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The escalation of tensions around the Sea of Azov and the Kerch Strait and threats to European security

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Andreas NICK, Germany, Group of the European People's Party

Summary

The committee is deeply concerned about the escalation of tensions between the Russian Federation and Ukraine in the region of the Sea of Azov and the Kerch Strait, which culminated on 25 November 2018 when three Ukrainian warships were manoeuvring from Odessa, on the Ukrainian Black Sea coast, to the city of Mariupol on the Sea of Azov.

The action proposed by the committee is primarily political and guided by the principled position the Parliamentary Assembly has taken on numerous occasions in favour of Ukraine's sovereignty and territorial integrity within its internationally recognised borders.

The Russian Federation is urged to immediately release the Ukrainian servicemen and ensure they are granted the necessary medical, legal and/or consular assistance and to ensure freedom of passage in the Sea of Azov and the Kerch Strait and to refrain from the use of force.

The authorities of both the Russian Federation and of Ukraine are called upon to respect the Treaty on the Use of the Sea of Azov and Kerch Strait and the agreed regulations for navigation through the Canal and to refrain from any further steps which might escalate the conflict and threaten security in the wider region. Council of Europe member States should do everything in their power to avoid such an escalation of violence.

1. Reference to committee: Bureau decision, Reference 4425 of 21 January 2019.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Andreas Nick, rapporteur 5
1. Introduction 5
2. Background 5
3. The facts 6
3.1. Martial law 6
3.2. Trial of the Ukrainian servicemen 6
4. The incident from Ukrainian and Russian perspectives 7
4.1. Ukraine's claims 7
4.2. Russia's claims 8
4.3. International reactions 8
5. Conclusions 10
Appendix – Treaty between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait 11

A. Draft resolution[2]

1. The Parliamentary Assembly is deeply concerned about the escalation of tensions between the Russian Federation and Ukraine in the region of the Sea of Azov and the Kerch Strait, which culminated on 25 November 2018 when three Ukrainian warships were manoeuvring from Odessa, on the Ukrainian Black Sea coast, to the city of Mariupol on the Sea of Azov.

2. The Russian Border Service of the Federal Security Service opened fire on the above-mentioned vessels, seized them and captured 24 Ukrainian servicemen, three of whom were wounded. The incident took place in the Black Sea, near the entrance to the Kerch Strait. There is, however, disagreement between Ukraine and Russia about the exact location and its specific legal status. Currently, the Ukrainian servicemen are being detained in Russia. The Assembly condemns the use of military force by the Russian Federation against Ukrainian warships and their crews.

3. On 26 November 2018, martial law was introduced in several regions of Ukraine, for 30 days, by a directive "on extreme measures to ensure the national sovereignty and independence of Ukraine". The Assembly welcomes the lifting of martial law in Ukraine on 26 December 2018.

4. The Assembly underlines that the Russian Federation and Ukraine are members of the Council of Europe and have committed themselves to its Statute (ETS No. 1) which requires the pursuit of peace based on justice and international co-operation, which is vital for the preservation of human society and civilisation. They have both committed themselves to solve their conflicts peacefully.

5. Referring to the Treaty between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait, signed in December 2003 and ratified by both countries in April 2004, the Assembly notes that, according to Article 2.1 of the Treaty, the free passage of merchant vessels and warships of both the Russian Federation and Ukraine in the Sea of Azov and the Kerch Strait, which are shared territorial waters, must be respected and freedom of passage ensured.

6. The Assembly therefore urges the Russian Federation to:

   6.1. immediately release the Ukrainian servicemen and ensure they are granted the necessary medical, legal and/or consular assistance;

   6.2. ensure freedom of passage in the Sea of Azov and the Kerch Strait in accordance with the above-mentioned Treaty and any other mutually agreed procedures;

   6.3. refrain from violence in the case of differing opinions about alleged border violations and rather follow the above-mentioned and other international procedures for dispute solutions.

7. The Assembly calls on the authorities of the Russian Federation and of Ukraine to:

   7.1. respect both the Treaty on the Use of the Sea of Azov and Kerch Strait and the agreed regulations for navigation through the Canal;

   7.2. refrain from any further steps which might escalate the conflict and threaten security in the wider region. It fully supports the efforts made through diplomatic channels and legal procedures of both sides concerned.

8. For its part, the Assembly:

   8.1. reiterates its commitment to the sovereignty and territorial integrity of Ukraine within its internationally recognised borders and recalls in this respect Resolution 1990 (2014) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, Resolution 2034 (2015) on the challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation, Resolution 2063 (2015) on the consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015)) and Resolution 2132 (2016) on the political consequences of the Russian aggression in Ukraine;

   8.2. expresses great concern about the construction by Russia of the bridge over the Kerch Strait, which it considers illegal and another breach of Ukraine's sovereignty, as well as about Russia's policy regarding the selective search of Ukrainian and international ships, which hinder navigation to and from the Sea of Azov;

2. Draft resolution adopted by the committee on 22 January 2019.

8.3. supports the proposal by the European Parliament that the mandate of the Special Monitoring Mission Ukraine of the Organization for Security and Co-operation in Europe (OSCE), which covers the entire territory of Ukraine, including maritime areas, also covers the new area of tensions in and around the Sea of Azov;

8.4. supports the proposal, made by Germany and France, that third country observers monitor shipping traffic and guarantee freedom of navigation in the Kerch Strait;

8.5. urges Council of Europe member States to do everything in their power to avoid a further escalation of violence with potentially dangerous consequences for security in the wider region;

8.6. calls on the international bodies which have competence in the field, such as the International Committee of the Red Cross and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), to visit the Ukrainian servicemen in prison, pending their release, and supports any diplomatic action taken by member States aimed at their release.

B. Explanatory memorandum by Mr Andreas Nick, rapporteur

1. Introduction

1. On Sunday 25 November 2018, two Ukrainian artillery ships, the *Berdyansk* and the *Nikopol*, as well as the tugboat *Yany Kapu*, were travelling from Odessa, on the Black Sea coast, to Mariupol on the Sea of Azov. As the three ships were preparing to enter the Kerch Strait, they were stopped by the Russian Coast Guard Service and seized. Twenty-four Ukrainian servicemen were captured. Russia reported three servicemen were wounded while the Ukrainian media reported six wounded.

2. Tensions in the Sea of Azov have been simmering since Russia illegally annexed the Crimean Peninsula in March 2014 and the November incident has sparked concern over further military escalation between Russia and Ukraine ahead of Ukrainian elections in 2019.

3. The claims by Ukraine and the Russian Federation on what precisely happened on 25November 2018 and afterwards differ considerably. To start with, they disagree about the exact location where the incident took place and its specific legal status. Both sides blame each other for the growing tensions in the region. Kiev stated that it took place in international waters and was a Russian "act of aggression". Moscow said that the Ukrainian ships had illegally entered its waters.

4. On 21 January 2019, the Parliamentary Assembly decided to hold an urgent procedure debate on the issue of "The escalation of tensions around the Sea of Azov and the Kerch Strait and threats to European security" and the Committee on Political Affairs and Democracy appointed me as rapporteur.

2. Background

5. The Kerch Strait connects the Black Sea and the Sea of Azov and separates the Taman Peninsula from the Crimean Peninsula. Navigation through the Kerch Strait is only possible via the Kerch-Yenikale Canal dredged in 1874-1877 and extended in 1965-1970. The Canal is 24 kilometres long, 120 metres wide and can accommodate vessels up to 215 metres long with a draft of up to 8 metres.

6. The legal status of both the Kerch Strait and the Sea of Azov is defined in the "Treaty between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait", signed in December 2003 and ratified by both countries in April 2004 (see Appendix).

7. The Treaty aimed to settle several essential issues, for example to ensure the safe passage of Russian and Ukrainian merchant vessels and warships through the Kerch Strait; to stress the inland status of the Sea of Azov; and to state that its entry by warships under third States' flags needs both Russian and Ukrainian authorisation.

8. Article 1 of this Treaty states that "The Sea of Azov and the Kerch Strait historically constitute inland waters of the Russian Federation and Ukraine".

9. According to Article 2.1 of this Treaty, merchant vessels and warships of both States "shall enjoy free passage in the Sea of Azov and the Kerch Strait".

10. However, warships and other State vessels of third States "may enter the Sea of Azov and pass through the Kerch Strait if they are making a visit or business call to a port of one of the Parties at its invitation or with its permission, approved by the other Party" (Article 2.3).

11. Article 4 of the Treaty states that "[d]isputes between the Parties associated with the interpretation and application of this Treaty shall be resolved by means of consultations and negotiations, as well as other amicable means as may be selected by the Parties".

12. The current (Russian) regulations for navigation through the Canal are identical to those introduced by the Ukrainian legislation in 2002: all vessels are obliged to inform the Captain of the Kerch Harbor 48 and 24 hours prior to the planned passage, with final confirmation four hours before the approach, and can only move once the authorisation is granted, with compulsory pilot assistance.

13. On earlier occasions, for instance on 25 September 2018, Ukrainian vessels had followed the current regulations for navigation through the Canal and requested all the permissions for passage through the Kerch Strait requested by Russian legislation. It seems however, that since July 2018, systematic Russian searches of Ukrainian and other vessels have considerably hindered Ukrainian exports from its ports of Berdyansk and Mariupol.

14. Russia completed building a bridge over the Kerch Strait (which it named “Crimean bridge”) in May 2018, securing access to the peninsula from its territory but reducing the space for passage. This bridge, which is considered illegal by the international community and constitutes a breach of Ukraine’s sovereignty, limits the size of ships that can reach the ports on the Sea of Azov to an air draft of less than 33 metres and a length of less than 160 metres and has made it impossible for Panamax-class vessels, accounting for over 20% of all ship traffic before the construction, to enter the Sea of Azov.

15. It is also worth noting that another incident took place a few months earlier in the Sea of Azov. On 25 March 2018, the Ukrainian Coast Guard detained – allegedly in Ukrainian territorial waters – the fishing vessel *Nord*, registered in Crimea and sailing under Russian flag. The ship was taken to the Ukrainian port of Berdyansk and its crew of 10 fishermen were detained for violation of border/passport regulations. According to Russia, the ship was fishing outside Ukrainian waters. The fishermen were subsequently released and all of them, except the captain, were able to return to Crimea on 30 October 2018, in exchange for seven Ukrainian servicemen arrested by Russia for “illegal fishing”. On 25 October, Ukraine’s authorities stated that the vessel *Nord* would be auctioned.

3. The facts

16. In the early morning of 25 November 2018, two Ukrainian warships, the *Berdyansk* and the *Nikopol*, and the tugboat *Yany Kapu*, travelling from Odessa on the Black Sea to Mariupol on the Sea of Azov, approached the Kerch Strait. At 11:04 Moscow time, the Ukrainian Navy reported that the Russian Coast Guard cruiser *Don* rammed into the *Yany Kapu*, damaging the Ukrainian tugboat’s main engine and piercing the ship’s plating.

17. After the collision with the *Yany Kapu*, the Ukrainian warships tried to continue moving towards the Kerch Strait, but Russian naval vessels blocked them and kept them blocked until 18:30 (Moscow time).

18. At 18.30, the Ukrainian vessels broke through the blockade and fled; the Russian border guards pursued them and summoned the Ukrainian vessels to stop. The latter did not stop and the Russian vessels opened warning fire at 20:45.

19. At 20:55, the Russian Coast Guard vessel *Izumrud* fired at the *Berdyansk.* The latter stopped, announced that there were wounded on board, and asked for help. The *Izumrud* took on board the seven members of *Berdyansk* crew; primary medical help was provided to the wounded.

20. The *Yany Kapu* was stopped and seized at 21:15 by the Russian Coast Guard vessel *Don*.

21. The *Nikopol* was stopped at 21:27 by a Ka-52 helicopter of the Russian Army and seized at 23:21 by the *Don*.

22. Twenty-four Ukrainian servicemen were captured; three wounded were taken to hospital. The seized Ukrainian ships were handed over to the Russian authorities and are currently in the port of Kerch.

3.1. Martial law

23. On 26 November 2018, Ukraine’s Security and Defence Council proposed the imposition of martial law for 60 days. The Ukrainian President, Petro Poroshenko, suggested to the Parliament, *Verkhovna Rada,* a period of martial law of 30 days.

24. The Ukrainian Parliament backed the decision to impose martial law for 30 days from 26 November 2018 onwards in 10 Ukrainian regions.

25. The imposed martial law included restrictions on constitutional rights and freedoms of civilians, the introduction of a “labour duty”, the construction of military checkpoints, document checking of individuals, bans on peaceful protests, and the prohibition of or restrictions on mass media and social networks.

26. Martial law was lifted on 26 December 2018, a fact which should be welcomed.

3.2. Trial of the Ukrainian servicemen

27. The 24 detained Ukrainian servicemen were initially held in Crimea and three wounded servicemen were treated at Kerch’s Pirogov Hospital No. 1 before being transferred to the medical unit of the Matrosskaya Tishina prison in Moscow.

28. A criminal investigation into the violation of Russia's State borders has been opened. The servicemen face a charge of illegally crossing Russian borders. This can carry a sentence of up to six years in prison.

29. On 27-28 November 2018, a Russian court in Simferopol, Crimea, put the 24 Ukrainian servicemen under arrest for 60 days. All the detained servicemen were subsequently transferred to Moscow and kept in custody. Russia has indicated its intention to charge them.

30. On 15 January, the Lefortovo District Court in Moscow extended their arrest for three months, i.e. until 24 April 2019. During the hearings in court, all Ukrainian servicemen refused to testify, referring to the Geneva Convention and claiming to be prisoners of war. Their lawyers requested that they should be tried by a military court. The court dismissed these requests as ungrounded.

4. The incident from Ukrainian and Russian perspectives

4.1. Ukraine's claims

31. According to the Ukrainian Navy, on 25 November 2018, at 5:58 Moscow time, the vessel, *Berdyansk*, notified the coastal post of the Russian border service of the intention to pass via the Kerch Strait in accordance with the Treaty between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait. "The information was conveyed, but no reply was given", according to the Ukrainian report.[3]

32. Ukraine demands that international rules and the right to free passage through the Kerch Strait be respected by the Russian side.

33. For Ukraine, Russian actions constitute a military aggression with the aim of greater maritime control in the area.

34. In an interview with *BILD*, President Poroshenko described the actions of Russia as "unprovoked and crazy" and asked the North Atlantic Treaty Organization (NATO) to send naval ships to the Sea of Azov "to assist Ukraine and provide security".[4]

35. The head of the Ukrainian navy reported that the Ukrainian servicemen were forced to give false testimonies.[5]

36. Ukraine's Security Service has opened an investigation into what it considers as an act of aggression by the Russian military, under Article 437 of Ukraine's Criminal Code "On the Planning, Preparation, Initiation and Conduct of a War of Aggression".

37. Volodymr Yelchenko, the Ukrainian representative to the United Nations, said that Ukraine acted strictly in line with international law and the bilateral treaty on the Kerch Strait. He stated that "requests by the Ukrainian vessels for passage were made to the Russian Federation maritime authorities. However, those requests were not answered until one of the Ukrainian vessels was rammed. In addition, Ukrainian naval vessels that came to offer assistance were pursued by Russian vessels, which were given clear orders to shoot to kill".[6]

38. Ukraine's Foreign Minister, Pavlo Klimkin, asked the International Committee of the Red Cross to arrange a visit to the Ukrainian prisoners. For him, it was not a political issue, as there could be an argument about the legal status, but it was simply for the purpose of protecting and helping Ukrainian prisoners.[7]

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3. Frontier ships of the Russian Federation carried out aggressive actions against the Ukrainian Naval Forces: https://navy.mil.gov.ua/prykordonni-korabli-rf-zdijsnyly-vidverto-agresyvni-diyi-proty-korabliv-vms-zs-ukrayiny/ (25 December 2018).
4. "We need new sanctions against Putin now": www.bild.de/politik/inland/politik-inland/interview-mit-praesident-poroschenko-glauben-sie-putins-luegen-nicht-58710576.bild.html (29 November 2018).
5. *The Telegraph*: www.telegraph.co.uk/news/2018/11/27/captured-ukranian-sailors-broadcast-giving-confessions-russian/ (27 November 2018).
6. Top Political Official Urges Restraint from Ukraine, Russian Federation in Emergency Security Council Meeting on Seized Ukrainian Vessels: www.un.org/press/en/2018/sc13601.doc.htm (26 November 2018).
7. *The Guardian*: www.theguardian.com/world/2018/nov/27/russia-to-charge-ukrainian-sailors-as-kerch-crisis-deepens (28 November 2018).

39. President Poroshenko declared that Ukraine was not planning to prolong its Treaty on Friendship, Cooperation and Partnership with Russia beyond 1 April 2019. On 6 December 2018, Ukraine's Parliament upheld President Poroshenko's decision to terminate this Treaty.

4.2. Russia's claims

40. According to the Russian Federal Security Service (FSB), the Ukrainian vessels were detected and identified on 24 November in the afternoon. As they approached the Russian maritime border at 21:30 (Moscow time), they were informed about the procedures for the crossing of the State border and the regulations for navigation through the Kerch-Yenikale Canal, including the need to inform the Captain of the Kerch Harbour 48 and 24 hours before the planned passage and provide final confirmation four hours before the approach. The Ukrainian captains responded that they were not planning to cross the border and to pass through the Strait. At 22:23 (Moscow time), the Russian Coast Guard patrol informed the Ukrainian vessels about the closure of the area, within the territorial waters of the Russian Federation, on the approach to the Kerch Strait.[8]

41. Russia claims that the Ukrainian vessels crossed Russia's border, "dangerously manoeuvred" and did not respond to the requests made by the Coast Guard ships.

42. Russia accused Ukraine of illegally entering its temporarily closed territorial waters and thus violating Articles 19 and 21 of the United Nations Convention on the Law of the Sea, defining the coastal State's right to ensure security in its maritime space.

43. According to the Kremlin spokesman, Dmitry Peskov, "[f]oreign military ships entered Russia's territorial waters without responding to any requests made by our border guards. Therefore, all actions were taken with strict compliance with the law".[9]

44. Sergei Lavrov, the Minister of Foreign Affairs of Russia, stated on 26 November 2018 that the incident in the Sea of Azov was "definitely a Ukrainian provocation".[10]

45. The official representative of the Russian Federation to the United Nations, Dmitry Polyanskiy, declared that "it was a provocation, pre-planned with western States, in order to generate hatred for [Russia] ahead of Ukrainian elections in which the current President is facing low ratings. The regime in Kiev does not want peace or dialogue, nor does it embrace European values as it claims; it only wants to hold on to power and justify its failings".[11]

46. Additionally, while answering the critics of his colleagues, Mr Polyanskiy underlined that the Minsk agreements did not mention Crimea. In his view, "support for Ukraine's provocation has already resulted in escalating violence in eastern Ukraine".[12]

47. On 27 November 2018, in a call with the German Chancellor Angela Merkel, President Putin stated that Ukraine had "deliberately ignored the rules of peaceful passage in the territorial sea of the Russian Federation".[13]

48. Russia insists that the responsibility for the incident in the Kerch Strait must be borne by those who gave illegal commands to the Ukrainian crew.

49. To assert its claims that the Kerch incident was a premeditated provocation by the Ukrainian side, Russia made public several documents seized on board the seized Ukrainian warships, including an order to the commander of the naval group "to attempt to covertly pass through the Kerch Strait", and a handwritten compendium on applicable regulations regarding the passage of the Kerch Strait.

4.3. International reactions

50. On 25 October 2018, a month prior to the November incidents, the European Parliament was among the first organisations to adopt a resolution calling for tougher sanctions from the European Union against Russia, should the situation in the Sea of Azov continue to deteriorate. The text stated that the Kerch bridge

8. *RIA Novosti*: https://ria.ru/20181126/1533479576.html (26 November 2018).
9. Interfax: www.interfax.ru/russia/639467 (26 November 2018).
10. www.youtube.com/watch?v=tE7cc-1BEXk (26 November 2018).
11. www.un.org/press/en/2018/sc13601.doc.htm (26 November 2018).
12. www.un.org/press/en/2018/sc13601.doc.htm (26 November 2018).
13. http://en.kremlin.ru/events/president/news/59195 (27 November 2018).

was built illegally, therefore the European Parliament welcomed the Council's decision to impose restrictive measures against the companies involved in its construction. It also suggested the creation of the position of special envoy on Crimea and the Donbass region in order to monitor the development of events there. Furthermore, it warned about wider security implications that directly affect the European Union and demanded that Russia "immediately end the intensive and discriminatory inspections of vessels and to consider, if necessary, appropriate countermeasures."[14]

51. On 25 November 2018, the NATO spokeswoman Oana Lungescu declared that "NATO is closely monitoring developments in the Sea of Azov and the Kerch Strait". NATO called for restraint and de-escalation. It also reaffirmed its support of Ukraine's sovereignty and territorial integrity, including its navigational rights in its territorial waters. NATO stated that Russia should "ensure unhindered access to Ukrainian ports in the Sea of Azov".[15]

52. On 26 November 2018, the Secretary General of the Council of Europe, Thorbjørn Jagland, also commented on the situation around the Sea of Azov and the Kerch Strait, stating that the free passage of the Kerch Strait is guaranteed in the Treaty between the Russian Federation and Ukraine, which was signed in 2003 and came into force in 2004.[16]

53. On 26 November 2018, Assembly President Liliane Maury Pasquier commented on the escalation of tensions around the Sea of Azov and the Kerch Strait: "I am greatly concerned by the events on Sunday in which force was used and people were injured in the seizure of Ukrainian vessels in the Sea of Azov. It is important to highlight that the basic rules of international law need to be respected. These rules include the right of freedom to navigate within one's own territorial waters".[17]

54. On 26 November 2018, the United Nations Security Council failed to support a Russian-proposed agenda item entitled "Violation of the borders of the Russian Federation", which was rejected by a procedural vote of seven against (France, Kuwait, Netherlands, Poland, Sweden, United Kingdom, United States) to four in favour (Bolivia, China, Kazakhstan, Russian Federation), with four abstentions (Ivory Coast, Equatorial Guinea, Ethiopia, Peru).[18]

55. On 26 November 2018, the President of the European Council, Donald Tusk, condemned the Russian use of force in the Sea of Azov. He urged the Russian authorities to hand over the Ukrainian servicemen and vessels and refrain from any further provocations.[19]

56. On 26 November 2018, a group of leading MEPs working on EU–Ukraine relations also issued a follow-up statement urging "all sides to de-escalate the situation immediately" and stressing once again that the "construction of the Kerch Bridge without Ukraine's consent already constitutes a violation of Ukraine's sovereignty and territorial integrity and has led to the militarisation of the Sea of Azov, as well as to the conflict escalating further". They also demanded that "Russia resorts to responsible behaviour and immediately de-escalates the situation, which has the potential to pose a threat to European security and stability".[20]

57. On 30 November 2018, the EU delegation to the Council of Europe expected Russia "to immediately release the Ukrainian crew and ensure the needed medical assistance to the Ukrainian servicemen".[21]

58. On 11 December 2018, following an exchange of views with committee members, the Chairperson of the Committee on Political Affairs and Democracy called for the immediate release of the crew members of the Ukrainian military vessels captured by Russia.

59. On 17 December 2018, the United Nations General Assembly adopted Resolution A/73/L.47 and expressed its "concern over the Russian Federation's ongoing actions in parts of the Black Sea surrounding Crimea and the Sea of Azov, including their militarisation, which pose further threats to Ukraine and

14. European Parliament resolution (2018/2870(RSP): www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0435&language=EN (25 October 2018).
15. https://twitter.com/natopress/status/1066796714672222210 (25 November 2018).
16. https://en.interfax.com.ua/news/general/548150.html (26 November 2018).
17. http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=7280 (26 November 2018).
18. www.un.org/press/en/2018/sc13601.doc.htm (26 November 2018).
19. https://twitter.com/eucopresident/status/1067021445174317056 (26 November 2018).
20. www.europarl.europa.eu/news/en/press-room/20181126IPR20134/leading-meps-concerned-by-growing-tensions-in-the-sea-of-azov (26 November 2018).
21. https://eeas.europa.eu/delegations/council-europe/54688/eudel-statement-escalating-tensions-azov-sea_en (30 November 2018).

undermine the stability of the broader region" and urged the Russian Federation, "as the occupying Power, to withdraw its military forces from Crimea and to end its temporary occupation of Ukraine's territory without delay".[22]

60. Germany and France have proposed that observers from their countries could monitor shipping traffic and guarantee freedom of navigation in the Kerch Strait.

5. Conclusions

61. While tensions in the Sea of Azov have been simmering since Russia illegally annexed the Crimean Peninsula in March 2014, the November incident has sparked concern over further military escalation between Russia and Ukraine, ahead of Ukrainian elections in 2019.

62. Considering that it is not the role of our Assembly to decide on the specific legal status surrounding the incident of 25November 2018, in a situation where the two sides concerned disagree about almost everything, the action I am proposing in the draft resolution is primarily political and guided by the principled position our Assembly has taken on numerous occasions in favour of Ukraine's sovereignty and territorial integrity within its internationally recognised borders.

63. Given the nature of a debate under urgent procedure and the fact that the Assembly has, since 2014, adopted numerous detailed reports on the illegal annexation of Crimea, the military conflict in the Donbass region and other infringements of Ukraine's sovereignty and territorial integrity by the Russian Federation and its supposed allies, the report has deliberately abstained from dealing with these subjects in detail, but refers to the above-mentioned reports to reaffirm the Assembly's unchanged positions in this regard.

64. My immediate concern is about the 24 detained Ukrainian servicemen who should be immediately released by Russia and, pending their release, be granted medical, legal and/or consular assistance as appropriate. International bodies which have competence in the field, such as the International Committee of the Red Cross and the CPT, should visit the Ukrainian servicemen in prison and the Assembly should support any diplomatic action taken by Council of Europe member States aimed at their release.

65. Specific recommendations are addressed to the Russian Federation concerning the fundamental issues of ensuring freedom of passage in the Sea of Azov and the Kerch Strait, in accordance with the relevant Treaty and any other mutually agreed procedures, and refraining from violence in case of differing opinions about alleged border violations.

66. Considering that both the Russian Federation and Ukraine have committed themselves, when acceding to the Council of Europe, to solving their conflicts peacefully, I propose that we call on both of them to respect the Treaty on the Use of the Sea of Azov and Kerch Strait and the agreed regulations for navigation through the Canal and refrain from any further steps which might escalate the conflict and threaten security in the wider region. Efforts made through diplomatic channels and legal procedures of both sides concerned should be supported.

67. Last but not least, I propose in paragraph 8 of the draft resolution that the Assembly takes position on a number of principled matters, supports initiatives taken by other international actors aimed at the de-escalation of the situation and urges Council of Europe member States to do everything in their power to avoid further escalation of violence with potentially dangerous consequences for security in the wider region.

22. www.un.org/press/en/2018/ga12108.doc.htm (17 December 2018).

Appendix – Treaty between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Kerch Strait

The Russian Federation and Ukraine, hereinafter referred to as the “Parties”,

guided by the friendly and cooperative relationship between the peoples of Russia and Ukraine and the fraternal ties that historically bind them;

guided by the provisions of the Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine of May 31, 1997, as well as the Treaty between the Russian Federation and Ukraine on the Russian-Ukrainian State Border of January 28, 2003;

noting the important significance of the Sea of Azov and the Kerch Strait for the economic development of Russia and Ukraine;

being convinced that all issues pertaining to the Sea of Azov and the Kerch Strait must be resolved only by peaceful means jointly or by the agreement of Russia and Ukraine;

based on the need to preserve the Azov-Kerch water area as an integral economic and natural complex to be used in the interests of Russia and Ukraine;

have agreed as follows:

ARTICLE 1

The Sea of Azov and the Kerch Strait historically constitute inland waters of the Russian Federation and Ukraine.

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

Issues concerning the water area of the Kerch Strait shall be resolved by agreement between the Parties.

ARTICLE 2

1. Merchant vessels and warships, as well as other State vessels flying the flag of the Russian Federation or Ukraine, operated for non-commercial purposes, shall enjoy free passage in the Sea of Azov and the Kerch Strait.

2. Merchant vessels under the flags of third states may enter the Sea of Azov and pass through the Kerch Strait if they are bound for or returning from a Russian or Ukrainian port.

3. Warships and other State vessels of third States, operated for non-commercial purposes, may enter the Sea of Azov and pass through the Kerch Strait if they are making a visit or business call to a port of one of the Parties at its invitation or with its permission, approved by the other Party.

ARTICLE 3

Russian-Ukrainian cooperation, including joint activity in the area of shipping, including the regulation thereof and navigational-hydrographic support; fishing; protection of the marine environment; and environmental safety, as well as search and rescue in the Sea of Azov and the Kerch Strait, shall be ensured by both the implementation of existing agreements and new ones, as appropriate.

ARTICLE 4

Disputes between the Parties associated with the interpretation and application of this Treaty shall be resolved by means of consultations and negotiations, as well as other amicable means as may be selected by the Parties.

ARTICLE 5

1. This Treaty shall be subject to ratification and shall enter into force on the date of exchange of the instruments of ratification of the Parties.

2. Amendments and additions to this Treaty shall be formalized as separate protocols, entering into force in accordance with the procedure described in paragraph 1 of this Article.

Done in Kerch on December 24, 2003 in duplicate, each in the Russian and Ukrainian languages, both texts being equally authentic.