

THE OCCUPATION OF CRIMEA:

NO MARKINGS, NO NAMES
AND HIDING BEHIND CIVILIANS

Analysis



Kyiv 2019



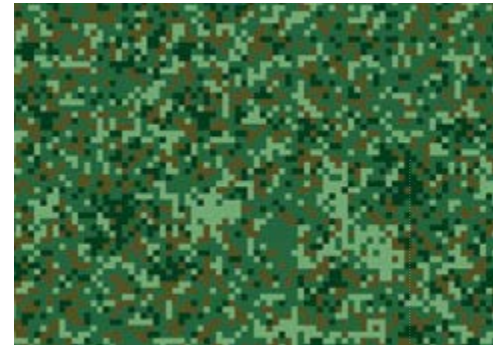
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Abbreviations:

ARC, Crimea, Crimean Peninsula	Autonomous Republic of Crimea
AFU	Armed Forces of Ukraine
AFRF	Armed Forces of the Russian Federation
IHL	International Humanitarian Law
GC IV	IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949
GC III	III Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949
API to GC	Additional Protocol I to the Geneva Conventions of 8 June 1977
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
10th Brigade	10th Naval Aviation Brigade of the Ukrainian Navy
UN	United Nations
RCHR	Regional Center for Human Rights
UHHRU	Ukrainian Helsinki Human Rights Union
BSF	Black Sea Fleet of the Russian Federation

Foreword



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IN EARLY 2014, UKRAINE encountered challenges it had not known since gaining independence in 1991. Euromaidan's peaceful protests, prompted by the government's unexpected refusal to sign an Association Agreement with the European Union, were met with a brutal retaliation by law enforcement, resulting in hundreds of our citizens being injured or killed. The Maidan events led to the change of central government in Kyiv, while in some regions of Ukraine, particularly in Crimea and Donbas, anti-government movements sprung up that refused to recognize the new authorities in the capital. It is quite obvious today that these movements were provoked and supported by an outside party, and that without such support and guidance they would never have arisen and would have had no chance of succeeding. These movements were a kind of response on the part of Russia to Ukraine's civilizational choice to side with Europe, intended then and now to prevent Ukraine from moving toward Europe, to keep Ukraine in Russia's sphere of influence by creating a zone of instability that would keep Ukraine from going forward, holding our state within Russia's orbit.

Russia achieved its goals in Crimea very quickly. In late February 2014, anti-Ukrainian demonstrations as well as blocking off of government buildings and military bases of the AFU and other military formations of Ukraine began in Crimea.

On March 16, 2014, Russia held a so-called «referendum» in Crimea, following which, on March 18, 2014, it «accepted Crimea and the city of Sevastopol in the Russian Federation». Both the «referendum» and the so-called «accession to the Russian Federation» of March 18, 2014 constituted violations of the fundamental principles of international law, and their results are neither valid nor recognized by the civilized international community, which still considers Crimea and Sevastopol a part of Ukrainian territory.

Since the end of February 2014, Russia has been in control of the territory of the Crimean Peninsula as the occupying power. Russia carried out this annexation within quite a short time frame - in less than a month - in February - March 2014. That was a very fast pace,

especially for events involving interstate relations. So what made it so easy for Russia to seize control of the Crimean Peninsula so quickly? Obviously, this became possible due to multiple factors, with new methods of warfare used by Russia in Crimea, which Ukraine was not prepared to counter, having played a major role.

Of particular interest among these new methods of warfare was the use of so-called «little green men», the surrounding and blocking off of military bases of the AFU and other military formations of Ukraine with the use of civilians, as well as the use of perfidy and deception, often in violation of international law. This work focuses on a detailed study and legal analysis of these methods of warfare.

Foreword



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THE IMPORTANCE OF THE SUBJECT of this study cannot be underestimated, as it brings to the fore a number of important and thorny questions under international humanitarian law, such as the use of civilians as human shields in military operations. The prohibition of the use of civilians as human shields is a long-standing rule of customary international law and falls under prohibited methods of warfare in both international and non-international armed conflicts. Notwithstanding this well-known prohibition in IHL, which constitutes a war crime, the legal contours of this prohibition are still far from clear. A major point of contention is whether civilians who voluntarily act as human shields lose their protected status under IHL, and therefore are lawful targets. The views on this point have split. Some pundits consider that deliberate and voluntary participation of civilians as human shields is nothing more than the abuse by civilians of their status as protected persons under IHL, and thus their contribution to the adversary's military operation could be equated to direct participation in hostilities.¹ Others argue that voluntary shielding of military objectives cannot deprive civilians of their protected status and therefore, cannot qualify as direct participation in hostilities.²

This study highlights the use of human shields by the “little green men” (later confirmed to be the members of Russian military) who were instrumental in seizing control over the Ukrainian governmental buildings and strategic military bases during the takeover of Crimea in the early phase of the conflict. In that respect, the situation in Crimea is rather unique, as the Crimean inhabitants with pro-Russian views had voluntarily acted as human shields, thus preventing the Ukrainian military from defending their military bases by means of engaging into

¹ Schmitt, M.N., 2008. Human shields in international humanitarian law. *Colum. J. Transnat'l L.*, 47, p.292.

² Sassòli, M., 2008. *Human Shields and International Humanitarian Law* (pp. 579-590). Nomos Verlagsgesellschaft mbH & Co. KG. See also: Sassòli, M., 2016. *The obligation to take feasible passive precautions and the prohibition of the use of human shields: can military considerations, including force protection, justify not to respect them?* (pp. 76-85) In: *Proceedings of the Bruges Colloquium - Urban Warfare*. Bruges: Collegium (pp. 76-85). See also: See Melzer, N., 2009. *Interpretive Guidance on the Notion of Direct Participation in Hostilities in International Humanitarian Law*, Geneva, ICRC, p. 57.

direct military confrontation with the adversary due to fear of civilian casualties. The use of voluntary human shields is not an entirely new phenomenon. However, it has been mostly employed by non-state actors designated as terrorist groups, such as Hamas, Hezbollah and ISIS, that notoriously exploited the protected status of the most vulnerable population (i.e. children, women and elderly), which was radicalised, in order to render certain areas immune from military operations. This ‘dirty’ tactic employed by such actors was often accompanied by civilian casualties, thus intensifying the debate on the status of voluntary human shields, and the use of prohibited means and methods of warfare by non-state actors against a law-abiding adversary.

Whereas civilian bloodshed was avoided during the takeover of the Ukrainian military bases and facilities in Crimea, this in no way negates the gravity of the war crime of the use of civilians as human shields. This crime is defined in terms of “using the presence or movements of civilians or other protected persons” in order” to shield a military objective from attack or shield, favour or impede military operations”.³ Therefore, the crime is premised on the *mens rea* of a perpetrator, rather than motives of civilians who have acted as human shields. Voluntary participation of civilians as human shields in military operations does not alter the character of the crime. What matters is that perpetrators use civilians or other protected persons to gain unfair advantage in military operations in violation of the most fundamental principles of IHL, while putting the life of such protected persons at peril.

This study is a welcome addition to the discussion on the use of civilians as human shields in IHL, which has a great potential to enrich the debate on the prohibited means and methods of warfare, and clarify some of the most important matters of IHL that call for immediate resolution.

³ ICC Elements of Crimes, Art. 8(2)(b) (xxiii).

Introduction

In the last days of February 2014, the number of protests against the new Ukrainian government began to rise, particularly in the eastern regions of the country and in the city of Simferopol - the capital of the ARC. On February 27, 2014, armed men, most of them dressed in military uniforms without insignia, seized government buildings in Simferopol, including the Crimean Parliament. On March 18, 2014, the so-called «accession» of Crimea and Sevastopol to Russia was announced. This was preceded by the so-called «referendum» held on March 16, 2014, which was declared invalid by the Ukrainian government as well as the vast majority of world countries and leading international organizations, including the United Nations.

The situation that formed in late February 2014 in the ARC and Sevastopol certainly had a huge impact on the rights of the local population. Widespread human rights violations, torture, enforced disappearances, extra-territorial control over one state's territory by another state - all this has resulted in unprecedented challenges. International human rights law is not always able to adequately cope with its tasks in a time of crisis, since the states can restrict certain rights during an armed conflict, state of emergency or another kind of crisis, aside from fundamental inalienable rights that must be observed at all times.

How does IHL classify the events that took place in February - March 2014 in Crimea? As we know, there were no prolonged military clashes in Crimea (except for a few sporadic acts of violence) between the AFU and the paramilitary group «Self-Defense of Crimea», so at first glance there was no non-international armed conflict there and IHL did not apply to the relations between these entities in Crimea, although, in the authors' opinion, the status of the «Self-Defense of Crimea» can be considered in the context of international armed conflicts. It was a different story with the soldiers of AFRF in Crimea. From late February to early March 2014, they were deliberately hiding their status, masquerading as members of the “Self-Defense of Crimea”. Dressed in green Russian military uniforms with no emblems and chevrons, they were dubbed «little green men». However, after the «referendum» of March 16, 2014, even Russian President V. Putin admitted that there were Russian soldiers in Crimea who «were backing the forces of the Self-Defense» and «ensured the holding» of the so-called referendum of March 16, 2014.⁴ Moreover, from the end of March 2014 to this day, the number of Russian soldiers there has been steadily increasing, along with the overall militarization of the Crimean Peninsula.

This situation can be classified as an occupation of the Crimean Peninsula by Russia. The accepted definition of occupation is given in Article 42 of the Regulations concerning the Laws and Customs of War on Land, which is an annex to the IV Hague Convention respecting the Laws and Customs of War on Land of 1907.⁵ In accordance with Article 42, «Territory is considered occupied when it is actually placed under the authority of the hostile army.»

The current international law also stipulates that any occupation constitutes an international armed conflict (an armed conflict between states, since only a sovereign subject of international law - a state - can be an occupying power), even when the occupying power encounters no armed resistance. An occupation that has not been met with armed resistance is the only example of international armed conflicts without an actual use of force.

Thus, the Crimean Peninsula is part of Ukrainian territory, which has been occupied by Russia without armed resistance from Ukraine. This territory is characterized by the legal regime of occupation and international armed conflict, with all four Geneva Conventions for the Protection of War Victims of 12 August 1949 applicable here.

⁴ This is evident, among other things, from V. Putin's statements disseminated by the media: https://www.bbc.com/russian/russia/2014/04/140417-putin_phone_line; <https://www.youtube.com/watch?v=NKObfcN7DGM>

⁵ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907: <https://www.icrc.org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/1d1726425f6955aec125641e0038bfd6>

The position that the situation in the ARC and Sevastopol is an occupation and an international armed conflict has been expressed in the reports of the Prosecutor of the International Criminal Court on preliminary examination (investigation) for 2016, 2017 and 2018.⁶ The situation in Crimea has also been classified as an occupation by the UN General Assembly in several of its resolutions of 2014-2018.⁷

Taking over the Crimean Peninsula, Russia used prohibited methods of warfare, such as the use of «little green men» (men in unmarked military uniforms), the use of civilians in the blocking off of military bases of the AFU, and the use of perfidy and deception, in violation of IHL, in order to capture Ukrainian military bases. It is these methods of warfare, coupled with the element of surprise, that helped Russia take over Crimea. Naturally, the lawyers and researchers today are faced with the task of classifying these actions from the perspective of international law, and in order to prevent such conduct from reoccurring in the future, the question arises whether these methods of warfare were lawful under international law - or was it a deliberate commission of violations and crimes used to achieve one's goals? Did these first manifestations of Russia's «hybrid» war against Ukraine involve crimes and violations of IHL on the part of Russia? These issues need to be analyzed and given a proper legal assessment, as it's possible that similar methods will be used in other regions and against other countries in the future. The civilized world must be able to respond to such threats effectively, and the states must be prepared for combating such conduct.

Given the importance of these issues for the task of ensuring international security, this study seeks to provide a detailed analysis of the methods of warfare used by Russia during Crimea's annexation. Some of these issues are effectively considered in an analytical legal study for the first time.

⁶ In particular, the 2018 ICC Prosecutor's Report in paragraph 68 clearly describes this situation as an occupation, to which the legal regime of international armed conflict is therefore applicable. This international armed conflict arose no later than February 26, 2014 and continues after March 18, 2014, since Crimea and Sevastopol effectively remain under occupation: [Web source] - Link: <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>; The Office of the ICC Prosecutor. Report on Preliminary Examination Activities 2016 [Web source] - Link: <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE-ENG.pdf>; The Office of the ICC Prosecutor. Report on Preliminary Examination Activities 2017: <https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE-ENG.pdf>

⁷ In its Resolution 68/262 of 27 March 2014 Territorial Integrity of Ukraine, the UN General Assembly reaffirms the recognition of Ukraine's sovereignty, political independence and territorial integrity within its internationally recognized borders, and calls on the international community not to recognize any change in the status of the Autonomous Republic of Crimea and the city of Sevastopol as a result of the so-called «referendum» of March 16, 2014: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262&referer=http://www.un.org/en/ga/68/resolutions.shtml&Lang=E; In its Resolution 71/205 of 19 December 2016 on the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), the UN General Assembly classifies the situation in the Autonomous Republic of Crimea and the city of Sevastopol as occupation of a part of the territory of Ukraine by the Russian Federation, reaffirms non-recognition of the consequences of annexation of these territories by the Russian Federation and calls on Russia to fulfill its obligations under international law as the occupying power: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205; In its Resolution 72/190 on the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) of 19 December 2017 the UN General Assembly also classifies the situation in the Autonomous Republic of Crimea and the city of Sevastopol as occupation of a part of the territory of Ukraine by the Russian Federation, reaffirms non-recognition of the consequences of annexation of these territories by the Russian Federation, calls on Russia to fulfill its obligations under international law as the occupying power, and condemns violations of human rights and freedoms in these occupied territories: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/190&referer=http://www.un.org/en/ga/72/resolutions.shtml&Lang=E; In its resolution 73/263 on the human rights situation in the ARC and Sevastopol, Ukraine of December 22, 2018, the UN General Assembly also recognizes that Crimea and Sevastopol are a part of the territory of Ukraine occupied by the Russian Federation: <https://undocs.org/A/RES/73/263>

Methodology

The subject of this study is the use of prohibited methods of warfare by Russia during the active phase of the occupation of the ARC and Sevastopol in February - March 2014. For this purpose, the authors set the following tasks for themselves:

- (1) Collect and analyze evidence of the use of civilians during the surrounding, blocking off and storming of military bases of the AFU and other military formations of Ukraine in Crimea.
- (2) Collect and analyze evidence of the use of AFRF soldiers in unmarked uniforms - «little green men» - during the annexation of Crimea.
- (3) Determine whether the AFRF used perfidy and deception in violation of IHL standards and principles during the capture of military bases of the AFU.
- (4) Determine whether the actions of representatives of the AFRF constituted gross violations of IHL and prohibited methods of warfare, or they were new methods of warfare that have not yet been regulated in international law.
- (5) Determine whether there was a use of prohibited methods of warfare specifically that allowed Russia to take over the ARC and Sevastopol in February - March 2014.

The following sources of information were used while working on this study:

a) interviews and written testimonies of witnesses

Witness testimonies were obtained during several monitoring visits by the UHHRU and RCHR conducted in 2017-2019. Most of the witnesses whose testimonies were used in this study are active duty military personnel or veterans of the AFU. For security purposes, their personal details are not disclosed.

b) photo and video evidence

While working on this study, the authors analyzed video evidence related to the blocking off and capture of Ukrainian military bases in Novofedorivka, Novoozerne, Perevalne and Sevastopol (65 video files), as well as photos of the events that took place in Novoozerne (170 photos) and publicly available information. Most of the photo and video evidence was provided to the authors by witnesses of the events themselves.

c) articles and written documents available on the Internet

While working on this study, the authors also used relevant written materials, articles and various publications published by news agencies and journalists related to Crimea's annexation in 2014. Over 100 publications were used in total.

d) submissions to the ICC Prosecutor's Office;

The authors used submissions sent to the ICC under Article 15 of the ICC Rome Statute by two NGOs - the Ukrainian Helsinki Human Rights Union and the Regional Center for Human Rights - together with the Prosecutor's Office of the ARC in February 2019.

For legal analysis, sources of international humanitarian and international criminal law were used, in particular international agreements and customary international law.

This study contains terminology used in international law, specifically in IHL.

Scope of methodology

While working on this study, the authors only used sources related to the events that took place in the ARC and Sevastopol in February - March 2014, specifically the sources and materials that the authors had access to. The work with the sources and analysis of the information lasted until the end of March 2019.

1. Instances of the use of human shields during the surrounding, blocking off and capture of military bases of the Armed Forces of Ukraine

General overview

The use of human shields is a prohibited method of warfare under IHL. This phenomenon occurs when persons directly involved in hostilities or military operations use civilians and/or civilian objects as cover while being aware that civilians and civilian objects are protected under IHL and that they cannot and must not be attacked by the adversary.

The use of human shields is prohibited by IHL, in particular during international armed conflicts, under which category also falls the armed conflict between Russia and Ukraine in Crimea.

In accordance with Article 28 of GC IV, «the presence of a protected person may not be used to render certain points or areas immune from military operations.»⁸ In accordance with paragraph 6, Article 51 of AP I to GC, «the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.»⁹

The use of human shields is also prohibited by customary international humanitarian law. Rule 91 in the Customary International Humanitarian Law document of the International Committee of the Red Cross expressly states: «The use of human shields is prohibited.»¹⁰

The use of human shields also violates the principle of distinction, which is one of the fundamental principles of IHL. In particular, Article 48 of AP I to GC states, «In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.»¹¹ The fundamental importance of the distinction principle for IHL is further confirmed by the fact that it is asserted in Rule 1 of the Customary International Humanitarian Law body of rules, which stipulates that «The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.»¹²

The use of human shields for providing cover to combatants and civilian objects is a clear violation of the principle of distinction, as it prevents the adversary from conducting lawful military actions due to the presence of civilians on the front lines. Moreover, the use of human shields essentially violates the obligation to take all possible precautions to distinguish between civilians and civilian objects - and combatants and military objectives.¹³

⁸ Article 28 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_154

⁹ Paragraph 7, Article 51 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

¹⁰ Customary International Humanitarian Law. Rules [Web source] – Link: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

¹¹ Article 48 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

¹² Rule 1, Customary International Humanitarian Law. Rules [Web source] – Link: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

¹³ In particular, the obligation to take such precautions is provided for in Article 57-58 of Additional Protocol I and in Rules 15-24 of Customary International Humanitarian Law.

In the Rome Statute of the ICC, the use of human shields is classified as a war crime in Article 8 «War crimes». In particular, Article 8(2)(b)(xxiii) names «utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations» as a war crime.¹⁴ Article 8(2)(b) of the Rome Statute states that the acts listed in this paragraph are «other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.» Thus, Article 8(2)(b)(xxiii) clearly classifies the use of human shields in an international armed conflict as a war crime.

ICC Elements of Crimes, which is a document that details characteristics of specific crimes mentioned in the ICC Rome Statute, names the following elements for the war crime of the use of human shields, enshrined in Article 8(2)(b)(xxiii) of the Rome Statute:

1. The perpetrator moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.
2. The perpetrator intended to shield a military objective from attack or shield, favour or impede military operations.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.¹⁵

In the recent jurisprudence of the ICTY, namely in the cases of *Radovan Karadžić* and *Ratko Mladić*, the defendants were charged with committing war crimes for using UN peacekeepers to shield their armed forces, that is, as human shields.¹⁶ The ICTY confirmed these allegations¹⁷ in the two defendants' sentences. In the *Karadžić* case, the ICTY Trial Chamber noted that when it comes to the use of human shields, the perpetrator must intend to shield a military objective from attack or to impede military operations, and the ban on the use of human shields remains in effect regardless of whether the victims have been actually harmed or attacked. The Trial Chamber also noted that the tribunal had no definition of the *mens rea* (mental element) of the use of human shields in its case law, so in this regard the ICTY Trial Chamber relied on the definitions set out in ICC Elements of Crimes, namely those given in Article 8(2)(b)(xxiii).¹⁸

¹⁴ Article 8(2)(b)(xxiii) of the Rome Statute of the ICC [Web source] – Link: <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

¹⁵ Elements of Crimes, International Criminal Court [Web source] – Link: <https://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9d-e73d56/0/elementsofcrimeseng.pdf>

¹⁶ ICTY, *Karadžić and Mladić* case, First Indictment and Review of the Indictment (par. 2364).

¹⁷ ICTY, *Prosecutor v. Radovan Karadžić*, Trial Judgment, 24 March 2016; ICTY, *Prosecutor v. Ratko Mladić*, Trial Judgment, 22 November 2017.

¹⁸ ICTY, *Prosecutor v. Radovan Karadžić*, Trial Judgment, 24 March 2016, (paras. 525-526).

Analysis of the use of human shields during the annexation of Crimea by the Russian Federation using the example of several key episodes.

Episode 1 - Novoozerne Village, ARC, Ukraine. Capture of the Southern Naval Base of the Ukrainian Navy.

The Southern Naval Base (SNB) was a strategically important installation of the Ukrainian Navy. Its main task was to organize the docking and departure of Ukrainian Navy ships. The SNB provided ships with food, fuel and ammunition and, if necessary, made repairs to them. Attached to the base was the 5th Surface Ships Brigade (military unit No. A-0898), which included several key vessels of the Ukrainian Navy. On March 17, 2014, after the so-called «referendum» in Crimea, S.V. Aksyonov issued Order No. 7 regarding further military service and the property located at Ukrainian military bases in Crimea (hereinafter - «Order No. 7»)¹⁹ On March 18, 2014, a representative of the so-called “authorities of Crimea” Yuri Zherebtsov²⁰ arrived at the SNB and read Order No. 7 aloud twice to Ukrainian servicemen in the presence of pro-Russian civilians.

It should be noted that while reading the order in daytime, in the presence of at least 100 civilians, Y. Zherebtsov invited people to come to the base again the next day, to participate in a public event, allegedly to support the soldiers in their decision to side with the «people of Crimea». The proof of this is **Video-NVZ-33**²¹, in which Y. Zherebtsov says that Ukrainian soldiers must think things through and side with the Crimean people, and later, addressing the civilians, he says: «I understand you perfectly, you want to see your husbands, your loved ones, your friends ...



as people that stand with us, but let's give them time till morning. Let them think it through. And I believe they will definitely decide in favor of the people of Crimea. So let's not pressure them now. They are, let's just say, military men. They carry out regulations, orders. The government in Kyiv is illegitimate. They know this perfectly ... So you tell them as their relatives, and I will suggest on behalf of the Crimean government to those that don't want to be here [on the territory of the SNB], make way for them and let them go to the village. Let the contract soldiers go. Stay here till morn-

¹⁹ Text of Order No. 7 on the Facebook page of the Council of Ministers of Crimea <https://www.facebook.com/notes/совет-министров-крыма/приказ-7-от-17032014/305524879596045>.

²⁰ Yuri Zherebtsov called himself a representative of the «Republic of Crimea» and actively participated in the capture of the Southern Naval Base in the village of Novoozerne. In his interview to the BBC (see Video-NVZ-10, from 01.18 to 01.53), he speaks about how the transition of Ukraine's Southern Naval Base to the Armed Forces of the Russian Federation will go. After the annexation of Crimea by the Russian Federation, Zherebtsov was a member of the Public Chamber of the «Republic of Crimea». On August 5, 2015, Y. Zherebtsov's death was reported. On the same day, Sergiy Aksyonov sent a telegram to the Public Chamber of the Republic of Crimea, in which he expressed his condolences on Zherebtsov's death.

²¹ The video is in the possession of the authors

ing. The decision will be made on the basis of the order of the Commander-in-Chief that has been officially delivered to you ... We will convince the people, ask them to refrain from any actions on their own. We have an agreement with the Crimean government that by 10 a.m. tomorrow we must get a response from the command of the base on what they've decided. After that, Novoozerne residents can hold an organized rally here and repeat their demands and, if the command of the base will not have reached a decision by then, I'm sure no soldier will dare open fire on the Crimean people, who own everything we see here. And I'm sure that the men here will make that decision and open the gates. People will be able to enter the base freely ... tomorrow at 10:00 a.m. we meet here, we gather here and tomorrow, I believe, the final decision will be made.»

Thus, **Video-NVZ-33** is an example of the evidence that demonstrates manipulation of the civilian population and its use as human shields in capturing the SNB. As is evident from the subsequent events, Y. Zherebtsov's words that "Novoozerne residents can hold an organized rally here and repeat their demands» were deliberate deception and manipulation, as the real goal was the capture of the SNB by Russian forces. Also, Y. Zherebtsov's conviction that «no soldier will dare open fire on the Crimean people» shows that he and the Russian soldiers were counting on the presence of civilians to prevent Ukrainian servicemen from opening fire during the storming of the base.



Photo-NVZ-9.JPG and **Photo-NVZ-10.JPG** are proof that civilians were standing in front of the «little green men» and were used by them as human shields, to defend against potential resistance on the part of Ukrainian soldiers.



Video-NVZ-22²² shows Russian soldiers approach the gate of the SNB in the morning of March 19, 2014 together with officers of Russia's BSF and Y. Zherebtsov, who takes charge of a rally organized by civilians holding Russian flags. **Video-NVZ-22** also shows Russian soldiers



lining up outside the gate, and the civilians with Russian flags gather behind them immediately after. Only a handful of civilians are standing aside and without flags. This footage is confirmed



²² The video is in the possession of the authors



by another video, **Video-NVZ-5**²³, taken from the perspective of civilians standing behind the Russian soldiers.

Another video, **Video-NVZ-23**²⁴, shows the Russian soldiers make way for a group of about 30



civilians with Russian flags as they move forward. Civilians come to the front, which puts them closer to the SNB's gate than the Russian soldiers. Thus, civilians were placed in front of the Russian soldiers to shield them from a potential response by Ukrainian servicemen. The group of civilians with Russian flags led by Y. Zherebtsov starts gathering other civilians around them,

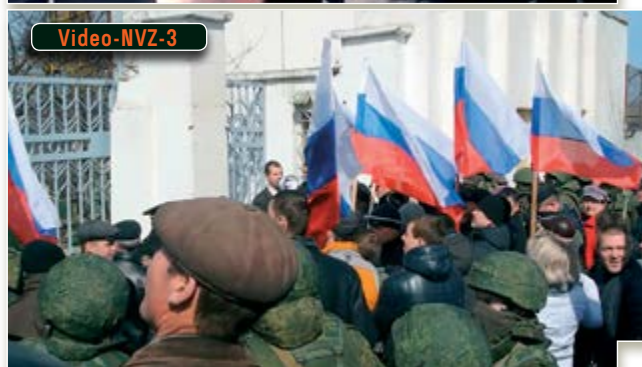
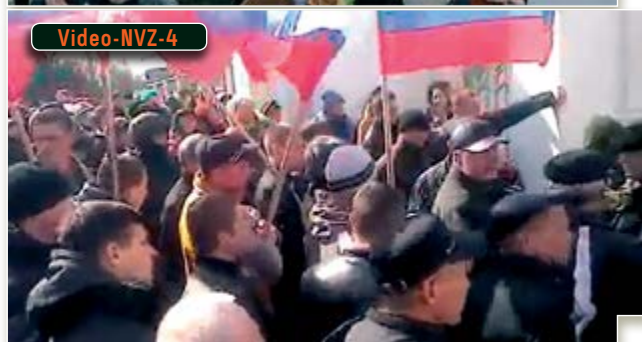
²³ <https://www.youtube.com/watch?v=7SemokE2Hak>, <http://archive.fo/DgHRb>

²⁴ The video is in the possession of the authors

among them many women with children as well as elderly people. The total number of civilians standing near the SNB at the time of the assault was about 300. The active group of civilians led by Y. Zherebtsov were calling on the Ukrainian soldiers at the gate to side with the «Crimean people» and join the Russian army. It should be noted that, as evidenced by **Video-NVZ-9**²⁵, at this time Russian soldiers were spread among the civilians.

Prior to the capture of the SNB, BSF officers were also spreading information among the civilians that an ultimatum had been given to the Ukrainian soldiers, according to which they had to give their reply as to whether they would side with the «Crimean people» by a certain deadline. If they refused, the Russian soldiers, «with the help» of civilians, would enter the base in order to capture it. This is clear from **Video-NVZ-9**, where a Russian officer talks about it.

During the assault on the SNB, civilians were mostly at the gate and around the fence of the base, which prevented Ukrainian servicemen from opening fire on Russian soldiers for fear of casualties among civilians. Thus, **Video-NVZ-2**²⁶, **Video-NVZ-4**²⁷ and **Video-NVZ-9**²⁸ show women, children and elderly people near the gates. Most of the men are standing at the gate with Russian flags, with no visible weapons, which could have marked them as combatants. Of particular interest here is **Video-NVZ-3**²⁹, which was taken outside the SNB, from the perspective of civilians, and which shows that a large number of civilians have gathered at the gates and in the nearby area, with Russian soldiers spread among them .



²⁵ <https://www.youtube.com/watch?v=1mfxkghQto8>,
<http://archive.fo/5HwLa>

²⁶ <https://www.youtube.com/watch?v=2akEFLYqvVC>,
<http://archive.fo/kPeGB>

²⁷ <https://www.youtube.com/watch?v=zlm7IDZy-00>,
<http://archive.fo/Z20Pl>

²⁸ <https://www.youtube.com/watch?v=1mfxkghQto8>,
<http://archive.fo/5HwLa>

²⁹ <https://www.youtube.com/watch?v=J5wTWsRleLE>,
<http://archive.fo/f75my>

Episode 2 - Sevastopol, Ukraine, capture of the Headquarters of the Ukrainian Navy

Human shields were also used in the capture of the Ukrainian Navy HQ in Sevastopol. Analysis shows that there existed a systematic and planned intention of the Russian military and special services to use civilians as human shields in order to capture the Ukrainian Navy HQ.

The blockade of the HQ lasted for about a month and ended on March 19, 2014 with an assault and capture by Russian soldiers. The beginning of the assault can be seen on **Video-SVS-CNFN-11-1**³⁰. The witnesses of these events, who were serving at the HQ at the time, told the UHHRU about the placement of the protesters outside the gate of the HQ. In the front, there were people dressed in civilian clothes and holding Russian flags, along with women and children. Near the civilians were Cossacks as well as members of the «Self-Defense of Crimea» and «Self-Defense of Sevastopol». This can be seen on **Video-SVS-CNFN-12**³¹. There were also officers of Russia's BSF there, appearing to be watching the progress of the rally. In the back, there

Video-SVS-CNFN-12



were «little green men» and military vehicles. By 10 a.m. on March 19, 2014, civilian specialists were brought in, who cut down the gate of the HQ. The gate was then rammed with a vehicle. Ukrainian soldiers were standing in groups on HQ grounds at the time. After the gate had been taken down, people in civilian clothes (including women and children; all of this was shot on camera) and Cossacks were the first to rush onto the HQ grounds. After them came the armed men. All these groups entered almost simultaneously, but one after the other. Several fights broke out. The whole process was filmed by Russian journalists. There were at least 300 civilians and military personnel there in total. The «little green men» were the last to enter the HQ. They were not involved in the assault; instead, they dispersed around the perimeter of the HQ to act as security.

³⁰ <https://youtu.be/pA681ppl77I>

³¹ https://youtu.be/r5eIva_l1v4



Episode 3 - Sevastopol, Ukraine, capture of the 204th Sevastopol Tactical Aviation Brigade named after Oleksandr Pokryshkin

The base of the 204th Sevastopol Tactical Aviation Brigade named after Oleksandr Pokryshkin was located near Sevastopol. At the time of Crimea’s annexation, the 204th was under the command of Colonel Yuliy Mamchur. Testifying under oath in the Obolon District Court of Kyiv in the case on the treason of ex-President of Ukraine Viktor Yanukovych, he reported that the assault on the base began on March 22, 2014, at 4:45 p.m. Colonel Mamchur also had the following to say: “Prior to that, a large number of civilians arrived at the base, some had children with them. Then there were those we called little Cossacks - men dressed in uniforms of the Don Cossacks, and behind them stood some military men of unclear affiliation, athletic-looking men but dressed in civilian clothes. The fourth echelon consisted of soldiers without insignia.³² According to Y. Mamchur, they had the newest armored personnel carriers characteristic of the military vehicles of the AFRF. This can also be seen on **Video-SVS-B-1**.³³

Episode 4 - Novofedorivka Village, Crimea, Ukraine

In the village of Novofedorivka, Saksyyi Rayon, ARC, the base of the 10th Naval Aviation Brigade of the Ukrainian Navy was located. The assault on the base began on March 22, 2014, at 13:15 at the latest. The capture of the base was carried out by civilians, while Russian soldiers stood by and watched.³⁴ On April 16, 2014, in his interview to the



³² <https://gordonua.com/news/crimea/mamchur-soobshchil-cto-pered-voennosluzhashchimi-kotorye-zahvatyvali-ego-chast-v-krymu-bylo-tri-linii-lyudey-v-grazhdanskom-224101.html>

³³ The video was published by the Russian outlet Life News. Currently, the video has been removed from public access. The authors possess a copy of the video.

³⁴ <https://www.facebook.com/vladislav.seleznev.94/posts/416926345110761>

Crimean outlet Crimea.Realities, Ukrainian Navy Captain 3rd rank **Igor Shvets**, asked about the capture of the 10th Brigade «*Later the base was stormed again and eventually captured. Why? Was it just because your communications were cut off?*» replied «*No, the assault was successful simply because we were attacked by civilians, who were then followed by soldiers ...*».³⁵

On April 17, 2017, Commander of the 10th Brigade, Ukrainian Navy Colonel **Igor Bedzai** also gave an interview during which, recalling the capture of the base, he said: «*... soon the assault on our base began. The «little green men» put civilian locals in front of them as a shield.*»³⁶ In November 2018, a team of experts from the UHHRU and RCHR also interviewed Igor Bedzai.

He confirmed what he had said to the press earlier and also stressed that the «little green men» were waiting for the civilians to storm the base, keeping behind their backs. In the end, the armed «little green men» took over the base in no more than 30 minutes. Colonel Bedzai noted that about 100 servicemen, who, like him, are currently serving in the 10th Brigade in Ukraine-controlled territory, will be able to confirm the fact of the use of civilians in the assault on the base. While studying the circumstances surrounding the capture of the 10th Brigade, the authors were able to obtain **Video-NVF-1**³⁷, **Video-NVF-2**³⁸ and **Video-NVF-3**³⁹, which partially show the assault.⁴⁰

Thus, based on the above episodes and facts, we can conclude a widespread use of civilians for shielding Russian military personnel from legitimate resistance by Ukrainian servicemen.

Thus, the use of civilians for rendering Russian soldiers immune to a possible response by Ukrainian servicemen was a deliberate act on the part of the heads of operations aimed at the capture of AFU military bases. Russia used civilians as human



³⁵ <https://ru.krymr.com/a/25335081.html>

³⁶ https://censor.net.ua/resonance/433632/letchik_igor_bedzayi_v_marte_2014_goda_nachalniku_aviatsii_pryamo_skazal_esli_u_menya_budet_vozmojnost

³⁷ <https://www.youtube.com/watch?v=dYWlZn0mbo>, <http://archive.fo/moscX>

³⁸ <https://www.youtube.com/watch?v=FsEbniBV07Q>, <http://archive.fo/mecWe>

³⁹ <https://www.youtube.com/watch?v=suy9M9lh5DY>, <http://archive.fo/V7UbN>

⁴⁰ 10th Brigade Commander Igor Bedzai confirmed that the video taken from YouTube is trustworthy in its depiction of the events that took place around the base he had been in charge of.

shields in the blocking off and capture of Ukrainian military bases in the ARC and Sevastopol. Therefore, the heads of operations aimed at the capture of Ukrainian military bases in February - March 2014 can be charged with committing the war crime of the use of human shields.

The issue of determining the status of the so-called «Cossacks» and members of the so-called «Self-Defense of Crimea» is a separate task that researchers may be facing in regard to the blocking off and storming of Ukrainian military bases in Crimea in February - March 2014. *Were they civilians and thus enjoying protection under IHL, including immunity from attacks? Or were they combatants directly involved in the conflict and therefore valid targets?*

It can be stated unequivocally that there was no non-international armed conflict in Crimea between the AFU and the Cossacks and members of the «Self-Defense of Crimea», as there were no prolonged hostilities between these parties⁴¹, nor were the criteria for the intensity of the hostilities and level of organization of the parties satisfied, which are required for determining whether there exists a non-international armed conflict.⁴² We also cannot consider Cossacks and members of the «Self-Defense of Crimea» combatants, since combatants are first and foremost persons that are part of the armed forces of a party to a conflict (aside for medical and religious personnel).⁴³ Therefore, whenever there is doubt as to the status of a person, presumption of civilian status is applicable (in the context of the object of this study).

This presumption is enshrined in part 1, Article 50 of AP I to GC: «In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.»⁴⁴

Thus, presumption of civilian status prohibits the use of arms against such persons - they are not a legitimate target. It appears that it was the doubt as to the status of these persons as well as presumption of civilian status that forced Ukrainian soldiers to refrain from opening fire on the so-called «Cossacks» and members of the «Self-Defense of Crimea». This means that Russia used these groups to gain military advantage during the annexation of the peninsula, namely to gain immunity from a legitimate response by Ukrainian servicemen.

It should also be noted that, since the actions (i.e. the storming of Ukrainian military bases) of the «Cossacks», members of the «Self-Defense of Crimea» and other civilians contributed to Russia's military advantage, one might wonder whether their actions, which involved the storming of Ukrainian military bases in Crimea, could not, in principle, be considered direct participation in hostilities. Once civilians choose to participate in hostilities directly, they lose protection under IHL civilians, namely immunity from attack. The key criterion for determining whether a civilian is directly involved in hostilities is whether that person's actions are aimed at achieving a specific military advantage for one of the parties to the conflict. Nevertheless, the use of weapons against civilians or persons subject to presumption of civilian status, when in doubt as to their direct involvement in hostilities, is always a difficult issue for military personnel and can only be addressed after detailed consultation with lawyers and legal consultants.

⁴¹ International Criminal Tribunal for former Yugoslavia. Tadic (IT-94-1) "Prijedor" [Web source] – Link: <http://www.icty.org/case/tadic/4>

⁴² See, for example, the ICTY case of Boškoski and Tarčulovski [Website]. – Link: <https://casebook.icrc.org/case-study/icty-prosecutor-v-boskoski>

⁴³ Part 2, Article 43 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

⁴⁴ Part 1, Article 50 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

2. Instances of the use of «little green men» – soldiers in unmarked uniforms

General overview

As was noted in the previous section, the principle of distinction is one of the fundamental principles of IHL.

Article 48 of AP I to GC states, «In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.»⁴⁵ The fundamental importance of the distinction principle for IHL is further confirmed by the fact that it is asserted in Rule 1 of the Customary International Humanitarian Law body of rules, which stipulates that «The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.»⁴⁶

Accordingly, distinguishing between civilians and combatants is an unconditional obligation for parties to an armed conflict, particularly for states involved in an international armed conflict. Moreover, in the event of doubt as to whether a person is a combatant or a civilian, that person is to be considered a civilian.⁴⁷

Combatants are legitimate participants of hostilities. Part 2, Article 43 of AP I to GC provides that members of the armed forces of a Party to a conflict (other than medical personnel and chaplains) are combatants, that is to say, they have the right to participate directly in hostilities.⁴⁸

This definition of combatants is also supported by customary IHL. Rule 3 of customary IHL stipulates that «all members of the armed forces of a party to the conflict are combatants, except medical and religious personnel».⁴⁹ This rule is a customary rule of international law and is applicable to international armed conflicts.

As for the distinction between combatants as well as their equivalents and civilians, this issue is covered in international agreements and customary IHL.

Article 1 of the Hague Regulations concerning the Laws and Customs of War on Land of 1907 states that «the laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.»⁵⁰

⁴⁵ Article 48 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I): https://zakon.rada.gov.ua/laws/show/995_199

⁴⁶ Rule 1, Customary International Humanitarian Law. Rules: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

⁴⁷ As stated earlier, said presumption is provided for in part 1, Article 50 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I): https://zakon.rada.gov.ua/laws/show/995_199

⁴⁸ Part 2, Article 43 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I): https://zakon.rada.gov.ua/laws/show/995_199

⁴⁹ Rule 3, Customary International Humanitarian Law. Rules [Web source] – Link: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

⁵⁰ Hague Regulations concerning the Laws and Customs of War on Land of 1907 (annex to the Convention (IV) respecting the Laws and Customs of War on Land of 1907 [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_222

Thus, we can see that the Hague Regulations have no specific provisions on distinctions between combatants, yet they expressly state how members of militias and volunteer corps must look and what they must have and do in order to be equated to combatants.

Similar requirements for such distinction are found in GC III and AP I to GC of 1977.

Article 4 of GC III establishes what categories of persons can be considered prisoners of war. In accordance with Article 4 of GC III, «members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- a) that of being commanded by a person responsible for his subordinates;
- b) that of having a fixed distinctive sign recognizable at a distance;
- c) that of carrying arms openly;
- d) that of conducting their operations in accordance with the laws and customs of war.»⁵¹

Thus, if IHL sets forth such distinction requirements (in particular, the Hague Regulations of 1907 and GC III of 1949) regarding militias and voluntary corps, then by analogy, the same requirements apply to other categories of combatants that are entitled to the status of POW, including members of the armed forces of a party to a conflict that are considered «conventional» combatants.

The issue of distinguishing between combatants and civilians is also addressed in Article 44 of AP I. Part three of this Article states that «in order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

- a) during each military engagement, and
- b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.»⁵²

Thus, we can see that part 3, Article 44 of AP I to GC requires combatants to carry arms openly at all times for distinguishing purposes, yet it says nothing about an obligation to wear insignia and uniforms of their respective armed forces. At the same time, part 7, Article 44 of AP I to GC essentially recognizes the widespread practice of states on the wearing of uniforms by combatants assigned to the uniformed armed forces of a party to a conflict.⁵³

So, are combatants, members of states' armed forces required to wear insignia, stripes, chevrons and uniforms of their respective armed forces? In a sense, the answer can be found in the commentary to the Geneva Conventions and Additional Protocols. Thus, the Commentary to Article 4 of GC III states that «The drafters of the 1949 Convention, like those of the Hague Convention, considered that it was unnecessary to specify the sign which members of armed forces should have for purposes of recognition. It is the duty of each State to take steps so that members of its armed forces can be immediately recognized as such and to see to it that

⁵¹ Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_153

⁵² Part 3, Article 44 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

⁵³ Part 7, Article 44 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

they are easily distinguishable from members of the enemy armed forces or from civilians. The Convention does not provide for any reciprocal notification of uniforms or insignia, but merely assumes that such items will be well known and that there can be no room for doubt.»⁵⁴ The Commentary to part 3, Article 43 of AP I to GC, which deals with the inclusion in the armed forces of para-military organizations and armed organizations that carry out policing functions, states that law enforcement officers without uniforms can be members of the armed forces if adverse Party has been notified of this, so that there is no confusion on its part.⁵⁵ Finally, the Commentary to Article 44 of AP I to GC states that this Article confirms the wearing of uniforms by members of regular armed forces and that this is a generally accepted practice among states.⁵⁶

The answer to the question whether combatants are required to wear distinguishing emblems, stripes, chevrons and uniforms of their armed forces can be found in Rule 106 of the Customary International Humanitarian Law body of rules and the comments to it. Rule 106 states that “Combatants must distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. If they fail to do so, they do not have the right to prisoner-of-war status.”⁵⁷ By itself, Rule 106 does not provide an unambiguous answer to the question about uniforms and distinctive emblems, but the comments are of particular interest here. The comments state that military manuals of several states (Australia, Belgium, United Kingdom, Germany, Kenya, Colombia, Madagascar, Netherlands, New Zealand, Switzerland, Sweden, South Africa) “remark that the obligation to distinguish oneself does not pose a problem for the regular armed forces because it is “customary” or “usual” for members of the regular armed forces to wear a uniform as a distinctive sign.”⁵⁸ “If members of regular armed forces do not wear a uniform, they risk being charged as spies or saboteurs.”⁵⁹ “In the Swarka case in 1974, an Israeli Military Court found that members of the Egyptian armed forces who had infiltrated Israeli territory and launched an attack in civilian attire were not entitled to prisoner-of-war status and could be prosecuted as saboteurs. The Court considered that it would have been illogical to regard the duty to distinguish oneself as applicable to irregular armed forces but not to regular armed forces, as the defendants had claimed.”⁶⁰

⁵⁴ Commentary to Article 4 of the Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=ECA76FA4DAE5B32EC12563CD00425040>

⁵⁵ Commentary to Article 43 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=0CDB7170225811A0C12563CD00433725>

⁵⁶ Commentary to Article 44 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=D04A6A9CBBF8B28CC12563CD00433946>

⁵⁷ Rule 106, Customary International Humanitarian Law. Rules: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

⁵⁸ Customary International Humanitarian Law, p. 491 – 492.

⁵⁹ Customary International Humanitarian Law, p. 492; United Kingdom, Military Manual, 1958, paras. 96 and 331.

⁶⁰ Customary International Humanitarian Law, p. 492; Israel, Military Court, Swarka case (volume II, chapter 33, para. 35); in 1974, Egyptian soldiers crossed the Israeli state border and launched several missiles at a settlement with civilians. After being detained by representatives of the Armed Forces of Israel, the Egyptian soldiers demanded to be accorded POW status under Article 4 of GC III, on the grounds that they belonged to Egyptian Armed Forces and were carrying out orders of their commanding officer. The Prosecutor in the case argued that the Egyptian soldiers were not entitled to POW status as they were wearing civilian clothes during their mission. The court decided that it would be illogical to consider the obligation to distinguish oneself with military uniforms applicable to irregular paramilitary units and not applicable to regular armed forces, as the defendants wanted. Thus, the court denied the defendants POW status and prosecuted them as saboteurs: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_il_rule106_sectiona

What's important, the comments to Rule 106 of customary IHL also state that "State practice indicates that in order to distinguish themselves from the civilian population, combatants are expected to wear a uniform or a distinctive sign and must carry arms openly."⁶¹ Relevant Russian legislation also requires commanders of military units to respect the principle of distinction during hostilities.⁶²

Thus, we can see that the obligation of members of the armed forces to wear uniforms of their respective armed forces and thus distinguish themselves from civilians is contained in customary IHL as well as follows from military manuals and practices of many states. However, the lack of an appropriate and clearly spelled out provision in international agreements somewhat complicates the situation. This obligation seems to be assumed, it follows from the very belonging of a person to armed forces, and this has never been an issue. This has almost never been questioned in practice (except for combat missions carried out by saboteurs).

Analysis of the events of February-March 2014 in Crimea

In essence, the widespread use of military personnel in unmarked military uniforms by Russia in Crimea in February-March 2014 was the first such case in the modern history of IHL in terms of failure to ensure distinction between combatants and civilians.

On the other hand, Russia's violation of its obligation to properly identify its military personnel did not deprive Ukrainian soldiers of their legal right to use force against these unmarked servicemen, since the visible weapons and military vehicles made it highly unlikely that the individuals in question were protected by Geneva Conventions and Additional Protocols, giving reason to believe that their goal was to take over Crimea.

In its preliminary examination reports (in particular, the 2018 Report⁶³), the Office of the ICC Prosecutor states that on February 27, 2014, armed men, most of whom were wearing military uniforms without distinctive signs, captured government buildings in Simferopol, including the building of the Crimean Parliament. Later Russia acknowledged the fact that Russian troops were involved in establishing control over the Crimean Peninsula.⁶⁴ We are talking here about the so-called «little green men». The «little green men» were individuals dressed in green military uniforms without any marks of distinction, chevrons or stripes that would make it possible to identify them as members of the armed forces of a particular state. They were armed with military grade weapons that looked Russian (i.e. like weapons used by the AFRF), which they carried around openly and with which they threatened Ukrainian soldiers. In addition, the «little green men» had all the gear that a soldier could require (radios and other means of communication as well bulletproof vests), as well as a clear hierarchy (some of them gave orders and others carried them out). The "little green men" also controlled civilians during the surrounding and storming of military bases of the AFU in Crimea, issuing orders to them. Thus, as was mentioned in the previous section, the «little green men» deliberately used civilian population for gaining military advantage and

⁶¹ Thus, German Military Manual states: "In accordance with the generally agreed practice of States, members of regular armed forces shall wear their uniform. Combatants who are not members of uniformed armed forces nevertheless wear a permanent distinctive sign visible from a distance and carry their arms openly." Source: Customary International Humanitarian Law, p. 492.

⁶² Manual on International Humanitarian Law for the Armed Forces of the Russian Federation, approved by Order No. 360 of August 8, 2001 of the Minister of Defense of the Russian Federation «On Measures for Ensuring Compliance with International Humanitarian Law in the Armed Forces of the Russian Federation», paragraph 17.

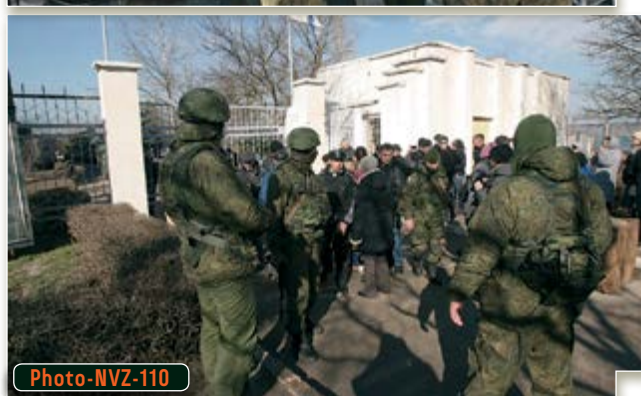
⁶³ The Office of the Prosecutor of the International Criminal Court. Report on Preliminary Examination Activities 2018 [Web source] – Link: <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>

⁶⁴ Ibid, paragraph 66.

defending against possible actions by Ukrainian servicemen.

As previously noted, since early March 2014 the «little green men» had been disguising themselves as members of the «Self-Defense of Crimea», essentially being soldiers without distinctive signs or emblems. However, after the so-called «referendum» of March 16, 2014, even Russian President V. Putin acknowledged that there were Russian soldiers in Crimea who «were backing the forces of the Self-Defense» and «ensured the holding» of the referendum.⁶⁵

As can be seen from the photos taken during the blocking off of the AFU SNB in the village of Novoozerne, the armed men were indeed wearing military uniforms without any distinguishing marks. That is, their appearance made it absolutely impossible to tell to which state's armed forces or military units they belonged to. Their green unmarked military uniforms can be clearly seen on **Photo-NVZ-11.JPG**, **Photo-NVZ-12.JPG**, **Photo-NVZ-23.JPG**, **Photo-NVZ-106.JPG**, **Photo-NVZ-107.JPG** and **Photo-NVZ-110.JPG**.



⁶⁵ This is evident, among other things, from V. Putin's statements disseminated by the media: https://www.bbc.com/russian/russia/2014/04/140417_putin_phone_line; <https://www.youtube.com/watch?v=NKObfcN7DGM>



In the village of Perevalne, Simferopol Rayon, ARC, the base of the 36th Separate Mechanized Coastguard Brigade was located. As clearly seen on **Video-PRV-01.mp4**⁶⁶, the base was blocked off by armed men in military uniforms without distinguishing signs, on unmarked military vehicles. The same can be seen on numerous other videos, including **Video-PRV-02.mp4**⁶⁷, **Video-PRV-03.mp4**⁶⁸, **Video-PRV-04.mp4**⁶⁹, **Video-PRV-05.mp4**⁷⁰. These videos confirm that armed men in unmarked military uniforms were used en masse in the blocking off and subsequent capture of the base of the 36th Separate Mechanized Coastguard Brigade in the village of Perevalne, Simferopol Rayon, ARC.

⁶⁶ <https://www.youtube.com/watch?v=11hYQrIFMd4>, <http://archive.fo/E7imf>

⁶⁷ <https://www.youtube.com/watch?v=TNKsLJK52ss>, <http://archive.fo/xspgQ>

⁶⁸ <https://www.youtube.com/watch?v=cTBA0I8uThE>, <http://archive.fo/DQO8D>

⁶⁹ <https://www.youtube.com/watch?v=GUNSFqdKPMm>, <http://archive.fo/MLPTN>

⁷⁰ <https://www.youtube.com/watch?v=jSKCrfosC8U>, <http://archive.fo/rKmpc>



Video-SVS-CNFH-7



Video-SVS-CNFH-9

Video-SVS-CNFH-7.mp4⁷¹ and Video-SVS-CNFH-9.mp4⁷² clearly show that armed men in unmarked military uniforms were used in the blocking off and capture of the HQ of the Ukrainian Navy in Sevastopol.

Multiple videos related to the blocking off and capture of the SNB in the village of Novoozerne, which were obtained by the UHHRU, show that armed men in unmarked military uniforms were actively used in the blocking off and capture of this base. Thus, it can be seen on Video-NVZ-1.mp4⁷³, Video-NVZ-2.mp4⁷⁴, Video-NVZ-10.mp4⁷⁵.

In general, the widespread use of armed men in unmarked military uniforms (the so-called “little green men”) in the blocking off and capture of Ukrainian military bases during the active phase of Crimea’s occupation by Russia is a well-known fact and requires no particular proof. Based on the analysis of treaty law and customary IHL as well as of the relevant practices of states, we can conclude that deliberate failure to the use the emblems, chevrons and other distinguishing signs of the armed forces of a state is a violation of IHL requirements to clearly identify that state’s military personnel. Thus, Russia’s use of «little green men» during the active phase of Crimea’s occupation was a violation of IHL, and, in essence, a prohibited method of warfare.



Video-NVZ-1



Video-NVZ-2



Video-NVZ-10

⁷¹ <https://youtu.be/VQqBYq75LjY>, <http://archive.fo/7js5W>

⁷² The video is in the possession of the authors

⁷³ <https://www.youtube.com/watch?v=zox7SfBnAdo>, <http://archive.fo/g44iq>, <https://www.youtube.com/watch?v=6D1nGWGjhl4>, <http://archive.today/6Dtrk>

⁷⁴ <https://www.youtube.com/watch?v=2akEFLYgvVc>, <http://archive.fo/kPeGB>

⁷⁵ https://www.bbc.com/russian/multimedia/2014/03/140319_v_naval_base_crimea, <http://archive.fo/GdG1h>

3. Instances of perfidy and unlawful use of emblems and uniforms of the adversary during the blocking off and capture of military bases of the Armed Forces of Ukraine

General overview

Perfidy is a forbidden method of warfare. In a broad sense, perfidy is a betrayal of IHL-based confidence. The prohibition of perfidy is contained in Article 37 of AP I to GC of 8 June 1977.

In accordance with part 1, Article 37 of AP I to GC, “It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy.

The following acts are examples of perfidy:

- the feigning of an intent to negotiate under a flag of truce or of a surrender;
- the feigning of an incapacitation by wounds or sickness;
- the feigning of civilian, non-combatant status; and
- the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.”⁷⁶

At the same time, part 2 of the same Article 37 of AP I to GC states that “Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.”⁷⁷

Customary IHL has the same approach to the definition and prohibition of perfidy, as well as to the difference between perfidy and ruses of war. In accordance with Rule 65 of customary IHL, “Killing, injuring or capturing an adversary by resort to perfidy is prohibited”.⁷⁸ This rule is a rule of customary international law in international as well as non-international armed conflicts. In accordance with Rule 57 of customary IHL, “Ruses of war are not prohibited as long as they do not infringe a rule of international humanitarian law”.⁷⁹ This rule is a rule of customary IHL during international as well as non-international armed conflicts.

⁷⁶ Part 1, Article 37 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

⁷⁷ Part 2, Article 37 of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I) [Web source] – Link: https://zakon.rada.gov.ua/laws/show/995_199

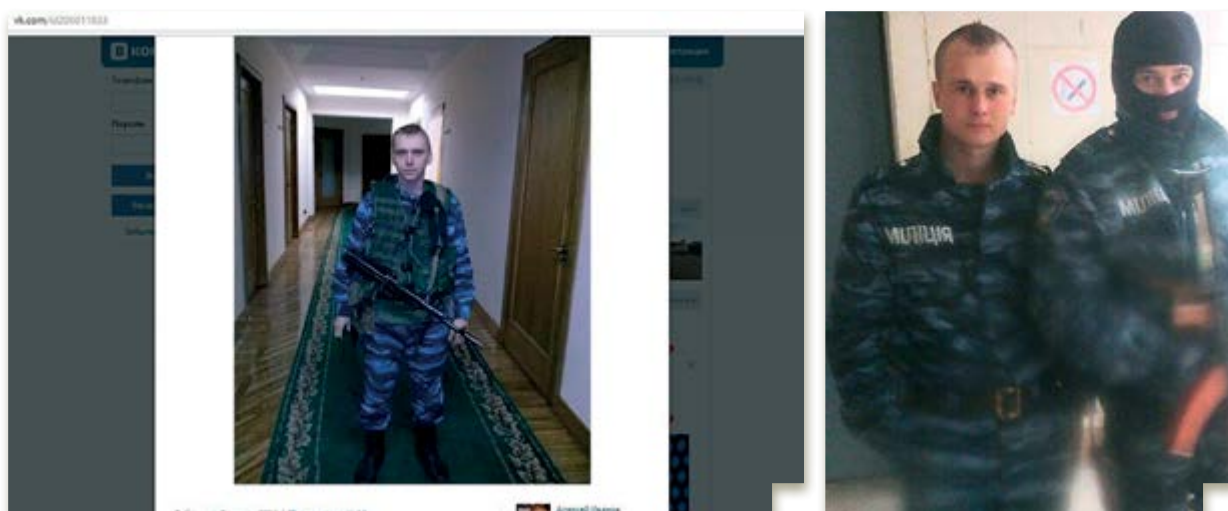
⁷⁸ Rule 65, Customary International Humanitarian Law. Rules [Web source] – Link: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

⁷⁹ Rule 57, Customary International Humanitarian Law. Rules [Web source] – Link: <https://www.icrc.org/ru/doc/assets/files/other/customary.pdf>

Analysis of the events of February-March 2014 in Crimea

Several instances of violations of IHL by Russia during the annexation of Crimea were documented that can be classified as perfidy and/or unlawful use of enemy emblems or uniforms.

In particular, in July 2015, results of a journalistic investigation were published on the **InformNapalm** website with evidence of the participation of Russian paratroopers from the 31st Separate Airborne Assault Brigade (military unit No. 73612, based in Ulyanovsk, Russia) in the capture of the Crimean Parliament under the guise of a Ukrainian police unit. That is, during the capture, these paratroopers were wearing Ukrainian police uniforms.⁸⁰ We can see on the photos published by the InformNapalm as two paratroopers of the 31st Separate Airborne Assault Brigade of the AFRF are taking photos while wearing Ukrainian police uniforms. The use of this unit by Russia's leadership for conducting planned military operations on Ukrainian soil is undeniable. Thus, in November 2015, paratroopers of the 31st Separate Airborne Assault Brigade of the AFRF participated in the hostilities in eastern Ukraine as part of anti-government armed groups.⁸¹



These actions on the part of the paratroopers of the 31st Separate Airborne Assault Brigade of the AFRF can be classified as perfidy, because they were used to gain military advantage in breach of confidence based on IHL provisions. Thus, by wearing uniforms of the Ukrainian police, Russian soldiers were in the position to deceive - and apparently did so - officers of the Ukrainian police and other law enforcement agencies, tricking them into believing that they were dealing with their colleagues, which kept them from using force against the disguised Russian soldiers. Furthermore, the wearing of Ukrainian police uniforms instead of those of the AFRF, to which these paratroopers belonged to, was a breach of confidence based on IHL, since Ukrainian police officers were unable to identify these individuals as members of the AFRF and thus unable to realize that these men were soldiers of another state that were trying to capture the Crimean Parliament. This can be seen as a typical example of perfidy in breach of confidence based on IHL, manifested in the feigning of the status of Ukrainian police officers and the unlawful wearing of Ukrainian police uniforms, which, in turn, violated the requirement for the paratroopers to identify themselves as members of the AFRF.

In addition, witnesses from the command staff of the Ukrainian Navy told UHHRU representatives that during the blocking off and capture of the Ukrainian Navy HQ in Sevastopol, some individuals entered the HQ wearing uniforms of the Ukrainian Navy. Moreover, intelligence

⁸⁰ 3 July 2015. InformNapalm.org. [Web source] – Link: <https://informnapalm.org/10341-desant-berkut-krym/>

⁸¹ 9 November 2015. InformNapalm.org. [Web source] – Link: <https://informnapalm.org/14861-ulyanovskye-desantnyky-yz-31-j-brygady-v-sostave-nvf-patryot/>

services reported instances of robbery at warehouses where Ukrainian Navy uniforms could have been obtained. According to one witness from the command staff of the Ukrainian Navy, about five persons wearing Ukrainian military uniforms were apprehended on the territory of the Ukrainian Navy HQ. This is another example of perfidy, that is, a breach of confidence based on IHL, because Russian soldiers sought to gain military advantage by wearing Ukrainian Navy uniforms.

While working on this study, the authors discovered no evidence of killings or injuries done through perfidy, or of unlawful use of the enemy flag, military emblems or uniforms that resulted in death or serious injury. However, perfidy was indeed used as a prohibited method of warfare by Russia's military personnel in February - March 2014 during the active phase of Crimea's occupation with the purpose of gaining a specific military advantage, namely to capture Crimean government buildings (in particular, the building of the Crimean Parliament), as well as to get into Ukrainian military bases, in particular the HQ of the Ukrainian Navy.

Conclusion

1. During the annexation of the ARC and Sevastopol in February-March 2014, Russian soldiers and civilians used civilian population as human shields in order to render Russian military personnel immune from possible resistance by Ukrainian servicemen.

About 1,000 civilians were used by Russia's representatives in the capture of 10 military installations. Moreover, as evidenced by the studied episodes, during the surrounding, blocking off and capture of the SNB in the village of Novoozerne as well as of the Ukrainian Navy HQ in Sevastopol, Russia's representatives essentially called on the civilian population to act as human shields between Russian and Ukrainian soldiers, as well as used them in the storming of Ukrainian military bases. There is every reason to believe that the tactic of using human shields was used by Russia's representatives deliberately and that it constituted a prohibited method of warfare and a war crime. Russia obviously counted on these actions to cause confusion and unwillingness on the part of the Ukrainian side to harm civilians in violation of IHL. This way, in violation of international law, Russia managed to gain military advantage through the use of human shields.

Ukrainian law enforcement should consider these violations of IHL in the context of investigation of and prosecution for war crimes committed in Crimea. In addition, representatives of the AFU should develop a strategy and tactics on the course of action in the event of encirclement, blocking off and attempted storming of Ukrainian military installations by/with the help of civilians. As we know, civilian population was also used in the spring of 2014 in Donbas by anti-Ukrainian elements for blocking off the soldiers and vehicles of the AFU.

2. The widespread use of the so-called «little green men» (armed men with no distinctive signs or and other emblems indicating their belonging to the armed forces of a particular state) during the occupation of Crimea and Sevastopol by Russia in February - March 2014 was a violation of IHL and a prohibited method of warfare .

The requirement for members of armed forces to wear distinguishing signs and to identify themselves as such, as well as the generally accepted practice of states regarding the wearing of uniforms by combatants are part of today's IHL, which has never been questioned or put on the agenda, since all states understood its essence and adhered to these rules. Russia obviously decided to use this tactic, which essentially violates IHL, due to the absence of precedents and practices among states on proper responses to such conduct. Ukraine also had no such precedents or historical examples in 2014 that could have helped it deal with the «little green men». At the same time, the fact that the “little green men” openly carried weapons, had military vehicles and were wearing military uniforms was sufficient evidence of the fact that their intentions were far from peaceful and were aimed at gaining military advantage, which meant that they were valid targets.

In this context, it seems prudent to recommend the AFU and the international community to develop tactics for responding to threats similar to the “little green men”, and Ukrainian law enforcement - to properly document, investigate and assess these facts in terms of violations of domestic and international law.

3. During the occupation of Crimea and Sevastopol by Russia in February-March 2014, instances of the use of perfidy by the AFRF were documented.

In particular, perfidy took the form of feigning of civilian status or that of Ukrainian police officers or servicemen, which was carried out through unlawful wearing of civilian clothes or uniforms of the Ukrainian police or Ukrainian Navy. By violating the requirement to identify themselves as members of the AFRF, Russian soldiers sought to gain a specific military advantage, namely to capture government buildings in Crimea (in particular, the Crimean Parliament) as well as to get into Ukrainian military bases, in particular the HQ of the Ukrainian Navy.

4. The actions of representatives of the AFRF in Crimea in February - March 2014 constituted grave violations of IHL and prohibited methods of warfare.

In particular, violations of IHL involved the use of civilians as human shields, the use of the «little green men», perfidy, as well as unlawful use of enemy military emblems and uniforms. Thus, during the February - March 2014 events in Crimea, Russia violated numerous norms of IHL.

In light of the February - March 2014 events in Crimea, it seems prudent to include the obligation of members of the armed forces of states to wear uniforms of their respective armed forces or identifying signs that are clearly visible at a distance in international treaty law, in order to avoid similar situations in the future and to ensure proper classification for such acts.

5. Russia's use of prohibited methods of warfare allowed it to take over the ARC and Sevastopol in February - March 2014 quickly and virtually unimpeded.

Obviously, neither Ukraine nor the international community were prepared for these prohibited methods of warfare. As a result, they were unable to respond to these challenges in a timely and proper manner and to counter Russia's occupation of Crimea and Sevastopol effectively. These circumstances make it necessary for the international community to develop appropriate security, counteraction and prevention policies for such violations of IHL in the future.

