Legal Means of Ensuring Maritime Security of Ukraine

March 2022
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This publication was prepared to provide analytical support to the Crimea Platform, the initiative of the Ukrainian Government on the de-occupation and reintegration of Crimea.

This publication was funded by UK aid from the UK government as part of the project “Solidifying the Crimean Platform to Enhance Ukraine’s and International Policy Framework for the De-Occupation of Crimea (Phase II)” implemented by the Centre for Defence Strategies (CDS). The views expressed in this publication are those of the author(s) and may not coincide with the official position of the UK Government.

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This publication is available in two languages: Ukrainian and English. Both are available on the CDS website.

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Published by the Centre for Defence Strategies, Kyiv, Ukraine  
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INTRODUCTION

Ukraine’s geographical location contributes to the development of its transport potential, integration into the world transport system, primarily as a state able to ensure the transit of cargos through the center of Europe by the shortest route.1

The occupation of Crimea with its subsequent illegal annexation, intensive militarization of the peninsula, the creation by the Russian Federation of artificial, unjustified obstacles and violations of freedom of navigation in the Black and Azov Seas pose serious challenges to maritime security in Ukraine, other countries of the Black Sea Basin and Mediterranean region.

One of the elements of guaranteeing maritime safety is the implementation and effective application of legal mechanisms of international maritime law and Ukrainian legislation to ensure the priority national interests at sea, including:

• support for the freedom of the high seas;

• protection of state sovereignty in inland waters, territorial sea, airspace above them, on the seabed and subsoil within them;

• protection of sovereign rights and jurisdiction of Ukraine in its exclusive (maritime) economic zone, as well as in strategically important areas of the sea for the state;

• protection of national interests in the oceans;

• ensuring in the territorial sea and inland waters the navigation regime established by the UN Convention on the Law of the Sea and other international documents;

• protection of human life at sea and rescue of people, property and vessels;

• prevention of marine pollution, effective environmental monitoring;

• achieving the state of the marine environment in the territorial waters and the exclusive maritime economic zone of Ukraine, which corresponds to “good ecological status” in the sense of the European Union Marine Strategy Framework Directive, and maintaining such a status in the long run;

• ensuring control over the functioning of vital maritime communications (territorial sea, the Kerch-Yenikale Canal, ways to seaports, mouths of the Southern Bug, Dnipro River and other areas of intensive shipping).2

Ukraine, as a state that ratified the UN Convention on the Law of the Sea in 1999 and implemented many provisions of international maritime law into Ukrainian legislation, has demonstrated its commitment to the peaceful development and use of the seas and the settlement of disputes. Meanwhile, the protection of borders, sovereign rights, with a view to ensuring maritime security are also crucial for us, as for any state.

That is why the Law of Ukraine “On the State Border of Ukraine” adopted on November 4, 1991 (with further amendments and additions) defined the inviolability of the borders of the Ukrainian state.3 This Law may be considered one of the first national regulatory acts in maritime law.4 Inter alia, the specified official document established that the state border at sea shall run along the outer border of the territorial sea of Ukraine; as well as it provided the definition of the territorial sea of Ukraine and inland waters. In fact, in this part the Law confirms the provisions of the UN Convention on the Law of the Sea (ratified by the Law No. 728-XIV of June 3, 1999).5

The study analyzes, draws conclusions and provides recommendations with respect to:

• legal situation in the Ukrainian maritime sector of the Black Sea-Azov regions in the periods before and after the armed aggression of the Russian Federation against Ukraine;

• acts of national legislation of Ukraine in force in each of these periods;

• status and content of a number of international legal acts, such as the Agreement between Ukraine and Russia on the Status and Conditions of the Russian Black Sea Fleet in Ukraine, the continuation of this agreement, the Agreement between Ukraine and Russia on Cooperation and Use of the Sea of Azov and Kerch Strait, Convention regarding the Regime of Navigation on the Danube, Montreux Convention;

• identified legal aspects of modern threats to maritime security of Ukraine;

• formulated specific practical recommendations aimed at improving the effectiveness of legal instruments for the protection of maritime security of Ukraine.
CHAPTER 1.
ANALYSIS OF THE LEGAL SITUATION IN THE UKRAINIAN MARITIME SECTOR OF THE BLACK SEA AND AZOV REGION BEFORE AND AFTER THE BEGINNING OF THE ARMED AGGRESSION BY THE RUSSIAN FEDERATION AGAINST UKRAINE

In order to understand in the legal field the current situation since the annexation of the Crimean Peninsula, which began in February 2014, in our opinion, it is extremely important to analyze the legal framework for establishing state borders, the status of Crimea, rules of international law, international maritime law, as well as acts of national legislation that have been formed since the collapse of the USSR and to date.

Legal analysis of the status of the Crimean Peninsula, the Black Sea and the Sea of Azov, agreements and disputes between Ukraine and Russia in the period from 1990 to 2014

The Declaration on State Sovereignty of Ukraine of July 16, 1990 (Chapter V) stipulates that the territory of the Ukrainian SSR within the existing borders is inviolable and cannot be changed and used without its consent.1

The Treaty of November 19, 1990 was concluded between the Russian Soviet Federal Socialist Republic (RSFSR) and the Ukrainian Soviet Socialist Republic of the time.2 In accordance with the terms of the Treaty, the Parties recognized each other as sovereign states (Article 1) and undertook to recognize the territorial integrity of the RSFSR and the Ukrainian Soviet Socialist Republic within the borders established in the USSR (Article 6).

The Act of Declaration of Independence of Ukraine dated August 24, 19913 established that the territory of Ukraine is indivisible and inviolable.

Completely in the spirit of international public law, namely the principle of uti possidetis (what you possess remains yours), a formula that means the transformation of boundaries between colonies or administrative and territorial units in international borders in case of formation of new states4. On September 12, 1991, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Legal Succession”.5 Pursuant to Article 5 of this Law, the state border of the USSR, separating the territory of Ukraine from other states, and the border between the Ukrainian SSR and the Byelorussian SSR, RSFSR, the Republic of Moldova as of July 16, 1990 constitutes the state border of Ukraine.

Respect for each other’s territorial integrity as well as for the inviolability of borders was enshrined in the Agreement Establishing the Commonwealth of Independent States of December 8, 1991 (Article 5).6

On November 17, 1994, the Government of Ukraine and the Government of the Russian Federation concluded an agreement on merchant shipping, which became effective on May 27, 1995.7 Article 2 of this document stipulates that the Contracting Parties shall fully promote the freedom of merchant shipping and shall refrain from any action which may impair the normal development of international shipping.

Some legal aspects of the status of the Crimean Peninsula, the division and basing of the Black Sea Fleet of the RF in the city of Sevastopol

The situation with the significance and status of the Crimean Peninsula, from the very beginning, provoked, to put it mildly, a stormy and ambiguous reaction in the Russian ruling circles of the time.

Thus, on August 28, 1991, P. Voshchonov, the press secretary of the President of the Russian Federation, stated on his behalf that “the solving of the border problem is possible and permissible only if the relevant treaty establishes allied relations”, i.e., a new union treaty was meant. The statement specified: “in the event of termination of such relations between Ukraine and Russia, the latter reserves the right to raise the issue of border revision ... This applies to all neighboring republics, except for the Baltic... The problem concerns mainly Crimea, Donbas and North Kazakhstan Region, where many Russians live”.8


Despite the fact that the next day, on May 22, 1992, the Supreme Soviet of the Russian Federation adopted a statement addressed to the Verkhovna Rada of Ukraine, which expressed commitment to the principle of inviolability of borders between Ukraine and Russia and intends to adhere to fundamental principles of the UN, CSCE, it already became clear then that revisionist policy is being traced and formed in the Russian Federation.

In the article of the Russian newspaper Kommersant dated July 10, 1993,10 the special correspondent Oleg Medvedev, commenting on the resolution passed by the Supreme Soviet of the Russian Federation, in fact, refutes the arguments
of Russian deputies. Thus, the article rightly states that according to the Constitution of the RSFSR of 1938, as well as of 1978, in the period between sessions of the Supreme Soviet, issues referred to its jurisdiction were decided by the Presidium of the Supreme Soviet. Therefore, the position of the deputies of the Supreme Soviet of the Russian Federation that the then Presidium could not decide on the transfer of Crimea is unfounded. Immediately, the author accurately points out that by the same logic, resolutions on the inclusion of Tuva in the RSFSR in 1944, or on the transformation of the 16th Soviet Republic, the Karelian-Finnish, into Russian autonomy could be considered null and void.

The President of Ukraine Leonid Kravchuk, in Minsk on December 30, 1991, made a statement that Ukraine would start exercising its right to establish its own armed forces on January 3, 1992 and voluntarily lead the troops to swear allegiance to the people of Ukraine. On December 31, 1991, a corresponding telegram from the Minister for Defense of Ukraine was sent to the troops and the navy. The swearing-in process was to be completed by January 20, 1992, but these plans were never implemented.¹⁷

At the same time, on December 30, 1991, in Minsk, the CIS leaders signed an agreement on strategic forces, which is effective today.¹⁸

According to Mr Oleksandr Zadorozhnyi, the agreement was key for Ukraine, in a negative sense, for the Ukrainian delegation agreed to sign an agreement according to which the Black Sea Fleet (in a closed sea basin!) was considered a strategic force that will solve tasks in the interests of the Commonwealth. Since then, the fleet has been demonstrated to the Crimean people as strategic and, accordingly, united and indivisible.¹⁹

Meanwhile, the Presidential Decree of April 6, 1992 “On Urgent Measures for the Development of the Armed Forces of Ukraine”, which provided for the formation of the Navy of Ukraine on the basis of the Black Sea Fleet stationed in Ukraine,²⁰

However, such actions of Ukraine regarding the creation of an independent Navy, as well as in general the policy towards Crimea and the Black and Azov Seas, clearly did not suit the Russian Federation, whose representatives exerted systematic pressure, both on determining the special status for Sevastopol and on the division of the Black Sea Fleet. Moscow demanded negotiations on the future of the Black Sea Fleet, citing the Agreement on CIS Strategic Forces signed on December 30, 1991.

Probably, the said can explain the Decree of the President of Ukraine of April 10, 1992, which approved the composition of the state delegation of Ukraine for negotiations with the delegation of the Russian Federation on the division of the Black Sea Fleet (the list is attached). During the work of state delegations of Ukraine and the Russian Federation on the division of the Black Sea Fleet the Decree suspended Article 2 of the Decree of the President of Ukraine “On Urgent Measures for the Development of the Armed Forces of Ukraine” of April 5, 1992, regarding the Black Sea Fleet.²¹

The First Minister for Defense of Ukraine Mr Kostyantyn Morozov recalled the events of those days. “In all negotiations with our participation, Ukraine insisted on its right to own part of the fleet that was to belong to the state and material values in Crimea, which were used by the fleet” – Mr Morozov writes. This right failed to be defended, because Russia considered the Black Sea Fleet as a strategic potential of the CIS. Under pressure from Moscow, President Leonid Krvavchuk repealed his decree of April 6, 1992, which defined the Black Sea Fleet as the basis of the Ukrainian Navy. “I had a feeling, that I came across a wall while running in a certain direction, a feeling of great loss – for a very long time, if not forever,” Mr Morozov recalls.²²

Eventually, the Masandra Accords were signed on September 3, 1993, between Ukraine and the Russian Federation. Four international documents were related to resolving of the problems of the division of the Black Sea Fleet of the former USSR and the disposal of nuclear weapons located on the territory of Ukraine.

The results of the accords were the following:

2. The Basic Principles of Utilizing Nuclear Warheads of the Strategic Nuclear Forces Deployed in Ukraine.
4. Agreement between Ukraine and the Russian Federation on Implementation of Assured and Authoritative Supervision for Operation of Strategic Missile Systems of Strategic Forces Located on Their Territories.²³

The set of agreements triggered mixed
reactions among the Ukrainian military, politicians and experts, as described in particular in the book Anatomy of Undeclared War by M. Savchenko.

Meanwhile, the former Minister for Foreign Affairs of Ukraine Anatoliy Zienko recalled those events the following way. “We had to make some concessions on the division of the Black Sea Fleet... According to the signed documents, we expressed readiness to sell our part of the Black Sea Fleet. In addition, Ukraine undertook to transfer all nuclear warheads to Russia... The Masandra Accords were met by certain circles in Ukraine as “betrayal” and “loss of prestige”. In the West, some observers generally described them as a step towards rebuilding the union of Ukraine and Russia. As a person directly involved in the Ukrainian and Russian negotiations, I have never been so categorical in my assessment of Masandra decisions. Indeed, in a certain area, Moscow “pressed” us, taking advantage of the difficult economic situation and total dependence on Russia’s willingness to continue to borrow new energy carriers... Masandra, although being a painful step for us, still for some time allowed, at least in part, to resolve energy problem, repay part of the debt, get nuclear fuel for nuclear power plants... This was an example of real politics in a real and incredibly deep crisis. We should not forget that the Black Sea Fleet in that form was simply not needed in Ukraine, it only required more and more new expenditures, which the state budget in Ukraine’s economic crisis at the time was simply unable to master... As a temporary compromise they [Masandra agreements] were necessary... The decisions made in Masandra were very difficult for Ukraine.”

Thus, the ex-Minister for Foreign Affairs of Ukraine practically admits that Russia has exerted pressure on Ukraine, in our opinion, without dishonoring blackmail and other dirty methods, in some situations.

An important event took place on December 5, 1994. It was on this day that a Memorandum of Security Assurances was signed between Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Budapest Memorandum). As a result of Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, the said agreement reaffirmed that the states signatories undertake to respect the independence, sovereignty and existing borders of Ukraine.

From the perspective of the then uncertain position of the Russian Federation on respect for the territorial integrity of Ukraine, especially trying to “shatter the situation” around Crimea, assurances of recognition and respect for sovereignty and existing borders were really important for Ukraine.

The Budapest Memorandum has completed the insinuations of the Russian side regarding the territorial affiliation of Crimea... The adoption of the Budapest Memorandum allowed Ukraine to proceed with settling security relations. However, it (the Budapest Memorandum) can be called a document that confirms the existing legal guarantees contained in the UN Charter, the CSCE (now the OSCE) Final Act or the Treaty on the Non-Proliferation of Nuclear Weapons. The only guarantee is the sixth paragraph of the memorandum, which states that Ukraine, the United States, Russia and the United Kingdom will hold consultations in the event of a situation that raises questions about the implementation of their commitments. This point is a small but success of Ukrainian diplomacy. It introduced the institute of mandatory consultations at the request of Ukraine in the event of a threat to its security as a nuclear-free state. But this provision of the Budapest Memorandum obliges nuclear powers only to sit down at the negotiating table to discuss Ukraine's security. Nothing more. At the same time, there are no signatures on behalf of France and China under this memorandum. That is, France and China refused to accept their commitment to sit at the negotiating table at Ukraine's request. They made some statements that refer to the UN Charter and the CSCE Final Act, but these statements include no undertaking to hold consultations at the request or on demand of Ukraine. Is it serious to consider the Budapest Memorandum the basis of Ukraine's future security? And such statements are heard, and they mislead our citizens. If we talk about international guarantees, they can be political, legal and material. NATO membership provides not only political and legal, but also material guarantees for the security of its member states. That's the difference.

The Agreement between Ukraine and the Russian Federation on the Black Sea Fleet of June 9, 1999 stipulates that the Ukrainian Navy and the Black Sea Fleet of the Russian Federation shall be established on the basis of the Black Sea Fleet. The Navy of Ukraine and the Black Sea Fleet of the Russian Federation are based separately (Article 1). The main base for the Black Sea Fleet of the Russian Federation was the city of Sevastopol (Article 2). The Black Sea Fleet was partitioned in the proportion: 18.3 per cent to Ukraine, 81.7 per cent to the Russian Federation (Article 4). Separately, the Agreement stipulated that the parties, in order to maintain stability in the Black Sea region and ensure security in maritime areas, will combine efforts to cooperate in the naval field (Article 9).

Part 7 of Article 17 of the Constitution of Ukraine, adopted on June 28, 1996, states that location of foreign military bases shall not be permitted on the territory of Ukraine.

Meanwhile, the Transitional Provisions (Clause 14) of the Basic Law allowed the use of existing military bases on the territory of Ukraine for the temporary stationing of foreign military formations in connection with the obligations under the Final Act of the Conference on Security and Cooperation in Europe, respect each other's territorial integrity and confirm the inviolability of the borders between them (Article 2).

Article 29 of the Treaty stipulates that the High Contracting Parties, as Black Sea states, are ready to further develop comprehensive cooperation in saving and preserving the natural environment of the Azov-Black Sea basin, conducting marine and climatological research, using...
recreational opportunities and natural resources of the Black and Azov Seas, and navigation and operation of maritime communications, ports and facilities.

Agreement between Ukraine and the Russian Federation on cooperation in the use of the Sea of Azov and the Kerch Strait

Border issues in Ukrainian and Russian relations reflect the dual nature hereof: declaring a “strategic partnership” on the one hand, and the growing differences, the accumulation of unresolved contradictions and mutual claims, on the other. The only achievement of the five years of negotiations (1997-2002) was that both sides recognized: the Sea of Azov is “inland waters used by both states.” In fact, all Russia’s proposals were as follows: either to arrange for Azov to be shared (referring to the example of Argentina and Uruguay in resolving the issue of the Gulf of Rio de la Plata), or to maintain the current state of affairs, in which the status of maritime spaces is not regulated. The Russian Federation also offered variants of the “modified median line” taking into account combinations of different principles – the median line, historical (special) rights; “coastal areas of national jurisdiction” or “coastal areas of responsibility”, etc.

Given these factors, at the end of 2002 the Verkhovna Rada registered a bill introduced by the government, according to which the territorial sea of Ukraine includes coastal seawaters in the Black and Azov seas within 12 nautical miles. The Ukrainian side expressed readiness to raise the issue: either the talks will decide to jointly delimit Azov on the option of a median line on the internal waters of each state, or Kyiv will independently establish territorial waters. International law allowed this to be done – in accordance with the 1982 Convention. Due to the negative reaction of the Russian side, Ukraine did not dare to take concrete action.23

On September 29, 2003, under the pretext of protecting the coast of the Taman Peninsula from erosion, the Krasnodar Krai authorities began construction of a dam to connect the island of Tuzla with the Russian coast. After Russian builders had reached Ukrainian territorial waters, the Ministry of Foreign Affairs of Ukraine sent a note of protest to the Russian Foreign Ministry. On October 6, Minister for Foreign Affairs of Ukraine Kostiantyn Hryshchenko left for Moscow to resolve the interstate conflict. To take part in his decision, Ukrainian President Leonid Kuchma interrupted his visit to Latin America and arrived in Tuzla in person.

Construction of the dam was halted on October 23, 102 meters from Ukraine’s land border, after Leonid Kuchma and Vladimir Putin agreed in Moscow on the provisions of the Agreement on Cooperation in the Use of the Sea of Azov and the Kerch Strait signed in December 2003. A new Ukrainian border checkpoint opened in Tuzla on December 2, but the issue of the Russian-Ukrainian border in the Kerch Strait demarcation remained unresolved.22

The Russian-Ukrainian conflict over the ownership of the island of Tuzla in the Kerch Strait became a test war on the part of Russia.21

In 2003, Russia and Ukraine agreed that the sea would be shared. But the Russians did not want to determine the line of the sea border, recalls Leonid Osavolyuk, co-author of the agreement and a member of the delegation to those talks.

“We persuaded the Russian side to start such negotiations, and we were told: “We do not understand what it is all about.” Russia’s position that these waters cannot be demarcated was categorical. We agreed with the definitions imposed by the Russian side that these are common waters, historical waters, internal waters,” said Leonid Osavolyuk, a member of the Ukrainian delegation to the deliberations with Russia on the demarcation of the state border until 2014.24

As a result, on December 24, 2003, an Agreement between Ukraine and the Russian Federation on Cooperation in the Use of the Sea of Azov and the Kerch Strait was signed, later ratified by Law № 1682-IV of April 20, 2004.25

Article 1 of the Agreement stipulates that the Sea of Azov and the Kerch Strait have historically been the internal waters of Ukraine and the Russian Federation. The Sea of Azov is delimited by a state border line in accordance with the agreement between the Parties. The settlement of issues related to the waters of the Kerch Strait shall be carried out by agreement between the Parties.

In accordance with Article 3 of the Treaty, Ukrainian-Russian cooperation, notably joint activities in the field of navigation, including its regulation and navigation and hydrographic support, fisheries, marine protection, environmental safety, and search and rescue in the Sea of Azov and the Kerch Strait, shall be provided by both the implementation of existing agreements.
and the conclusion, where appropriate, of new agreements.

Pursuant to the provisions, in particular the said Agreement, on March 20, 2012 between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation an Agreement on Maritime Safety in the Sea of Azov and the Kerch Strait was signed.36

The preamble to the Agreement states that noting the importance of the Sea of Azov and the Kerch Strait for the economic development of Ukraine and the Russian Federation; being desirous to promote the development of shipping in the Sea of Azov and the Kerch Strait, recognizing the need to take measures to enhance maritime safety in areas of intensive navigation in the Sea of Azov and the Kerch Strait, in particular the organization of data exchange of automatic identification systems, being aware of the need to coordinate actions of the Parties in navigation in the Sea of Azov and the Kerch Strait.

The Parties have agreed in particular on the following points: in order to monitor navigation in the Region, the Parties agree to organize the exchange of data of automatic identification systems (AIS), as defined in Rule 19 of Chapter V of Annex V to the 1974 International Convention for the Safety of Life at Sea, as amended by the 1978 Protocol and 1988 Protocol with amendments (Article 3).

Kharkiv Agreements (the Agreement between Ukraine and the Russian Federation on the Stationing of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine)

The desire of the new leadership of Ukraine to reduce the cost of Russian gas supplied to our country at almost any cost has been demonstrated since the first days of Viktor Yanukovych’s presidency in February 2010. This factor could be used by Russia to achieve its own geopolitical objectives. One of the main goals was the continuation of the Russian Black Sea Fleet’s base in Ukraine.37

The Agreement between Ukraine and the Russian Federation on the Stationing of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine was signed on April 21, 2010 and ratified by Ukraine on April 27, 2010.38


This Agreement has received a lot of negative assessments, among many politicians, experts, and civil society representatives.

The report of the Ukrainian Center for Economic and Political Studies named after Oleksandr Razumkov “Ukraine and Russia: Current Results and Problems of Bilateral Cooperation in the Oil and Gas and Nuclear Sectors” assesses the signed Kharkiv Agreements the following way. The result of the Ukrainian regime's decision-making in this manner is their questionable legitimacy, which may in the future become the basis for their revision and lead to a conflict situation in Ukraine's relations with Russia.

By signing the agreements, Russia has thus achieved compliance with one of the provisions of the Maritime Doctrine of the Russian Federation for the period up to 2020 (adopted in 2001) – on preservation of the city of Sevastopol as the main base of the Black Sea Fleet of the Russian Federation.

Instead, “gas-fleet” agreements not only have a very dubious economic effect on Ukraine, but also pose a number of threats. First of all, they are an unprecedented, asymmetric political and economic barter – the exchange of conditional economic preferences of the Russian Federation for strategic geopolitical concessions on the part of Ukraine.

“Today the political course of power limits the sovereignty of our state. In any case, we will feel the growing influence on Ukraine from Moscow.,” the first President of Ukraine Leonid Kravchuk stated.39
Commenting on the agreement signed by President Viktor Yanukovych to extend the term of the Russian Black Sea Fleet in Crimea, Yu. Lutsenko stated that “Yanukovych sold part of Ukrainian territory to satisfy the appetites of oligarchs who want cheap gas for metals, chemicals and other things.” According to him, “against everyone who thinks of Ukraine as an independent state there has been a war declared.”

Such actions of the then government could be qualified as a constitutional coup. Such an insurrection took place when the pro-government parliamentary majority was created in an unconstitutional way and when in April 2010 this majority ratified the unconstitutional Kharkiv agreements in gross violation of the Rules of Procedure of the Verkhovna Rada.

Changes in the legal situation and acts of legislation after the annexation of the Crimean peninsula

In February and March 2014, extraordinary in the history of bilateral Ukrainian and Russian relations actions of the Russian Federation took place – the occupation and annexation of part of the territory of our state – namely the Crimean Peninsula. To do this, a puppet government mechanism based on Russian troops was used – a mechanism previously successfully tested by the Russians in South Ossetia, Abkhazia and Transnistria.

On March 1, 2014, the Federation Council of the Russian Federation gave President Vladimir Putin the right to deploy the military on the territory of Ukraine. The law does not mention the terms such permission is granted for. Theoretically, this right is given to the President of the Russian Federation forever.

During this period, according to the State Border Guard Service of Ukraine, 30,000 Russian servicemen remained in Crimea. “Previously, about 30,000 servicemen of the Russian Federation are currently involved,” informed Colonel-General Mykhailo Kovai, Director of the Personnel Department of the State Border Guard Service of Ukraine, at a press conference.

More details on the chronology of these events can be found on the special page of the Ministry of Foreign Affairs of Ukraine. On April 11, 2014, the Verkhovna Rada of the Autonomous Republic of Crimea adopted a declaration of independence.

Therefore, the relations between Ukraine and the Russian Federation on the Crimean Peninsula, the Black Sea Fleet, and the situation in the Black and Azov Seas remained tense. With the exception of some periods of stability and normalization of relations, the Russian Federation has often had recourse to pressure and sometimes outright blackmail to achieve its goals, trying to persuade Ukraine to not always advantageous compromise. According to the analyzed official documents and materials between 1990 and 2014, the Russian Federation systematically worked to increase its military and humanitarian influence in Crimea, creating a bridgehead to strengthen dominance in the Black and Azov Seas.

The document contained 3 points.

The first stated that if a referendum on March 16 by the majority of votes decided for Crimea’s entry into Russia, then “after the referendum, Crimea will be declared an independent and sovereign state with a republican form of government.”

In the second paragraph, Crimea was called a “democratic, secular and multinational state.”

The third paragraph stated that Crimea, as an “independent and sovereign state,” will apply to Russia with a proposal to become part of it.

On March 7, Acting President of Ukraine Oleksandr Turchynov signed a decree terminating the resolution of the Verkhovna Rada of Crimea on holding a referendum.

Subsequently, on March 16, 2014, under pressure from Russian troops and special services, a so-called “referendum” was held in Crimea on the reunification of Crimea with Russia as a subject of the Russian Federation.


Part 3 of Article 3 of this Law provides for the delimitation of the Black and Azov Seas to be carried out on the basis of treaties of the Russian Federation, rules and principles of international law.

However, it should be noted that it is unknown how Russia proposes to comply with rules and principles of international law, after the capture of Crimea in gross violation of international law itself.

Resolution adopted by the UN General Assembly on March 27, 2014 No 68/262: Territorial Integrity of Ukraine, determined that: the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on March 16, 2014, was not authorized by Ukraine.

The UN General Assembly, inter alia:

• Affirmed its commitment to the sovereignty, political independence, unity, and territorial integrity of Ukraine within its internationally recognized borders;

• ... called upon all states, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

On April 15, 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine.” Article 1 of the Law stipulates that the temporarily occupied territory of Ukraine (hereinafter – the temporarily occupied territory) is an integral part of the territory of Ukraine, which is covered by the Constitution, laws of Ukraine, and treaties agreed to be binding by the Verkhovna Rada of Ukraine.
Part 1 of Article 3 of this legal act defined that the temporarily occupied territory shall include:

1. Land territory of the Autonomous Republic of Crimea and the city of Sevastopol, internal waters of Ukraine of these territories;

2. Internal seaways and territorial sea of Ukraine around the Crimean Peninsula, the territory of the exclusive (maritime) economic zone of Ukraine along the coast of the Crimean Peninsula and the adjacent to the coast continental shelf of Ukraine, which are subject to the jurisdiction of state authorities of Ukraine in accordance with international law, the Constitution and laws of Ukraine;

3. Mineral wealth under the territories referred to in paragraphs 1 and 2 of this Part and the airspace above those territories.


The document states that "as a result of signing the Agreement between the Russian Federation and the Republic of Crimea on March 18, 2014 On the Admission of the Republic of Crimea to the Russian Federation and the Formation of new Subjects within the Russian Federation, the subject of Russian and Ukrainian agreements was lost due to de facto termination of lease by the Russian Federation of the facilities of its Black Sea Fleet on the territory of Ukraine."

In accordance with the Order of the Cabinet of Ministers of Ukraine dated April 30, 2014 No 578-r "Some Issues of Maritime and River Transport"10 the Ministry of Infrastructure, the State Inspectorate for Safety in Maritime and Inland Water Transport to take measures to:

- temporarily suspend the exercise of its powers in the Autonomous Republic of Crimea and the city of Sevastopol;

The Ministry of Foreign Affairs of Ukraine is instructed to inform international organizations about the closure of the seaports of Yevpatoria, Kerch, Sevastopol, Feodosia, Yalta.

In pursuance of this Order, the Ministry of Infrastructure issued an order dated June 16 "On the Closure of Seaports." "Essentially, this decision means that any ship that enters the seaports of the peninsula does so at its own risk, as shipowners and captains of ships having ignored such a ban may face serious problems (fines or even imprisonment)," – the press service notes.

The notice underscores that Ukraine informed the International Maritime Organization (IMO) about the preparation of a decision to close the Crimean ports in mid-May.12

Resolution of the Cabinet of Ministers of Ukraine of April 6, 2016, No 263 "On Temporary Closure of Sea Fishing Ports" stipulates that until the restoration of the constitutional order of Ukraine in the temporarily occupied territory of the Autonomous Republic of Crimea and Sevastopol the following entities shall be temporarily closed:

- Kerch Sea Fishing Port within the water area leased to the state enterprise "Kerch Sea Fish Port" in accordance with the Resolution of the Cabinet of Ministers of Ukraine of August 21, 2013 No 606 "On Leasing the Water Area to the State Enterprise "Kerch Sea Fish Port" (Official Gazette of Ukraine, 2013, No 68, p. 2471);
- Sevastopol Sea Fishing Port within the water area leased to the state enterprise "Sevastopol Sea Fishing Port" in accordance with the Resolution of the Cabinet of Ministers of Ukraine of August 5, 2009 No 823 "On Leasing the Water Area to the State Enterprise "Sevastopol Sea Fishing Port" (Official Gazette of Ukraine, 2009, No 59, p. 2085);
- The State Agency for Land Reclamation and Fisheries to take measures to inform international organizations about the closure of the Kerch Sea Fishing Port and the Sevastopol Sea Fishing Port.13

In response to Russia's annexation of the peninsula, the European Union has imposed sanctions. In particular, European vessels are also prohibited from entering Crimean ports except in emergencies.14

In 2016, the Russian Federation began construction of a bridge across the Kerch Strait. The constructed crossing was opened in May 2018.

According to the Center for Army Research, Conversion and Disarmament, the construction of the Kerch Bridge in the occupied Crimea, which violates international maritime law, will reduce trade between Ukraine and other countries. The document says that the construction of this facility entails restrictions on freedom of navigation in the Black and Azov Seas, a significant reduction in trade and losses of Ukrainian Azov ports in Mariupol and Berdyansk, as well as new socio-economic risks of stagnation of the Ukrainian Azov region.15

In 2016, Ukraine filed a lawsuit against Russia in the International Court of
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According to the official statement of the Ukrainian Navy: on November 25, ships of the Navy of the Armed Forces of Ukraine, namely two small armored artillery boats Berdyansk and Nikopol and raid tug Yany Kapu undertook a planned passage from the port of Odesa to the port of Mariupol in the Sea of Azov. The intention to undertake the passage was announced in advance in conformity with international standards with a view to ensuring the safety of navigation. However, contrary to the UN Convention on the Law of the Sea and the Agreement between Ukraine and the Russian Federation on Cooperation in the Use of the Sea of Azov and the Kerch Strait, Russian border ships, namely such border boats as Sobol, border patrol vessel Don, Mangust-class patrol boats, and small anti-submarine ship (MPK) Suzdalets committed openly aggressive actions against ships of the Ukrainian Navy. The border ship Don rammed our raid tugboat, damaging the ship's main engine, hull and guardrail, and losing a life raft. The Dispatch Service of the occupiers refuses to guarantee the right to freedom of navigation guaranteed by international agreements.

Thus, the Russian Federation has once again demonstrated its aggressive nature and complete disregard for international law. Ships of the Navy of the Armed Forces of Ukraine continue to perform tasks in compliance with all rules of international law. All illegal actions are recorded by the crews of ships and the Command of the Naval Forces of the Armed Forces of Ukraine and will be handed over to the competent international bodies.27

24 Ukrainian sailors were detained and subsequently arrested by the Kyiv court of occupied Simferopol.28

Ukraine applied to the UN International Tribunal for the Law of the Sea (ITLOS).

ITLOS announced a decision on Ukraine's lawsuit on seizure of Ukrainian ships with sailors in the Kerch Strait.

President of the Tribunal Pak Jin-Hyun, announcing the decision of the court, ordered Russia to release three Ukrainian ships Berdyansk, Yany Kapu and Nikopol as well as 24 detained Ukrainian sailors and return them to the jurisdiction of Ukraine.29

On February 21, 2020, the Minister for Foreign Affairs of Ukraine Dmytro Kuleba announced that on October 11 the Arbitration Tribunal would begin a hearing on jurisdiction in the case of Ukraine against Russia regarding the illegal seizure in November 2018 of three Ukrainian ships Nikopol, Berdyansk and Yany Kapu as well as 24 Ukrainian sailors being servicemen of the Navy of the Armed Forces of Ukraine.

In his words, this case is very important for Ukraine. “We prove the illegality of Russia’s behavior towards our state, the illegality of the detention and retention of Ukrainian warships and the illegal fake trial against our sailors who spent 9 months in a Russian prison.”30

Given the existence of an international armed conflict with Russia, military build-up of the aggressor state in Crimea, the Cabinet of Ministers of Ukraine adopted Resolution of December 18, 2018 No 1108 “On Amendments to the Maritime Doctrine of Ukraine for the Period until 2035.”

On April 1, 2019, the Treaty of Friendship, Cooperation and Partnership between Ukraine and the Russian Federation (the Great Treaty) was terminated, in accordance with the decision of the Verkhovna Rada of Ukraine of December 6, 2018.
CHAPTER 2.
IDENTIFICATION OF MARITIME SECURITY THREATS OF UKRAINE IN THE LEGAL SPHERE

After analyzing the legal framework, it is important to understand what risks and pitfalls exist in the existing regulatory framework and agreements between Ukraine and Russia.

It is obvious that the war, as well as the occupation of part of the territory of Ukraine by the Russian Federation, in particular the Crimean Peninsula, with the increase of the Black Sea Fleet, are making changes in the legal status. After all, it is impossible not to take into account the change in the situation, which is introduced by these factors. Therefore, in our opinion, it is necessary to clearly identify the existing threats to maritime security of Ukraine in the legal sphere, in order to further eliminate and minimize them, as will be discussed in this section.

Agreement Between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait

In Chapter I, we noted the content of this Agreement, as well as the circumstances that preceded its signing.

From our perspective, the existing Agreement between Ukraine and the Russian Federation on Cooperation in the Use of the Sea of Azov and the Kerch Strait is a threat to maritime security in the legal sphere, given the following factors.

The National Security Strategy of Ukraine (paragraph 17) states that as a result of the actions of the Russian Federation, the threat to free navigation in the Black and Azov Seas, the Kerch Strait remains.

This is confirmed by the statistics of cases of obstruction of free navigation, particularly in the Kerch Strait.

For example, according to the data of the Ministry of the Temporarily Occupied Territories, in just two days on November 25–27, 2018, the number of vessels in the Kerch Strait and near it increased more than two and a half times, namely from 167 to 421. Due to the blocking and obstruction by the Russian Federation of the Kerch Strait, which is used for international shipping under the 1982 UN Convention on the Law of the Sea, Ukrainian and foreign merchant vessels are forced to remain in the Black and Azov Seas without further access to Berdyansk and Mariupol.

From time to time, the Russian Federation takes unreasonable measures to keep ships, creating artificial barriers. Such actions are already systemic. This leads to negative economic consequences for the Ukrainian ports of Mariupol and Berdyansk, and the search for alternative routes requires additional time, which can affect the price of cargo, reducing its competitiveness.

As of 2019, according to official reports of the Administration of Sea Ports of Ukraine, Ukrainian seaports in the Sea of Azov in connection with Russia’s aggression since 2014 have faced a shortfall of almost UAH 6 billion in revenue.

“Prior to the de facto blockade of Ukrainian ports in May 2018, the average waiting time for permission to pass through the Kerch Strait (namely those vessels that carried Ukrainian export cargo from the ports of Mariupol / Berdyansk – was from five to seven hours. In the second half of 2018, it amounted from 80 to 115 hours. In 2019, the average waiting time for a permit was 37.4 hours, in 2020 it amounted to 29.6 hours (the reduction was due to fear of Russian border guards from the Federal Security Service (hereinafter – the FSS) Coast Guard the possibility of contracting COVID-19, as around half of the vessels subject to ship care came from the ports of Italy and other European countries, where in the spring of 2020 there was a significant outbreak of the pandemic). However, in the last four months (from December 2020 to March 2021) there was a notable increase, averaging up to 50 hours. In April 2021 an increase up to 70 hours per ship was seen,” comments the head of the Monitoring Group of the Institute of Black Sea Strategic Studies Andriy Klymenko.
According to Daniel-Erasmus Khan, a professor at the University of the Bundeswehr, the passage of the Kerch Strait is regulated in the same way as the passage of the Bosphorus or any other strait in the world. “According to the 1982 Convention on the Law of the Sea, Ukraine shall enjoy an unrestricted right to transit through the Kerch Strait. No Russian permits or any preconditions shall be required for this.”

Since 2019, Russia has started well drilling to find fresh water at the bottom of the Sea of Azov to address the issue of providing Crimea with water, without the consent of Ukraine, which could potentially have negative environmental consequences. All the warnings of the Ukrainian side about the inadmissibility of such actions were ignored by them, demonstrating in fact the inability of the state of Ukraine to control the area of its “internal waters.”

Any attempt by Ukraine to defend its rights to free access and navigation in the Sea of Azov is constantly met with brazen forceful resistance from Russia. In Chapter I, we mentioned the case of detention of the Federal Security Service of the Russian Federation of Ukrainian sailors in November 2018.

Also, on April 15, 2021, the FSS boats threatened with weapons and dangerously maneuvered around small artillery boats of the Ukrainian Navy, which patrolled the Sea of Azov 20 miles in the direction of the Kerch Strait during Russia’s significant buildup of its troops in the region on pretext of training.

Probably as conclusions from this confrontation, Russia is extending the powers of its security forces and amending its laws, which contradict Russia’s international agreements. The signing by Putin of amendments to the Law “On the Troops of the National Guard of the Russian Federation” (July 1, 2021) gives it the right to block the territories and waters adjacent to a number of facilities, creates unjustified obstacles to freedom of navigation. This law grossly neglects rights of Ukraine as a coastal state over the Black and Azov Seas and the Kerch Strait.

A serious danger for Ukraine from the perspective of military operation is that the agreement “On Cooperation in the Use of the Sea of Azov and the Kerch Strait” does not provide for the establishment of a territorial sea for the coastal state, the so-called “international waters” (a term recognized in navigation that refers to waters outside the territorial sea) falls to be mentioned, and the range of rights granted to third countries under the UN Convention on the Law of the Sea (1982) and promoting freedom of navigation in the Sea of Azov and the Kerch Strait is levied herein.

Due to the factors mentioned above, the line of fire by the security and defense forces of Ukraine in the event of hostilities from the outside is limited to the coastline. The 12-mile zone of the territorial sea, which should be such a line, is absent, it is considered part of the “common inland waters.” As a result, Ukraine’s military capacity is declining in the face of possible aggression from the sea. Interestingly, the area of 12 miles to the coast is for the enemy landing detachment the most vulnerable one for then it is possible to inflict very serious damage to vessels and landing troops on board. But in the case of the Sea of Azov, in the formal absence of a state of hostilities (war), this is impossible. Due to this factor, ships and boats of the Russian fleet, the FSS, and aircraft can approach the Ukrainian coastline, conduct training, maneuver, and even fire (allegedly within the Sea of Azov). So in November 2021, Russia closed proving grounds for artillery fire right at the exit from Ukrainian ports on the Sea of Azov, from four to six miles from the coast. Given the projectile range (caliber 30 mm and above), it is very dangerous and brazen in relation to the population of Ukraine living in the coastal zone.

Russia now has virtually unlimited opportunities for covert minefields near our shores and the landing of numerous reconnaissance and sabotage groups on our shores underwater. In the event of a decision on aggression against Ukraine, these additional capabilities of the enemy can have serious negative consequences for us: the blockade and destruction of our naval forces in ports, the destruction of critical infrastructure of the economy, communications, infrastructure, and energy.

The lack of “international waters” in the Sea of Azov and the need to agree with Russia on the arrival of third-country vessels makes it impossible for NATO ships to visit the Sea of Azov, conduct joint training with them and work out joint maritime security operations, which Ukraine desperately needs.

“They have lost Crimea, the Kerch Strait, and now they are losing the Sea of Azov. Later, they will lose Mariupol, after that – Berdyansk. And then Russia will build a land-based route to Crimea,” Glenn Howard, president of the Jamestown Foundation, said in an interview with the Voice of America. According to international lawyer Vitaliy Sobkovych, “The legal uncertainty of the border in the Sea of Azov and its status as the inland sea allows Russia to use most of the water area and abuse it. Russia, de facto, controls the entry point into this sea in the Kerch Strait. This is done under the slogans of security, but practically, it is a continuation of the creeping annexation.”

The problem is the legal conflict existing in the Agreement between Ukraine and the Russian Federation on Cooperation in the Use of the Sea of Azov and the Kerch Strait and the UN Convention on the Law of the Sea (1982), which is as follows.

In accordance with Article 1 of the said Agreement, the Parties agree that the Sea of Azov and the Kerch Strait are historically the internal waters of Ukraine and the Russian Federation.

The Sea of Azov is delimited by a state border line in accordance with the agreement between the Parties.

Settlements related to the waters of the Kerch Strait shall be reached by agreement between the Parties.

Meanwhile, the Verkhovna Rada of Ukraine ratified the 1982 UN Convention on the Law of the Sea with reservations. In accordance with Article 298 of the Convention, Ukraine declares that, unless certain international agreements of Ukraine with the respective states otherwise provide, it does not recognize mandatory procedures leading to binding decisions for disputes concerning the delimitation of maritime borders, historical bays, and military activity.
The Russian Federation, in turn, stated that the mandatory procedures provided for in Section 2 of Part 15 of the Convention (in other words, all mandatory procedures) could not be applied to the “delimitation of maritime borders; disputes related to historic bays or legal grounds; disputes concerning military activities, including disputes over the military activities of state-owned vessels and aircraft, or disputes over activities to enforce laws on the exercise of sovereign rights and jurisdiction, as well as disputes in respect of which the UN Security Council functions in accordance with the UN Charter.”

Hence, Ukraine limits itself in the instruments and opportunities to defend and protect its national interests, in particular in relevant international courts. The agreement between Ukraine and Russia On Cooperation in the Use of the Sea of Azov and the Kerch Strait stipulates that all disputes between Ukraine and Russia related to the application of the relevant geographical indication, according to which the Convention applies to the navigable part of the Danube River between Kelheim and the Black Sea through the Sulina arm with access to the sea through the Sulina channel.

According to the aforementioned provisions of the Convention, the Russian Federation is not a “Danubian State.” as the river does not flow through its territory, neither it is a line of state border with other states, and therefore Russia has no geographical links hereto.

The question of the participation of non-Danubian states in the commission establishing the rules of navigation on the Danube should be considered in relation to the parity granting the Danubian States a regime of navigation in the inland waters of the non-Danubian state. And most importantly, Article 44 of the Convention clearly sets out the legal criteria for the possibility of participating in the work of the commission, namely the situating of a state on a bank or banks of the Danube. It is this point that makes it impossible for Russia to participate in the commission.

Russia’s participation in the Danube Commission gives Russian naval vessels the right to sail on the Danube by agreement among the Danubian states concerned (Article 30), posing, inter alia, security challenges and threats for Ukraine. And not only for Ukraine. Thus, after the Russian occupation of Crimea, Romania felt in danger, and Romanian President Traian Băsescu directly stated that Russia’s actions against Ukraine are a threat to Romania as well. Following these events, the NATO member country paid closer attention to its Danube flotilla. According to Artem Filipenko, an expert at the National Institute for Strategic Studies, the Danube was seen as an alternative route to the Black Sea for naval vessels of non-Black Sea states. The main route, through the Bosphorus, is controlled by Turkey, and restricts access to the sea for such vessels – no more than 21 days for each ship, and no more than 30 thousand tons of total displacement tonnage for any ships of any country entering the Black Sea. Thus, some NATO countries, including Germany, could keep their ships and naval forces close to the Black Sea in the Danube.

Thus, under such conditions, the participation of the Russian Federation not being a Danubian state in the Danube Commission poses security risks, both in terms of the possible presence of Russian warships on the Danube and blocking the development of cooperation among the Danubian states, as well as cooperation between NATO and Ukraine on regional security.

Agreement between Ukraine and the Russian Federation on the Status and Conditions of the Presence of the Russian Federation Black Sea Fleet on the territory of Ukraine

As already mentioned in Chapter I, the said Agreement was signed on May 28, 1997 and ratified on March 24, 1999.
the Russian Federation, shall respect the sovereignty of Ukraine, shall comply with its laws, and shall not interfere in the internal affairs of Ukraine.

Economic activity of enterprises, organizations, and institutions of the Black Sea Fleet of the Russian Federation should not contradict the legislation of Ukraine.

Article 7 of the Agreement stipulates that Construction in the places of deployment of military formations of roads, bridges, buildings, and other objects is carried out by the Russian Party in coordination with the relevant authorities of Ukraine.

Paragraph 2 of Article 8 stipulates that military formations conduct training and other combat and operational activities within training centers, proving grounds, positional and dispersal areas, shooting ranges and, except for restricted areas, in designated for this purpose airspace zones in coordination with the competent authorities of Ukraine.

However, contrary to the provisions of this Agreement, Russia has committed a number of violations.

An example of this is the repeated violation of the order of troop movement of the Black Sea Fleet of the Russian Federation on the territory of Ukraine. Thus, in 2005 there was an unauthorized disembarkation of personnel and military equipment from the landing ship of the Black Sea Fleet of the Russian Federation M. Filchenkov in the area of Cape Opuk. Another clear example of non-compliance with the agreements on the order of stationing of Black Sea Fleet of the Russian Federation units in the territory of Ukraine is the illegal seizure of property, such as navigation and hydrographic facilities, namely lighthouses in the area from Cape Tarkhankut to Cape Ayu-Dag, while the court ruled that they belong to Ukraine. During all previous years, numerous other violations of the legislation of Ukraine and the concluded agreements by the military formations of the Black Sea Fleet of the Russian Federation were recorded. In particular, it is about the obstruction of the proper legal registration of leased land and infrastructure facilities, as well as control over their condition by the authorized state bodies of Ukraine; non-payment of taxes by economic entities of the Black Sea Fleet of the Russian Federation; posing threats to the environmental security of Ukraine, and conducting activities not related to the basic functions of the fleet (including information and propaganda work among the local population).\textsuperscript{11}


According to this document, Article 15 of the Agreement stipulates that the transportation of troops, persons who are members of military formations and travel alone and as part of military formations, weapons, military equipment, other material and technical means, guards and accompanying specialists, and all modes of transport performed in the interests of the Black Sea Fleet of the Russian Federation are carried out in compliance with border, customs and other types of state control when crossing the Ukrainian-Russian border in accordance with current legislation of Ukraine. In addition, displacements related to the activities of Russian military formations outside their places of deployment are carried out after coordination with the competent authorities of Ukraine. In addition, the decision of the National Security and Defense Council of August 13, 2008 regulates the relevant conditions of the Russian Black Sea Fleet and provides for informing the Ukrainian side by the Russians 72 hours prior to crossing the state border by any military units headed to Black Sea Fleet depots, as well as providing exhaustive information on the number of servicemen and the type of weapons transported.

However, on February 28, this year (2014) 8 Russian military helicopters, 4 IL-76 aircraft with paratroopers and a Zubr-class hovercraft arrived on the territory of Ukraine without authorization. Thus, the transportation of the Russian military by sea and air shows the complete disregard of these requirements by the Russian side.\textsuperscript{12}

In addition, the information and propaganda work of the Russian Federation aimed at destabilizing the situation in Crimea is worth mentioning.

According to the materials presented at the National Security and Defense Council by Volodymyr Gorbolin, in 2006, the Federal Security Service of the Russian Federation created units for social networks activity (called "18 Center"). Russian special services intensified the creation of intelligence networks in Ukraine. Numerous structures of Russian influence from the entire political spectrum began to operate, from right-wing radicals and clericals to communists. After 2004, Russian special services formed an extensive network of anti-Ukrainian organizations in the Southeast and Crimea, controlled or even
headed by Russian agencies, namely the Party of Regions, CPU, PSPU, such parties as Rodina, Russkoye Edinstvo, various Orthodox groups, focused on ideas of “russkiy mir” (“Russian world”), separatist political groups (“Donetsk Republic”), and criminalized paramilitary formations (Cossack formations, fighting clubs, especially in Crimea, the Oplot organization, security structures that were actively used during the Revolution of Dignity, and the so-called “titushky” – mercenary agents often posing as street hooligans). The vast majority of these groups failed to have broad public support, but they actively cooperated with law enforcement agencies during the Yanukovych regime.

In 2008, the Kremlin launched propaganda preparations for aggression against Ukraine. Propaganda campaigns and special information operations were carried out in the press, on television, and on the Internet. Various books about the coming Russian-Ukrainian war were published in large numbers. The ideological basis of Russian propaganda was the concept of “Russian peace,” formed in the 1970s among the Moscow liberal intelligentsia (from the circle of M. Gefter) and picked up in 2010 by the ROC Patriarch Kirill (V. Gundyayev).43

Pursuant to Article 4 of the Agreement, the total number of personnel, ships, vessels, arms and military equipment of the Black Sea Fleet of the Russian Federation on the territory of Ukraine shall not exceed the levels specified in the Agreement between Ukraine and the Russian Federation on the Parameters of the Division of the Black Sea Fleet (643_075) of 28 May, 1997.

In turn, Article 7 of the Agreement between Ukraine and the Russian Federation on the expansion to the East criticized by Moscow, but attended meetings of the joint advisory group. Now the Russian Federation has completely withdrawn from the agreement, but, according to the statement of the representative of the Russian Foreign Ministry, this does not mean that the country will abandon the dialogue on conventional arms control in Europe.45

The Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea Anton Korynevych during an online meeting of the OSCE Forum for Security Co-operation in June 2020 stated that the militarization of Russian-occupied Crimea violated the Treaty on Conventional Armed Forces in Europe, only in the Black Sea region.

“Russia’s occupation of Crimea has led to a sharp increase in the number of conventional weapons and military equipment in the Black Sea region, which exceeds the limits set by the Treaty on Conventional Armed Forces in Europe,” noted Mr Korynevych.46

In the annexed Crimea, the number of Russian servicemen has increased by at least two and a half times since 2014 – in 6 years,” Kovalenko stated.47

Another alarming signal is the possible deployment of nuclear weapons by Russia in the occupied Crimea. Thus, in July 2021, First Deputy Foreign Minister Emine Japarova at the Ukraine 30. International Politics Forum stated the following. “Russia is actively building the Crimean military infrastructure for its nuclear weapons and reconstructing the infrastructure of Soviet-era nuclear warhead storage facilities. Potential carriers of nuclear weapons have already been deployed.”48

According to the head of the Chief Directorate of Intelligence of the Ministry of Defense of Ukraine, Brigadier General Knyilo Budanov, the actions of the Russian occupation administration on the Crimean Peninsula could lead to an environmental catastrophe in the entire Black Sea region. “Tactical nuclear weapons in Crimea, and now the intention to deploy uranium enrichment facilities, the production of dual-use materials and the use of nuclear weapons technology on the occupied Ukrainian peninsula, could all turn Crimea into a nuclear settling tank. The ecological situation in the whole region will be under threat,” Budanov said.49

It should be noted that Article 5 of the Agreement between Ukraine and the Russian
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Influence on the maritime security of Ukraine through the manipulation of the Russian Federation with the provisions of international law and attempts to legalize the status of waters around the occupied Crimea

Russia is strengthening its military dominance in Crimea by weakening its Black Sea neighbours and trying to limit the activities of any players from outside the region, especially NATO, the United States and Great Britain. This activity is carried out against the background of forced recognition of the status of waters around the Crimean Peninsula in favor of its jurisdiction. This work has been significantly intensified since 2017–2018, when the surface forces of ships and boats of the Black Sea Fleet and the Russian FSS capable to accomplish these objectives were formed in Crimea and on the Taman Peninsula.

The first method of this work is Russia's declaring unreasonably large in size and length sea areas as prohibited for navigation, allegedly for combat training and shooting. Formally, the temporary closure of maritime areas for certain reasons (including military exercises) is permitted by the SOLAS Convention for the Safety of Life at Sea (1974). It is important to note that the recommendations on the prohibition or restriction of navigation in the area do not apply to warships and vessels.

In August 2019, Russia closed 118,570 square kilometers, namely more than 25% of the Black Sea, for more than 3 weeks for military exercises, blocking international shipping routes between Bulgaria, Georgia, Romania, Turkey, and Ukraine. Interestingly, this happened shortly after the arrest of the Russian tanker NIKA SPIRIT in Izmail by the Security Service of Ukraine. This is the same tanker (formerly called NEYMA) which the Russian FSS used to deliberately block the passage of our ships under the Kerch Bridge on November 25, 2018.

Russian authorities resulted to threats. There appeared a note from the MFA of the Russian Federation and threats from senators were heard as follows: "The arrest of the Russian tanker NIKA SPIRIT in Ukraine must not be left without response," said Russian State Duma deputy Yuri Shvytkin. Interestingly, what the "response" is, and what did the Russian parliamentarian mean? And he was not alone among the deputies of the State Duma, who spoke of the same “response”...

During the three weeks no declared training in the relevant areas was observed, but many civilian vessels were forced to spend extra service life and time due to restrictions. Russia continues to do so. In April 2021, Russia closed two maritime areas of the Black Sea and the area at the entry to the Kerch Strait for 6 months for all foreign state-owned vessels.

On February 9, 2022, Russia closed for exercises practically the entire northeastern part of the Black Sea from Cape Tarkhankut to Snake Island, from Crimea to the territorial waters of Ukraine. Navigation on all recommended routes in the area is blocked for a week for missile launches of the Russian Federation. Thus, navigation from the ports of Ukraine is possible only in the territorial sea of Ukraine. The area chosen for firing is...
very dangerous in case of an emergency situation with a missile, which (in case of failure of guidance) can hit both the territory of Ukraine and neighboring Romania, which is a NATO country. Moreover, the southern part of the Sea of Azov (over 70% of the total water area) was closed for navigation during the same period, without any possibility for civilian vessels to enter the Kerch Strait. The Ministry of Foreign Affairs of Ukraine sent to the Russian Federation a note of protest with a demand not to obstruct ship movement from the ports of Ukraine. The United States, Great Britain and other Western countries sided with Ukraine. However, the next day, under the influence of demands, Russia lifted these restrictions.66

This practice has acquired systemic features on the part of Russia not only in the Black Sea, but also in the Baltic and Barents Seas, which is negative for the maritime economy of the regions.

Trying to legalize the waters around Crimea under Russian sovereignty is another area of systemic effort. This applies to both the 12-mile territorial sea and the exclusive maritime economic zone. In this process, Russia is forcing the crews of foreign civilian ships to recognize the status of waters around Crimea through a system of obtaining permits, via security measures provided by the FSS and the illegal administration of the captured port of Kerch in Ukraine. Russia has its own interpretation of the rules of international maritime law, in particular the right of peaceful passage and freedom of navigation in the exclusive maritime economic zone, which constitutes a direct violation and illegal restrictions and adversely affects the economy of Ukraine. 16% of Ukraine's GDP is produced by enterprises located in the coastal sea zone. Freedom of navigation is important for the export of Ukrainian agro-industrial complex amounting to about USD 22 billion per year. In the event of a complete or partial blockade of Ukrainian seaports, the losses could amount to USD 5 billion monthly.97

In the event of an attempt by a sovereign country or individual citizens to assert their rights to freedom of navigation or flight in the Black Sea, Russia is behaving very aggressively.

This resulted in numerous incidents. On November 30, 2016, the ships of the FSS of the Russian Federation carried out dangerous maneuvers and threats to the ship of the naval units of the State Border Guard Service of Ukraine, which was navigating in the area of gas towers with representatives of the Prosecutor General's Office on board. On February 1, 2017, the An-26 aircraft of the Ukrainian Navy was fired upon from small arms and was damaged during the overflight of the Odessa gas field in international waters (exclusive maritime economic zone of Ukraine). In July 2020, the Russian FSS ship Bezuprechnyy obstructed participants of Sea Breeze 2020 exercises, threatened to use weapons and issued illegal claims to the ships of the Bulgarian Navy Bodry and the Spanish Navy Alvaro De Bazan to leave the training area allegedly for it was part of exclusive economic zone of Russia. On April 17, 2021, the FSS of the Russian Federation arrested 4 Ukrainian fishermen from the village of Ochakiv, 40 miles from the Crimean coast, for alleged poaching in the "exclusive maritime economic zone of the Russian Federation." On May 9, 2021, the FSS ships made a dangerous maneuver and demanded to leave the area of the US Coast Guard ship Hamilton during its navigation in the area of gas platforms that were captured by Russia in Ukraine in 2014 in its exclusive maritime economic zone. On May 16, 2021, similar illegal demands were made by the FSS vessels of the Russian Federation in the same sea area to the Royal Navy ship Trent. On June 23, 2021, the Black Sea Fleet and the FSS of the Russian Federation threatened the HMS Defender and fired warning shots from AK-630 while the warship was pursuing the 12-mile zone off the coast of Crimea using the right of innocent passage.98

In this sense, the recent decision of the Minister for Defense of the Russian Federation Shoigu to transfer the planned naval exercises of Russia within the exclusive maritime economic zone of Ireland to the area outside these waters is of interest. The decision was based on an alleged desire of a “gesture of goodwill” with respect to the protests of Irish fishermen and an official appeal from the Dublin authorities.99

This example can be used in the Black Sea, during the next international exercises. Russia is likely to demand a mirroring response from Western countries. However, this practice is not at all acceptable for the Black Sea (it is completely divided into exclusive economic zones between coastal states). In addition, the fact of illegal annexation of the Crimean Peninsula is recognized by the majority of the world community.

Another example of Russia's continued manipulation of international law is the selective application of the Montreux Convention.

This convention was concluded in 1936 with the aim of restoring security in the Black Sea and limiting the militarization of the region by external naval forces. Turkey and other NATO countries adhere to the provisions of the Montreux Convention, although some of its provisions are clearly obsolete over 80 years of history. Given Russia's military dominance in the region, the continued accumulation of military force, and the demonstration of its aggressive behavior toward its neighbors, the Montreux Convention restriction on non-Black Sea warships (21 days) in the Black Sea seems artificial and undesirable to support most countries in the region via NATO. The development of an effective security mechanism for the Black Sea region with the participation of Turkey, the United States, the United Kingdom, NATO, and the countries of the region is urgently needed in the nearest future.100

Unlike Western countries adhering to the provisions of the Montreux Convention, first the Soviet Union and then Russia constantly found some gaps and interpreted the provisions of the document in their favour. During the Soviet period, this mainly concerned the navigation of Soviet aircraft carriers across the Black Sea, on the shores of which they were all built between 1970 and 1990. The solution then was to categorize these ships as aircraft carriers, allowing the Soviet Union to circumvent the provisions of the Montreux Convention, which does not allow any aircraft carriers to stay in the Black Sea.

Today Russia picked up this tradition regarding the use of its submarines outside the Black Sea, particularly in the war in Syria. The six newest boats of the 636.3 project were built in 2014–2016 in St. Petersburg for the Black Sea Fleet of the Russian Federation and are based in Novorossiysk. Russia has no right to use its submarines in military operations outside
the Black Sea, for this is a requirement of Article 12 of the Montreux Convention. Meanwhile, for 4 years it has been regularly sending them to Syria, where they are involved in patrolling maritime areas and combat operations. This is done against the background of alleged plans for the further transition of these submarines for repair to the shipyard in St. Petersburg.

Although submarines are allowed to leave the Black Sea for repairs, the combination, which is ongoing and systematic, appears to be a clear violation of the Montreux Convention. However, Russia denies the allegations and continues to combine two completely different activities in terms of content and status of the submarine.

Danger of navigation in the Black Sea due to the active GPS spoofing by Russia

Over the past 5 years, Russia has been actively developing its capabilities in the artificial creation of false electronic signals of navigation systems installed on ships. Since 2017, numerous cases of erroneous GNSS (Global Navigation Satellite Navigation) signals have been reported in the Baltic Sea (for the first time during the Russian Zapad-2017 (West-2017) exercise) and in the Black Sea. The Center for Advanced Defense Studies (C4ADS, United States) has identified about 10,000 cases of such signals, affecting the safety of about 1,300 ships around the entire Russian coast and its occupied territories in Crimea since 2016. On the Black Sea coast, Russia has created a network of stations for generating false signals: in Sevastopol, Olyva, Kerch, Novorossiysk, Sochi. Erroneous signals can cause GNSS receivers to lose genuine satellite signals and replace them with signals generated by the spoofing device. GNSS generally covers such world-famous navigation systems as GPS (USA), GLONASS (Russia), Galileo (European Union), BeiDou (China), QZSS (Japan) and NavIC (India). The Russian Federation is a pioneer in the use of false signaling techniques for navigation and uses this to achieve its strategic interests. In response to NATO’s strengths in the capabilities of electronic control systems, Russia has prioritized the development of a comprehensive set of asymmetric EW systems designed to deceive military and civilian GNSS receivers. These systems are currently in use in Russia’s Western and Southern military districts on the border with NATO (including the Black and Baltic Seas) and have been deployed in the occupied territories of Ukraine and Syria. C4ADS twice demonstrated GNSS spoofing activities near the Kerch Bridge on September 15, 2016 and May 15, 2018, during Putin’s visits to the area. It is already clear that such activities need to be regulated, especially for passenger and freight transport, for which there is a very serious risk of accidents and catastrophes.
**FINDINGS AND PRACTICAL RECOMMENDATIONS**

As can be seen from the above material of the study, with a view to ensuring better legal protection, guaranteeing the maritime security of Ukraine, and deterring Russia from trying to establish dominance in the Azov and Black Seas, it is vital to take a number of decisions, as follows:

1. **Develop and approve the draft Laws of Ukraine “On Inland Waters and Territorial Sea” with the definition of coordinates of a medial line, on amendments to some laws of Ukraine on protection of the state border, in particular on determining the procedure and methods of involving units of the Armed Forces of Ukraine, other military formations and law enforcement agencies of Ukraine to perform tasks to strengthen the protection (cover) of the state border and sovereign rights of Ukraine in its exclusive (maritime) economic zone.**

The Cabinet of Ministers of Ukraine was instructed to draft and submit such draft laws to the Ukrainian Parliament by the Decision of the National Security and Defense Council “On Urgent Measures to Protect National Interests in South and Eastern Ukraine, the Black and Azov Seas and the Kerch Strait” dated October 12, 2018.\(^{102}\)

The adoption of such laws will definitely strengthen legal position of Ukraine.

2. **Develop and adopt the draft Law of Ukraine “On the Continental Shelf.”**

In the interests of Ukraine, it is advisable to develop and adopt the Law “On the Continental Shelf.” A large number of normative and legal documents regulating the legal basis for the use of natural resources of the maritime continental shelf of Ukraine does not contribute to the law enforcement activities of the subjects of legal relations in management of natural resources of the maritime continental shelf of Ukraine.

To adopt the Law of Ukraine “On the Continental Shelf” it is necessary to take into account the following peculiarities:

- geographical and geological qualities of the natural object;
- delimitation of adjacent maritime economic zones of other states;
- relevant international legal practice regarding the protection and use of the continental shelf.\(^{103}\)

3. **Denunciation of the Agreement between Ukraine and the Russian Federation on Cooperation in the Use of the Sea of Azov and the Kerch Strait (2003).**

Ukraine can and should terminate this Agreement, since pursuant to Article 60 of the 1969 Vienna Convention on the Law of Treaties, a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending it in whole or in part. In the conditions of the ongoing armed aggression of the Russian Federation against Ukraine, our state has the right to terminate the Treaty also in pursuit of the international legal sanctions applied according to the international law against the aggressor state.

At one time, the Treaty was concluded with the understanding that the recognition by the parties of the Sea of Azov and the Kerch Strait as historic inland waters will accompany the established lines of the Ukrainian-Russian state border in the Sea of Azov (Article 1 of the Treaty).

The Russian Federation refuses to comply with the said agreements, thereby violating Part 1 of Article 1 of the Treaty. Instead, it considers the entire space of the Sea of Azov as its internal sea and on this basis commits arbitrary acts. Failure of the Russian Federation to comply with the requirements of Art. 1 of the Treaty is another reason for Ukraine to terminate it.

There are no territorial articles in the provisions of the Treaty. Therefore, its termination cannot cause a Ukrainian-Russian territorial dispute.
Termination of the Treaty will allow Ukraine, acting in accordance with Section 1 of Part II of the 1982 UN Convention on the Law of the Sea, to declare the establishment of 12-mile territorial waters to be deducted from the baselines determined by Ukraine and notified to the UN Secretary-General on November 11, 1992 by verbal note No 633, sent by the Permanent Mission of Ukraine to the UN.

Simultaneously with the delimitation of its territorial waters, Ukraine will be able to establish a 24-mile adjacent zone and declare the breadth of its economic maritime zone and continental shelf. In this case, the Azov Sea outside territorial waters of Ukraine will acquire the status of the high seas, and the Kerch Strait will have the status of a strait used for international navigation in accordance with Part III of the 1982 UN Convention on the Law of the Sea.

Thus, the Russian Federation will be deprived of grounds to use uncertainty in the delimitation of the Sea of Azov and the Kerch Strait to justify its arbitrary actions, and Ukraine will have legal instruments to increase the effectiveness of protection of its national interests.104

It is appropriate to take into account the opinion of Professor of International Law and International Relations of the National University “Odesa Law Academy” Tymur Korotkyi that Ukraine's actions to terminate the 2003 Treaty in an attempt to establish a territorial sea and exclusive economic zone in the Sea of Azov are also feasible. In this case, it is necessary to calculate, firstly, the position and actions in response of the Russian Federation, and secondly, to what extent Ukraine's further actions after denunciation of the 2003 Treaty will be from legal perspective in line with international law and recognized by third states. The issue of denunciation of the Treaty should be considered not only in legal plane, but also in the political, military, economic, and information spheres. The geopolitical factor must also be considered. That is, there should be a comprehensive analysis of the implications of each step, taking into account the dynamics of the situation and forecasting the reaction of other states and the international community.105


Given that from 2021 to 2023 Ukraine will be chairing the Danube Commission, there is a good opportunity to raise these issues, given the arguments set out in Section II of our study.

According to the diplomat, international lawyer Serhiy Meshcheryak, pursuant to the rules of procedure, the Danube Commission holds two regular sessions a year. An extraordinary session shall be convened by the chairman by decision of the commission or if three or more members of the commission request the convening of such a session. Notice of the convening of an extraordinary session and its preliminary procedure shall be communicated to the members of the commission at least 10 days prior to the opening of the session.

The preliminary agenda of the regular session is drawn up on the basis of the instructions of the previous regular session and the statements of the commission members, if these statements are received by the commission at least one month before the opening date of the session. Each member of the commission may, at least three days prior to the opening date of the session, request that additional issues be included in the agenda.

Therefore, the issue of Russia's exclusion can be resolved as soon as possible at both the regular and extraordinary sessions. Any decision that contradicts the provisions of the Convention is invalid ipso facto (due to the fact itself). Decisions of the commission shall be taken taken by a majority vote. Given that of the ten members of the commission (excluding Russia), six are members of NATO, Austria is a member of the EU, and Ukraine and Moldova are states with the territories occupied by Russia, the issue of excluding the violator or revoking a decision that contradicts the Convention is purely a matter of will and desire, perseverance and professionalism.106

5. Denounce the Agreement between Ukraine and the Russian Federation on the Status and Conditions of the Presence of the Russian Federation Black Sea Fleet on the territory of Ukraine with all additional protocols and other agreements signed as supplementary, prolonging, etc., aimed at its implementation.

Reasoning of the violations of these agreements by the Russian Federation are given in Section II of our study. It should be added that pursuant to paragraph 1 of Article 60 of the 1969 Vienna Convention on the Law of Treaties a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

According to Part 2 of Article 18 of the Law of Ukraine "On International Treaties of Ukraine," in case of significant breach of a treaty of Ukraine by other parties hereto, if the treaty may harm the national interests of Ukraine, such treaty may be denounced.107

The following paragraph shall be included in the Transitional Provisions of the Constitution of Ukraine. “Until Ukraine becomes a member of the North Atlantic Treaty Organization, temporary deployment of military infrastructure facilities and military units of member countries of the North Atlantic Treaty Organization is allowed on the territory of Ukraine. The procedure for placing such objects is determined by legislation and agreements.”
6. Initiate a review of the content of certain provisions of the Montreux Convention.

The Montreux Convention needs to be modernized and put in the form of a document that would really contribute to the restoration of security in the Black Sea in the interests of all coastal states and the exercise of shipping rights under the UN Convention on the Law of the Sea (1982). The most pressing and important issue remains that NATO ships can only stay in the Black Sea for 21 days at a time. It is advised to supplement the Convention with the following article: “It is prohibited for naval vessels of the state (states) that participate in the aggression against any of the Black Sea states to pass through the straits.”

7. Develop and propose for signing to the United States of America and the United Kingdom a Memorandum on the Prevention and Inadmissibility of the Deployment of Nuclear Weapons in the Occupied Crimea, or on the Establishment of Adequate Military Infrastructure for its Deployment.

8. Appeal to the UN Human Rights Council regarding the illegal conscription of Crimean residents for military service in the army and other military formations.

According to the Prosecutor’s Office of the Autonomous Republic of Crimea and Sevastopol, which is on the mainland of Ukraine, since 2015, about 34,000 Crimean residents have been sent to serve in the Russian army. This situation needs to be condemned and responded to by the UN Human Rights Council.

9. Initiate at the UN General Assembly the adoption of an appeal to the UN International Court of Justice with a request to give an advisory opinion on the legal status of the Crimean Peninsula.

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