV-CWPG>].

pro-Western protestors violently challenged Yanukovich's decision.<sup>2</sup> Armed pro-Russian groups countered this movement and took over a collection of government buildings throughout eastern Ukraine.<sup>3</sup> Since the beginning of the fighting, the civilian death toll and human rights abuses have risen consistently.<sup>4</sup> The annexation of Crimea by Russia in early 2014 not only challenged the state sovereignty of Ukraine but also gave way to additional human rights violations in the region.<sup>5</sup> In the face of continued violence and Russian influence, Ukraine filed an inter-state application against Russia seeking relief before the European Court of Human Rights (ECtHR) and alleging, among other things, the violation of Ukrainian nationals' right to life and right to freedom from torture or inhuman and degrading treatment.<sup>6</sup> The court granted Ukraine's simul-

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<sup>2</sup> See *Ukraine History: Independent Ukraine*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/314882/The-Maidan-protest-movement> [<http://perma.cc/BV56-9EVN>] (last updated Feb. 11, 2015); *Ukraine*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine> [<http://perma.cc/H7TM-YAB7>] (last updated Feb. 11, 2015); *Ukraine History: Prehistory*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/275902/Cultural-institutions#toc30061> [<http://perma.cc/JW65-QNUC>] (last updated Feb. 11, 2015).

<sup>3</sup> See Roland Oliphant, *Ukraine Crisis: Russian Flag Raised in Crimea as Gunmen Storm Parliament*, TELEGRAPH (Feb. 27, 2014, 7:25 AM), <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10664381/Ukraine-crisis-Russian-flag-raised-in-Crimea-as-gunmen-storm-parliament.html> [<http://perma.cc/64Z5-HQC3>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>4</sup> See OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, REPORT ON HUMAN RIGHTS SITUATION IN UKRAINE, ¶ 4 (Sept. 16, 2014), [http://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf) [<http://perma.cc/PUQ9-KGDS>] [hereinafter SEPTEMBER REPORT]; OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, REPORT ON HUMAN RIGHTS SITUATION IN UKRAINE, 14 (May 15, 2014), <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf> [<http://perma.cc/F2FK-9L5J>] [hereinafter MAY REPORT]; *UN Chief 'Gravely Concerned' as Civilian Death Toll from Ukraine Conflict Continues to Rise*, UN NEWS CENTRE (Feb. 5, 2015), <http://www.un.org/apps/news/story.asp?NewsID=50001#.VIJqpPmrTIW> [<http://perma.cc/E6ZA-T9AB>] [hereinafter *UN Chief 'Gravely Concerned'*].

<sup>5</sup> See MAY REPORT, *supra* note 4, at 4, 34; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>6</sup> See Press Release, Eur. Court of Human Rights, European Court of Human Rights Deals with Cases Concerning Crimea and Eastern Ukraine (Nov. 25, 2014), <http://hudoc.echr.coe.int/webservices/content/pdf/003-4945099-6056223> [<http://perma.cc/Y9GC-BQ3K>] [hereinafter November Press Release]; Press Release, Eur. Court of Human Rights, Interim Measure Granted in Inter-State Case Brought by Ukraine Against Russia, (Mar. 13, 2014), <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4699472-5703982> [<http://perma.cc/W7KF-UKFW>] [hereinafter March Press Release]. In addition to this application, *Ukraine v. Russia* (App. No. 20958/14), Ukraine also filed three additional inter-state applications against Russia: *Ukraine v. Russia II* (App. No. 43800/14), which was lodged in June 2014 and asserts claims regarding the abduction of children in eastern Ukraine; *Ukraine v. Russia III* (App. No. 49537/14), which alleges that Russia mistreated and deprived a Ukrainian national of his liberty, although it was later struck from the court's docket and replaced by an individual application against Russia; and *Ukraine v. Russia IV* (App. No. 42410/15), which was lodged in August 2015 and concerns human rights abuses that occurred during the fighting of September 2014. Press Release, Eur. Court of Human Rights, Russia Press Country Profile 14 (Oct. 15, 2015), [http://www.echr.coe.int/Documents/CP\\_Russia\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf) [<http://perma.cc/9E32-D7YV>]. More than 1400 individual applications have been filed against Russia in connection with the ongoing conflict in Crimea and eastern Ukraine. *Id.* at 14–15.

taneous request for interim measures due to the dangerous and volatile situation in the region; however, the court has yet to make an admissibility determination or to rule on the merits.<sup>7</sup> Nevertheless, *Ukraine v. Russia* is unique because of the procedure surrounding inter-state applications, the nature of ECtHR interim measures, and the implications the case may have on global politics.<sup>8</sup>

Part I of this Note provides a background on Ukrainian history and details the recent conflict sparked by the failed EU agreement. It also describes the procedure and nature of Ukraine's inter-state application and the ECtHR's interim measures. Part II outlines the ECtHR's case law on inter-state applications, interim measures, and extraterritorial jurisdiction. Finally, Part III argues that the court's interim measures have not been effective, as both Ukraine and Russia have failed to comply with the court's order. That is not to say, however, that the interim measures are without value. Rather, the court's order can still contribute to the overall discourse and conflict resolution process in international law.

## I. BACKGROUND

### A. Ukrainian History

#### 1. From the Middle Ages to the Twentieth Century

Until the collapse of the Soviet Union in 1991, Ukraine was primarily controlled by outsiders, which contributed to the broad mix and variation in the Ukrainian culture that has developed over centuries.<sup>9</sup> Beginning in the mid-

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<sup>7</sup> See EUR. COURT OF HUMAN RIGHTS, PRACTICAL GUIDE ON ADMISSIBILITY CRITERIA 9 (2014), [http://www.echr.coe.int/Documents/Admissibility\\_guide\\_ENG.pdf](http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf) [<http://perma.cc/QYX9-6FV7>] [hereinafter ADMISSIBILITY CRITERIA]; November Press Release, *supra* note 6, at 1. The court granted Russia an extension of time to submit its "observations on the admissibility" of Ukraine's application, which was due on December 31, 2015. Press Release, Eur. Court of Human Rights, *European Court of Human Rights Communicates to Russia New Inter-State Case Concerning Events in Crimea and Eastern Ukraine* 1 (Oct. 1, 2015), <http://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-5187816-6420666&filename=ECHR%20communicates%20new%20inter-State%20case%20concerning%20events%20in%20Crimea%20and%20Eastern%20Ukraine.pdf> [<http://perma.cc/G59G-PH4B>]. An admissibility hearing will take place if one or more of the contracting parties requests a hearing, and is often accompanied by additional briefing and oral argument. EUR. COURT OF HUMAN RIGHTS, RULES OF COURT, R. 51 at 27, [http://www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf) [<http://perma.cc/5EWY-BQYS>]. There are procedural, jurisdictional, and merit-based grounds for which the court can find an application inadmissible. See ADMISSIBILITY CRITERIA, *supra*, at 22, 41, 82.

<sup>8</sup> See *Ukraine's Sharp Divisions*, BBC NEWS (Apr. 23, 2014), <http://www.bbc.com/news/world-europe-26387353> [<http://perma.cc/N5Z5-5SDU>]; Philip Leach, *Ukraine, Russia and Crimea in the European Court of Human Rights*, EJIL: TALK! (Mar. 19, 2014), <http://www.ejiltalk.org/ukraine-russia-and-crimea-in-the-european-court-of-human-rights/> [<http://perma.cc/M2AS-JA32>].

<sup>9</sup> See *Russia*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/513251/Russia> [<http://perma.cc/39J2-TT8Y>] (last updated Mar. 19, 2015); *Ukraine History: Lithuanian and Polish Rule*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/30063/>

fourteenth century and lasting for three hundred years, portions of Ukraine were ruled by the Tartar Golden Horde while others were concurrently ruled by the Grand Duchy of Lithuania and still others by the Kingdom of Poland.<sup>10</sup> In the mid-seventeenth century, a large tract of Ukraine experienced self-governance and independence as the result of a Cossack revolt; it was short-lived, however, and portions of the territory were partitioned to other powerful states in the region.<sup>11</sup> Following an additional sequence of annexations in the late-eighteenth century, much of present-day Ukraine came under the control of the Russian Empire while a fraction of its western land was partitioned by the Habsburg Empire.<sup>12</sup> By the end of the First World War, Ukraine became a part of the Soviet Union, where it remained until 1991.<sup>13</sup>

Following World War II, Ukrainians experienced a purge of foreign and non-Soviet ideas under the tight and repressive control of Joseph Stalin.<sup>14</sup> The repression of outside influence—for example, the prohibition of any publications in languages other than Russian—was known as Russification, and it was historically used to unify the various Russian territories.<sup>15</sup> Throughout the next half-century, Ukrainians were subject to a constant ebb and flow of Russification as Ukrainian political or cultural leaders would gain power and influence under a particular regime, only to have the advances of Ukrainian national development squashed during the next era.<sup>16</sup> For example, in the 1950s, Ukraini-

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Lithuanian-and-Polish-rule [<http://perma.cc/MJ6A-LC5L>] (last updated Feb. 11, 2015); *Ukraine, supra* note 2.

<sup>10</sup> *Ukraine History: Lithuanian and Polish Rule, supra* note 9.

<sup>11</sup> See PAUL KUBICEK, *HISTORY OF UKRAINE* 39–40 (2008); PAUL R. MAGOCSI, *THE HISTORY OF UKRAINE: THE LAND AND ITS PEOPLES* 242 (2d ed. 2010).

<sup>12</sup> See *Ukraine History: The Cossacks*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/30070/Right-Bank-and-western-Ukraine-until-the-Partitions-of-Poland> [<http://perma.cc/TB4Y-UT3H>] (last updated Feb. 11, 2015).

<sup>13</sup> *Ukraine History: Ukraine in the Interwar Period*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/30077/Ukraine-in-the-interwar-period> [<http://perma.cc/FV9J-F53G>] (last updated Feb. 11, 2015). Many of the small portions of present-day Ukraine that were not part of the Soviet Union in 1919 were later annexed by the Soviets in the 1939 Molotov-Ribbentrop Pact, in which the Soviet Union acquired a northwestern portion of Ukraine from Poland. *Id.* It also acquired a southwestern portion of Ukraine from Romania in a 1940 annexation. *Id.*

<sup>14</sup> See MAGOCSI, *supra* note 11, at 14.

<sup>15</sup> See KUBICEK, *supra* note 11, at 50; *Ukraine History: Lithuanian and Polish Rule, supra* note 9.

<sup>16</sup> See *Ukraine History: Soviet Ukraine in the Postwar Period*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/30085/The-period-of-Khrushchev> [<http://perma.cc/NFU2-MBCK>] (last updated Feb. 11, 2015); *Ukraine History: World War II and Its Aftermath*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/612921/Ukraine/275916/The-Nazi-occupation-of-Soviet-Ukraine> [<http://perma.cc/Y45B-WQ68>] (last updated Feb. 11, 2015). As part of this ebb and flow, Stalin used harsh tactics to suppress the development of Ukrainian nationality, sending hundreds of thousands of disloyal nationalists to concentration camps in Siberia. See *Ukraine History: Soviet Ukraine in the Postwar Period, supra*. Conversely, the mid-to-late-1980s marked mass mobilization and public demonstrations, which were successfully aimed at asserting the Ukrainian language, culture, and tradition. *Id.*; *Ukraine History: World War II and Its Aftermath, supra*.

an culture, literature, and economics flourished for a period of time under Nikita Khrushchev.<sup>17</sup> Only a few years later, however, Ukrainians found an increase in political repression while Ukrainian-language education and publications were restricted.<sup>18</sup> It was during this volatile period that the Soviets transferred Crimea to Ukraine in celebration of the 300th anniversary of their reunification.<sup>19</sup>

Despite resistance from Moscow, Ukraine began to break free from the Soviet government in the early 1990s when it held its first competitive parliamentary elections and declared its sovereignty.<sup>20</sup> As the Soviet Union began to unravel, Ukraine declared its full independence in August 1991.<sup>21</sup>

## 2. An Independent Ukraine

Although Ukraine was successful in building its international relationships, infrastructure, and military, it—like other former Soviet states—faced several key challenges after gaining independence, including the achievement of economic prosperity and maintenance of amicable relations with Russia.<sup>22</sup> Immediately after Ukrainian independence in 1991, tensions flared between Russia and Ukraine over Crimea, where ethnic Russians made up a majority of the population.<sup>23</sup> Crimea became an autonomous Ukrainian republic in 1991, shortly before a slight majority of Crimeans, somewhat unexpectedly, voted to support the Ukrainian referendum for independence.<sup>24</sup> Separatist movements in the region, however, soon developed with Russian support.<sup>25</sup> The separatist

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It was during this time that Ukrainian was formally denoted as the official language of the Ukrainian Republic. *Ukraine History: Soviet Ukraine in the Postwar Period, supra*.

<sup>17</sup> *Ukraine History: Soviet Ukraine in the Postwar Period, supra* note 16.

<sup>18</sup> *Id.*

<sup>19</sup> Mark Kramer, *Why Did Russia Give Away Crimea Sixty Years Ago?* WILSON CENTER, <http://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago> [http://perma.cc/ZG2R-J6VT] (last visited Jan. 5, 2016). Even today, what prompted Russia to gift Crimea to Ukraine is not clear in part because there was little explanation or documentation surrounding this 1954 decision. *Id.* It may be that Khrushchev, then First Secretary of the Communist Party, was seeking to build strength and power. *Id.* Gifting Crimea to Ukraine would help to cement Soviet power in Ukraine—particularly after a bloody Ukrainian civil war in the 1940s. *Id.* This gift—described by the Soviet government as reflecting the “unity of Russians and Ukrainians” and a “great and indissoluble friendship”—may also have been strategic because, by adding Crimea and its large Russian population to Ukrainian territory, Russian presence and identity increased in the region as did support for the Soviet regime. *Id.*; see MAGOCSI, *supra* note 11, at 22.

<sup>20</sup> See MAGOCSI, *supra* note 11, at 724; *Ukraine History: Soviet Ukraine in the Postwar Period, supra* note 16.

<sup>21</sup> See MAGOCSI, *supra* note 11, at 724.

<sup>22</sup> See *Ukraine History: Independent Ukraine, supra* note 2; *Ukraine History: Soviet Ukraine in the Postwar Period, supra* note 16.

<sup>23</sup> *Ukraine History: Independent Ukraine, supra* note 2.

<sup>24</sup> MAGOCSI, *supra* note 11, at 724; *Ukraine History: Independent Ukraine, supra* note 2.

<sup>25</sup> *Ukraine History: Independent Ukraine, supra* note 2.

movements ultimately were crushed in the mid-1990s when the Ukrainian government instituted direct political control over Crimea—although relations between Ukraine and Russia continued to flare periodically.<sup>26</sup>

In today's Ukraine, approximately 78% of the population is comprised of ethnic Ukrainians while roughly 17% identify as Russian and make up the largest ethnic minority.<sup>27</sup> Similarly, about 67% of the population speaks Ukrainian, the state's official language, and approximately 24% speaks Russian, which is considered a regional language.<sup>28</sup> A majority of the native Russians and Russian speakers live in the eastern and southern parts of Ukraine, bordering Russia and the Black Sea.<sup>29</sup> The 2010 presidential election between Yanukovich—who was supported by Russian President Vladimir Putin—and Yulia Tymoshenko—who was backed by Western states—demonstrated the geopolitical and cultural divide in Ukraine: the oblasts that voted for Yanukovich were those with the highest Russian populations in the east and south of Ukraine, and those oblasts that voted for Tymoshenko were primarily comprised of native Ukrainian speakers, located in central and western Ukraine.<sup>30</sup> Yanukovich won the election, taking approximately 49% of the votes.<sup>31</sup>

<sup>26</sup> *Id.*; see Kathy Lally, *Russian Forces in Ukraine: What Does the Black Sea Fleet in Crimea Look Like?* WASH. POST (Mar. 1, 2014), [http://www.washingtonpost.com/world/europe/russia-decides-to-send-troops-into-crimea-what-does-the-black-sea-fleet-look-like/2014/03/01/38cf005c-a160-11e3-b8d8-94577ff66b28\\_story.html](http://www.washingtonpost.com/world/europe/russia-decides-to-send-troops-into-crimea-what-does-the-black-sea-fleet-look-like/2014/03/01/38cf005c-a160-11e3-b8d8-94577ff66b28_story.html) [<http://perma.cc/KPM8-5Y63>]; Daniel Sneider, *Russia, Ukraine Agree to Split Black Sea Fleet*, CHRISTIAN SCI. MONITOR (June 18, 1993), <http://www.csmonitor.com/1993/0618/18062.html/%28page%29/2> [<http://perma.cc/AD7Y-2BTC>]. Which state was to control the former Soviet Black Sea navy fleet stationed in Crimea, for example, was hotly contested. *Ukraine History: Independent Ukraine*, *supra* note 2. It was resolved over a period of approximately ten years by splitting the fleet between the two states; Ukraine ultimately leased the base, which was located in Sevastopol, to Russia. See *id.* Russia also always had considered Ukrainians to be effectively Russian, thus the sudden independence of Ukraine proved more difficult for Russia to accept than the independence of other former Soviet states. See *id.* Ukraine, in turn, became hyper-aware of any encroachment on its sovereignty by Russia—particularly in these early years of independence. See *id.*

<sup>27</sup> *The World Factbook: Ukraine*, CIA (June 24, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html> [<https://perma.cc/W6PB-6AN9>].

<sup>28</sup> *Id.* Pursuant to Ukrainian law, a regional language is one that is spoken by at least 10% of the population and is permitted to be used in schools, courts, and additional government organizations. *Id.*; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>29</sup> *Ukraine's Sharp Divisions*, *supra* note 8.

<sup>30</sup> See *id.* An oblast is a type of administrative or political division in former Soviet states, like a state or province. *Oblast*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/oblast> [<http://perma.cc/KZV7-QY23>] (last visited Jan. 5, 2016); see Ralph S. Clem, *Why Eastern Ukraine Is an Integral Part of Ukraine*, WASH. POST (Mar. 7, 2014), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/03/07/why-eastern-ukraine-is-an-integral-part-of-ukraine/> [<http://perma.cc/DZ6N-8HVU>].

<sup>31</sup> *Viktory for the Blue Camp*, ECONOMIST (Feb. 11, 2010), <http://www.economist.com/node/15501625> [<http://perma.cc/UC7Y-PAGC>].

## B. Protests, Riots, and Secession in 2013 and 2014

### 1. Protests and Riots in Kiev

Yanukovich's pro-Russian leanings were reflected in his presidency, during which he abandoned Ukraine's goal of joining the North American Treaty Organization (NATO) and cut a lucrative deal to extend Russia's lease of the Crimean navy base.<sup>32</sup> His strongest move, however, came on November 21, 2013, when he announced that the country would not be moving forward with an association agreement between Ukraine and the European Union.<sup>33</sup> The association agreement functioned as a beneficial trade pact that also would politically align Ukraine with the EU.<sup>34</sup> It was years in the making and part of a monumental development policy by the EU to strengthen its ties with the former Soviet states.<sup>35</sup> Yanukovich's cabinet suspended preparations to sign the agreement eight days before a signature was expected.<sup>36</sup> The Parliament followed Yanukovich's lead when it systematically rejected six additional pieces of legislation that were required to meet the terms of the EU agreement.<sup>37</sup>

Although Putin denied playing a role in Yanukovich's decision to withdraw from the EU agreement, Yanukovich and Putin met several times in the months leading up to the decision—and at least once in secret—amidst Russian threats of economic sanctions against Ukraine.<sup>38</sup> In the end, the economic threats proved effective, and Yanukovich announced that Ukraine would not

<sup>32</sup> See *Ukraine's Parliament Votes to Abandon NATO Ambitions*, BBC NEWS (June 3, 2010, 10:49 AM), <http://www.bbc.com/news/10229626> [<http://perma.cc/STQ2-C7V5>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>33</sup> *Why Is Ukraine in Turmoil?*, BBC NEWS (Feb. 22, 2014, 1:34 PM), <http://www.bbc.com/news/world-europe-25182823> [<http://perma.cc/B3U8-VVGU>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>34</sup> Ian Traynor & Oksana Grytesenko, *Ukraine Suspends Talks on EU Trade Pact as Putin Wins Tug of War*, GUARDIAN (Nov. 21, 2013, 11:31 AM), <http://www.theguardian.com/world/2013/nov/21/ukraine-suspends-preparations-eu-trade-pact> [<http://perma.cc/CY2U-L5M2>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>35</sup> Traynor & Grytesenko, *supra* note 34.

<sup>36</sup> *Id.*; *Why Is Ukraine in Turmoil?*, *supra* note 33; Englund & Lally, *supra* note 1.

<sup>37</sup> Daryna Krasnolutska & Kateryna Choursina, *Ukraine Parliament Fails to Adopt Tymoshenko Law for EU Pact*, BLOOMBERGBUSINESS (Nov. 21, 2013, 5:29 AM) <http://www.bloomberg.com/news/articles/2013-11-21/ukrainian-parliament-fails-to-adopt-tymoshenko-law-for-eu-accord> [<http://perma.cc/ZY6S-UPYQ>]; Traynor & Grytesenko, *supra* note 34.

<sup>38</sup> Richard Balmforth, *Ukraine Leader Ignores Putin Warning on EU Path*, REUTERS (Aug. 24, 2013), <http://www.reuters.com/article/2013/08/24/us-ukraine-russia-yanukovich-idUSBRE97N05P20130824> [<http://perma.cc/6XHH-J67D>]; *Putin's Gambit: How the EU Lost Ukraine*, SPIEGEL ONLINE (Nov. 25, 2013), <http://www.spiegel.de/international/europe/how-the-eu-lost-to-russia-in-negotiations-over-ukraine-trade-deal-a-935476.html> [<http://perma.cc/QC9Q-688N>]; Traynor & Grytesenko, *supra* note 34. Among these threatened sanctions were detailed and painstaking customs checks on imports at the Ukraine-Russia border. Balmforth, *supra*. This threat to Ukrainian trade with Russia and other Eurasian states was particularly concerning because more than 60% of Ukraine's exports involved these Eurasian states. *Id.*



move forward with the EU but would instead consider joining a “Moscow-lead customs union.”<sup>39</sup> Yanukovich defended his decision by saying that Ukraine “could not afford to sacrifice” its trade with Russia.<sup>40</sup>

Rejection of the EU agreement led immediately to protests in Kiev and other cities throughout central and western Ukraine.<sup>41</sup> More than 10,000 protesters demanded either that Yanukovich reverse his decision and Parliament pass the six required pieces of legislation or that Yanukovich be removed from office.<sup>42</sup> The protests continued into December with only occasional violence breaking out and then into January, when the protests turned into vicious riots.<sup>43</sup> In the early months of 2014, dozens of anti-government protesters were killed by state police as the protesters stormed government buildings in Kiev and elsewhere in western Ukraine.<sup>44</sup> Before the end of February, the EU imposed sanctions against Yanukovich’s government for failure to control the growing violence, constitutional measures dramatically reduced the president’s powers, Yanukovich fled the capital prior to an impeachment vote, and the interim Parliament issued a warrant against Yanukovich for the mass murder of the protesters.<sup>45</sup>

## 2. Crimean Secession

The pro-Western sentiment in Kiev was countered by growing pro-Russian protests in eastern Ukraine and, in particular, Crimea.<sup>46</sup> The protests escalated quickly to the point where masked gunmen occupied the Crimean parliament building in the capital, Simferopol, and raised a Russian flag.<sup>47</sup> Immediately thereafter, a pro-Russian prime minister was installed in Crimea, communication wires were severed between Crimea and the rest of Ukraine, and Russia began moving its own troops into the region.<sup>48</sup> Putin defended this

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<sup>39</sup> Oksana Grystenko, *Ukrainian Protesters Flood Kiev After President Pulls out of EU Deal*, GUARDIAN (Nov. 24, 2013, 10:44 AM), <http://www.theguardian.com/world/2013/nov/24/ukraine-protesters-yanukovich-aborts-eu-deal-russia> [<http://perma.cc/5MT5-PD3V>]; see *Putin’s Gambit: How the EU Lost Ukraine*, *supra* note 38; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>40</sup> *Ukraine Protests After Yanukovich EU Deal Rejection*, *supra* note 1.

<sup>41</sup> *See id.*

<sup>42</sup> Grystenko, *supra* note 39.

<sup>43</sup> *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*; see also Paul Sonne, *Ukraine Issues Arrest Warrant for Ousted President Yanukovich*, WALL STREET J. (Feb. 24, 2014), <http://www.wsj.com/articles/SB1000142405270230461040579402401580476592> [<http://perma.cc/93AA-XC2E>]; *Ukraine Arrest Warrant for Fugitive Victor Yanukovich*, BBC News (Feb. 24, 2014, 7:55 PM), <http://www.bbc.com/news/world-europe-26320004> [<http://perma.cc/78SC-PL6G>].

<sup>46</sup> *See* Oliphant, *supra* note 3.

<sup>47</sup> *See id.*; *Ukraine Crisis: Timeline*, BBC NEWS (Nov. 13, 2014, 3:16 PM), <http://www.bbc.com/news/world-middle-east-26248275> [<http://perma.cc/DSQ3-SASD>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>48</sup> *Ukraine History: Independent Ukraine*, *supra* note 2.

last maneuver as necessary to protect the Russian interests, military assets, and citizens living in Crimea.<sup>49</sup>

On March 6, 2014, the Crimean parliament voted to secede from Ukraine and scheduled a public referendum for March 16 to confirm this vote.<sup>50</sup> The results of the referendum showed that 97% of voters supported Crimean secession, although the interim government in Kiev refused to recognize the vote and cited various irregularities, including the presence of armed men at polling stations.<sup>51</sup> Days later, Putin signed a treaty annexing Crimea, which was followed by the prompt Russian occupation of Crimean military bases and the ratification of the treaty to formally bring Crimea into the Russian Federation.<sup>52</sup> Ukraine and Western states challenged this secession and subsequent military occupation as a blatant violation of Ukraine's state sovereignty.<sup>53</sup>

Pro-Russian separatists continued to take over government buildings throughout eastern Ukraine, allegedly with the aid of Russian weapons and ammunition.<sup>54</sup> Tensions continued to build when NATO reported that, as of early April, an estimated 40,000 Russian troops were amassing in Russia, just across the Ukrainian border.<sup>55</sup> Over the coming months, violent skirmishes continued while negotiation talks between Ukraine, Russia, the EU, and the United States failed to produce a ceasefire.<sup>56</sup> As fighting continued, the sepa-

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<sup>49</sup> *Id.*; see *Ukraine Crisis: Timeline*, *supra* note 47.

<sup>50</sup> *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>51</sup> Carol Morello, Pamela Constable & Anthony Faiola, *Crimeans Vote to Break Away from Ukraine, Join Russia*, WASH. POST (Mar. 16, 2014), [http://www.washingtonpost.com/world/2014/03/16/ccce2132-acd4-11e3-a06a-e3230a43d6cb\\_story.html](http://www.washingtonpost.com/world/2014/03/16/ccce2132-acd4-11e3-a06a-e3230a43d6cb_story.html) [<http://perma.cc/686Y-VXYK>].

<sup>52</sup> Will Englund, *Kremlin Says Crimea Is Officially Part of Russia After Treaty Signing, Putin Speech*, WASH. POST (Mar. 18, 2014), [http://www.washingtonpost.com/world/russias-putin-prepares-to-annex-crimea/2014/03/18/933183b2-654e-45ce-920e-4d18c0ffec73\\_story.html](http://www.washingtonpost.com/world/russias-putin-prepares-to-annex-crimea/2014/03/18/933183b2-654e-45ce-920e-4d18c0ffec73_story.html) [<http://perma.cc/LJ4H-WPL3>]; Morello, Constable & Faiola, *supra* note 51; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>53</sup> See David M. Herszenhorn & Andrew Roth, *Russia Backs Plan by Ukraine Separatists for an Early Election*, N.Y. TIMES (Oct. 28, 2014), <http://www.nytimes.com/2014/10/29/world/europe/vote-set-by-ukraine-separatists-wins-russias-support.html> [<http://perma.cc/LLQ3-Q5E3>]; Morello, Constable & Faiola, *supra* note 51.

<sup>54</sup> *NATO Releases Satellite Imagery Showing Russian Combat Troops Inside Ukraine*, N. ATL. TREATY ORG. (last updated Nov. 26, 2014, 6:14 PM), [http://www.nato.int/cps/en/natohq/news\\_112193.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/news_112193.htm?selectedLocale=en) [<http://perma.cc/X8JL-J3GD>] [hereinafter *NATO Releases Satellite Imagery*]; *Ukraine History: Independent Ukraine*, *supra* note 2. These takeovers, like those in Crimea, generally were carried out by men without uniforms but who could execute the plans with precision, suggesting the actors may have been trained or part of a formally organized militia. See *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>55</sup> *Imagery Reveals Destabilizing Russian Forces near Ukraine Border*, SUPREME HEADQUARTERS ALLIED POWERS EUR. (Apr. 10, 2014), <http://www.aco.nato.int/imagery-reveals-destabilizing-russian-forces-near-ukraine-border-nato-plans-balanced-response-to-reassure-allies.aspx> [<http://perma.cc/3F42-FWLZ>].

<sup>56</sup> See *Ukraine History: Independent Ukraine*, *supra* note 2.

ratists opened a southern front, and as of late August, NATO estimated that more than 1000 Russian troops were actively engaged in fighting on Ukrainian soil.<sup>57</sup>

### C. Ukraine's Inter-State Application Against Russia

On March 13, 2014, Ukraine filed an inter-state application against Russia in the ECtHR alleging various human rights violations.<sup>58</sup> In doing so, Ukraine invoked Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), which provides that any "Contracting Party may refer to the Court any alleged breach of the provisions of the Convention . . . by another . . . Contracting Party."<sup>59</sup> Consequently, a contracting party, like Ukraine, may bring an inter-state application in an effort to protect the lives and health of that state's nationals from the conduct of another contracting party.<sup>60</sup>

In its application, Ukraine complained of violations of Article 2 (the right to life) and Article 3 (the right to protection from torture or inhuman and degrading treatment) as well as several other rights protected by the Convention.<sup>61</sup> Many of these claims arose from the killing of Ukrainian civilians that related to Russia's annexation of Crimea.<sup>62</sup> Other claims resulted from the pressure allegedly put on Crimeans to abandon their Ukrainian citizenship in favor of Russian citizenship.<sup>63</sup> Additionally, Ukrainians who tried to protect their property or customs in the east were allegedly harassed and threatened.<sup>64</sup> Finally, journalists reporting on the events were said to have been abducted, attacked, and impeded from their work.<sup>65</sup>

<sup>57</sup> See *id.*; Shaun Walker, *Ukraine Crisis: Emergency NATO, UN and EU Meetings After Russian Invasion Claim*, GUARDIAN (Aug. 28, 2014, 2:44 PM), <http://www.theguardian.com/world/2014/aug/28/ukraine-russia-emergency-un-nato-eu-meetings-invasion-claim> [<http://perma.cc/45DU-VCXS>].

<sup>58</sup> March Press Release, *supra* note 6; November Press Release, *supra* note 6, at 1; see Kanstantsin Dzehtsiarou, *The Effectiveness of the European Court of Human Rights in Cases of War*, ECHR BLOG (Mar. 24, 2014), <http://echrblog.blogspot.com/2014/03/ukraine-russia-inter-state-application.html> [<http://perma.cc/MD48-FCBN>].

<sup>59</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 33, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter Convention].

<sup>60</sup> See *id.*; Dzehtsiarou, *supra* note 58. This is distinct from an individual application, which is brought under Article 34 by a person, group of people, or non-governmental organization against a contracting party seeking human rights protection on their own behalf. See Convention, *supra* note 59, art. 34.

<sup>61</sup> November Press Release, *supra* note 6. In addition to Articles 2 and 3, Ukraine also alleged the violation of Article 5 (the right to liberty and security), Article 6 (the right to a fair trial), Article 8 (the right to respect for private life), Article 9 (the right to freedom of religion), Article 10 (the right to freedom of expression), Article 11 (the right to freedom of association), Article 13 (the right to an effective remedy), and Article 14 (the right to prohibition of discrimination). *Id.*

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

Also on March 13, under Rule 39 of the ECtHR Rules of Court, the court granted interim measures, which Ukraine had requested upon filing its application.<sup>66</sup> The interim measures, intended to prevent violations of the Convention while a case is pending, required that both Russia and Ukraine “refrain from taking any measures . . . which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk . . . .”<sup>67</sup> In particular, the court sought to protect the Ukrainian nationals’ rights under Articles 2 and 3, as it called upon Ukraine and Russia to abstain from taking any “military action[]” that might lead to further violations of the Convention.<sup>68</sup>

Procedurally, the next hearing in *Ukraine v. Russia* is an admissibility hearing, where the court will vet Ukraine’s claims to make sure they conform with the court’s admissibility standards.<sup>69</sup> The date of this hearing has not been identified in press releases, but the court requested that Russia submit its “observations on the admissibility” of the Ukrainian application by December 31, 2015.<sup>70</sup> If the court finds Ukraine’s application admissible, it will then hear the merits of the case.<sup>71</sup> Additionally, documents filed with the court are available to the public under Rule 33, but in this early stage of the proceedings, Ukraine’s entire application is confidential.<sup>72</sup> This decision, also made by the court under Rule 33, means that the several ECtHR press releases regarding *Ukraine v. Russia* are the only case documents currently available to the public.<sup>73</sup>

## II. DISCUSSION

### *A. Article 33: Inter-State Applications*

Article 33 of the Convention grants jurisdiction to the ECtHR over any application brought by one contracting party against another contracting party for an alleged “breach of the provisions of the Convention and the Protocols[.]”<sup>74</sup> The court only has jurisdiction over applications that are filed against

<sup>66</sup> See March Press Release, *supra* note 6; November Press Release, *supra* note 6.

<sup>67</sup> March Press Release, *supra* note 6.

<sup>68</sup> *Id.*

<sup>69</sup> See November Press Release, *supra* note 6; ADMISSIBILITY CRITERIA, *supra* note 7, at 7.

<sup>70</sup> November Press Release, *supra* note 6; *see also* March Press Release, *supra* note 6.

<sup>71</sup> See ADMISSIBILITY CRITERIA, *supra* note 7, at 9.

<sup>72</sup> RULES OF COURT, *supra* note 7, R. 33 at 17; *see* Letter from Marialena Tsirli, Deputy Section Registrar, Eur. Court of Human Rights, to author (Jan. 19, 2015) (on file with author). Rule 33 states that “[p]ublic access to a document or to any part of it may be restricted in the interests of morals, public order or national security . . . or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice.” RULES OF COURT, *supra* note 7, R. 33 at 17.

<sup>73</sup> See Letter from Marialena Tsirli to author, *supra* note 72.

<sup>74</sup> Convention, *supra* note 59, art. 33.

a contracting party.<sup>75</sup> Both Ukraine and Russia have been parties to the Convention since 1998.<sup>76</sup> Since its formation in 1959, the court has heard fewer than twenty-five inter-state cases—despite having received hundreds of thousands of individual applications.<sup>77</sup> Through an inter-state application, the applicant state can challenge other contracting states' systemic failures, broad violations of the Convention, or human rights abuses.<sup>78</sup> Any challenges regarding a state's sovereignty or territorial jurisdiction, however, are not within the purview of the court as they alone do not raise human rights issues.<sup>79</sup> Remedies sought in inter-state applications vary based on the claims asserted by the applicant state; they can include, for example, the change of a domestic policy or legislation so as to protect from future violations of human rights.<sup>80</sup> The Committee of Ministers of the Council of Europe—an entity related to the court and created by the Statute of the Council of Europe—is responsible for conferring with the respondent state to determine how the court's judgment should be executed and how to prevent similar violations in the future.<sup>81</sup>

*Cyprus v. Turkey* is exemplary of the ECtHR's ability to hold a respondent state in violation of the Convention, to find the respondent state in continuing violation of the Convention years later, and to hold the respondent state liable

<sup>75</sup> See *id.*

<sup>76</sup> *Chart of Signatures and Ratifications of Treaty 005*, COUNCIL OF EUR. (last updated Dec. 15, 2015), <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> [<http://perma.cc/PWQ6-6YVJ>].

<sup>77</sup> See EUR. COURT OF HUMAN RIGHTS, INTER-STATES APPLICATIONS, [http://www.echr.coe.int/Documents/InterStates\\_applications\\_ENG.pdf](http://www.echr.coe.int/Documents/InterStates_applications_ENG.pdf) [<http://perma.cc/XM3K-SB6A>] (last visited Jan. 5, 2016); EUR. COURT HUMAN RIGHTS, THE ECHR IN FACTS AND FIGURES 2013, at 5 (Jan. 2014), [http://www.echr.coe.int/Documents/Facts\\_Figures\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Facts_Figures_2013_ENG.pdf) [<http://perma.cc/K2SD-NA2F>].

<sup>78</sup> See *Can't Get No Just Satisfaction? The Cyprus v. Turkey Judgment of the European Court of Human Rights*, CAMBRIDGE J. INT'L & COMP. L. (May 23, 2014), <http://cjlcl.org.uk/2014/05/23/cant-get-just-satisfaction-cyprus-v-turkey-judgment-european-court-human-rights/> [<http://perma.cc/566C-2XH6>]; Kanstantsin Dzehtsiarou, *The European Court of Human Rights and the Armed Conflict Between Russia and Ukraine*, VERFASSUNGSBLOG (Nov. 27, 2014), <http://www.verfassungsblog.de/en/european-court-human-rights-armed-conflict-russia-ukraine/> [<http://perma.cc/8PCE-LHNW>].

<sup>79</sup> See Convention, *supra* note 59, pmb.; Dzehtsiarou, *supra* note 78. The International Court of Justice is the proper forum for sovereignty or territorial disputes, not the ECtHR. Dzehtsiarou, *supra* note 78.

<sup>80</sup> See EUR. COURT HUMAN RIGHTS, THE ECHR IN 50 QUESTIONS 10 (Feb. 2014), [http://www.echr.coe.int/Documents/50Questions\\_ENG.pdf](http://www.echr.coe.int/Documents/50Questions_ENG.pdf) [<http://perma.cc/7A8G-R28J>].

<sup>81</sup> See Statute of the Council of Europe, art. 10, May 5, 1949, 87 U.N.T.S. 104; THE ECHR IN 50 QUESTIONS, *supra* note 80. The Council of Europe is Europe's leading human rights organization with forty-seven member states—many of which are also members of the European Union. *The Council of Europe in Brief: Who We Are*, COUNCIL OF EUR., <http://www.coe.int/en/web/about-us/who-we-are> [<http://perma.cc/H299-5C27>] (last visited Jan. 6, 2016). The Council of Europe is made up of a number of different branches and organizations—including the Committee of Ministers, which is the Council's decision-making body with respect to the Council's policies and the ECtHR, which is the Council's judicial body. *Id.*; *The Council of Europe in Brief: Structure*, COUNCIL OF EUR., <http://www.coe.int/en/web/about-us/structure> [<http://perma.cc/D8G7-CG5J>] (last visited Feb. 10, 2015).

for a substantial fine by way of just satisfaction.<sup>82</sup> In 1974, Cyprus filed an inter-state application against Turkey for human rights violations in connection with Cyprus's contested independence in 1960.<sup>83</sup> Vying for control of the island, a Greek paramilitary organization carried out a short-lived *coup d'état*.<sup>84</sup> Turkey, also fighting for control of Cyprus, responded by sending 20,000 soldiers to northern Cyprus and declaring a Turkish Federated State of Cyprus, which it justified as a way to "safeguard its territorial integrity and the security of life and property of the Turkish community[.]"<sup>85</sup> As a result of this fighting, the European Commission on Human Rights, in 1976, found that Turkey had violated those rights protected by Articles 2, 3, 5, and 8—among others—of the Convention.<sup>86</sup> In 2001, the ECtHR ruled favorably on a subsequent 1994 application by Cyprus that alleged continued abuses by Turkey.<sup>87</sup> In response to this application, the court also granted just satisfaction for Cyprus in 2014, requiring Turkey to pay Cyprus €90 million for damages suffered by specific groups of Cypriot nationals.<sup>88</sup> At the time, the award was not only the largest one in the court's history, but also the only one granted in an inter-state application.<sup>89</sup> Although Article 41 of the Convention indicates that the just satisfaction judgment is legally binding on Turkey, the €90 million has gone unpaid as

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<sup>82</sup> See generally *Cyprus v. Turkey*, App. No. 25781/94, Eur. Ct. H.R. (2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151> [<http://perma.cc/UX2J-U9CH>] [hereinafter *Cyprus III*] (awarding just satisfaction to Cyprus for Turkey's continued violations of the Convention); *Cyprus v. Turkey*, App. No. 25781/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454> [<http://perma.cc/69RT-TXXG>] [hereinafter *Cyprus II*] (finding continued violations by Turkey of Articles 2, 3, 5, and 8 of the Convention, among others); *Cyprus v. Turkey*, App. No. 8007/77, 13 Eur. Comm'n H.R. Dec. & Rep. 156 (1976) [hereinafter *Cyprus I*] (concluding Turkey had violated the Cypriot nationals' rights, including those under Articles 2, 3, 5, and 8 of the Convention).

<sup>83</sup> See *Cyprus I*, App. No. 8007/77, ¶¶ 1, 8.

<sup>84</sup> See *id.* ¶¶ 11–13.

<sup>85</sup> *Id.* ¶¶ 12, 14.

<sup>86</sup> *Id.* ¶¶ 208, 285, 355, 374. Article 2 guarantees the right to life, Article 3 guarantees the right to protection from torture or inhuman and degrading treatment, Article 5 guarantees the right to liberty and security, and Article 8 guarantees the right to respect for private life. Convention, *supra* note 59, arts. 2, 3, 5, 8. Each of these violations was alleged by Ukraine in its March 2014 application against Russia. See November Press Release, *supra* note 6, at 1.

<sup>87</sup> See generally *Cyprus II*, App. No. 25781/94 (holding Turkey responsible for continued violations of Articles 2, 3, 5, and 8 of the Convention—among others—largely resulting from the disappearance of Cypriot nationals and the denied control, use, and enjoyment of other nationals' private property).

<sup>88</sup> *Cyprus III*, App. No. 8007/77, ¶ 58. Article 41 permits just satisfaction and reparations paid to the applicant, whether an individual or a state party. See Convention, *supra* note 59, art. 41.

<sup>89</sup> *The Analysis of Cyprus v. Turkey Just Satisfaction Judgment and Its Implications*, J. TURKISH WKLY (May 22, 2014), <http://www.turkishweekly.net/op-ed/3190/the-analysis-of-cyprus-v-turkey-just-satisfaction-judgment-and-its-implications.html> [<http://perma.cc/M2P7-EKEC>]; see *Inter-State Applications*, *supra* note 77. Since the May 2014 just satisfaction award in *Cyprus v. Turkey*, the court has awarded a larger award, in *Yukos v. Russia*, in an amount greater than €1.8 billion. See *Yukos v. Russia*, App. No. 14902/04, Eur. Ct. H.R., ¶ 36 (2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145730> [<http://perma.cc/WB7S-F7EL>].

of July 2014.<sup>90</sup> Furthermore, Turkey's foreign minister stated that the judgment would not "carry any value" and that Turkey was "not thinking of paying this amount to a country that [it does] not recognize."<sup>91</sup>

Another inter-state application that has striking factual similarities to the one filed by Ukraine is *Georgia v. Russia*.<sup>92</sup> The Georgian government lodged its application against Russia in August 2008 alleging that Russia had caused and allowed attacks against Georgian civilians and their property.<sup>93</sup> The application posited that Russian forces had occupied—and still held—parts of Georgia; as a result, Russia was exercising direct control through its armed forces and indirect control through its agents and *de facto* authorities.<sup>94</sup> Georgia argued that Russia's engagement in Georgian territory resulted in hundreds of civilians killed, missing, or detained while thousands of civilians also lost their homes and property.<sup>95</sup> The court held an admissibility hearing in September 2011 and, without ruling on the merits, found Georgia's application admissible; the court has not yet ruled on the merits of the case.<sup>96</sup> Although *Georgia v. Russia* arises from different events, the court's treatment of the case may provide insight into how it will treat the allegations arising from Russia's extraterritorial presence in Ukraine.<sup>97</sup>

### B. Rule 39: Interim Measures

Rule 39 of the Rules of Court provides both individuals and states with the opportunity to request interim measures.<sup>98</sup> Specifically, Rule 39 states that

<sup>90</sup> Convention, *supra* note 59, art. 41; Elena Katselli, *The European Court of Human Rights Has Spoken . . . Again. Does Turkey Listen?* STRASBOURG OBSERVERS (July 7, 2014), <http://strasbourgobservers.com/2014/07/07/the-european-court-of-human-rights-has-spoken-again-does-turkey-listen/> [<http://perma.cc/V5Q8-KANX>].

<sup>91</sup> Katselli, *supra* note 90 (quoting *Turkish Cypriot and Turkish Media Review 13/05/2014*, REPUBLIC OF CYPRUS, <http://www.moi.gov.cy/moi/pio/pio.nsf/AII/FD17989D701529BAC2257CD700419C7A?OpenDocument> [[perma.cc/N5F6-EB7U](http://perma.cc/N5F6-EB7U)] (last visited Jan. 5, 2016)).

<sup>92</sup> See Press Release, Eur. Court of Human Rights, Court Declares Case Concerning Armed Conflict Between Georgia and Russia Admissible 1–2, (Dec. 19, 2011), <http://hudoc.echr.coe.int/webservices/content/pdf/003-3786046-4333408> [<http://perma.cc/GT6B-DG2E>] [hereinafter *Georgia v. Russia Admissibility Press Release*] (reporting the allegations that Russia's military occupation of Georgian territory and control of the separatists' conduct resulted in killings of and attacks against Georgian civilians); November Press Release, *supra* note 6, at 1 (reporting the allegations that the Russian military presence in Crimea and support of the separatists in eastern Ukraine directly resulted in killings of and attacks against Ukrainian civilians).

<sup>93</sup> *Georgia v. Russia Admissibility Press Release*, *supra* note 92, at 1.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> See *Georgia v. Russia*, App. No. 38263/08, Eur. Ct. H.R. 34 (2008), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108097> [<http://perma.cc/9VDF-4XKG>]; *Georgia v. Russia Admissibility Press Release*, *supra* note 92, at 2, 4.

<sup>97</sup> See Leach, *supra* note 8 (observing factual similarities and the court's use of interim measures in both *Georgia v. Russia* and *Ukraine v. Russia*).

<sup>98</sup> RULES OF COURT, *supra* note 7, R. 39 at 20.

the court “may, at the request of a party . . . indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.”<sup>99</sup> Interim measures often are granted pursuant to a motion made by the applicant and on the basis that the rights and principles of the Convention are at serious risk of being violated while the application is pending.<sup>100</sup> Additionally, the measures are only applied in situations when there is an “imminent risk of irreparable harm[.]” which is a decision that the court makes independently from its decision on the merits of the application.<sup>101</sup>

Due to its concern regarding imminent harm and the preservation of life and safety, the court typically grants interim measures to preserve the applicant’s rights specifically under Articles 2 and 3 of the Convention.<sup>102</sup> Indeed, the court in *Georgia v. Russia* imposed interim measures that required both states to “comply with their engagements under the Convention, particularly . . . Articles 2 . . . and 3[.]”<sup>103</sup> This language is similar to that used by the court in *Ukraine v. Russia*, where the court required both Russia and Ukraine to “refrain from taking any measures, in particular military action, which might bring about violations of the Convention rights of the civilian population, notably under Articles 2 and 3 of the Convention.”<sup>104</sup>

Although Rule 39 does not expressly indicate that interim measures are binding on the states, the court in *Paladi v. Moldova* held that contracting parties have a legal obligation to comply with the measures because a failure to do so would prevent the court from “effectively examining the applicant’s complaint and . . . hindering the effective exercise” of the applicant’s Convention rights.<sup>105</sup> The court also noted in *Paladi* that a respondent state breaches the

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<sup>99</sup> *Id.*

<sup>100</sup> See March Press Release, *supra* note 6.

<sup>101</sup> EUR. COURT OF HUMAN RIGHTS, INTERIM MEASURES 1 (Jan. 2013), [http://www.echr.coe.int/Documents/FS\\_Interim\\_measures\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf) [<http://perma.cc/9XDD-5YMD>].

<sup>102</sup> See *id.* at 1–2; see, e.g., Georgia v. Russia Admissibility Press Release, *supra* note 92, at 1; November Press Release, *supra* note 6, at 1.

<sup>103</sup> Georgia v. Russia Admissibility Press Release, *supra* note 92, at 1. In *Georgia v. Russia*, however, the court declined to grant the more specific interim measures requested by Georgia, which would have allowed “Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor.” See Press Release, Eur. Court of Human Rights, European Court of Human Rights Grants Request for Interim Measures 1 (Dec. 8, 2008), <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2458412-2647173> [<http://perma.cc/F2FR-BZRK>] [hereinafter *Georgia v. Russia Interim Measures Press Release*].

<sup>104</sup> November Press Release, *supra* note 6, at 2; see *Georgia v. Russia Interim Measures Press Release*, *supra* note 103, at 1.

<sup>105</sup> *Paladi v. Moldova*, App. No. 39806/05, Eur. Ct. H.R. ¶¶ 87–89 (2009), <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-91702> [<http://perma.cc/FS6G-HY9M>]; see *Mamatkulov & Askarov v. Turkey*, App. Nos. 46827/99 and 46951/99, 2005-I Eur. Ct. H.R. ¶¶ 128–129 (2009), <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-68183> [<http://perma.cc/NL5G-4A4F>] (af-



Convention if “authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court.”<sup>106</sup>

Nevertheless, the ECtHR has had a difficult time enforcing the interim measures that it grants.<sup>107</sup> For example, in *Labsi v. Slovakia*, Slovakia was ordered not to expel the applicant to his home state due to a significant risk that, once expelled, his human rights would be violated.<sup>108</sup> The court, in addressing the fact that the applicant had already been expelled contrary to the interim measures, found Slovakia in violation of the Convention and ordered damages to be paid to the applicant.<sup>109</sup> Despite assessing damages, however, the court could not oblige Slovakia to take actions to undo the expulsion of the applicant; therefore, it was unable to enforce its original interim measures.<sup>110</sup>

### C. Extraterritorial Jurisdiction

A third aspect of the court’s case law that is critical to evaluating the efficacy of the interim measures is the extent to which the acts violating the order can be imputed to the two contracting parties.<sup>111</sup> Under Article 1 of the Convention, the contracting parties “shall secure to everyone within their jurisdiction the rights and freedoms” defined in the Convention.<sup>112</sup> Thus, where a state exercises jurisdiction over an area, it may be responsible for violations of the Convention occurring in that area.<sup>113</sup> As much of the violence has occurred in

firming the binding nature of Rule 39 interim measures on contracting parties); RULES OF COURT, *supra* note 7, R. 39 at 20; INTERIM MEASURES, *supra* note 101, at 7.

<sup>106</sup> *Paladi*, App. No. 39806/05, ¶ 88.

<sup>107</sup> See INTERIM MEASURES, *supra* note 101, at 8; Leach, *supra* note 8; see, e.g., *Labsi v. Slovakia*, App. No. 33809/08, Eur. Ct. H.R. ¶¶ 149, 150–151 (2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110924> [<http://perma.cc/HM6A-WB2P>] (determining that Slovakia’s expulsion of the applicant to his home state of Algeria, contrary to the interim measure, was a violation of the Convention); *Rrapo v. Albania*, App. No. 58555/10, Eur. Ct. H.R. ¶¶ 34, 88 (2012), <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-113328> (concluding that Albania’s extradition of the applicant to United States, despite the interim measure’s temporary prohibition of extradition, was violative of the Convention).

<sup>108</sup> *Labsi*, App. No. 33809/08, ¶¶ 48, 53, 128, 150.

<sup>109</sup> *Id.* ¶¶ 150–151, 155. Specifically, the court noted that it was “prevented by the applicant’s expulsion . . . from conducting a proper examination of [the applicant’s] complaints in accordance with its settled practice in similar cases . . . . As a result, the applicant has been hindered in the effective exercise of his [Article 3 right to protection from torture or inhuman and degrading treatment and] his right of individual application guaranteed by Article 34 of the Convention.” *Id.* ¶ 150.

<sup>110</sup> See *id.* ¶ 100; see also Leach, *supra* note 8.

<sup>111</sup> See November Press Release, *supra* note 6, at 1; Dzehtsiarou, *supra* note 78; Leach, *supra* note 8.

<sup>112</sup> Convention, *supra* note 59, art. 1.

<sup>113</sup> See *id.*; *Ilaşcu and Others v. Moldova and Russia*, App. No. 48787/99, 2004-VII Eur. Ct. H.R., ¶ 311 (2004), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886> (concluding Russia had jurisdiction over certain Moldovan territory, giving rise to the responsibility for Convention violations in that territory); Brief of Françoise Hampson and Noam Lubell as Amicus Curiae Third-Party

Ukrainian territory, the violation of Articles 2 and 3 may be imputed to Ukraine but also to Russia, depending on the extent of Russia's extraterritorial jurisdiction in Crimea and eastern Ukraine.<sup>114</sup> Whether a state has extraterritorial jurisdiction is determined by the degree of control it exercises in that area.<sup>115</sup> Pursuant to the case law of the ECtHR, a state may have extraterritorial jurisdiction if that state is "involved [in] acts and omissions [through its] authorities which produce effects outside of [its] own territory."<sup>116</sup> Extraterritorial jurisdiction—and often, responsibility—as a consequence of control is reflected in persuasive case law of the International Court of Justice as well.<sup>117</sup>

### 1. Responsibility Through Effective Control

Pursuant to ECtHR case law, one way to determine a state's extraterritorial jurisdiction is to evaluate whether the state has effective control over the area.<sup>118</sup> In *Loizidou v. Turkey*, the ECtHR noted that responsibility of a contracting party may arise as a "consequence of military action—whether lawful or unlawful—[where the state exercises] effective control of an area outside its national territory."<sup>119</sup> Specifically, *Loizidou* dealt with the confiscation of a Cypriot national's land during the Turkish occupation of northern Cyprus—the facts of which also gave rise to the *Cyprus v. Turkey* inter-state application.<sup>120</sup> Turkey argued that the conduct occurred outside of Turkish territory and that it could not be responsible for conduct that occurred in territory controlled by the

Intervention at 3–4, *Georgia v. Russia*, App. No. 38263/08, Eur. Ct. H.R., <http://repository.essex.ac.uk/9689/1/hampson-lubell-georgia-russia-amicus-01062014.pdf> [<http://perma.cc/GH8N-FK6D>] [hereinafter *Georgia v. Russia Amicus Curiae*]; Dzehtsiarou, *supra* note 78.

<sup>114</sup> See November Press Release, *supra* note 6, at 1; Dzehtsiarou, *supra* note 78; Leach, *supra* note 8.

<sup>115</sup> See *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 382–385; *Loizidou v. Turkey*, App. No. 15318/89, 1996-VI Eur. Ct. H.R., ¶ 52 (1996), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58007> [<http://perma.cc/AWM2-NZ8K>] [hereinafter *Loizidou (Merits)*] (concluding that Turkey had jurisdiction over portions of Cyprus and was responsible for Convention violations occurring in those Cypriot areas); *Georgia v. Russia Amicus Curiae*, *supra* note 113, at 3.

<sup>116</sup> See *Loizidou (Merits)*, App. No. 15318/89, ¶ 52.

<sup>117</sup> See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14, ¶ 115 (June 27) [hereinafter *Military Activities in Nicaragua*] (defining the context in which a state could be liable for actions occurring in the territory of another state, but declining to find the United States liable for certain actions taken by rebels in Nicaragua).

<sup>118</sup> See *Ilaşcu and Others*, App. No. 48787/99, ¶ 314; *Cyprus II*, App. No. 25781/94, ¶ 77 (concluding that Turkey had effective control over certain areas in Cyprus as a result of its "military and other support" of the local regime, the TRNC); *Loizidou (Merits)*, App. No. 15318/89, ¶ 52.

<sup>119</sup> *Loizidou v. Turkey (Preliminary Objections)*, App. No. 15318/89, Eur. Ct. H.R., ¶ 62 (1995), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57920> [<http://perma.cc/6CLA-CE9Z>] [hereinafter *Loizidou (Preliminary Objections)*]; see also *Tinoco Arbitration (Gr. Brit. v. Costa Rica)*, 1 R.I.A.A. 369, 381 (1923) (holding that the powers of a *de facto* government are not diminished, even when not recognized by others and not acting in conformance with a previous constitution).

<sup>120</sup> *Loizidou (Preliminary Objections)*, App. No. 15318/89, ¶ 11; see *Loizidou (Merits)*, App. No. 15318/89, ¶ 56.

Turkish Republic of Northern Cyprus (TRNC), an organization that was “in no way exercising jurisdiction on behalf of Turkey[.]”<sup>121</sup> In making its determination, the court recognized that the applicant’s loss of property was a consequence of the TRNC and Turkish military occupation, and it concluded that “the large number of troops engaged in active duties in northern Cyprus [made it obvious that Turkey’s army] exercise[d] effective overall control” over the northern portion of the island.<sup>122</sup> This military control imputed responsibility to Turkey for the TRNC’s policies and actions, and since the region fell under Turkish jurisdiction within the meaning of Article 1, Turkey was responsible for protecting Cypriots’ “rights and freedoms set out in the Convention[.]”<sup>123</sup> This holding embodied the court’s previous observation that the “obligation to secure, in [an area of effective control], the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.”<sup>124</sup>

Additionally, persuasive case law from the International Court of Justice (ICJ), specifically from *Military and Paramilitary Activities in and Against Nicaragua (Military Activities in Nicaragua)*, requires that a state must exercise “effective control” over the conduct and operations of the actors before the actors’ conduct can be imputed to the state.<sup>125</sup> Here, the ICJ concluded that the United States could not be held responsible for certain actions of *contra* rebels in Nicaragua.<sup>126</sup> Specifically, the United States had provided the rebels with organization, training, equipment, and weapons.<sup>127</sup> The *contras*, however, did not rely heavily enough on this support and their reliance, though significant, was nevertheless “insufficient to demonstrate their complete dependence on United States aid.”<sup>128</sup> The ICJ clarified, “For this conduct [in which the United States provided military support to the rebels] to give rise to legal responsibility of the United States, it would in principle have to be proved that [the United States] had effective control of the military or paramilitary operations[.]”<sup>129</sup>

Thus, under the case law of both the ECtHR and the ICJ, states that exercise effective control over territory, even if that territory belongs to another state, may be held responsible for certain conduct occurring in that area.<sup>130</sup>

<sup>121</sup> *Loizidou (Merits)*, App. No. 15318/89, ¶ 51.

<sup>122</sup> *Id.* ¶¶ 54, 56.

<sup>123</sup> *Id.* ¶ 56.

<sup>124</sup> *Loizidou (Preliminary Objections)*, App. No. 15318/89, ¶ 62.

<sup>125</sup> *See Military Activities in Nicaragua*, 1986 I.C.J., ¶¶ 110, 115–116.

<sup>126</sup> *Id.* ¶¶ 115–116.

<sup>127</sup> *Id.* ¶ 115.

<sup>128</sup> *Id.* ¶ 110.

<sup>129</sup> *Id.* ¶ 115.

<sup>130</sup> *See Military Activities in Nicaragua*, 1986 I.C.J., ¶ 115; *Loizidou (Merits)*, App. No. 15318/89, ¶ 56.

## 2. Responsibility Through Decisive Influence

Even in instances where a state may not exercise effective control over a region or territory, the state's financial, military, and political support may be sufficient to impute to it the conduct of others.<sup>131</sup> A state's "decisive influence" over a local government—even if that government maintains its own administration—may give rise to state responsibility.<sup>132</sup> The ECtHR's decisive influence standard is less rigorous than the effective control standard and may be sufficient to impute human rights abuses to Russia—both for purposes of evaluating the efficacy of the interim measures and the merits of Ukraine's case.<sup>133</sup>

The ECtHR applied this standard in *Ilașcu and Others v. Moldova and Russia*, where Russia's decisive influence over a separatist regime resulted in liability for violations of the Convention.<sup>134</sup> Around the time of the Soviet Union's collapse in 1991, the Republic of Moldova declared its independence from the Soviets while the region of Transdniestria, which had been transferred to Moldova years before, also declared its independence from Moldova.<sup>135</sup> The Soviet army and weaponry previously stationed in Moldova was withdrawn from the country, although much of it passed through and even remained inside the Transdniestrian territory.<sup>136</sup> When violence broke out between Moldova and a growing separatist movement in Transdniestria, Transdniestrian paramilitary units were formed and professionally equipped with weaponry and soldiers from the Russian army.<sup>137</sup> Hundreds of people were killed, and the applicants were arrested and detained by men in Russian army uniforms.<sup>138</sup>

<sup>131</sup> See *Ilașcu and Others*, App. No. 48787/99, ¶¶ 392–394.

<sup>132</sup> See *Catan and Others v. Moldova and Russia*, App. Nos. 43370/04, 8252/05 and 18454/06, 2012 Eur. Ct. H.R., ¶ 106 (2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114082> [<http://perma.cc/BY6M-Y2YV>] (determining Russia was responsible for Convention violations committed by a separatist regime that operated in Moldovan territory); *Ilașcu and Others*, App. No. 48787/99, ¶¶ 392, 394; *Georgia v. Russia Amicus Curiae*, *supra* note 113, at 3.

<sup>133</sup> See *Military Activities in Nicaragua*, 1986 I.C.J., ¶ 115; *Ilașcu and Others*, App. No. 48787/99, ¶ 392.

<sup>134</sup> *Ilașcu and Others*, App. No. 48787/99, ¶¶ 392–394. The court also held that Moldova, in addition to Russia, was responsible for the separatists' actions because Moldova was the "only legitimate government" in the region of Transdniestria, and although Moldova may not have exercised exclusive control over the region due to the separatist movement, Moldova nevertheless had a positive obligation under the Convention to take "measures . . . in its power . . . and in accordance with international law to secure to the applicants the rights guaranteed by the Convention." *Id.* ¶¶ 323, 330–331, 351–352.

<sup>135</sup> *Id.* ¶¶ 28–30. Neither Moldova nor the international community recognized Transdniestria as an independent state, and like Crimea in 2014, Transdniestria held a vote in 1991 that the sovereign state, Moldova, considered illegal and invalid. See *id.* ¶¶ 30, 47.

<sup>136</sup> *Id.* ¶¶ 32, 34.

<sup>137</sup> *Id.* ¶¶ 44–46, 380.

<sup>138</sup> *Id.* ¶¶ 51, 188. The applicants also alleged that a Russian army commander called up Russian army reservists to be deployed in Transdniestria, reasoning "that Transdniestria is Russian territory and that the situation there has deteriorated, [and so] we must defend it by all means possible." *Id.* ¶ 46.

With facts strikingly similar to those in *Ukraine v. Russia*, the *Ilaşcu* court determined that Russia had decisive influence in Transdniestria and, through the conduct of the Transdniestrian separatists, had violated Article 3 of the Convention.<sup>139</sup> The court determined that the Transdniestrian separatists had armed themselves with Russian weapons, the Russian military did not oppose the arming of the separatists, a large number of Russian nationals were fighting with the separatists, and a number of Russian troops were also fighting with the separatists.<sup>140</sup> Consequently, the Transdniestrian regime was “at the very least under the decisive influence of the Russian Federation” and “survive[d] by virtue of the military, economic, financial and political support given to it by the Russian Federation.”<sup>141</sup> Moreover, as a result of the “Russian authorities’ collaboration” with the illegal separatist regime, they were “capable of engaging responsibility for the acts of that regime.”<sup>142</sup>

To the extent that a state’s extraterritorial jurisdiction—through effective control or decisive influence—could vary depending on whether the conduct in question was that of a state actor or a non-state actor, the *Ilaşcu* court did not draw a clear distinction.<sup>143</sup> Although the court determined that the Transdniestrian regime was comprised primarily of non-state actors—individuals not acting on behalf of the Russian state—the court emphasized the significance of the Russian army’s participation in the regime.<sup>144</sup> The court, however, did mark a clearer distinction in *Catan and Others v. Moldova and Russia*, which was another individual application that arose out of the Transdniestrian conflict.<sup>145</sup> There, the applicants complained of Moldovan school closings in the pro-Russian Transdniestria region where “there [was] no evidence of any di-

<sup>139</sup> *Id.* ¶ 392; see November Press Release, *supra* note 6, at 1.

<sup>140</sup> *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 57, 60, 65. Although the evidence regarding how the separatists came into possession of the weapons was disputed, the court concluded that, beyond a reasonable doubt, the Russian army actively provided the weapons to the separatists or else stood passively by and chose not to oppose the separatists who had come to take the weapons. *Id.* ¶ 57.

<sup>141</sup> *Id.* ¶ 392.

<sup>142</sup> *Id.* ¶ 385.

<sup>143</sup> See *id.* ¶ 384; Marko Milanovic, *Grand Chamber Judgment in Catan and Others*, EJIL: TALK! (Oct. 21, 2012), <http://www.ejiltalk.org/grand-chamber-judgment-in-catan-and-others/> [<http://perma.cc/W2HS-V7YW>] (“[I]t was utterly unclear . . . whether the Court considered all acts of the [separatist regime] to be attributable to Russia . . . or rather whether Russia was held responsible for failing to comply with a positive obligation to prevent human rights violations by non-state actors [of the separatist regime] operating in an area under its jurisdiction.”). Moreover, the court noted that Russian responsibility extends to conduct beyond that of the Russian soldiers to the conduct of the separatists because the soldiers “were fully aware that they were handing [the applicants] over to an illegal and unconstitutional regime.” *Ilaşcu and Others*, App. No. 48787/99, ¶ 384.

<sup>144</sup> See *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 384–385. The conduct ultimately imputed to Russia included the applicants’ arrest and detention by state actors—the Russian army—but also the applicants’ transfer to the Transdniestrian police and regime, which subsequently mistreated and violated the rights of the applicants. *Id.*

<sup>145</sup> *Catan and Others*, App. Nos. 43370/04, 8252/05, and 18454/06, ¶¶ 12, 114, 122–123.

rect involvement of Russian agents in the action taken against the applicants' schools."<sup>146</sup> Yet, in its holding, the ECtHR concluded that the conduct of the local regime in Transdniestria could be imputed to Russia because Russia nevertheless exercised decisive influence over it and it continued to exist "only because of Russian military, economic and political support."<sup>147</sup> Consequently, *Catan* stands for the notion that the conduct of non-state actors can be imputed to a state when that state exercises decisive influence over the local government.<sup>148</sup>

### III. ANALYSIS

#### A. Failure of the Interim Measures

In granting Ukraine's requested interim measures, the ECtHR used broad language "calling upon both Russia and Ukraine to refrain from taking any measures, in particular military action, which might bring about violations of the Convention rights of the civilian population, notably under Articles 2 and 3 of the Convention."<sup>149</sup> Thus, in order to evaluate the efficacy of the order, the subsequent policies, armaments, and defenses of both Russia and Ukraine since the imposition of the interim measures must be considered.<sup>150</sup> An evaluation of Russia's conduct in Crimea and eastern Ukraine after March 13, 2014 reveals that Russia has violated the interim measures.<sup>151</sup> This breach is evidenced by reports of significant human rights abuses, Russia's effective control over Crimea, and, possibly, its decisive influence in eastern Ukraine.<sup>152</sup> It is equally as evident from reports on the fighting that Ukraine—putting aside a counterargument for self-defense—is involved in military action and violating the letter of the interim measures too.<sup>153</sup> Despite the flagrant violations of the interim measures, however, it is not necessarily accurate to say that the

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<sup>146</sup> *Id.* ¶¶ 44–45, 114. Russia's argument against Article 1 jurisdiction in this case was that, if the ECtHR were to impute the conduct of the non-state actors in Transdniestria, it would not be consonant with the holding in *Military Activities in Nicaragua*, which would require extensive and effective control of the military or paramilitary operations by Russia. *Id.* ¶ 115; Milanovic, *supra* note 143.

<sup>147</sup> See *Military Activities in Nicaragua*, 1986 I.C.J., ¶ 115; *Catan and Others*, App. Nos. 43370/04, 8252/05, and 18454/06, ¶¶ 114, 122–123.

<sup>148</sup> See *Catan and Others*, App. Nos. 43370/04, 8252/05, and 18454/06, ¶¶ 106, 122–123 (observing that "[t]he fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions.")

<sup>149</sup> November Press Release, *supra* note 6, at 2.

<sup>150</sup> See March Press Release, *supra* note 6; November Press Release, *supra* note 6, at 1.

<sup>151</sup> See SEPTEMBER REPORT, *supra* note 4, ¶¶ 3–4; November Press Release, *supra* note 6, at 2; *NATO Releases Satellite Imagery*, *supra* note 54.

<sup>152</sup> See SEPTEMBER REPORT, *supra* note 4, ¶¶ 3–4; November Press Release, *supra* note 6, at 2; *NATO Releases Satellite Imagery*, *supra* note 54.

<sup>153</sup> See SEPTEMBER REPORT, *supra* note 4, ¶ 3; November Press Release, *supra* note 6, at 2; *UN Chief 'Gravely Concerned'*, *supra* note 4.

measures will continue to be unsuccessful and ineffective as the international community works towards a resolution of this conflict.<sup>154</sup>

### 1. Russia's Conduct in Crimea

With respect to the events that occurred in Crimea after March 13, 2014, Russia has definitively violated the court's orders.<sup>155</sup> Three days after Ukraine filed its application, the Crimean Parliament, which had already declared the peninsula to be part of Russia, held a public referendum to confirm its vote.<sup>156</sup> The months following the referendum saw Russia solidify its control over the area by formally annexing Crimea, nullifying all Ukrainian law on the peninsula, and implementing a full transition policy to integrate Crimea into Russia.<sup>157</sup> In mid-April, Putin also admitted that Russian soldiers wearing unmarked uniforms had been deployed throughout Crimea.<sup>158</sup>

The annexation of Crimea, comprehensive transition process, and substantial presence of Russian troops mean that the day-to-day operations on the peninsula now are governed and effectively controlled by Russia.<sup>159</sup> Under Article 1, and as a consequence of Russia's effective control, Russia should be responsible for the human rights abuses occurring in Crimea—some of which

<sup>154</sup> See NAGENDRA SINGH, *THE ROLE AND RECORD OF THE INTERNATIONAL COURT OF JUSTICE* 216–17 (1989); Chris Borgen, *The Crimea, Compliance, and the Constraint of International Law*, OPINIO JURIS (Mar. 3, 2014, 12:29 PM), <http://opiniojuris.org/2014/03/03/crimea-compliance-constraint-international-law/> [<http://perma.cc/EUU9-YKUN>]; Nico Krisch, *Crimea and the Limits of International Law*, EJIL: TALK! (Mar. 10, 2014), <http://www.ejiltalk.org/crimea-and-the-limits-of-international-law/> [<http://perma.cc/27NV-EPVZ>].

<sup>155</sup> See MAY REPORT, *supra* note 4, at 4; OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, REPORT ON HUMAN RIGHTS SITUATION IN UKRAINE ¶ 284 (June 15, 2014), [http://www.un.org.ua/images/stories/Report\\_15\\_June\\_2014\\_en.pdf](http://www.un.org.ua/images/stories/Report_15_June_2014_en.pdf) [<http://perma.cc/BW7T-PFUP>] [hereinafter JUNE REPORT]; March Press Release, *supra* note 6; November Press Release, *supra* note 6, at 2.

<sup>156</sup> Alan Yuhas & Raya Jalabi, *Crimea's Referendum to Leave Ukraine: How Did We Get Here?*, GUARDIAN (Mar. 13, 2014, 3:04 PM), <http://www.theguardian.com/world/2014/mar/13/crimea-referendum-explainer-ukraine-russia> [<http://perma.cc/7BQ2-EMUZ>]; *Ukraine History: Independent Ukraine*, *supra* note 2.

<sup>157</sup> *Ukraine History: Independent Ukraine*, *supra* note 2; Robert McMahon, *Ukraine in Crisis*, COUNCIL ON FOREIGN RELATIONS (Aug. 25, 2014), <http://www.cfr.org/ukraine/ukraine-crisis/p32540> [<http://perma.cc/Q5GL-YGG4>]; see MAY REPORT, *supra* note 4, at 4.

<sup>158</sup> Willis Raburu, *Putin Admits Unmarked Soldiers in Ukraine Were Russian; Optimistic About Geneva Talks*, PBS (Apr. 17, 2014, 11:45 AM), <http://www.pbs.org/newshour/rundown/putin-admits-unmarked-soldiers-ukraine-russian-optimistic-geneva-talks/> [<http://perma.cc/CQG7-NQGA>].

<sup>159</sup> MAY REPORT, *supra* note 4, at 4; McMahon, *supra* note 157; see *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 115 (June 27) [hereinafter *Military Activities in Nicaragua*] (defining the context in which a state could be liable for actions occurring in the territory of another state, but declining to find the United States liable for certain actions taken by rebels in Nicaragua); *Loizidou (Merits)*, App. No. 15318/89, ¶¶ 52, 56 (concluding that Turkey exercised effective control over portions of Cyprus such that it was responsible for the Convention violations that occurred in those areas).

are highlighted in a June 2014 report by the Office of the UN High Commissioner for Human Rights (Office):

[A] continuation of worrying trends, including instances of enforced disappearances, arbitrary detentions, violence and ill-treatment committed by the so-called “Crimean self-defence” [sic] . . . Furthermore the enforcement of the Russian Federation law on the territory of Crimea . . . is creating difficulties for Crimean residents to enjoy their human rights . . . .<sup>160</sup>

Additionally, the UN report revealed specific breaches of Articles 2 and 3 of the Convention, as it listed individuals who had been reported missing, imprisoned, or tortured by the Federal Security Service, the Russian security and counterintelligence agency.<sup>161</sup>

Not only do these facts suffice to demonstrate effective control as required by *Military Activities in Nicaragua*, but they also align with *Cyprus v. Turkey*, in which Turkey’s effective control over Northern Cyprus gave rise to Turkish jurisdiction under Article 1 and state responsibility.<sup>162</sup> Regardless of whether the international community recognizes Russia’s *de facto* control over Crimea as lawful, the human rights violations in Crimea still may be attributed to Russia.<sup>163</sup> Consequently, Russia has failed to comply with the court’s interim measures with respect to its conduct in Crimea.<sup>164</sup>

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<sup>160</sup> JUNE REPORT, *supra* note 155, ¶ 284; *see* Convention, *supra* note 59, art. 1; *Loizidou (Merits)*, App. No. 15318/89, ¶¶ 52, 56.

<sup>161</sup> JUNE REPORT, *supra* note 155, ¶¶ 287–292; *see* *Federal Security Service (FSB)*, ENCYC. BRITANNICA, <http://www.britannica.com/EBchecked/topic/203373/Federal-Security-Service-FSB> [<http://perma.cc/JWM9-GL7L>] (last visited Jan. 28, 2016). Additional human rights violations recorded by the Office included the prohibition of groups from assembling (even those unrelated to the immediate political turmoil), the well-being and protection of gay and lesbian individuals (the *de facto* Crimean prime minister stressed these individuals would “not receive support from authorities”), and an increase in domestic violence, because Russia—unlike Ukraine—has no explicit domestic violence law. SEPTEMBER REPORT, *supra* note 4, ¶¶ 159, 171–172. Additional reports noted that Crimeans who did not immediately apply for Russian citizenship were “facing harassment and intimidation”; restrictions or prohibitions were placed on Ukrainian television and radio outlets located in Crimea; and priests were experiencing attacks, pressure, and intimidation. MAY REPORT, *supra* note 4, at 28, 30.

<sup>162</sup> *See* *Military Activities in Nicaragua*, 1986 I.C.J., ¶ 115; *Cyprus v. Turkey*, App. No. 25781/94, Eur. Ct. H.R., ¶ 77 (2001), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454> [<http://perma.cc/69RT-TXXG>] [hereinafter *Cyprus II*]; MAY REPORT, *supra* note 4, at 4; McMahon, *supra* note 157.

<sup>163</sup> *See* *Tinoco Arbitration (Gr. Brit. v. Costa Rica)*, 1 R.I.A.A. 369, 381 (1923); *Loizidou (Preliminary Objections)*, App. No. 15318/89, ¶ 62.

<sup>164</sup> *See* MAY REPORT, *supra* note 4, at 4; November Press Release, *supra* note 6, at 2; McMahon, *supra* note 157.



## 2. Russia's Conduct in Eastern Ukraine

Although Russia has exercised direct and effective control over Crimea since the March 13 interim measures, it has not demonstrated similar control over other areas in eastern Ukraine.<sup>165</sup> Pro-Russian separatists may exercise some control over portions of the Donetsk and Luhansk oblasts, but accountability for these separatists' conduct cannot be automatically imputed to the Russian state.<sup>166</sup> Yet, to the extent that Russia has exercised decisive influence in the region and on local governments, it may have jurisdiction under Article 1; thus, it may be responsible for the fighters' conduct—even though these areas remain part of Ukrainian territory.<sup>167</sup>

Several reports from different international peace-keeping organizations proffer that Russian troops and weaponry have been sent to eastern Ukraine to support the separatists' movement.<sup>168</sup> Specifically, in August 2014, NATO released satellite images that appear to depict Russian troops within Ukraine.<sup>169</sup> A director in NATO's Allied Command Operations described these images:

Over the past two weeks we have noted a significant escalation in both the level and sophistication of Russia's military interference in Ukraine . . . . The satellite images . . . provide additional evidence

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<sup>165</sup> See *Ukraine Crisis in Maps*, N.Y. TIMES (Mar. 10, 2015), <http://www.nytimes.com/interactive/2014/02/27/world/europe/ukraine-divisions-crimea.html> [<http://perma.cc/8BUR-QFUN>] (showing the various and continuous battles in the Donetsk and Luhansk regions, which demonstrate a lack of effective control over the territory); November Press Release, *supra* note 6, at 1; *UN Chief 'Gravely Concerned,' supra* note 4.

<sup>166</sup> See *Military Activities in Nicaragua*, 1986 I.C.J., ¶¶ 115–116 (determining that the control that the United States exerted over certain conduct of the *contras* was insufficient to rise to the level of state responsibility); *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, Judgment, 1980 I.C.J. 3, ¶ 58 (May 24) (concluding that without the militants acting on behalf of Iran or under the charge of Iran, their conduct could not be imputed to Iran). Donetsk and Luhansk are two oblasts in eastern Ukraine, which border Russia and have seen most of the fighting in the east. *Ukraine Crisis in Maps, supra* note 165. With a large number of civilian fatalities in Donetsk and Luhansk, these oblasts also have the greatest number of refugees and displaced people. *Id.*; *UN Chief 'Gravely Concerned,' supra* note 4.

<sup>167</sup> See *Loizidou (Preliminary Objections)*, App. No. 15318/89, ¶¶ 62, 64 (concluding that Turkey had jurisdiction over portions of Cypriot national territory, and therefore, responsibility for Convention violations occurring in that territory); *Ukraine Crisis in Maps, supra* note 165 (depicting a lack of effective control over the Donetsk and Luhansk regions based on the ongoing fighting and shifts in territorial possession).

<sup>168</sup> See, e.g., Ewen MacAskill, *Russian Tanks and Troops Crossing into Ukraine, Says NATO Commander*, GUARDIAN (Nov. 12, 2014, 1:00 PM), <http://www.theguardian.com/world/2014/nov/12/russian-tanks-troops-crossing-into-ukraine-nato-supreme-commander> [<http://perma.cc/L27Q-MLPA>]; *Ukraine Crisis: Russian "Cargo 200" Crossed Border—OSCE*, BBC NEWS (Nov. 13, 2014, 8:34 AM), <http://www.bbc.com/news/world-europe-30039004> [<http://perma.cc/G4YQ-D2SA>]; *NATO Releases Satellite Imagery, supra* note 54.

<sup>169</sup> *NATO Releases Satellite Imagery, supra* note 54.

that Russian combat soldiers, equipped with sophisticated heavy weaponry, are operating inside Ukraine's sovereign territory . . . .<sup>170</sup>

NATO also has reported significant amounts of advanced weapons systems, including artillery, tanks, and armored personnel carriers that have been transferred to separatist forces inside Ukraine.<sup>171</sup> In November 2014, the United States Supreme Allied Commander in Europe, referring to border-crossing observations made by NATO, announced that “[f]orces, money, support, supplies, [and] weapons are flowing back and forth across this border completely at will[.]”<sup>172</sup> Additionally, the Organization of Security and Co-operation in Europe (OSCE) observed vehicles believed to be carrying “Russian military men” across the border.<sup>173</sup> Specifically, the vehicles were marked “Cargo 200,” which is a Russian military code for soldiers killed in action.<sup>174</sup> NATO observers noted that this frequent Russian activity and movement was “part of a highly coordinated and destabilising strategy.”<sup>175</sup>

These observations are important because—with *Loizidou*, *Ilaşcu*, and *Catan* in mind—they suggest Russian control over the planning and day-to-day operations in eastern Ukraine.<sup>176</sup> Yet, it may be difficult to satisfy the higher standard relied on in *Loizidou* and to show conclusively that Russia is exhibiting sufficient “effective overall control” in eastern Ukraine.<sup>177</sup> On the other hand, applying the ECtHR’s case law from both *Ilaşcu* and *Catan*, the money, support, supplies, and weapons allegedly “flowing back and forth across [the] border completely at will” may be sufficient to establish decisive

<sup>170</sup> *Id.* (internal quotation marks omitted).

<sup>171</sup> *Id.*

<sup>172</sup> MacAskill, *supra* note 168.

<sup>173</sup> *Ukraine Crisis: Russian “Cargo 200” Crossed Border—OSCE*, *supra* note 168. The OSCE is a group whose member states work to address various regional issues including arms control, human rights, policing strategies, and counter-terrorism. *Who We Are*, ORG. FOR SEC. & CO-OPERATION IN EUR., <http://www.osce.org/who> [<http://perma.cc/NQY6-FG5T>] (last visited Jan. 6, 2016).

<sup>174</sup> *Ukraine Crisis: Russian “Cargo 200” Crossed Border—OSCE*, *supra* note 168.

<sup>175</sup> *NATO Releases Satellite Imagery*, *supra* note 54.

<sup>176</sup> See *Catan and Others v. Moldova and Russia*, App. Nos. 43370/04, 8252/05, and 18454/06, 2012 Eur. Ct. H.R., ¶¶ 122–123 (2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114082> [<http://perma.cc/BY6M-Y2YV>]; *Ilaşcu and Others v. Moldova and Russia*, App. No. 48787/99, 2004-VII Eur. Ct. H.R., ¶ 392 (2004), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886>; MacAskill, *supra* note 168; *NATO Releases Satellite Imagery*, *supra* note 54.

<sup>177</sup> *Loizidou (Merits)*, App. No. 15318/89, ¶ 56; see Raburu, *supra* note 158 (reporting that Putin continues to deny that Russian troops are “stirring unrest” in eastern Ukraine); *Ukraine Crisis in Maps*, *supra* note 165. In *Military Activities in Nicaragua*, the ICJ also specifically noted that “United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the *contras*, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the United States the acts committed by the *contras* in the course of their military or paramilitary operations in Nicaragua.” *Military Activities in Nicaragua*, 1986 I.C.J., ¶ 115.

influence over the separatists' conduct in eastern Ukraine.<sup>178</sup> To the extent that the regimes in Donetsk and Luhansk survive and operate as a consequence of Russia's financial, military, and political support—including Russia's support for the November 2014 elections in the separatist Donetsk and Luhansk—the alleged Convention violations committed by the separatists in these areas could be imputed to Russia.<sup>179</sup>

Finally, despite Russia's repeated denial of its involvement in eastern Ukraine, such denial will not alone shield it from assuming responsibility for the conduct of the pro-Russian separatists.<sup>180</sup> In sum, because Russia has engaged in military action that has resulted in human rights violations contrary to the interim measures—through its effective control over Crimea and possibly its decisive influence over pro-Russian separatists in eastern Ukraine—Russia has not abided by the interim measures.<sup>181</sup>

### 3. Ukraine's Conduct

Although Ukraine requested interim measures to protect its nationals, when the court granted the request, it required that both Russia and Ukraine “refrain from taking any measures, in particular military action, which might bring about violations of the Convention . . . notably under Articles 2 and 3[.]”<sup>182</sup> Under a strict interpretation of the order, Ukraine has not abided by the

<sup>178</sup> MacAskill, *supra* note 168; *see Catan and Others*, App. Nos. 43370/04, 8252/05, and 18454/06, ¶¶ 114, 122–23; *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 384, 392.

<sup>179</sup> *See Catan and Others*, App. Nos. 43370/04, 8252/05, and 18454/06, ¶¶ 114, 122–23; *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 384, 392; MacAskill, *supra* note 168; Shaun Walker, *Russia Calls for Talks with Kiev After Separatist Elections*, *GUARDIAN* (Nov. 3, 2014, 11:23 AM), <http://www.theguardian.com/world/2014/nov/03/germany-urges-russia-respect-unity-ukraine-donetsk-elections> [<http://perma.cc/2AU7-SJ6U>]; *NATO Releases Satellite Imagery*, *supra* note 53. Although Ukraine, the United States, and other Western states rejected the elections—which were to determine the parliamentary make-up of both Donetsk and Luhansk—as illegitimate and violative of the Minsk Agreement, Russia's Foreign Minister Sergey Lavrov called the elections “important for legitimizing the authority” in the region and noted that Russia “of course will recognize their results.” Herszenhorn & Roth, *supra* note 53; *see Walker, supra*.

<sup>180</sup> Dzehtsiarou, *supra* note 78 (“[Russia's denial of] its involvement into a particular set of events does not mean that [ECtHR] will accept this position.”); *see Military Activities in Nicaragua*, 1986 I.C.J., ¶ 27 (noting “regret” in the fact that the United States chose not to appear at the proceedings, but nevertheless, deciding the merits of the case against the United States, at least in part); *Loizidou (Merits)*, App. No. 15318/89, ¶¶ 51, 56 (holding that the Turkish government did, in fact, have jurisdiction over the northern portion of Cyprus, despite Turkey's denial of jurisdiction).

<sup>181</sup> *See MAY REPORT, supra* note 4, at 4; McMahon, *supra* note 157; *NATO Releases Satellite Imagery, supra* note 54; November Press Release, *supra* note 6, at 1; *UN Chief ‘Gravely Concerned,’ supra* note 4; *Close to 8,000 People Killed in Eastern Ukraine—UN*, UN NEWS CENTRE (Sept. 8, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16394> [<http://perma.cc/DX6A-JJTP>].

<sup>182</sup> November Press Release, *supra* note 6, at 2.

interim measures.<sup>183</sup> Since the beginning of the conflict in Crimea and eastern Ukraine, Ukrainian security forces and army personnel have been the primary counter-force to pro-Russian separatists.<sup>184</sup> Ukraine's military action has contributed to the deadly conflict, which, between April 2014 and December 2015, has claimed the lives of nearly 9000 people and left almost 21,000 wounded.<sup>185</sup> The Office of the UN High Commissioner for Human Rights indicated that the civilian death toll was particularly high in the residential areas of eastern Ukraine, the control of which is contested by both the Ukrainian government and the pro-Russian separatists.<sup>186</sup> Moreover, and pursuant to the ECtHR's holding in *Ilaşcu*, to the extent that Ukraine is the "only legitimate government" in eastern Ukraine, it will retain jurisdiction of the region under Article 1, regardless of its ability to exercise effective control over the area.<sup>187</sup> Therefore, Ukraine will maintain its positive obligation in eastern Ukraine to "secure to the applicants the rights guaranteed by the Convention."<sup>188</sup> Although Ukraine may be forced to exercise its right to self-defense, its use of military action contributes to the serious and ongoing violation of its nationals' human rights, contrary to the order of the ECtHR.<sup>189</sup>

### B. Contributions of the Interim Measures

The court's interim measures were not effective in restricting military action by Russia or Ukraine, and as a consequence of the failure, Ukrainian nationals have suffered ongoing human rights abuses and violations of their Convention rights.<sup>190</sup> It does not necessarily follow, however, that because the interim measures were not initially effective, they will offer no value to a future resolution of the conflict.<sup>191</sup> Regardless of when or how the conflict is fully resolved, its resolution is unlikely to arise from cloistered discussions between

<sup>183</sup> See *id.*; *Ukraine Crisis: Russian Troops Crossed Border, NATO Says*, BBC NEWS (Nov. 12, 2014, 5:23 PM), <http://www.bbc.com/news/world-europe-30025138> [<http://perma.cc/A488-FMXL>]; *UN Chief 'Gravely Concerned'*, *supra* note 4.

<sup>184</sup> See *Ukraine Crisis: Russian Troops Crossed Border, NATO Says*, *supra* note 183; Yuhás & Jalabi, *supra* note 156.

<sup>185</sup> *Despite Less Fighting, Eastern Ukraine Still 'Highly Flammable'*, *UN Reports, as Death Toll Tops 9,000*, UN NEWS CENTRE (Dec. 9, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52771#.VqOfvfkrlIV> [[perma.cc/J4D3-7S6D](http://perma.cc/J4D3-7S6D)]. In particular, beginning in early 2015 and carrying on throughout the summer, there was a dramatic rise in civilian casualties. See *id.*; *UN Chief 'Gravely Concerned'*, *supra* note 4.

<sup>186</sup> *UN Chief 'Gravely Concerned'*, *supra* note 4; see also *Close to 8,000 People Killed in Eastern Ukraine*, *supra* note 181.

<sup>187</sup> See *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 323, 330–331; Herszenhorn & Roth, *supra* note 53; Morello, Constable & Faiola, *supra* note 51.

<sup>188</sup> See *Ilaşcu and Others*, App. No. 48787/99, ¶¶ 323, 330–331.

<sup>189</sup> See November Press Release, *supra* note 6, at 2; *UN Chief 'Gravely Concerned'*, *supra* note 4.

<sup>190</sup> See MAY REPORT, *supra* note 4, at 14; November Press Release, *supra* note 6, at 1; *UN Chief 'Gravely Concerned'*, *supra* note 4.

<sup>191</sup> See Borgen, *supra* note 154; Krisch, *supra* note 154.

Russia and Ukraine.<sup>192</sup> Rather, any final resolution will likely be the product of complex negotiations between multiple states against a backdrop of international institutions and trans-border alliances.<sup>193</sup> Although international law appears weak in the context of effectuating the interim measures, the measures actually reinforce international law and, in conjunction with other international organizations—the UN, OSCE, NATO, World Trade Organization, International Monetary Fund, and Group of Eight (G8)—they strengthen the efficacy and enforcement power of international law as a whole.<sup>194</sup>

The interim measures demonstrate that the ECtHR can serve as yet another platform for addressing and discussing international law and politics.<sup>195</sup> By encouraging the use of a variety of different platforms, the international community has seen some success in mitigating the dangers in eastern Ukraine.<sup>196</sup> For example, the UN has deployed a Human Rights Monitoring Mission and holds regular meetings of the Security Council to address the human rights conditions and implications of the fighting.<sup>197</sup> Additionally, the G8, the world's eight wealthiest countries, voted to suspend Russia from the organization, citing Russia's actions in Crimea as being inconsistent with the "shared beliefs" of the G8.<sup>198</sup> The United States and EU have also implemented a number of stringent sanctions against Russia, including those that target high-level Russian officials and others that target Russian banks and corporations—restricting credit markets for loans, energy technology exports, and arms pro-

<sup>192</sup> See Borgen, *supra* note 154; Krisch, *supra* note 154.

<sup>193</sup> See Borgen, *supra* note 154; Krisch, *supra* note 154.

<sup>194</sup> See Borgen, *supra* note 154; Leach, *supra* note 8; November Press Release, *supra* note 6, at 1; see, e.g., JUNE REPORT, *supra* note 155, ¶ 1 (reflecting the presence and role of the UN Human Rights Monitoring Mission in Ukraine); Bruno Waterfield, Peter Dominiczak & David Blair, *G8 Suspends Russia for Annexation of Crimea*, TELEGRAPH (Mar. 24, 2014, 9:26 PM), <http://www.telegraph.co.uk/news/worldnews/europe/russia/10720297/G8-suspends-Russia-for-annexation-of-Crimea.html> [<http://perma.cc/CY9U-RZ3N>] (reporting that the G8 group suspended Russia as a consequence of its involvement in Crimea).

<sup>195</sup> See Borgen, *supra* note 154; Krisch, *supra* note 154.

<sup>196</sup> See Borgen, *supra* note 154; see, e.g., Agnes Lovasz & Ott Ummelas, *Russia Cut to One Step Above Junk by Fitch on Oil, Sanctions*, BLOOMBERG (Jan. 9, 2015, 4:20 PM), <http://www.bloomberg.com/news/articles/2015-01-09/russia-credit-grade-cut-to-step-above-junk-by-fitch-on-oil-slide> [<http://perma.cc/AP6H-KVKR>] (analyzing the impact of sanctions against Russia and concluding that they have contributed to a serious currency crisis); *NATO Releases Satellite Imagery*, *supra* note 54 (sounding the alarm that, based on NATO observation, Russian troops and weapons were crossing over the Ukrainian border); *UN Chief 'Gravely Concerned'*, *supra* note 4 (noting that UN Secretary General openly supported the proposal by OSCE for a truce and "good-faith negotiation").

<sup>197</sup> See *The Situation in Ukraine: Quick Guide*, UN DAG HAMMARSKJÖLD LIBRARY (Feb. 13, 2015), <http://research.un.org/en/ukraine> [<http://perma.cc/77HZ-GBFE>]. The Monitoring Mission observes conduct and conditions on the ground in Ukraine, produces reports for the UN and the public, and makes recommendations to the UN on how to counter the human rights violations. *Id.*; see MAY REPORT, *supra* note 4, at 3, 32.

<sup>198</sup> Waterfield, Dominiczak & Blair, *supra* note 194.

ducers.<sup>199</sup> Whether or not sanctions are the best approach, they have—particularly those imposed on large banks and other commercial businesses—seriously impacted the overall economy of Russia.<sup>200</sup> In cutting off virtually all sources of Western funding and financing, these sanctions have contributed to the worst currency crisis in Russia since 1998 and the recent downgrade of Russia’s credit rating to BBB-.<sup>201</sup>

Moreover, the ceasefire originally brokered on February 12, 2015 between Ukraine, Russia, Germany, and France demonstrates that an effective truce is not the product of a single day’s work or a sheltered talk between two states.<sup>202</sup> Instead, the satisfactory resolution of the conflict will result from a broad and expansive collection of international figures, organizations, and standards—even if any one of those could not, on its own, achieve the truce.<sup>203</sup> Dubbed the Minsk Agreement, the February 2015 truce aimed to implement an immediate ceasefire in Ukraine, to remove heavy weapons and artillery from the lines of fighting, and to set a deadline by which Ukraine is to regain full control over its eastern region, which was set for the end of 2015.<sup>204</sup> These peace efforts, however, have been hampered by setbacks, including the crash of flight MH17 and the recent conclusion from Dutch officials that the cause of the crash was a surface-to-air missile that “could have commenced” from with-

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<sup>199</sup>James Kanter & David M. Herszenhorn, *U.S. and Europe Back New Economic Sanctions Against Europe*, N.Y. TIMES (Sept. 11, 2014), <http://www.nytimes.com/2014/09/12/world/europe/eu-pushes-forward-with-tougher-sanctions-on-russia.html> [<http://perma.cc/Z29R-YU7B>]; *Ukraine Crisis: Russia and Sanctions*, BBC NEWS (Dec. 19, 2014, 9:13 AM), <http://www.bbc.com/news/world-europe-26672800> [<http://perma.cc/9DUF-CNSV>]; Press Release, U.S. Dep’t of Treasury, Announcement of Treasury Sanctions on Entities Within the Financial Services and Energy Sectors of Russia, Against Arms or Related Materiel Entities, and Those Undermining Ukraine’s Sovereignty (July 16, 2014), <http://www.treasury.gov/press-center/press-releases/Pages/jl2572.aspx> [<https://perma.cc/J55P-2VCR>]. These kinds of sanctions have been ongoing, and the EU sanctions, in particular, will only expire on January 31, 2016, if the EU member states choose not to extend them. See *EU’s Tusk Says Russia Does Not Abide by Minsk Deal on Ukraine*, REUTERS (Nov. 4, 2015, 10:05 AM), <http://www.reuters.com/article/2015/11/04/us-ukraine-russia-eu-sanctions-idUSKCN0ST1YR20151104#Yydl1cyU0ewEPfXZs.97> [<http://perma.cc/7MNX-T3PL>].

<sup>200</sup>Priyanka Boghani, *What’s Been the Effect of Western Sanctions on Russia?*, PBS (Jan. 13, 2015), <http://www.pbs.org/wgbh/pages/frontline/foreign-affairs-defense/putins-way/whats-been-the-effect-of-western-sanctions-on-russia/> [<http://perma.cc/N33G-XYNN>].

<sup>201</sup>*Id.*; Lovasz & Ummelas, *supra* note 196. In April 2014, Standard & Poor downgraded Russia’s credit rating to BBB-, and in January 2015, Fitch matched the downgrade, which is just one level above junk. Lovasz & Ummelas, *supra* note 196.

<sup>202</sup>See *Ukraine Ceasefire: New Minsk Agreement Key Points*, BBC NEWS (Feb. 2, 2015, 9:13 AM), <http://www.bbc.com/news/world-europe-31436513> [<http://perma.cc/76HV-3VRA>]; Borgen, *supra* note 154; Krisch, *supra* note 154.

<sup>203</sup>See *Ukraine Ceasefire: New Minsk Agreement Key Points*, *supra* note 202; Borgen, *supra* note 154; Krisch, *supra* note 154.

<sup>204</sup>*EU’s Tusk Says Russia Does Not Abide by Minsk Deal on Ukraine*, *supra* note 199; *Ukraine Ceasefire: New Minsk Agreement Key Points*, *supra* note 202.

in eastern Ukraine.<sup>205</sup> Additionally, the initial ceasefire that was called for by the Minsk Agreement was not maintained in the long-term, and fighting instead continued throughout the year.<sup>206</sup> As the deadline for complete Ukrainian control in Donetsk and Luhansk approached, both sides agreed to pull back their heavy weaponry from the primary areas of fighting.<sup>207</sup> This agreement, reflecting the terms of the Minsk Agreement, and coupled with the general decline in fighting on the front lines was said to possibly “signal the end of the war” in Ukraine.<sup>208</sup> This deadline, however, came and went with Ukraine, Russia, France, and Germany agreeing to extend the terms of the Minsk Agreement into 2016.<sup>209</sup>

Ukraine’s application with the ECtHR has helped to enlarge the forum for discussion of international law, policy, security, and in particular, concerns regarding human rights challenges.<sup>210</sup> The ECtHR application brings awareness of the human rights violations to other states and organizations.<sup>211</sup> This awareness is evidenced by the reporting and acknowledgment of the interim

<sup>205</sup> DUTCH SAFETY BOARD, *MH17 CRASH: CRASH OF MALAYSIA AIRLINES FLIGHT MH17*, at 253, 256 (Oct. 2015), <http://www.onderzoeksraad.nl/uploads/phase-docs/1006/debcd724fe7breport-mh17-crash.pdf> [<http://perma.cc/7YEE-J2HG>]; *MH17 Ukraine Disaster: Dutch Safety Board Blames Missile*, BBC NEWS (Oct. 13, 2015), <http://www.bbc.com/news/world-europe-34511973> [<http://perma.cc/T98Y-TVRR>]. Although without the authority to attribute blame, the president of the Safety Board publicly has said that the missile was fired from a location that was controlled by pro-Russian separatists. *MH17 Ukraine Disaster: Dutch Safety Board Blames Missile*, *supra*.

<sup>206</sup> Roland Oliphant, *Ukraine and Rebels to Pull Back Heavy Weapons in Move that ‘Could Signal End of War’*, TELEGRAPH (Oct. 1, 2015, 6:58 PM), <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/11904946/Ukraine-and-rebels-to-pull-back-heavy-weapons-in-move-that-could-signal-end-of-war.html> [<http://perma.cc/9ZBE-A3G2>]; Shaun Walker, *As Russia Enters War in Syria, Conflict in Ukraine Begins to Wind Down*, GUARDIAN (Oct. 1, 2015, 1:05 PM), <http://www.theguardian.com/world/2015/oct/01/as-russia-enters-war-in-syria-conflict-in-ukraine-begins-to-wind-down> [<http://perma.cc/28C3-MP7W>].

<sup>207</sup> Oliphant, *supra* note 206.

<sup>208</sup> *Id.*; Walker, *supra* note 206.

<sup>209</sup> *Leaders of Ukraine, Russia, France and Germany Back Extension of Ukraine Peace Deal*, REUTERS (Dec. 30, 2015) <http://www.reuters.com/article/ukraine-crisis-talks-idUSR4N14A02M20151230> [[perma.cc/D6X9-YB3X](http://perma.cc/D6X9-YB3X)].

<sup>210</sup> See Borgen, *supra* note 154; November Press Release, *supra* note 6, at 1.

<sup>211</sup> See Borgen, *supra* note 154; November Press Release, *supra* note 6, at 1; see, e.g., Press Release, Eur. Court of Human Rights, Interim Measure Granted in Inter-State Case Brought by Ukraine Against Russia (Mar. 15, 2014), [http://usa.mfa.gov.ua/mediafiles/sites/usa/files/2014.03.14\\_ECHR.pdf](http://usa.mfa.gov.ua/mediafiles/sites/usa/files/2014.03.14_ECHR.pdf) [<https://perma.cc/3VSS-8DJZ>] (providing the story and information of the ECtHR’s interim measures on the website for the Ukrainian Embassy in United States); *On Filing by the Government of Ukraine to the European Court of Human Rights (ECHR) an Inter-State Application Against the Russian Federation*, EMBASSY OF UKR. IN REPUBLIC OF LAT. (Mar. 17, 2014), <http://latvia.mfa.gov.ua/en/press-center/news/19952-shhodo-podannya-uryadom-ukrajini-do-jevropejskogo-sudu-z-pravlyudini-zajavi-proti-rosijskykoji-federaciji> [<http://perma.cc/3R9X-YMV8>] (publishing the story and information regarding the ECtHR’s interim measures on the website for the Ukrainian Embassy in Latvia).

measures in various media and government outlets.<sup>212</sup> While the interim measures have not appeared in the mass media or been regularly addressed in the speeches of political leaders, the academic community has focused on and dissected the measures, analyzing their strengths and weaknesses through vigorous debate.<sup>213</sup>

Finally, by filing an application with the ECtHR and requesting interim measures, Ukraine has opted—on the international stage—to take the high road by seeking to achieve order through international legal obligations and principled solutions.<sup>214</sup> Possible effects of such conduct are reflected in *United States Diplomatic and Consular Staff in Tehran*, where the United States sought the assistance and support of the ICJ even though it was unlikely that the proceeding alone would result in the release of the hostages.<sup>215</sup> Its appeal to an international tribunal demonstrated to the world that the United States had been wronged, that it would not use force in response, and that Iran had violated principles of international law.<sup>216</sup> Consequently, the institution of the ICJ proceeding strengthened the U.S. position by highlighting Iran's illegal conduct in a juridical setting and helped diversify the forums in which states address international law and order.<sup>217</sup> The same is true of Ukraine's application to the ECtHR—particularly when combined with appeals to and monitoring by the UN, economic sanctions imposed by the international community, and, perhaps most important, the Minsk Agreement, which, although requiring months to take hold, may finally be working to resolve the conflict.<sup>218</sup>

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<sup>212</sup> See, e.g., VAUGHNE MILLER, HOUSE OF COMMONS LIBRARY, STANDARD NOTE SN/IA/6953, RUSSIA AND THE COUNCIL OF EUROPE 11 (2014), <http://www.parliament.uk/briefing-papers/sn06953.pdf> [<http://perma.cc/CUH2-T5GX>]; ECHR on Ukraine v. Russia Cases Concerning Crimea and Donbas, KHARKIV HUMAN RIGHTS PROTECTION GRP. (Dec. 2, 2014), <http://khpg.org/en/index.php?id=1417124580> [<http://perma.cc/5YQA-K5BC>]; Theresa Papademetriou, *European Court of Human Rights; Russia; Ukraine: Ukraine Files an Inter-State Application Against Russia*, LAW LIBRARY OF CONG. (Mar. 20, 2014), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403898\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403898_text) [<http://perma.cc/2R6E-UV8D>].

<sup>213</sup> See, e.g., Borgen, *supra* note 154; Krisch, *supra* note 154; Julian Ku, *Russia Reminds the World (and International Lawyers) of the Limits of International Law*, OPINIO JURIS (Mar. 2, 2014), <http://opiniojuris.org/2014/03/02/ukraine-russia-international-law-governing-use-force/> [<http://perma.cc/UZW8-LWZS>] (“[I]nternational law . . . has utterly and completely failed to constrain Russia’s actions in Ukraine.”).

<sup>214</sup> See SINGH, *supra* note 154, at 216–17.

<sup>215</sup> See *id.*

<sup>216</sup> See *id.*; Krisch, *supra* note 154.

<sup>217</sup> See SINGH, *supra* note 154, at 216–17; Krisch, *supra* note 154.

<sup>218</sup> See SINGH, *supra* note 154, at 216–17; Robert Caswell, *Economic Sanctions and the Iran Experience*, 60 FOREIGN AFF. 247, 247–48 (1981–82) (concluding that it was not clear why Iran eventually released the hostages, but pointing to the numerous actions by the United States and international organizations that likely contributed to the positive outcome); Kanter & Herszenhorn, *supra* note 199 (reporting on the collective economic sanctions that the United States and EU have imposed on Russia); Oliphant, *supra* note 206 (reporting on the recent agreement between Ukraine and separatists to withdraw large weapons from the front lines pursuant to the ideals of the Minsk Agreement);



## CONCLUSION

Although Russia and Ukraine violated the interim measures by continuing to fight and effect human rights violations, Ukraine's inter-state application to the ECtHR nevertheless can be a tool to help resolve the conflict. The efficacy and execution of the court's interim measures have frequently been questioned, but the unique nature and rarity of an inter-state application provides the court with a way to contribute to the resolution of the conflict on an international stage. Alone, the interim measures are not sufficient to put an end to the fighting and human rights challenges, but they certainly contribute to the discourse on international law, rights, obligations, and relations. It is with the help of these forums that a permanent solution will eventually be reached in Ukraine.

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*The Situation in Ukraine: Quick Guide*, *supra* note 197 (explaining the various elements of UN involvement in Ukraine, including a human rights monitoring mission and General Assembly resolutions).