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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

NEW YORK, 16 DECEMBER 1966

UKRAINE: NOTIFICATION UNDER ARTICLE 4 (3)

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 26 November 2019.

(Original: English)

“#4132/23-194/501-2057

The Permanent Mission of Ukraine to the United Nations presents its compliments to the Secretary-General of the United Nations and, with the reference to its Verbal Notes No. 4132/28-194/501-803 of 5 June 2015, No. 4132/28-194/501-1987 of 24 November 2015, No. 4132/28-194/501-1792 of 6 July 2016 and 4132/28-194/501-128 of 20 January 2017, has the honor to enclose herewith a further communication in accordance with the obligations of the Government of Ukraine under Article 4, paragraph 3, of the International Covenant on Civil and Political Rights.

The Permanent Mission of Ukraine to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Enclosure: as stated, on 7 pages.

26 November 2019

Communication in accordance with the obligations of the Government of Ukraine under Article 4, paragraph 3, of the International Covenant on Civil and Political Rights

1. Considering that the Russian Federation is committing a crime of aggression against Ukraine and is temporarily occupying a part of its territory by the armed formations of the Russian Federation, which consist of regular units subordinated to the Ministry of Defense of the Russian Federation, units and special formations subordinated to other security agencies of the Russian Federation, their advisors, instructors, and irregular illegal armed formations, armed gangs and groups of mercenaries, created, subordinated, commanded and financed by the Russian Federation, as well as with the help of the occupation administration of the Russian Federation consisting of its state organs and structures, functionally responsible for governing of the temporarily occupied territories of Ukraine, and self-proclaimed bodies controlled by the Russian Federation that usurped executive functions on the temporarily occupied territories of Ukraine, on January 18, 2018, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the peculiarities of State policy on ensuring state sovereignty of Ukraine over temporarily occupied territories in Donetsk and Luhansk regions” (hereinafter - the Law No. 2268), which aims to determine peculiarities of a state policy for ensuring state sovereignty of Ukraine in the temporarily occupied territories in Donetsk and Luhansk regions.

The Law No. 2268 came into force on February 24, 2018, and defines peculiarities of a state policy for ensuring the state sovereignty of Ukraine in the temporarily occupied territories in Donetsk and Luhansk regions in conditions of the ongoing crime of aggression and temporary occupation of a part of the territory of Ukraine.

To secure the state sovereignty of Ukraine in the temporarily occupied territories of Donetsk and Luhansk regions, state bodies and their officials, acting on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and laws of Ukraine, take measures to ensure national security and defense, repelling and containing of the armed aggression of the Russian Federation (Article 5.3 of the Law No. 2268).

Measures to ensure national security and defense, repelling and containing of the armed aggression of the Russian Federation in Donetsk and Luhansk regions include measures to restore the territorial integrity of Ukraine, which are performed by security and defense bodies, other state bodies of Ukraine, their officials (article 7.1 of the Law No. 2268).

The initiating and finalizing of measures to ensure national security and defense, repelling and containing the armed aggression of the Russian Federation in Donetsk and Luhansk regions are determined by separate decisions of the Supreme Commander-in-Chief of the Armed Forces of Ukraine (Article 8.3 of the Law No. 2268).

The President of Ukraine as Supreme Commander-in-Chief of the Armed Forces of Ukraine, by his Decree No. 116 dated April 30, 2018, in accordance with Article 8.3 of the Law No. 2268, put into force the Decision of the National Security and Defense Council of Ukraine (hereinafter – NSDC) on initiation of national security and defense measures, repelling and containing the armed aggression of the Russian Federation in Donetsk and Luhansk regions (hereinafter – *Joint Forces Operation (JFO)*).

According to Article 18 of the Law of Ukraine “On Combating Terrorism” and the Decree of the President of Ukraine No. 116 dated of April 30, 2018, a decision to terminate an anti-terrorist operation in connection with the launch of the JFO was taken.

Thus, on April 30, 2018, the anti-terrorist operation was terminated and measures were launched to ensure national security and defense, repelling and containing the armed aggression of the Russian Federation in Donetsk and Luhansk regions (the JFO).

2. According to Article 5 of the Law of Ukraine “On civil-military administrations” (as amended by the Law No. 2268), civil-military administrations in the area of conducting of the JFO, with consent of the Commander of the Joint Forces, have the right: to set limitations on presence on the streets and other public places without documents at a certain times of day; temporarily restrict or prohibit the movement of vehicles and pedestrians on the streets, roads and sections of the territory; to arrange verification of identity documents of individuals, and, if necessary, the inspection of belongings, vehicles, luggage and cargo, offices and housing of citizens, except restrictions established by the Constitution of Ukraine.

In security zones adjacent to the combat areas, a special procedure is in place, which provides security and defense bodies and other state bodies of Ukraine with the special powers necessary for carrying out this operation (Article 8.2 of the Law No. 2268).

In order to ensure vital interests of the society and the state in the period of repelling of the armed aggression in the security zones adjacent to the combat areas, military personnel, *law enforcement agents* and persons defined by Article 8 of the Law No. 2268, who are involved in the implementation of the JFO measures, in accordance with the Constitution and legislation of Ukraine have the right: 1) to apply, in case of absolute necessity, weapons and special means to persons who have committed or are committing offenses or other actions that impede the fulfillment of legitimate demands of persons involved in the implementation of the JFO measures, or actions related to unauthorized attempt to enter the area of implementation of the mentioned measures; 2) to detain and transport persons mentioned in paragraph 1 of this part to the National Police of Ukraine; 3) to check identity documents of citizens and officials, and in the absence of documents, to detain them for identification; 4) to carry out a personal inspection of citizens, an inspection of things in their possession, vehicles and things that are transported by them; 5) temporarily restrict or prohibit the movement of vehicles and pedestrians on streets and roads, not to allow vehicles, citizens to certain sections of the territory and objects, to move out citizens from certain sections of the territory and objects, to tow vehicles; 6) to enter (gain access) to residential and other premises, land plots belonging to citizens, sites and premises of enterprises, institutions and organizations, to check vehicles for the purposes of the JFO conduct; 7) to use for official purposes communication means and means of transport, including special, belonging to citizens (with their consent), enterprises, institutions and organizations, except vehicles of diplomatic, consular and other representations of foreign states and international organizations.

The stay of persons not involved in carrying out such measures in the area of *the JFO* conduct may be temporarily limited by the Joint Forces Commander for the period of carrying out such measures (Article 12.4 of the Law No. 2268).

Implementation of these measures may imply a derogation from Ukraine's obligations under Articles 9, 12, 17 of the International Covenant on Civil and Political Rights, Articles 5, 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 2 of the Protocol No. 4 thereto and necessitates the continuation of such a derogation.

3. According to Article 2.8 of the Law No. 2268, procedure for territorial jurisdiction of cases, falling within the jurisdiction of courts located in the temporarily occupied territories in Donetsk and Luhansk regions, for the time of the JFO, is established under the Law of Ukraine No. 1632-VII dated August 12, 2014 "On the administration of justice and criminal proceedings in connection with the conduct of an anti-terrorist operation"(hereinafter – the Law No. 1632).

As set out in the above Article 2.8 of the Law No. 2268, the Law No. 1632 defines legal regulation measures in the area of the JFO conduct and aims at ensuring access of citizens and legal entities to justice.

According to Article 1 of the Law No. 1632, due to impossibility of administering justice by certain courts in the area of the JFO conduct, the territorial jurisdiction of court cases in the area of the JFO conduct, is changed, and civil cases, administrative offenses, administrative cases, commercial and criminal proceedings are taken by local and appeal courts as determined by the President of the Supreme Court.

Issues related to the competence of the investigating judge in criminal proceedings at the stage of pre-trial investigation and carried out in the area of the JFO conduct, in the case of impossibility of administering justice, are examined by investigative judges of local general jurisdiction courts as determined by the President of the Supreme Court (Article 1.2 of the Law No. 1632).

The issue of access to justice in the territories not controlled by Ukraine, was considered by the European Court of Human Rights (ECHR) in cases of *Khlebiuk v. Ukraine* and *Tsezar and Others v. Ukraine*, in which the ECHR stated that the applicants' inability to go to court at their places of residence did not violate the merits of the right of access to a court, and held that there was no violation of Article 6 of the Convention.

In paragraph 52 of the judgment in the case of *Tsezar and Others v. Ukraine* (Applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 and 7289/15 dated 13 February 2018), the ECHR acknowledged that the State authorities might sometimes experience certain difficulties in ensuring proper functioning of the judicial system in certain regions in view of ongoing hostilities in those regions. Nevertheless, the Court stated that the State authorities are expected to take certain steps to resolve the problem by, for instance, specifically authorizing claims to be filed in courts in another region of the State.

Thereby, the ECHR does not consider the above measures as violation by Ukraine of its obligations under Article 6 of the Convention.

In view of the above, there is no need to continue derogation from obligations of Ukraine under Article 14 of the Covenant and Article 6 of the Convention.

4. The Law of Ukraine “On Amendments to the Law of Ukraine ‘On Combating Terrorism’ regarding the preventive detention of persons, engaged in terrorist activities in the anti-terrorist operation area for a period exceeding 72 hours” allows preventive detention of individuals who are engaged in terrorist activities for more than 72 hours, but not more than 30 days, with consent of the prosecutor’s office and without a court’s order. This Law was applied in the area of the anti-terrorist operation. Its applicability has not been expanded for the Joint Forces Operation.

Therefore, measures regarding preventive detention of individuals, enacted by the Law of Ukraine “On Amendments to the Law of Ukraine ‘On Combating Terrorism’ regarding the preventive detention of persons, engaged in terrorist activities in the anti-terrorist operation area for a period exceeding 72 hours” in the conditions of the JFO and from the date of JFO enactment – 30 April 2018 – are not applicable.

5. The Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine regarding the special regime of pre-trial investigation under martial law, in state of emergency or in the anti-terrorist operation area” introduces for a period of an anti-terrorist operation a special regime of pre-trial investigation, according to which authority of investigating judges defined by the Criminal Procedure Code of Ukraine are temporarily transferred to respective prosecutors, who have obtained additional procedural rights. This Law was applied in the area of the anti-terrorist operation. Its application has not been expanded for the Joint Forces Operation.

Therefore, measures regarding special regime of pre-trial investigation, enacted by the Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine regarding the special regime of pre-trial investigation under martial law, in state of emergency or in the anti-terrorist operation area” in the conditions of the Joint Forces Operation and from the date of JFO enactment - 30 April 2018 - are not applicable.

II

Regarding the territory, to which the derogation applies

Special order of guarantying rights and freedoms of civilians applies:

- in the security zone, adjacent to the combat area and provides granting authorities of security and defense bodies, other state bodies of Ukraine special powers necessary for the implementation of measures, aimed at ensuring national security and defense, repelling and containing the armed aggression of the Russian Federation (first paragraph of Article 8.2 of the Law No. 2268).

Boundaries of security zones, adjacent to the combat area, are determined by the Chief of General Staff - Commander-in-Chief of the Armed Forces of Ukraine, upon a submission of the Commander of Joint Forces (second paragraph Article 8.2 of the Law No. 2268).

Boundaries of security zones, adjacent to the combat area, are determined as follows: Vynohradne, Kurakhove, Ocheretyne, Rozivka, Vovcheyarivka, Bila Hora, Novoaidar, Sadky, Makarivka, Prostiane, along the state border, Chernyavka, along the administrative border of Luhansk and Kharkiv regions, Olhivka, along the administrative border of Donetsk and Kharkiv regions, Znamenivka, along the administrative border of Donetsk and Dnipropetrovsk regions, Komyshevakha, along the administrative border of Donetsk and Zaporizhia regions, Urzuf, along the seacoast, Prymorske;

- in the area of implementation of measures to ensure national security and defense, repelling and containing the armed aggression of the Russian Federation in Donetsk and Luhansk regions, which is as follows: village Shyrokyne, along the contact line, village Parkhomenko, along the state border of Ukraine, village Novoznamianka, along the administrative border of Luhansk and Donetsk regions, village Urzuf.

If armed aggression by the Russian Federation is expanded outside the territory of the Autonomous Republic of Crimea and the city Sevastopol, Donetsk and Luhansk regions, special forces and means are to be involved and used in order to repel and contain the aggression in any time at any part of Ukraine's territory, mentioned in Article 8 of this Law, and under procedure established by Article 9 (Article 10 of the Law No. 2268).

III

Regarding temporarily occupied territories of Ukraine in Donetsk and Luhansk regions

On the day of adoption of the Law No. 2268 as temporarily occupied territories in Donetsk and Luhansk regions are recognized the parts of the territory of Ukraine within which the armed groups of the Russian Federation and occupation administration of the Russian Federation established and are exercising overall control: land territory and its internal waters within certain districts, cities, towns and villages of Donetsk and Luhansk regions; marine internal waters adjacent to the land; subsoil beneath these territories and the airspace above these territories (part 1 of Article 1 of the Law No. 2268).

The boundaries and the list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions are determined by the President of Ukraine upon the submission of the Ministry of Defense of Ukraine, prepared on the basis on the proposals of the General Staff of the Armed Forces of Ukraine (part two of Article 1 of the Law No. 2268).

The boundaries and the list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions are determined by the Decree of the President of Ukraine No. 32 dated February 7, 2019 "On the boundaries and the list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions".

The special order of guarantying rights and freedoms of civilians is enacted within the temporarily occupied territories in Donetsk and Luhansk regions, which is determined by this Law, other laws of Ukraine, international agreements, to which the Verkhovna Rada of Ukraine gave consent to bound by, principles and norms of international law (part five of article 2 Law No. 2268).

IV
Regarding the security situation in the area of the Joint Forces Operation
(as of 16 September 2019)

1. Despite the decision of the Trilateral Contact Group to establish a comprehensive, sustainable and permanent ceasefire regime from 00:01 on 21 July 2019, the number of shellings during August-September 2019 points to an upward trend and reveals as well a decrease of the control by the command by the Russian occupation forces in regards to compliance with this regime.

2. Currently, an average number of shellings is at 16 per day (in August 2019 – 10 shellings per day). In September 2019, positions of the JFO were shelled by the armed forces of the RF 70 times by heavy weaponry with 479 artillery/mortar shells (in August 2019 - 25 times by heavy weaponry with 194 artillery/mortar shells). There were also 4 cases of sniper fire causing the death of 2 military personnel and 3 injured (in August - 5 cases of sniper fire causing the death of 2 military personnel and 3 injured). In total, during August-September 2019 16 military personnel were killed and 47 were injured.

3. In September 2019, armed forces of the Russian Federation shelled residential areas twice (in August – 4 times, which resulted in the injuries of 1 civilian, 2 residential buildings were damaged).

4. The total number of the occupational forces constitutes more than 30 thousand personnel. 2.1 thousand of instructors of the Armed Forces of the Russian Federation conduct training of specialists for military intelligence and radio-electronic warfare, as well as for participation in combat operations in the temporarily occupied territories of Donetsk and Luhansk regions. Fuel and lubricants along with ammunition are continuously supplied from the territory of the Russian Federation to support the Russian occupation forces.

The Russian Federation continues to increase its military potential and intensified holding of military exercises of an offensive nature of various branches of its military forces near the borders of Ukraine.

The Russian Federation deploys along the state border of Ukraine 28 battalion tactical groups over 22 thousand strong, in particular at the military training grounds in Rostov region 12 battalion tactical groups 8A (numbering 7.5 thousand personnel) are stationed with a readiness level of less than 24 hours; at Smolensk, Orlovsko-Voronezh and Crimean directions 16 more battalion tactical groups of the Armed Forces of the Russian Federation are deployed numbering around 14.5 thousand personnel.

5. In order to hide the movement of tanks and artillery, armed forces of the Russian Federation systematically use modern systems of radio-electronic warfare, which render impossible operation of unmanned aerial vehicles of the OSCE Special Monitoring Mission, in particular, 2 times in September 2019.”

13 December 2019

