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**Violations of Human Rights in Ukraine during the Revolution of  
Dignity and Russian Aggression**

Master Thesis

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I hereby declare that I am the sole author  
of this Master Thesis and it has  
not been presented to any other  
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## **List of abbreviations**

ATO	Antiterrorist Operation
ECHR	European Court of Human Rights
ECU	Eurasian Customs Union
EU	European Union
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
ILO	International Labour Organisation
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SBU	Security Service of Ukraine
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
USA	United States of America
USSR	Union of Soviet Socialist Republics

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## Introduction

Human rights are universally known principles that guarantee basic rights and freedoms to all people. Despite its broad meaning, this is an important concept for every individual, since every human being deserves to be treated with utmost respect and dignity, regardless of personal characteristics such as ethnicity, nationality, race, colour, gender, religion, language or any other personal status. It is so inherent to human beings that most individuals rarely ponder its meaning and importance, especially those that live in a society, where their rights are always protected. However, in many cases around the world, the lack of or violations of human rights and freedoms of certain persons or groups can become mortally dangerous. In today's day and age, many authorities and national leaders fail to recognize the entitlement of civil, political, economic, social and cultural rights of their citizens. In many countries, law may not even protect these basic human rights, hence, many undermine the importance of these imperative principles that are never granted and could never be taken away from any single person on earth.

The states, as political formations, do not provide human rights to citizens of their countries, but each power has an obligation to ensure the compliance and establishment of these freedoms and moral principles, that describe certain standards of human behavior in the field of their governance.

Human rights are equal and should be respected by everyone. Even if human rights are protected at the appropriate level in one country, there is always a risk that they will be broken as a result of the actions of other governments and foreign citizens. That is why, in the modern world, human rights as a legal institution is universal, unified and has an international scope. There are various international bodies, which are called to consistently monitor the respect for human rights and assure its accord and compliance with international legal acts.

The modern understanding of human rights has developed after the Second World War. Although the term "human rights" is relatively new, the fundamental aspects of this concept can be traced back to the days of ancient Greek and Roman law, and also back to the concept of natural law.<sup>1</sup>

Beginning of the XII century, the prevailing idea of human rights had begun to surface with its written legal consolidation. The "Magna Carta" is traditionally considered to be the initial legal act in which were laid the foundations of the human rights concept, as well as

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<sup>1</sup> Claude, R., Weston, B. Human rights in the world community: Issues and action. Philadelphia: University of

created conditions for further establishment of freedom and the rule of law in society.<sup>2</sup>

This and many other legal documents lay out a basis for the modern conception of human rights in today's day and age. Throughout history and time, human rights and freedoms have always been a topic of discussion around the world, and have been considered to be important and essential elements in the creation and establishment of a free and democratic society.

Ukraine is a country situated in the central east part of Europe. This is a relatively new re-established state with more than a thousand years of vast history and legal traditions. Ukraine is a democratic and free country, where people have always shared international values on human rights. Even during the times when this land was bound by the Union of Soviet Socialist Republics (USSR), after World War II, Ukraine took an active role in the development and adoption of basic international legal documents on human rights.

However, Ukraine and its citizens have found themselves in a very difficult and at the same time challenging situation. During the last three years, the level of violations of human rights has significantly increased.<sup>3</sup> The reason for this was mainly the cause of the events that were related to the massive protests of people against their government and the external aggression from the neighboring state of the Russian Federation.

On November 21st, 2013, the Ukrainian Cabinet of Ministers decided to stop the process of preparation for the signing of the economic association agreement with the European Union, which caused demonstrations on the Independence Square in Kyiv, called Maidan.<sup>4</sup>

Later on, the participants of this protest demanded the resignation of the former president and the dismissal of his government. The authorities, however, were far from agreeing to these terms and in turn, decided to use different methods to drive out the people and bring the protest to an end. Nevertheless, the people stood strong and refused to be undermined, demanding that their words would be heard. The protest persisted for a period of about three months, after which, finally, compelling the turnover of the government and the resignation of president Viktor Yanukovich. This, however, was not an easy task, nor was it a peaceful protest. During this period, there have been recorded many human rights violations of the citizens of Ukraine on behalf of the authorities. This protest was the most gruesome event in the history of modern Ukraine and as a result, was called The Revolution of Dignity.

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<sup>2</sup> Lairg, A. Human rights, constitutional law, and the development of the English legal system: Selected essays. Oxford: Hart Publishing 2003, pp 264-266.

<sup>3</sup> Grant, M. Latest UN report shows growing levels of human rights violations in Ukraine. Lecture presented at Security Council Ukraine Humanitarian and Human Rights Briefing in New York, March 6, 2015.

<sup>4</sup> Åslund, A. Ukraine: What Went Wrong and How to Fix It. Washington, DC: Peterson Institute for International Economics 2015, p 254.

The Revolution of Dignity was not the sole event where there have been exhibited violations of human rights. After its conclusion, the Russian Armed Forces, in March 2014, organised an operation of the annexation of the Crimean peninsula, a significant part of the Ukrainian territory.<sup>5</sup> The former territory of Ukraine became a part of the Russian Federation. This intervention was accomplished by organising a formal referendum, which resulted in the annexation of the land. The introduction of new laws, currency and policy by the Russian government in Crimea also caused and continues to be the source of many violations of human rights in this territory.

In addition to these events, the conflict in the Donetsk and Luhansk regions in Ukraine continues to result in many casualties and human rights violations. This conflict was also ignited after the Revolution of Dignity, and has now escalated into a hybrid war between the nation of Ukraine and Russia with the representation of the so-called formal Donetsk and Luhansk People's Republics.

The level of human rights violations continues to grow in Ukraine to this day, however, from a legal point of view, it is quite difficult to monitor all the cases and bring offenders to responsibility, especially within the grounds of uncontrolled territory. Nevertheless, it is extremely important to record and categorize these contraventions in order to bring the culprits to justice and punish those responsible for criminal acts committed against the Ukrainian people. During the period starting from the Revolution of Dignity to the annexation of Crimea to today's military conflict in eastern Ukraine, the nation's citizens have not seen sufficient justice be administered, nor have they been appropriately informed regarding these issues. These events need to be brought to light and analysed in order to better understand their significant impacts. This examination will then allow for the conception of alternatives that could bring those responsible to justice, and in turn will act as a preventative measure to deter individuals and avert such events in the future.

For this particular reason, this thesis will analyse the following research questions:

- What kind of human rights were violated in Ukraine since the beginning of Revolution of Dignity until now?
- Which legal solutions can be used to punish perpetrators?

This thesis will use and apply the following research methodology:

*Analysis* - the subject of the study will be divided into parts to be considered separately as

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<sup>5</sup> Grant, T. *Aggression against Ukraine: Territory, responsibility, and international law*. New York: Palgrave Macmillan 2015, pp 19-20.

a part of one whole concept.

*Legal Analysis* - often the analysis will focus on the legal aspect of the information to be researched and discussed.

*Synthesis* - in order to combine the parts into one general concept.

*Induction* - to have the formal logical reasoning which will enable to come up with an overall conclusion on the basis of the individual facts.

*Deduction* - opposite of the induction method, which will help obtain individual conclusions based on general provisions and knowledge.

*Abstraction* - this method will help reject superficial and unnecessary elements in order to understand internal and essential parts of the concepts and ideas.

*Analogy* - this method will allow to understand the knowledge that is based in its similar elements with another, resulting in perhaps new knowledge.

Various sources related to the topic were used in this thesis, in order to get a general knowledge of all events. The theoretical part of this work was augmented by fundamental academic writings regarding the theory and the development of the subject legal institute of Human Rights. In order to get a more rounded perspective on the events that took place and continue to take place in Ukraine, parts of the thesis were sourced to more recent academic books, papers and electronic articles. The sources of information that were researched and analysed for relevant information, are mainly in three languages: English, Ukrainian and Russian.



# 1. International human rights development

## 1.1. History overview

The human rights concept is a relatively modern in the field of law, which has been formulated after the Second World War. The present-day understanding of human rights was laid down and imposed in the provisions of the Universal Declaration of Human Rights (UDHR) in 1948.

However, the origins of the phenomenon, which later became known as the human rights, emanate from the earliest times of human history. Ideas about the value and inviolability of life and equality of people before higher powers were contained in ancient myths and beliefs. Later on in ancient times, similar views became widespread in ancient Greece, where the idea of natural rights started its development. Soon, philosophers and jurists of Ancient Rome subsequently developed this concept.<sup>6</sup>

Similar ideas began to surface in the ancient East. In particular, Chinese philosopher Mozi defended the idea that all people are equal before the heavens, and the creation of state is the result of their agreement.<sup>7</sup>

The ancient idea of freedom was picked up on and further developed by secular and religious thinkers of the Middle Ages. During this period, a significant role in the universal concepts of human rights was played by Christianity, which became widespread in the medieval Europe. Biblical position indicated the general notions of human beings about good, justice, equality, the inviolability of the individual and others. Human being was placed above all in the center of the universe.<sup>8</sup>

At the legislative level, first ideas of human rights began to appear in the Magna Carta, adopted in 1215 in England. It limited the absolute power of the monarch and his property rights, which laid the foundation principles of accordance between guilt and punishment, the presumption of innocence, proclaimed the right to freely travel throughout England, leave the country and return to it. It also ensured that the rights and freedoms of the individual states, and those concerning a wide range of people would be protected. It was traditionally considered the

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<sup>6</sup> Tierney, B. *The idea of natural rights: Studies on natural rights, natural law, and church law, 1150-1625*. Atlanta: Wm. B. Eerdmans Publishing 1997, p 18.

<sup>7</sup> Harrison, V. *Eastern philosophy: The basics*. London: Routledge 2013, p 113.

<sup>8</sup> Dellavalle S. "From above" or "from the bottom up"? The protection of human rights between the descending and ascending interpretations. Definition and development of human rights and popular sovereignty in Europe. Strasbourg: Council of Europe Publishing. December 2011, pp 91-113.

first legal document, which laid the foundations of the human rights concept, created conditions for further strengthening of freedom and the rule of law in society.<sup>9</sup>

Subsequently, the Petition of Right of 1628, in England, made more specific provisions of Magna Carta on the free citizen inability of imprisonment without legal grounds, proclaimed the inadmissibility of the existence of secret courts and extrajudicial repression.<sup>10</sup>

The times of the middle ages were followed by the modern period that began with a historical and legal point of view and an era of the emergence and consolidation of the social state and law. This time presented a new stage for social progress, including the development of universal values such as human rights and the rights of citizens. It appeared as though a new, rationalist theory of human rights emerged. Due to strong criticism of the feudal system and substantiation of new concepts on individual rights and freedoms, grew a considerable need for the rule of law in the relationship between the individual and the state, which as a result, found many supporters and made a great contribution to the formation of a new legal outlook.<sup>11</sup>

A further step towards the consolidation of human rights and freedoms was the adoption of the Habeas Corpus Act of 1679 in England, which established procedural guarantees of personal security, introduced the institute of surety and pledge, and set the limitations of a detention term.<sup>12</sup>

In 1689, in England, the Bill of Rights was adopted, which became the legal basis of constitutional parliamentary monarchy. This legal document guaranteed the right for people to address the King with a particular petition, limited the size of court penalties and fines, declared the freedom of parliamentary elections, and freedom of speech and opinions in its walls.<sup>13</sup>

Parallel to this, under the influence of the Enlightenment, the ideas of freedom, natural rights, social contract and separation of powers, gained more strength and popularity.

A very important legal document that developed and elaborated on these provisions became known as the Declaration of Independence of United States of America (USA) in 1776. Based on the natural-law doctrine of human rights, the Declaration proclaimed that: “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among

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<sup>9</sup> Klug, F. A magna carta for all humanity: Homing in on human rights. London: Routledge Taylor & Francis Group 2015, p 202.

<sup>10</sup> Haas, M. International human rights: A comprehensive introduction. London: Routledge Taylor & Francis Group 2008, pp 47-48.

<sup>11</sup> Landman, T. Studying human rights. London: Routledge Taylor & Francis Group 2006, pp 37-39.

<sup>12</sup> Ishay, M. The Human Rights Reader: Major Political Writings, Essays, Speeches, and Documents from the Bible to the Present. New York: Routledge Taylor & Francis Group 1997, p 89.

<sup>13</sup> Dickson, B. Human rights in the United Kingdom Supreme Court. Oxford: Oxford University Press 2013, pp 18-20.

these are Life, Liberty and the pursuit of Happiness”.<sup>14</sup> In this particular document, in addition to what was specified in the United States of America’s Constitution of 1787, was laid the foundations of not only the American constitutionalism, but also the foundations of the liberal concept of human rights.

One of the most important documents in the history of development of human rights became the Declaration of the Rights of Man and Citizen in 1789, which had the progressive significance and became a legal confirmation of victory of the French Revolution. The Declaration was the first set of principles that incorporated in its law the principle of formal equality of all citizens before the law, as well as, this proclamation laid the foundation of the concept of universal human rights. The Declaration affirmed freedom of conscience, freedom of speech, the presumption of innocence, the inviolability of the person and his property, and also established the state’s duty to provide and guarantee human rights and freedoms. In addition, it included the right of citizens to resist oppression, which is a complex and many-sided notion. At the same time, freedom was understood as the ability to do everything that does not harm another individual. For the first time in world practice, this Declaration established the principle of regulating legal relations, stating that “everything which is not forbidden is allowed”.<sup>15</sup>

During the XVIII-XIX centuries, with the development of the world’s principles of constitutionalism and parliamentarism, ideas of human rights were being increasingly embodied in the rulemaking practice of the states. At the beginning of the twentieth century, especially after World War I and the appearance of the League of Nations and the International Labour Organisation (ILO), the concepts of human rights were beginning to be included among the subjects of international law regulation. The recognition of the significance of human rights legislations seemed to be acknowledged by more states and country leaders, thus marking the development of better laws for the protection of its citizens.

The ongoing formation of the standards of human rights and freedoms intensified after the Second World War. At this time, the protection of human rights came out on narrow national boundaries and finally became the object of regulation of international law. In 1948, the United Nations (UN) organisation adopted the Universal Declaration of Human Rights. This was the first universal document, which proclaimed internationally the basic civil, political, social, economic and cultural rights for all. Thus, it established standards and ideals, which today, the majority of countries and world leaders tend to follow when setting up and establishing their own

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<sup>14</sup> Jayne, A. Jefferson’s Declaration of independence: Origins, philosophy, and theology. Lexington: University Press of Kentucky 1998, p 109.

<sup>15</sup> Ishay, M. The Human Rights Reader: Major Political Writings, Essays, Speeches, and Documents from the Bible to the Present. New York: Routledge Taylor & Francis Group 1997, pp 138-139.

legislations on human rights and freedoms. The Universal Declaration of Human Rights laid the foundation for further consolidation and development, specification, expansion of the list and a detailed understanding of the mechanisms of human and civil rights throughout the entire civilized world.

Currently, one of the most important legal documents in the field of human rights is the European Convention on Human Rights, which came into force in 1950, alongside the protocols that were established to augment and accompany it. These human and civil rights are recognized by the European and international communities. The European Court of Human Rights (ECHR) protects the rights of citizens of the State Parties in accordance with the set out terms of the Convention.

Individuals and authorities from different parts of the world have historically perceived the development process of the human rights understanding in its modern form. This is a synthesis of fruitful political and legal contributions in numerous countries and periods of time. In this context, Ukraine is a country, on whose territory throughout human civilization history, were held various human rights development processes. As a result, these processes have contributed and influenced the continual building blocks on which the international concept of human rights stands on today.

## **1.2. Ukrainian contribution**

Ukraine is a relatively new re-established country in Eastern Europe, which has restored its independence in 1991. However, from the perspective of human rights, it has its own rich history and strong legal traditions.

One of the first Ukrainian human rights terminology origins was from the “Rus’ka Pravda”. This was a legal code in the Kievan Rus’ from the year 1280. “Rus’ka Pravda” prohibited the death penalty, the cutting off of arms, legs or other mutilations. It was illegal to practice and apply martyrdom punishments or torture during interrogation of individuals. Initially, the concept of revenge was limited, and later on it was completely banned. Generally, “Rus’ka Pravda” placed many regulations and legal mechanisms for the protection of life, honor and dignity of a person. Offending the honor and dignity, such as inflicting blows with a stick, pole, the back part of the sword or sword scabbards, tearing moustache and beard, was punishable much more strictly than if one was to inflict injuries, wounds and beatings to a

person.<sup>16</sup>

During those times, the position of women among the ancient Ukrainian law was much higher than in the old Germanic and Roman law, where a woman, daughter, wife, or mother always needed a legal guardian and throughout their entire life, did not hold any legal weight nor were they allowed to have much voice in the society. On the contrary, in Kievan Rus', a wife during the entire life of a man, was preserving her separate property. Even after the passing of a woman's husband, the wife's property was not included in their common heritage. Also, in this particular case, it seemed that the woman herself became the head of the household.<sup>17</sup>

According to the "Rus'ka Pravda" in the Kievan Rus', the property right was in certain respect. If somebody's property was stolen and the owner knew who committed the crime against him, he had the right to return this possession back and charge the perpetrator for the personal abuse for the sum of 3 hryvnias.<sup>18</sup>

Rus'ka Pravda is a unique ancient example of the Ukrainian legal history. It has affected the legal traditions of many countries and territories. However, there is even older evidence and legal sources that consist of some elements of human rights. As a result of this, the contract between Byzantium and Rus' of 912, fixed the right of any person who is accused of any crime to be able to have his or her case be considered before the court of justice.<sup>19</sup>

It is interesting to note that a similar principle was fixed on the territory of modern Ukraine long before the Magna Carta of 1215, that contained the similar statement as in its article 39, where it was stated that no one shall be captured, imprisoned, deprived of property, expelled from the country otherwise than by lawful verdict or the court or by the law of the country.<sup>20</sup>

One of the very important historic and legal documents for modern Ukraine is "The Constitution of Pylyp Orlyk" or by another name: "Pacts and Constitutions of Rights and Freedoms of the Zaporizhian Host". This document was written in 1710 by a Ukrainian cossacks' hetman Pylyp Orlyk. It established the democratic standards and the concept of the separations of powers into legislative, executive and judicial branches. However, Montesquieu's "Spirit of the Laws", where the well known French lawyer and political philosopher described the concept of separation of powers, was published for the first time only 38 years later in 1748.

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<sup>16</sup> Kaiser, D. The Laws of Rus' - Tenth to Fifteenth Centuries, tr., ed. Salt Lake City: Charles Schlacks Publisher 1992, pp 20-34.

<sup>17</sup> Правда Русская. II. Комментарии / Под ред. акад. Б. Д. Грекова.- М. Л.: Изд-во АН СССР, 1947 p 550.

<sup>18</sup> Ibid, p 99.

<sup>19</sup> Літопис Руський / Пер. Л. Махновця.— К.: Дніпро, 1989.— p 20.

<sup>20</sup> Howard, A. Magna carta: Text and commentary. Charlottesville: Published for the Magna Carta Commission of Virginia [by] The University Press of Virginia 1964, article 39, p. 14.

The Pacts and Constitutions of Rights and Freedoms of the Zaporizhian Host included articles on immunity protection laws and liberties of ownership for not only the Hetman, who was the head of the state, but for everyone else such as monks, priests, childless widows, elective and ordinary Cossacks, palace servants and individuals. Also, the right to elect government officials through free will and voting was adopted. The widows of Cossacks or women whose husbands were at war or in the military service, had the right to be free from general duties and taxes.<sup>21</sup>

The next important step in declaring human rights in Ukraine was the period during the end and after the First World War, when the Ukrainian People's Republic was proclaimed and established. The Third Universal of the Central Rada proclaimed freedom of speech, press, religion, assembly, unions, strikes, inviolability of person and residence, the right and the opportunity to use local languages in dealing with all authorities. To the Russian, Jewish, Polish and other nations that were living in Ukraine, a national-personal autonomy to safeguard the rights and freedoms of government in their affairs of national life was also provided.<sup>22</sup>

The Fourth Universal of the Central Rada proclaimed that in the independent Ukrainian People's Republic, nations shall use the rights of the national personal autonomy in accordance with the Law of Ukrainian Central Rada "On the national personal autonomy" from January 9th, 1918. It provided the rights for each of the nations inhabiting Ukraine to self-placement of its national life.

The Constitution of the Ukrainian People's Republic of 1918 placed great attention to the rights of citizens of Ukraine. It had statements about the equality of the men's and women's rights and intangibility of the accommodation of the citizens. No one could be arrested on the territory of Ukrainian National Republic without a court order. Revisions could take place only on the basis of a court order and in cases that the law provides it. In addition, it established the secrecy and privacy of correspondence, provided liberty of conscience and faith, and allowed for changes in religion. It declared the full freedom of change of residence, in other words, the complete freedom to change the place of everyday life and transfer their own property within the territory of the state and the right to immigrate to other places.<sup>23</sup>

Generally, these legal documents were progressive for their time but they did not have a lot of positive impact, as they were declared in the last days of the Ukrainian People's Republic.

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<sup>21</sup> Перша Конституція України гетьмана Пилипа Орлика 1710 р. / Національна бібліотека України імені В. І. Вернадського. (The Bendery Constitution of Pylyp Orlyk, National Library of Ukraine named after V. I. Vernadskyi).

<sup>22</sup> Verkhovna Rada of Ukraine. "III Універсал Української Центральної Ради" from 20.11.1917.

<sup>23</sup> Verkhovna Rada of Ukraine. "Конституція Української Народньої Республіки - Статут про державний устрій, права і вільності УНР", from 29.04. 1918.

In 1921, the Soviet Regime was established on the territory of Ukraine and many changes began to take place.

During the period of the Soviet Union, many human rights in Ukraine were violated for several reasons and on numerous occasions. Nevertheless, this country took part in the process of the creation of human rights in the modern understanding. After the Second World War, Ukraine as a state that has made one of the most important contributions to the victory over the fascist invaders, received a wide international recognition and credibility in the eyes of the world's public community. The Stalinist Regime even allowed it to create its own Ministry of Foreign Affairs, which operated under the strict control of the Moscow center. However, this inconvenience did not stop it from becoming one of the founders of the established United Nations Organisation of 1945 and to be repeatedly elected as a member of the principal organs of the UN, its committees and commissions. Since that time, Ukraine has acted as a subject of international law and international relations, whilst for a long period of time not being an independent nation.

As a United Nations member, Ukraine took an active part in the development and adoption of basic international legal documents on human rights. Thus, specific proposals of Ukraine are reflected in the main international documents in the field of human rights, the Universal Declaration of Human Rights, as well as, a number of other documents, including: International Convention on the Elimination of All Forms of Racial Discrimination 1965, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Convention on the Suppression and Punishment of the Crime of Apartheid 1973.

Despite such an active participation in the development of the international human rights system, only after gaining its independence from the Soviet Union, Ukraine became a full-rights member of the international community and became able to develop and establish its own legal system. Shortly following its independence, Ukraine ratified some of the main international instruments, such as the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms. After gaining its independence, it also ratified many other international legal acts of the United Nations, Council of Europe, the International Labour Organisation and other international institutions. A more significant fact is that Ukraine became the first country in the world that made the decision to voluntarily renounce nuclear weapons, and in return receiving security

assurances.<sup>24</sup>

Entering the international human rights system, Ukraine established a national system of applying international human rights legal acts in its domestic law, which would allow it to fulfill its international obligations.

In view of all of the above, it should be mentioned that in the context of human rights development, Ukraine being a fairly modern country, has been noted for its deep and often progressive evolution of human rights for some periods of time in history. The contributions of this nation cannot go unnoticed. Bearing this in mind, the violations of human rights in Ukraine should be considered with not less attention than any other progressive, modern and democratic country in the world.

### **1.3. Legal responsibility for violations**

The concept of human rights does not only carry dispositive understanding. If some of the values, that are inherent to people and protected legally, have been officially defined, there should also be established certain mechanisms of responsibility in order to punish the perpetrators. Otherwise, the official norms, stated in legal documents, will not have any judicial force and nor any respect from the officials. Furthermore, those legal subjects, who are related to different legal systems, may sometimes breach human rights. For this purpose, the existence of international responsibility for the violations of human rights is crucial.

However, the international legal responsibility of individuals and organisations for crimes against humanity and individual responsibility for serious violations of human rights remains a controversial issue in international law. For a long time, it was believed that international law considers the actions of the sovereign states and does not provide punishment to governmental organisations and individuals. Thus, if the criminal acts are the acts of the state those, who committed them, did not take responsibility in person, because they are protected by the doctrine of state sovereignty.<sup>25</sup>

The first attempt to break this unwritten rule and ascribe the responsibility to persons guilty of actions “against the whole world” was in 1919, by the Treaty of Versailles, articles of which provided the ad hoc tribunal to bring to justice those individuals who were accused of

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<sup>24</sup> Thakur, R. Nuclear Weapons and International Security: Collected Essays. Freedman, 2016.

<sup>25</sup> Ayoob, Mohammed. 2002. "Humanitarian Intervention and State Sovereignty," International Journal of Human Rights 6 (1) Spring: 81-102.



violating the laws and customs of war.<sup>26</sup>

A court ruling had to take place over Kaiser Wilhelm II “for a supreme offense against international morality and the sanctity of treaties”. However, regarding this case, there was never any tribunal or permanent court organised. It should have been ruled pursuant to the 1937 Convention on the Prevention and Punishment of Terrorism and its companion instrument, the Convention for the Creation of an International Criminal Court. None of these legal documents ever entered into force.<sup>27</sup>

The “Allied States” of that time required organising a trial of the 901 people, but Germany was passive to do this in a proper way. In fact, 13 people were prosecuted, but 6 of the defendants were acquitted. Thus, despite the attempts to force Germany by the Allies to punish war criminals, in fact, only a few lawsuits took place.<sup>28</sup>

Later on, a crucial role in the recognition of international criminal jurisdiction over a person under international law played the Nuremberg International Military Tribunal, which was set up after World War II from November 20, 1945 to October 1, 1946 and had its aim to organise the international trial of the 24 former leaders of Nazi Germany. According to the Tribunal, international law imposes duties of both the individuals and the state. Men commit crimes against international law, not abstract units and only punishment of individuals who committed such crimes can be the realization of the provisions of international law.<sup>29</sup>

As the consequence of the Nurnberg Tribunal, the paradigm of responsibility shifted from national to international processes and from collective to individual. Under Article 7 of the Charter of the Nuremberg Tribunal, the official status of the accused, whether he is a Head of State or a responsible official shall not be a reason to be exempt from responsibility and the punishment cannot be mitigated.<sup>30</sup>

An important contribution to the history of the development of international criminal responsibility after World War II, brought the International Military Tribunal for the Far East, also known as the Tokyo Trials. It was created by the order of the Commander of the Allied occupying forces, General Douglas MacArthur, to punish the main leaders of Japan, which was one of the main allies of Nazi Germany. According to the same order were carried out arrests of

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<sup>26</sup> “Treaty of Peace between the Allied and Associated Powers and Germany, and Protocol” - The Versailles Treaty, from 28.06.1919.

<sup>27</sup> Clark, R., & Sann, M. The prosecution of international crimes: A critical study of the International Tribunal for the Former Yugoslavia. New Brunswick: Transaction 1996, p 166.

<sup>28</sup> McCormack, T. The law of war crimes: National and international approaches. The Hague: Martinus Nijhoff 1997, p 44.

<sup>29</sup> Kritz N. J., ed. Transitional Justice: How Emerging Democracies Reckon with Former Regimes.- V. 3.- Washington, DC: United States Institute of Peace Press, 1995, p 412.

<sup>30</sup> Ibid, p 441.

suspects committing war crimes. In total, 29 people were arrested, mostly members of the cabinet of General Hideki Tojo. The tribunal took place in Tokyo between May 3rd, 1946 and November 12th, 1948.

At the tribunal were represented 11 countries: USSR, USA, China, UK, Australia, Canada, France, Netherlands, New Zealand, India and Philippines. During the process, there were carried out 818 public hearings and 131 meetings in chambers; Tribunal ruled 4356 documentary evidence and out of which were 1194 witnesses. The indictment formulated 55 points containing general accusations of guilt of all the defendants and each of them individually. Traditionally, as in the Nurnberg Tribunal, all of the accusations were consolidated into three groups: crimes against peace, murders, and crimes against the customs of war and humanity.<sup>31</sup>

As World War II carried a significant impact for humanity, it became a catalysator for the cooperation between the states on an international level. The United Nations Organisation was created with its main bodies. It became a priority to prevent the committing of international crimes in the future, thus should exist a neutral mechanism, which would be able to intervene in conflicts and regulate them towards peace.

After two main military tribunals in Nuremberg and Tokyo at the international level became appearing many discussions regarding the creation of the permanent court, which would be dealing with the main international crimes instead of the creation of ad hoc tribunals for special aims. However, in the period of the “Cold War” between USA and USSR, when the geopolitical world became polarized, the conditions for realizing this idea were insignificant.

Finally, at the end of 80s and beginning of 90s, as a result of the collapse of the Soviet Union and the socialist block, the idea of the creation of permanent international criminal court became more realistic and this idea attracted new attention.

Initially, in 1989, the government of Trinidad and Tobago addressed a letter to the General Assembly of the United Nations to resume work on the question of an international criminal court that would have jurisdiction including over crimes related to illicit drug trafficking.<sup>32</sup>

Then, in 1991, in the former Yugoslavia sparked an internal war, and later, in 1994, a genocide took place in Rwanda. The UN Security Council responded to the two recent cases and made its decision to establish two ad hoc tribunals to bring to punishment those responsible. The initiator of the International Criminal Tribunal for the former Yugoslavia (ICTY) was France.

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<sup>31</sup> Takeda, K. *Interpreting the Tokyo War Crimes Trial: A Sociopolitical Analysis*. Ottawa: University of Ottawa Press 2010, pp 13-14.

<sup>32</sup> Mahnoush H. Arsanjani: *The Rome Statute of the International Criminal Court*. *The American Journal of International Law* Vol. 93, No. 1 (Jan., 1999), pp. 22-43

The purpose of the Tribunal was the prosecution of persons responsible for serious violations of International Humanitarian Law (IHL) in the former Yugoslavia. The Tribunal considered such serious crimes as murder, torture, unlawful deportation and hostage taking. There was prosecution for the use of toxic substances, destruction of cities, villages, and historic monuments.<sup>33</sup>

International Criminal Tribunal for Rwanda was a subsidiary body of the United Nations, established to prosecute persons responsible for the genocide committed in Rwanda or crimes committed by Rwandan citizens on the territory of the neighboring countries during the period from January 1st, 1994 to December 31st, 1994.<sup>34</sup>

The creation of such Tribunals of different cases demonstrates the potential political power of the Security Council, which is the body of the United Nations Organisation. Unlike other UN bodies, only the Security Council has the power to take decisions mandatory for all UN members. In 1965, the number of its members increased from 11 to 15. Five of these are permanent members, which are Britain, China, USA, USSR, France and ten members elected by the General Assembly for two years on a geographical basis. Five of the ten members are elected each year. After the USSR collapsed its place in the Security Council was inherited by Russia.

Like in cases of Yugoslavia and Rwanda, the Security Council is able to create ad hoc tribunals, however not in a permanent court with the general jurisdiction on the international crimes, which was planned to be created by the international community.

After several years of negotiations aimed at establishing a permanent international tribunal for the prosecution of persons accused of genocide and other serious international crimes,, such as crimes against humanity, war crimes and recently added, certain crimes of aggression, the General Assembly of the United Nations organised a five weeks diplomatic conference in Rome in June 1998, to finalise and adopt a convention establishing the International Criminal Court.<sup>35</sup>

On July 17th, 1998, the Rome Statute was adopted by a vote of 120 countries, seven voted against, 21 abstained. On April 11th, 2002, at a special ceremony held at the headquarters of the United Nations in New York, ten countries have ratified the Statute, bringing the total number of signatories to sixty, which was the minimum necessary to bring the Charter to force,

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<sup>33</sup> Hagan, J., & Kutnjak, S. *Reclaiming justice: The International Tribunal for the former Yugoslavia and local courts*. Oxford: Oxford University Press 2011, p 5.

<sup>34</sup> Zachary D. Kaufman *International Criminal Tribunal for Rwanda*. *Encyclopedia of transitional Justice*, Nadya Nedelsky & Lavinia Stan, eds., Cambridge University Press, 2012, pp 233-237.

<sup>35</sup> Fanny Benedetti and John L. Washburn: *Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference*. *Global Governance* Vol. 5, No. 1 (Jan.–Mar. 1999), pp. 1-37.

on July 1st, 2002. The International Criminal Court (ICC) can investigate crimes that were committed after the entry of the Rome Statute into force. Today, 124 countries are State Parties to the Rome Statute of the International Criminal Court. Out of them, 34 are African States, 19 are Asia-Pacific States, 18 are from Eastern Europe, 28 are from Latin American and Caribbean States, and 25 are from Western European and other States.<sup>36</sup>

Today, the international legal responsibility for the violations of the most serious categories of human rights has been progressively developed. People committing such violations have serious chances to take a personal responsibility for their own actions. However, there are numerous examples worldwide, where this system does not always work properly. Taking this into consideration, the history of international responsibility of human rights violations is still continuing to develop as number of unified international agreements, rules and corporations have various technical collisions regarding separate cases. This can be explained from the legal side with various arguments, some of which are related to several recent cases of human rights violations in Ukraine.

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<sup>36</sup> Official web-site of the International Criminal Court. The states parties of the Rome Statute. N.d. See: [www.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx) (Retrieved March 8th, 2016).

## **2. Violations of human rights during the “Revolution of Dignity”**

### **2.1. Political preconditions**

The Revolution of Dignity, also known as Maidan, is the biggest and the most dramatic revolution that took place in Ukraine during its history as an independent state. These sets of events have commenced with a peaceful movement of Ukrainians towards the European integration on November 21st, 2013 and resulted in the massive killings of protesters by the government officials on February 22nd, 2014, who continued to participate in the demonstrations until the former president Viktor Yanukovich and his government left their duties.

This period of three months is marked by active protests against the government. However, in order to save political power and highly ranked positions by the state authorities, who were curated by Viktor Yanukovich, used multiple unlawful tools to stop or prevent the scaling of the revolution. As a result, the peaceful protest of students towards economic integration with European Union was transformed into a long gruesome revolution of the Ukrainian nation against their own state leadership. During the period of Revolution of Dignity, numerous violations of human rights have taken place.

One of the reasons behind such brutal treatment of the Ukrainian people, was the close relations of the former government and president with the Russian leader Vladimir Putin. These close ties have been observed for some time, but mainly, the Russian president’s influence was noticed in the time proceeding to the beginning of Maidan. After their meeting in November 2013, the Ukrainian president changed his decision about signing the European Union Association Agreement, which the people of Ukraine have been so eagerly looking forward to happen.<sup>37</sup>

### **2.2. Characteristics of Maidan**

Revolution of Dignity was the beginning of a new age of history of Ukraine. Today, it is difficult to say whether it was the beginning of positive changes or an unnecessary sacrifice. The Revolution of Dignity is the first big impact for the society since the restoration of their independence and from the position of human rights violations, it has some serious undue

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<sup>37</sup> Derkach N. “Relations between Ukraine and the European Union: History and Perspective”, Poltava National Pedagogical University, pp 59-60. See: [www.dspace.pnpu.edu.ua/handle/123456789/3651](http://www.dspace.pnpu.edu.ua/handle/123456789/3651) (Accessed February 27, 2016).

consequences. Maidan had some preconditions, which strongly affected the most active part of society. After the election of Viktor Yanukovich as president of Ukraine in February 2010, the ruling elite took a clear policy on building a centralized vertical system of power. On the background of growing corruption in the country, as well as losing trust in the government institutions, people began to experience great dissatisfaction, thus a protest mentality began to brew in many. Many victims of repression were being identified and often these were opposition politicians, journalists, human rights defenders, social activists, and active youth.

Since Viktor Yanukovich was elected as President of Ukraine, the relations and ties between Ukraine and Russia became significantly closer. On March 5th, 2011, Russian President Vladimir Putin invited Ukraine to become a member of the Eurasian Customs Union (ECU). But, at the same time starting from 2007, Ukraine was officially preparing to sign the Economical Association with the European Union during the summit in Vilnius on November 28-29th, 2013, which would mean an economical association with the EU.<sup>38</sup>

It is important to note the growing influence of Russia on the adoption of the most important state decision in Ukraine. Within a few months before Euromaidan, the Russian government used different methods to stop the process of European integration, including the so-called "trade wars".<sup>39</sup>

On November 21st, 2013, the exception of unpredictable decision of the government to "suspend" the process of signing the Association Agreement between Ukraine and the European Union, were considered by the society as a conscious rejection of European integration and the beginning of a movement towards the ECU, continuing close ties with Russia.

The basis of the Euromaidan movement protest were laying the values of freedom and human dignity on the part of the government, which made it possible to describe the protest as one of the most widespread human rights movements in the entire area of the newly independent states formed after the collapse of the Soviet Union. The slogan "Human Rights above all!" was heard from the people chanting near the courtroom in early December 2013, as the authorities began to bring in protesters that were accused of undue crimes. The people already then began to see the injustices being carried out and so the protest movement became known as the "Revolution of Dignity."

Throughout the period of Euromaidan from November 2013 to February 2014,

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<sup>38</sup> Sokolovskaya, Y., & Yavlyanskiy, I. "Ukraine to join Customs Union as observer | Russia Beyond The Headlines ASIA, May 28, 2013. See: [www.rbth.asia/world/2013/05/28/ukraine\\_to\\_request\\_observer\\_status\\_at\\_the\\_customs\\_union\\_46977.html](http://www.rbth.asia/world/2013/05/28/ukraine_to_request_observer_status_at_the_customs_union_46977.html) (Accessed 29.02.2016).

<sup>39</sup> European Union Committee: "The EU and Russia: Before and Beyond the Crisis in Ukraine". 6th report of session 2014-2015. London: The Stationery Office Limited, the Authority of the House of Lords 2015, p. 53-78.

participants of the protest movement were persecuted by the authoritarian regime in different ways. Persecution included a variety of government actions to limit freedom of expression and media, spreading false information to discredit the protest, systematic ban of peaceful gatherings in different regions, and the use of unlawfully violent police forces. The results of these crimes were the murder of at least 123 people.<sup>40</sup> During this period, several hundred people were imprisoned, over a thousand activists received minor or serious bodily harm. To this day, the fate of 53 missing protesters is still unknown.<sup>41</sup> Numerous cases of human rights violations were observed during this difficult time for the nation of Ukraine. These crimes were systematically planned, well organised and committed in a short period of time. As evidence of these crimes, there is a large array of video and photo material of attacks on peaceful protesters, confirming the awareness of perpetrators about complete impunity for the committed crimes.

Together, all these crimes were part of a large-scale and regular attacks on peaceful civilian population by the authorities, whose aim was to intimidate people and to suppress the protest. Not only the nation's capital observed the suppression by the law enforcement agencies, but also in other parts of the country, many experienced difficulties to even make their way to the country's capital, Kyiv.

The massive and systematic crimes were not directed at randomly selected people, but rather there was a consistent campaign of the persecution of actual protesters in Kyiv and in other regions. It should be mentioned that protesters varied by age, sex, occupation, property status, social origin, place of residence, religious beliefs, ideological views of others. Regardless of all these differences, people were united by the support of the protest movement and dissent with the actions led by the Yanukovych regime.

The victims of the attacks were persons who according to the authorities' opinion were members of Euromaidan or supported this idea. Often, these were individuals who donated money, supplies and brought medication in order to help the wounded, or provided legal assistance for those that were detained based on improper grounds. These attacks were clearly directed against a group of citizens on grounds of political opinion, which in this case acted as the disagreement with the actions of the regime of the president and his supporters.

It should be noted that throughout the protest period, the authorities constantly tried to provoke protesters to commit illegal violent acts in order to detain them or inflict harm and cause

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<sup>40</sup> "The Heaven's Hundred. Tribute to the heroes of Euromaidan". See: [www.nebesnasotnya.com.ua/en](http://www.nebesnasotnya.com.ua/en) (Accessed 29.02.2016).

<sup>41</sup> Maidan Search Initiative - "Fifty three persons who disappeared during Maidan events are still missing" See: [www.uacrisis.org/ua/40403-poshukova-initsiativa-majdanu](http://www.uacrisis.org/ua/40403-poshukova-initsiativa-majdanu) (Accessed 22.02.2016).

fear for others to cease the continuation of the protest. Often, the members of police themselves were taking on the role of instigators among the rest of the people present on the Euromaidan.<sup>42</sup> In most cases, such provocations failed, however there were incidents where the provocations would bring out emotions in people and thus, instigating clashes between authorities and protesters. Most leaders and activists of the Euromaidan repeatedly emphasized the peaceful nature of the protest and condemned any sort of violence. It was confirmed that the nation's leaders coordinated criminal actions between different public authorities, collective mobilization of law enforcement agencies and affiliated with criminal groups in order to end the protests. These collaborations allowed them to use a variety of methods and different forms of using force to implement these attacks. In particular, this was observed and confirmed by the absence of any reaction of the authorities in preventing criminal groups from continuing to obstruct the protest movement on Maidan.

### **2.3. Restrictive legal decisions adopted by former regime**

It became quite evident that the political authorities strived to suppress the peaceful protest, based on the decisions and actions taken by the government. The first amnesty law was adopted on December 19th, 2013, for the release of persons illegally detained and beaten on December 1st, 2013. However, its provisions also allowed the release from criminal responsibility the members of security forces who committed unlawful violent actions.<sup>43</sup>

The so-called “Laws on the dictatorship”, is a packet of laws adopted by Ukrainian parliament on January 16th, 2014. These laws experienced loud criticism and raised a great resonance in the Ukrainian society. They contained provisions which introduced criminal liability for defamation and extremism, which made it impossible for journalists to provide and report anything negative about the laws nor provide any criticism of authorities in their released statements and news.<sup>44</sup> It became prohibited to drive cars in columns, which limited the holding of peaceful events by the protesters, which they named as “Automaidan”.

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<sup>42</sup> News Channel 24 - “Euromaidan is fighting with provocateurs, who are suspected in connection to police”, December 30, 2013. See: [www.24tv.ua/yevromaydan\\_voyuye\\_z\\_provokatorami\\_yakih\\_pidozryuyut\\_u\\_zvyazkah\\_z\\_militsiyeyu\\_n395633](http://www.24tv.ua/yevromaydan_voyuye_z_provokatorami_yakih_pidozryuyut_u_zvyazkah_z_militsiyeyu_n395633) (Accessed 20.02.2016).

<sup>43</sup> Verkhovna Rada of Ukraine Official Web Portal. LAW OF UKRAINE “On elimination of negative consequences and to prevent harassment and punishment of persons on the events that occurred during peaceful assembly” (Act repealed under Law № 743-VII of 02/21/2014). See: [www.zakon3.rada.gov.ua/laws/show/712-18](http://www.zakon3.rada.gov.ua/laws/show/712-18) (Accessed 20.02.2016).

<sup>44</sup> Verkhovna Rada of Ukraine Official Web Portal. Draft Law on Amendments to the Law of Ukraine "On the Judicial System and Status of Judges and procedural laws regarding additional measures to protect public safety" 721-VII on 16/01/2014. See: [www.w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?id=&pf3516=3879&skl=8](http://www.w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=3879&skl=8) (Accessed 20.02.2016).



The law of Ukraine “On amnesty” of January 29th, 2014, was called in the society as the “law of hostages.”<sup>45</sup> It provided that the release of illegally detained and injured activists would take place only if other Maidan partakers would release occupied administration buildings and withdraw from mass street gatherings. Only after these conditions, the Prosecutor General of Ukraine would give an order for the detained activists to be released. The Act provided that if these actions would not be performed within fifteen days after its entry into force, the possibility of the release of detained protesters would be lost.

To prevent peaceful assemblies in Kyiv and other regions, an announcement of deliberately unjust judgments were used. According to the Unified State Register of Court Decisions during the period from November 30th, 2013 to February 22nd, 2014, at least 77 peaceful assemblies in all regions were banned or limited in different ways by the district administrative courts.<sup>46</sup> In comparison to other court rulings at that time, it can be noted that the number of court bans increased more than three times as the events of Euromaidan took place.

These unlawful decisions, which did not comply with the democratic order, were confirmed by the Parliamentary Assembly of the Council of Europe (PACE) resolution 1974 from January 30th, 2016, which was approved by two-thirds of votes. It condemned laws from January 16th, 2014, which were adopted by the Ukrainian Parliament and confirmed by president Yanukovich. According to the following resolution these laws were undemocratic and repressive. They violated the principles of freedom of expression, freedom of assembly and demonstration, the freedom of media and information, as well as, infringed upon the right to a fair trial.<sup>47</sup>

In addition, it is important to mention that paragraph 4 of the resolution has stated that the decision of the Ukrainian government to change the direction from signing the Economic Association with the EU was made under the pressure of the Russian Federation. This reinforced the belief of the involvement of Russia with the many human rights violations in Ukraine during the last three years.

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<sup>45</sup> Verkhovna Rada of Ukraine Official Web Portal. Draft Law “On eliminating the negative effects and preventing the persecution and punishment of people on the events that occurred during peaceful gatherings” on 01.29.2014. See: [www.w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=49622](http://www.w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49622) (Accessed 20.02.2016).

<sup>46</sup> Ukrainian Helsinki Human Rights Union - “Human rights in Ukraine 2013” - Freedom of Assembly report. See: [www.helsinki.org.ua/index.php?id=1398047946](http://www.helsinki.org.ua/index.php?id=1398047946) (Accessed 01.03.2016).

<sup>47</sup> PACE Resolution 1974 (2014) “The functioning of democratic institutions in Ukraine”.

## 2.4. Main violations of human rights

A few days before the meeting of the Organisation for Security and Co-operation in Europe's (OSCE) Council of Ministers in Kiev, on the night of November 29th to 30th, 2013, police broke up a "Student Maidan", which was caught on several live cameras, showing how special forces police in masks and helmets were violently beating these young people. The peaceful protesters were not notified of this dispersing of mainly a student gathering, which left 34 people under arrest and 29 of them had administrative protocols drafted against them. That night, about 71 individuals were given medical assistance, among them were three journalists. According to the agency Reuters, among the victims of arbitrary and illegal actions of the police were also their cameraman and photographer.<sup>48</sup> The next morning the country woke up to a state of complete dismay. Outraged by this brutal crackdown approximately 500,000 people reached Maidan.<sup>49</sup>

Another significant event occurred when about two thousand protesters reached the street Bankova, and with the instigation of the provocateurs, began a violent confrontation between the police and protesters. The entire time behind the backs of the resisting forces, holding their distance, stood soldiers of Special Forces "Berkut", who together with the internal troops, went on the offensive and began to brutally beat everyone who they came across, including bystanders and journalists who were not showing any signs of resistance. During this time, nine individuals were beaten for several hours in the courtyard, which bystanders happened to record on video and capture in several photos. These individuals became known as the "Bankova prisoners", later charged with organising mass disturbances and given into custody for two months under criminal proceedings raised against them.<sup>50</sup>

On the night of December 11th, 2013, internal troops and soldiers of the Special Forces "Berkut" made another attempt to forcefully disperse the people of Maidan. By the morning, they beat up protesters with clubs, most of whom were not showing any signs of resistance. The official data reports that due to the special forces attack, around 79 people were injured,

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<sup>48</sup> Institute of Mass Information. "In the center of Kyiv security forces smashed the head of a Ukrainian Reuters photographer", November 30, 2013. See: [www.imi.org.ua/news/42282-v-tsentri-kieva-silovikirozbili-golovu-ukrajinskomu-fotokoru-reytersa.html](http://www.imi.org.ua/news/42282-v-tsentri-kieva-silovikirozbili-golovu-ukrajinskomu-fotokoru-reytersa.html) (accessed 01.03.2016).

<sup>49</sup> NewsRuUA: "National Assembly began on Independence Square: the number close to a million protesters", December 8, 2013. See: [www.newsru.ua/ukraine/08dec2013/million.html](http://www.newsru.ua/ukraine/08dec2013/million.html) (accessed 01.03.2016).

<sup>50</sup> TSN: "Berkut brutally beat detainees under Presidential Administration" Kyiv, December 2, 2013. See: [www.tsn.ua/politika/berkut-po-zviryachomu-biv-zatrimanih-pid-ap-na-kolina-merzota-Revolyuciya-s-ka-video-323166.html](http://www.tsn.ua/politika/berkut-po-zviryachomu-biv-zatrimanih-pid-ap-na-kolina-merzota-Revolyuciya-s-ka-video-323166.html) (accessed 01.03.2016).

including 7 members who were part of the law enforcement.<sup>51</sup>

Additional clashes took place on January 19th, as a result of which many protesters were injured. Soldiers of Special Forces used special means, tear gas and water cannons, despite the cold temperatures. The Government of Ukraine passed a few laws to allow the Special Forces to use such means that were previously not permitted.<sup>52</sup> According to official data at least 24 people were hospitalized that night.

The vast majority of protesters used the help of volunteer field hospitals and health centers in order to seek medical attention and treat wounds. On January 22nd, the first protester died from an illegal use of firearms by law enforcement officials. This was Sergiy Nihoyan, a 20-year-old man by the name, who died of bullet wounds. Another protester, Mikhail Zhyznevskyy, a citizen of Belarus, was directly hit with a bullet in the heart and killed instantly. During another clash with riot police, Roman Senik suffered a gunshot wound in the lung, which later died in the hospital on January 25th.<sup>53</sup>

During the days from January 19th to 22nd, at least 42 journalists suffered traumatic lesions of weapons and other injuries. Judging by the nature of the injuries, which were the eyes and head, it was evident that the police were strategically aiming fire on the people in orange vests and helmets with the word "Press" on their backs. Also, among those affected were about 30 doctors. The riot police, "Berkut" defeated and destroyed a medical center, which was situated at the Parliamentary Library on the street Grushevskogo. After that, the journalists refused to wear vests with the words "Press" and the Red Cross issued a statement about the inadmissibility of the use of weapons against physicians with appropriate labels.<sup>54</sup> During this period, in Kyiv were activated criminal gangs, who coordinated their activities with law enforcement agencies.<sup>55</sup> They injured people in different parts of the city, destroyed cars and organised provocations.

On the night of February 18th to 19th, the House of Trade Unions was set on fire, which was used for material and technical support of Euromaidan. In particular, there was a hospital

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<sup>51</sup> PrestupnostiNet: "In the dispersal of Euromaidan 79 people were injured - Prosecutor General's Office" December 5th, 2013. See: [www.news.pn.ua/criminal/92782](http://www.news.pn.ua/criminal/92782) (accessed 01.03.2016).

<sup>52</sup> ZN.UA: "The Cabinet "untied hands" of Berkut to use force against demonstrators on Grushevskogo", January 22nd, 2014. See: [www.dt.ua/UKRAINE/kabmin-rozv-yazav-ruki-berkutu-dlya-zastosuvannya-sili-do-demonstrantiv-na-grushevskogo-135934\\_.html](http://www.dt.ua/UKRAINE/kabmin-rozv-yazav-ruki-berkutu-dlya-zastosuvannya-sili-do-demonstrantiv-na-grushevskogo-135934_.html) (accessed 01.03.2016).

<sup>53</sup> Censor.net: "Why I am sure that the people on the barricades were killed by "Berkut"" March 3, 2014. See: [www.censor.net.ua/resonance/269229/pochemu\\_ya\\_uveren\\_cho\\_lyudeyi\\_na\\_barrikadah\\_ubil\\_berkut](http://www.censor.net.ua/resonance/269229/pochemu_ya_uveren_cho_lyudeyi_na_barrikadah_ubil_berkut) (accessed 03.03.2016).

<sup>54</sup> Red Cross Society of Ukraine: "Ukrainian Red Cross Society assists victims in the clashes" Kyiv, January 24, 2014. See: [www.redcross.org.ua/modules/news/index.php?id=1012](http://www.redcross.org.ua/modules/news/index.php?id=1012) (accessed 03.03.2016).

<sup>55</sup> CommentsUA: "A Peaceful night on the Maidan was overshadowed by "titushky" who were the police members", December 7, 2013. See: [www.ua.comments.ua/life/216353-spokiyunu-nich-maydanu-zatmarili-titushki.html](http://www.ua.comments.ua/life/216353-spokiyunu-nich-maydanu-zatmarili-titushki.html) (accessed 03.03.2016).

located for the treatment of wounded protesters. The soldiers of Special Forces "Alfa", entered the Trade Unions building from the upper floors, and then started the fire. At least two volunteers burned inside.<sup>56</sup> On February 19th, the Chairman of the Security Service of Ukraine Oleksandr Yakimenko announced the counterterrorist operation and the issuance of firearms. On February 20th, 2014, Minister of Internal Affairs Vitaliy Zakharchenko signed a decree issuing military weapons to the police.<sup>57</sup> At the same time, some of the police officers began to spontaneously leave the position of an officer by refusing to use weapons against unarmed people.

The events further took an unfortunate turn when snipers in black uniforms, with yellow ribbons on their sleeves began firing at unarmed protesters, which was recorded in numerous videos. Following the gruesome developments, Viktor Yanukovych fled Kyiv, and was later discovered in Russia. Ultimately, citizens reached the goals of the protest, however by the price of many violations of human rights, which created a state of shock for the entire nation. These events and illegal actions of the perpetrators cannot be left without being brought to justice.

## **2.5. Mechanisms to convict perpetrators**

The protests on Maidan created a significant resonance in the Ukrainian society and the state leadership. Feeling the criminal responsibility and inevitability of punishment for numerous crimes addressed towards civilians, the top elite political figures fled the country immediately.

The complexity of the criminal investigation process, as well as the potential lack of will from the authorities, has left the cases of Maidan without concrete judgment of conviction, nor were there any serious repercussions to those individuals responsible for organising and executing the serious violations of human rights against civilians, to this day.

According to the report on the human rights situation in Ukraine, conducted by the Office of the United Nations High Commissioner for Human Rights on April 15th, 2014, during the period of Revolution of Dignity, it was noted that the following types of violations of human rights were infringed upon: freedom of assembly, excessive use of force, killings, disappearances, torture and ill-treatment.

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<sup>56</sup> EspressoTV: "Gennady Moskal named people who stormed the building trade unions during the stripping of Maidan" May 15, 2014. See: [www.link:espreso.tv/news/2014/05/15/moskal\\_Nazvav\\_lyudey\\_yaki\\_shturmuvaly\\_budynok\\_profspilok\\_pid\\_chas\\_zachystky\\_maydanu](http://www.link:espreso.tv/news/2014/05/15/moskal_Nazvav_lyudey_yaki_shturmuvaly_budynok_profspilok_pid_chas_zachystky_maydanu) (accessed 03.03.2016).

<sup>57</sup> LbUa: "Zakharchenko signed an order for the extradition of military weapons law enforcement officers" February 20, 2014. See: [http://lb.ua/news/2014/02/20/256285\\_zaharchenko\\_Podpisal\\_prikaz\\_vidache.html](http://lb.ua/news/2014/02/20/256285_zaharchenko_Podpisal_prikaz_vidache.html) (accessed 03.03.2016).

In the following report, there were several recommendations made for immediate action to the Government of Ukraine. One of the most important was as followed, “to ensure accountability for all human rights violations committed during the period of unrest, through securing of evidence and thorough, independent, effective and impartial investigations, prosecutions and adequate sanctions of all those responsible for these violations; ensure remedies and adequate reparations for victims.”<sup>58</sup> However, the “immediate action” of the government of Ukraine regarding “investigations, prosecutions and adequate sanctions of all those responsible for these violations” has not been noticed. This could be explained by the lack of political will of current Ukrainian government and the remaining strong influence on blocking this process from the side of the previous government representatives.

An illustration of this case can be made from the report from April 20th, 2016, made by Serhiy Horbatiuk, the Head of Special Investigations Department of the Prosecutor General's Office of Ukraine, which was addressed to the Acting Prosecutor General, Yuri Sevruk. The author stated: “I wrote a report addressed to Yuri Sevruk over the fact of pressure on me and the Special Investigations Department.” Also, Serhiy Horbatiuk said that four criminal proceedings against him and his subordinates were raised by the department for investigation into the crimes, committed by the Prosecutor General Office's law enforcement officials.<sup>59</sup>

From the perspective of Ukrainian national legal mechanisms, the following arguments provide understanding of investigation difficulties and the process of bringing responsible persons to justice, who are guilty of massive violations of human rights during the Revolution of Dignity. However, due to certain societal pressures and public discussions of this matter, as well as continual media coverage, there are certain expectations that this case will be progressed in the near future.

Another aspect of the investigations of Maidan crimes has international nature. Today, Ukraine is not a party to the treaty of the International Criminal Court (ICC), as it has not yet ratified the Rome Statute. However, on April 17th, 2014, the Government of Ukraine drafted a declaration under Article 12(3) accepting the jurisdiction of the ICC over the alleged crimes committed during Maidan events on its territory for the period starting November 21st, 2013 to February 22nd, 2014. Accordingly, in April 2014, the Prosecutor of the ICC, Fatou Bensouda,

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<sup>58</sup> United Nations Human Rights Office of the High Commissioner: “Reports on the human rights situation in Ukraine” April 15, 2014. See: [www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx](http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx) (accessed 03.04.2016).

<sup>59</sup> Human Rights Information Center: “Pressure on officials responsible for investigation into crimes on Maidan reported” April 20, 2016. See: [https://humanrights.org.ua/en/material/vidpovidalnij\\_za\\_rozsliduvannja\\_zlochiviv\\_na\\_majdani\\_gorbatjuk\\_zajavljae\\_pro\\_tisk?cl=en](https://humanrights.org.ua/en/material/vidpovidalnij_za_rozsliduvannja_zlochiviv_na_majdani_gorbatjuk_zajavljae_pro_tisk?cl=en) (accessed 22.04.2016).

decided to open a preliminary examination of the situation in Ukraine in order to establish whether the Rome Statute criteria for opening an investigation are met.<sup>60</sup>

There are certain concerns regarding reality of power of ICC on the territory of Ukraine in terms of investigation of the crimes, which were committed during the period of the Revolution of Dignity. The biggest argument is that Ukraine is still not recognized as a party of the Agreement. According to the rules and provisions of the Rome Statute, the investigation by ICC cannot be done in retrospective. Therefore, in order to rely on this mechanism of international responsibility for punishing perpetrators of human rights violations during the Maidan protest, the above-mentioned Convention had to be signed before these events took place.

As a result, to this day, there has not been sufficient criminal punishment regarding the numerous cases of human rights violations during the protests on Maidan, that would have been carried out by the International Criminal Court representatives. The shortcomings of the legal mechanisms and the lack of international attention to the substantial violations that took place, can also be seen in the lack of attention to the new and even more resonant events, which occurred on the territory of this country soon after the Revolution of Dignity.

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<sup>60</sup> International Criminal Court. Declaration by Ukraine lodged under Article 12(3) of the Rome Statute. April 2014. See: [www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx) (accessed 29.03.2016).

### **3. Violations of human rights and Russian aggression in Crimea**

#### **3.1. Social background**

The Autonomous Republic of Crimea is a peninsula in the southernmost part of the Ukrainian territory, located on the northern coast of the Black Sea. Unlike the other regions of Ukraine, legally it has its own parliament, which provides a special political power to people, living in this region.

Crimean peninsula is now occupied by the Russian Federation, which came as a result of many human rights being violated, since a significant part of the local population was not supportive, nor did it agree with the new order that was recently established on their territory by the Russian leader, Vladimir Putin.

The population of Crimea during the period when this region was under the control of Ukraine was around 2.4 millions inhabitants. It was fairly called the most Russian region of Ukraine, since the majority of its population, around 58 percent of people, recognised themselves as ethnic Russians.<sup>61</sup>

However, according to the results of a survey conducted in 2011, by the Razumkov Centre, an independent political institution in Kyiv, 71.3% of Crimean residents said they consider their homeland Ukraine. The survey showed that 66.8% of ethnic Russians living on the Crimean peninsula, acknowledged Ukraine as their home. Among ethnic Ukrainian and Crimean Tatars, the figure was over 80%. And only 18.6% of respondents said they did not consider Ukraine their motherland, and 10% could not answer the question.<sup>62</sup>

From the results of the survey, it can be concluded that even if most of the inhabitants of Crimea are Russian speakers, they still consider Ukraine to be their home, the country they grew up in and built their lives. The majority of the individuals did not demonstrate their will to be part of another country before the Russian occupation.

#### **3.2. Intervention in Crimea**

On February 22nd, 2014, after the end of the Revolution of Dignity, the Parliament of Ukraine adopted a resolution, which declared that Viktor Yanukovych had withdrawn from

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<sup>61</sup> О.Г. Воронко. Особливості етнодемографічних процесів у Криму в другій половині ХХ ст. Культура народів Причорномор'я. — 2011. — № 198. — pp 28-33.

<sup>62</sup> Центр Разумкова. Національна безпека і оборона. Якість життя кримчан - пріоритети розвитку криму: проблеми реалізації. №4-5, 2011, pp. 71-136.

performing his duties.<sup>63</sup> As a result, it was decided the next day, that the duties of the president were entrusted to the parliamentary speaker, Oleksandr Turchynov for the time being.<sup>64</sup>

At that time, according to various opinions, future security, political unity and territorial integrity depended on how President Vladimir Putin reacts to the overthrow of his ally Viktor Yanukovich, and that down this road may lie the dread prospect of territorial partition, peacefully achieved or not.<sup>65</sup>

An advisor to the US President on national security, Susan Rice, in response to the position of Russian politicians, said that Putin would be making a big mistake, if he were to send troops to Ukraine.<sup>66</sup> At the same time, Ukrainian media began to inform about a significant accumulation of Russian military forces near the borders of Ukraine and their penetration into the territory of Crimea.

In fact, since February 27th, 2014, on the territory of Crimea, actions of numerous armed groups were deployed. On the one hand, these were self-defence units of the local residents, special riot police "Berkut", Cossacks and Russian representatives of various NGOs who arrived in Crimea to protect their compatriots. On the other side, there was a group of well-armed and equipped men in uniforms without marks of recognition, who were acting autonomously, by order of own leadership, and did not subordinate to local authorities. Up until the end of the Crimean events, these military formations provided control over strategic targets and local authorities, their security and functioning, blocked Ukrainian military facilities, military units and headquarters.

Ukrainian and Western media, the Ukrainian authorities and the leadership of Western countries in the first days, confidently said that they are talking about actions of the Russian forces units, qualifying them as aggression as these actions could be recognised in accordance with the United Nations General Assembly (UNGA) resolution number 3314.<sup>67</sup> The first time that the Russian President admitted to the fact that those were his troops, was only a year later in

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<sup>63</sup> Verkhovna Rada of Ukraine Official Web Portal. The draft resolution of the Verkhovna Rada of withdrawal Viktor Yanukovich. 02/22/2014. See: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=49853](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=49853) (03.03.2016).

<sup>64</sup> Verkhovna Rada of Ukraine Official Web Portal. Resolution of the Verkhovna Rada of Ukraine number 764-VII from 23.02.2014 "On laying on the Head of Verkhovna Rada of Ukraine the duties of President of Ukraine in accordance with Article 112 of the Constitution of Ukraine". See: <http://zakon3.rada.gov.ua/laws/show/764-18> (accessed 03.03.2016).

<sup>65</sup> The Guardian: "Russia feels double-crossed over Ukraine – but what will Putin do?" February 23, 2014. See: [www.theguardian.com/commentisfree/2014/feb/23/ukraine-deal-russia-double-crossed-vladimir-putin](http://www.theguardian.com/commentisfree/2014/feb/23/ukraine-deal-russia-double-crossed-vladimir-putin) (04.03.2016).

<sup>66</sup> The Telegraph: "US tells Russia to keep troops out of Ukraine's Crimea flashpoint looms." February 23, 2014. See: [www.telegraph.co.uk/news/worldnews/europe/ukraine/10657067/US-tells-Russia-to-keep-troops-out-of-Ukraine-as-Crimea-flashpoint-looms.html](http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10657067/US-tells-Russia-to-keep-troops-out-of-Ukraine-as-Crimea-flashpoint-looms.html) (04.04.2016).

<sup>67</sup> United Nations Audiovisual Library of International Law. Definition of Aggression General Assembly resolution 3314 (XXIX). 14 December 1974. See: <http://legal.un.org/avl/ha/da/da.html> (accessed 04.03.2016).



an interview for the Russian documentary movie “Crimea. The way home”.<sup>68</sup>

On March 16th, 2014, in the Autonomous Republic of Crimea with a significant violation of a number of Ukrainian and international legal norms, a referendum on the status of the territory was held. Despite the numerous proposals under the political representatives of the international community, Vladimir Putin on March 18th, during a speech to the deputies in the Kremlin’s State Duma, the Federation Council and representatives of regional leaders, recognized the referendum in Crimea and that it took place in full accordance with democratic procedures and international law. The annexation of the Ukrainian territory was justified with the common history and called it the reunification of the divided Russian people and a correction of historical injustice. Ukrainian authorities and the international community did not recognize this "referendum" as legitimate and its results to be genuine. Only several United Nations countries, such as Cuba, Venezuela, Afghanistan, North Korea and Syria voted on March 27th, 2014 against regarding territorial integrity of Ukraine and its legitimate belonging to the Russian Federation.<sup>69</sup>

The occupation of the Crimean peninsula by Russia was relatively short in term and without much military force, which has been organised in a very inconvenient time for Ukraine, after the Revolution of Dignity. There were no casualties in this clash of military forces, however, this intervention had a huge impact on the future of this region and its people, many of whom affected by a number of human rights violations.

### **3.3. Establishment of Russian order and violations of human rights**

Despite all the prohibitions from the international community, Crimean peninsula, which officially belonged to Ukraine, was occupied by the Russian Federation. Many international laws and regulations were broken and human rights of local people living on this land were violated in different ways. However, for the leaders, it was not enough to “restore” as they used to say to their people, the historical justice with proclaiming a foreign land as their own. Crimea was waiting on a new political, economic and legal order, establishment of which caused hardships for many local people.

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<sup>68</sup> BBC News: “Putin reveals secrets of Russia’s Crimea takeover plot.” March 9, 2015. See: <http://www.bbc.com/news/world-europe-31796226> (04.03.2016).

<sup>69</sup> United Nations General Assembly. Resolution adopted by the General Assembly on 27 March 2014 68/262. Territorial integrity of Ukraine. April 1, 2015. See: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/262](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262) (14.03.2016).

On March 7th, 2014 the Crimean Parliament adopted a resolution on the independence of Crimea and the proclamation of an independent sovereign state, the Republic of Crimea. On March 18th, 2014, the Treaty between the Russian Federation and the Republic of Crimea was signed on the acceptance of Crimea into the composition of the Russian Federation Republic and the formation of new constituent entities. The Russian Federation began an active "integration" on the territory of Crimea. Many changes began to be widely spread, such as the change in the calculation of time and currency, the Crimean citizens were automatically recognized as citizens of the Russian Federation, as well as, the introduction of new legislations that when compared to Ukrainian laws, are oppressive and limiting to human rights in different spheres of life. In addition, the occupation authorities during their process of integration, adopted a number of laws and regulations that resulted in significant deterioration of the situation and violation of human rights.

The Law of the Republic of Crimea "On peculiarities purchase of property in the Republic of Crimea" from August 8th, 2014, actually disguised raider seizures of private property.<sup>70</sup> Another example is the law of the Republic of Crimea "On the national militia, People's Army of the Republic of Crimea" from June 12th, 2014.<sup>71</sup> This legal act legalized paramilitary formation that took part in the captivity of the peninsula, seizure of property involved in kidnappings and murders, dispersal of peaceful assembly and obstruction of journalistic activities.<sup>72</sup> There was a decision of the Verkhovna Rada of Crimea "On combating the spread of extremism in Crimea" from March 11th, 2014, and also a Federal Law of the Russian Federation № 91 "On the application of the provisions of the Criminal Code and the Criminal Procedure Code of the Republic of Crimea and federal city Sevastopol" on May 5th, 2014.<sup>73</sup> According to these documents, it was established that there could be a possibility to be criminally liable for acts committed in Crimea and the city of Sevastopol before March 18th, 2014, when Crimea officially became under political and legal control of the Russian Federation.

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<sup>70</sup> Law of the Republic of Crimea on August 8, 2014 №47 - "On peculiarities of foreclosure properties in the Republic of Crimea". August 10th, 2014. See: <http://www.rg.ru/2014/08/08/krim-proekt-vikup-reg-dok.html> (accessed 12.03.2016).

<sup>71</sup> Law of the Republic of Crimea on June 12, 2014, № 22-ZRK - "On people's militia - citizen patrols of the Republic of Crimea". Approved by the State Council of the Republic of Crimea. See: [http://mirnoe.com/respublika\\_krym/zakonodatelsvo\\_rk/1465-zakon-respubliki-krym-o-narodnom-opolchenii-narodnoy-druzhine-respubliki-krym.html](http://mirnoe.com/respublika_krym/zakonodatelsvo_rk/1465-zakon-respubliki-krym-o-narodnom-opolchenii-narodnoy-druzhine-respubliki-krym.html) (accessed 12.03.2016).

<sup>72</sup> Yulia Gorbunova: Human Rights Abuses in Crimea under Russia's Occupation. Security and Human Rights, Volume 25, Issue 3, pp. 328 – 340. 2014.

<sup>73</sup> Federal law of the Russian Federation from May 5 2014 №91-FZ "On the application of the provisions of the Criminal Code and the Criminal Procedure Code of the Russian Federation on the territory of the Republic of Crimea and the federal city of Sevastopol. See: [www.rg.ru/2014/05/07/primenenie-dok.html](http://www.rg.ru/2014/05/07/primenenie-dok.html) (accessed 12.03.2016).

Following these newly established laws, there was an initiation of mass arrests, which had the aim of prosecuting pro-Ukrainian activists and leaders of the Crimean Tatar community.

According to article 7 of the European Convention of Human Rights (ECHR), “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”<sup>74</sup>

In practice, all criminal offenses and cases, which were in the process of investigation by authorities and the courts of Ukraine, located in Crimea and in Sevastopol, have been reclassified under the legislation of the Russian Federation. There were recorded cases about the suspension of numerous prosecutions, referring to Article 12 of the Criminal Code of the Russian Federation, as well as, the sentencing decision contrary to the referred provisions of the law. These circumstances give reason to believe that the authorities of the Russian Federation have violated the safeguards provided by Article 7 of the ECHR. As such, in this context arises the question of the validity of detention.

According to Article 5 of the ECHR, one of the grounds for detention in custody is a reasonable suspicion that the person committed the offense. Thus, everyone detained has the right to check the lawfulness of his detention and has the right to be released if such detention was unlawful. Under the provisions of Article 5 of the ECHR in conjunction with the provisions of Article 7 of the Convention of the Russian Federation, the government was obliged to immediately review the validity of the detention of persons whom a preventive measure was chosen in accordance with the laws of Ukraine. However, over a long term, after the announcement of Crimea becoming part of Russia, no action to review the reasonableness of detention was taken. Prosecutors and judges were in a state of confusion due to a sharp change in legislation.

As a result of the occupation of the Crimean peninsula, changes covered all aspects of life, currency, legislation, paperwork, rules providing medical and social services in its scope have led to confusion and violations of their social relations and negatively affected the personal lives of the vast majority of citizens. One of these could be observed with the forced shutdown of Ukrainian telephone operators on the Crimean peninsula in August and September 2014, where

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<sup>74</sup> European Court of Human Rights. “European Convention on Human Rights.” See: [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed 12.03.2016).

contacts were severed between Crimeans and the inhabitants of mainland Ukraine.<sup>75</sup> Instead people had to buy services from Russian companies. According to Article 1 of the Protocol 1 of ECHR “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”<sup>76</sup>

Also, pursuant to Article 46 of the Convention (IV) regarding the Laws and Customs of War on Land and its annexation, which states that, “Family honour and rights, the lives of persons, and private property, as well as, religious convictions and practice, must be respected. Private property cannot be confiscated.” Article 56 of the same document specifies that, “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”<sup>77</sup>

In violation of these norms, actions of Russian invaders led to massive violations of property rights on the peninsula. Since the beginning of the occupation, under the guise of the so-called "nationalization", state property on the peninsula of Ukraine was seized, because a decision was adopted to "nationalize" businesses, property, land, schools, monuments, etc. This occurred without the consent of the Ukrainian authorities, nor were there any compensation for damages.

On August 8th, 2014, a Law of the Republic of Crimea has been passed “On peculiarities of foreclosure of property in the Republic of Crimea” and amendments to it, with the assistance of the new government of Crimea that could buy the historical monuments and cultural heritage sites that are privately owned. Most of these objects are socially and culturally meaningful for Crimea.<sup>78</sup> Representatives of the occupation authorities announced that this law allows them to apply its provisions to former state or municipal buildings that previously passed into private ownership. In most cases, the seizure of property was conducted by the legalized paramilitary

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<sup>75</sup> LB.ua: ““Ukrtelecom” stopped working in Crimea - Communication on the peninsula completely disabled” February 10th, 2015. See: [http://ukr.lb.ua/news/2015/02/10/295007\\_ukrtelekom\\_pripiniv\\_robotu\\_krimu.html](http://ukr.lb.ua/news/2015/02/10/295007_ukrtelekom_pripiniv_robotu_krimu.html) (accessed 12.03.2016).

<sup>76</sup> European Court of Human Rights. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. See: [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention\\_ENG.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention_ENG.pdf) (20.03.2016).

<sup>77</sup> International Committee of the Red Cross. 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. See: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788> (20.03.2016).

<sup>78</sup> Law of the Republic of Crimea from August 10th, 2014 №47-ZRK “On peculiarities of foreclosure properties in the Republic of Crimea”<http://www.rg.ru/2014/08/08/krim-proekt-vikup-reg-dok.html> (accessed 20.03.2016).

formations, such as The "Crimean Self-defense". Within ten months after the occupation of the Crimean peninsula, with the help of owners and lawyers, it was calculated that the price of the seized property and other assets was worth more than one billion dollars USD.<sup>79</sup> Many problems were caused in this area of property rights by the actual dual jurisdiction in matters of their registration.

The occupation of the Crimean peninsula was accompanied by full simultaneous change of the legal framework for the legislation of the Russian Federation, what caused the deterioration and restriction of freedom of speech, freedom of expression and freedom of peaceful assembly. In parallel, it was accompanied by systematic repression through criminal and administrative prosecution of activists and pro-Ukrainian population.

In addition, Russia has enforced a complicated legislation on the freedom of migration. The legislation of the Russian Federation introduced mandatory provisions about reporting by citizens if they have an existing second citizenship.<sup>80</sup> Starting from January 1st, 2016, in accordance with the newest edition of the Criminal Code of Russia, individuals will be punished for failing to report about the possession of a secondary passport of another country. This also applies if an individual owns a residence permit or another valid document confirming his right to permanent residence in a foreign country.<sup>81</sup> According to this, all those that were registered in Crimea during the period of the occupation will have to inform the authorities about the presence of their Ukrainian citizenship. If citizens informed the authorities after a certain term or indicate incomplete or obviously inaccurate data, they face administrative liability.

The invasion of the Crimean peninsula by the Russian Federation and the establishment of a new order has affected many local citizens in their freedom of expression and freedom of peaceful assembly. There have been established a number of changes in the Russian legislation and adopted a number of regulations in Crimea with significant restrictions on freedom of assembly, which cannot be interpreted as reasonable in a democratic society.

On June 21st, 2014, there was a law passed in Russia, № 258-FZ "On Amendments to Certain Legislative Acts of the Russian Federation in improving legislation on public events", which established criminal responsibility for repeated violation of the order of organisation or

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<sup>79</sup> Macfarquhar, N. The New York Times: "Seizing Assets in Crimea, From Shipyard to Film Studio." January 10th, 2015. See: [www.nytimes.com/2015/01/11/world/seizing-assets-in-crimea-from-shipyard-to-film-studio.html?\\_r=3](http://www.nytimes.com/2015/01/11/world/seizing-assets-in-crimea-from-shipyard-to-film-studio.html?_r=3) (accessed 20.03.2016).

<sup>80</sup> Federal Law of the Russian Federation from June 4, 2014 № 142-FZ "On Introducing Amendments to Articles 6 and 30 of the Federal Law "On Citizenship of the Russian Federation 'and Certain Legislative Acts of the Russian Federation"". See: <http://www.rg.ru/2014/06/06/grajdanstvo-dok.html> (accessed 21.03.2016).

<sup>81</sup> "The Criminal Code of the Russian Federation" Article 330.2 N 63-FZ (Ed. on 11.28.2015) See: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=189580;fld=134;dst=1630,0;rnd=0.5052344263531268> (accessed 23.03.2016).

carrying out large scale events.<sup>82</sup> On October 4th, 2014, another law was passed, № 292-FZ “On Amending Article 9 of the Federal Law ‘On meetings, rallies, demonstrations, marches and pickets’,” whereby public events could no longer begin before 7:00 and after 22:00, by the local time, excluding public events dedicated to memorable dates in Russia.<sup>83</sup> On November 12th, 2014, the Council of Ministers of Crimea issued a resolution under №452 “On approving the list of places for public events in Crimea, which defines the places for peaceful gatherings”. For example, in Simferopol, it is only allowed to conduct peaceful assembly in four specifically assigned places.

Setting repressive legislation, criminal liability for "appeals to separatism" systemic violations of the right to peaceful assembly and targeted persecution of pro-Ukrainian activists by the police and so-called "Crimean self-defence" is not only a flagrant violation of international law, but public pressure, attempts to destroy civil society and intimidate the population that does not agree with the occupation of the peninsula.

The establishment of Russian order in Crimea coincided with an unprecedented increasing of human rights violations in this region. According to CrimeaSOS from the beginning of the intervention in February 2014, until today in the Crimean peninsula were characterized 195 cases of human rights abuses which are considered to such categories as deprivation of life, torture, kidnapping, violence, illegal detention, discrimination, restrictions of freedom of movement, raids, pressure on media, the prohibition of peaceful assembly, pressure on Mejlis of the Crimean Tatar population, pressure on religious communities, and interrogations.<sup>84</sup>

In this context, it is important to mention the difficult situation with political prisoners, who were arrested by the Russian regime in Crimea and would not acknowledge the Ukrainian judicial system, where they were officially located. According to Dmytro Kuleba, the Ambassador-at-Large at the Ministry of Foreign Affairs of Ukraine, who stated at a press conference that a total of 23 Ukrainians were officially imprisoned for political reasons on the

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<sup>82</sup> Federal Law of Russian Federation from July 13, 2015 № 258-FZ “On Amendments to Article 222 of the Civil Code of the Russian Federation and the Federal Law "On introduction of the first part of the Civil Code of the Russian Federation”. See: [www.rg.ru/2015/07/16/grazhdansky-codex-dok.html](http://www.rg.ru/2015/07/16/grazhdansky-codex-dok.html) (accessed 23.03.2016).

<sup>83</sup> Federal Law of Russian Federation from October 4, 2014 № 292-FZ “On Amendments to Article 9 of the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing”. See: <http://www.rg.ru/2014/10/08/miting-dok.html> (accessed 27.03.2016).

<sup>84</sup> CrimeaSOS. Human rights in Crimea. n.d. See: <http://crimeamap.krymsos.com/eng/list.html> (accessed 27.03.2016).

territory of the Russian Federation.<sup>85</sup> Among those arrested is a Ukrainian filmmaker from Crimea, Oleg Sentsov, who was supporting the local protest during the Revolution of Dignity. In addition, several other individuals were illegally imprisoned. Among them were Alexander Kolchenko, a student activist and Gennadiy Afanasyev, a photographer, who was recording short videos to demonstrate his pro-Ukrainian views.<sup>86</sup> In these cases, there can be followed a motive sequence to deter active citizens, who were suspected to not be loyal to the new regime and to spread fear to their supporters.

Regarding the situation around the Ukrainian political prisoners such as Sentsov, Kolchenko, Afanasyev and others, who were illegally arrested in Crimea and prosecuted as terrorists against the Russian Federation, there are various mechanisms, which are involved in order to release these people. The biggest legal contrariety is the fact that Ukraine recognises these persons as their own citizens and claims for the transfer to their homeland. However, due to the fact that Russia is recognising Crimea as its own territory, from their understanding these convicted individuals are Russian citizens, who committed crimes on the territory located under the Russian jurisdiction.

Nevertheless, on March 10th, 2016, Ukraine's Ministry of Justice sent a request to Russia to transfer 4 convicted Ukrainians in accordance to the Convention on the Transfer of Sentenced Persons.<sup>87</sup> As a response, the Ministry of Justice of Russia has sent an order to the Prison Service to prepare documents for the transfer of the sentenced Oleg Sentsov, Gennady Afanasyev, Alexander Kolchenko and Juriy Soloshenko to Ukraine. At the same time, the Ministry of Justice stressed that the Russian federal courts will make the final decision. According to Dmitriy Dindze, the lawyer of Oleg Sentsov, the procedure of extradition in this case may take around one year.<sup>88</sup> This situation creates a relatively small probability of the release of those who were imprisoned illegally.

In terms of human rights violations in Crimea, a particular attention should be placed on the problems and harm inflicted on the Crimean Tatars.

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<sup>85</sup> TSN.ua: "The Foreign Ministry called the official number of Ukrainian political prisoners in Russia and occupied CRIMEA". March 25, 2016. See: <http://tsn.ua/ukrayina/u-mzs-nazvali-oficiynu-kilkist-politv-yazniv-ukrayinciv-urosiiyi-ta-okupovanomu-krimu-617789.html> (Accessed 05.04.2016).

<sup>86</sup> Ministry of Foreign Affairs of Ukraine: "Ukrainians Illegally Detained in Russia and in the occupied Crimea". See: <http://mfa.gov.ua/en/page/open/id/4177> (accessed 27.04.2016).

<sup>87</sup> Council of Europe: "Convention on the Transfer of Sentenced Persons". Strasbourg, 21/03/1983. See: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/112>. (accessed 27.04.2016).

<sup>88</sup> Hromadske: "Sentsov's lawyer: Extradition of Ukrainians could take nearly a year". April 8, 2016, See: <http://www.hromadske.tv/politics/advokat-sentsova-ekstraditsiya-ukrayintsiv-mozhe-t/> (Accessed 27.04.2016).

### 3.4. Repressions directed at the Crimean Tatars

Crimean Tatars are a national ethnic group, which historically has lived on the territory of Crimean peninsula. Unlike ethnic Ukrainians and Russians, who inhabit this land today, Crimean Tatars do not have another territory, which would be recognized as their home.

Before the occupation, Crimean Tatars were constituted more than 12% of the population of the peninsula, these are around 300 000 inhabitants.<sup>89</sup> These individuals can be distinguished by their appearance, language and religion. Most of the Crimean Tatars have a negative attitude towards the Russian policy, since around 185 thousand of them were deported by Stalin out of Crimea to different regions of Russia in 1944.<sup>90</sup>

When Ukraine restored its independence, the deported Crimean Tatars finally got a chance to return back home. Despite the cultural differences, naturally, naturally, they have good relations with the Ukrainian population. The Ukrainian government has officially recognized the deportation of Crimean Tatars as an act of genocide, which destroyed 46% of the population of this nation.<sup>91</sup>

Since the beginning of the annexation, the Crimean Tatars became victims of many abuses. Generally, disappearances of Crimean Tatars were quite a popular practice. One of the first was a Crimean Tatar activist Reshat Ametov, who was found two weeks after he participated in a peaceful protest outside the occupied Crimean parliament. According to witnesses, people in military uniform kidnapped Ametov from the square.<sup>92</sup> In October 2014, the national leader of the Crimean Tatars, Mustafa Dzhemilev on the Parliamentary Assembly of the Council of Europe session announced that 18 people of his nation were missing without reason. Another body was found mutilated.<sup>93</sup> There are still no proper evidence for as to what happened to all these people and where they are now. The official website of the local law enforcement agencies of Crimea also do not carry any relevant information about the disappearance of these individuals. Despite the frequent kidnappings among Crimean Tatars,

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<sup>89</sup> Бакальчук В.О. Тенденції етнокультурної толерантності в українському суспільстві. Стратегічні Пріорітети: Науково-Аналітичний Щоквартальний Збірник. Київ: Національний Інститут Стратегічних Досліджень. 2007, № 4(5), pp. 69-75.

<sup>90</sup> Uehling, G. "Beyond memory of the Crimean Tatars' deportation and return". New York: Palgrave Macmillan 2004. p. 91.

<sup>91</sup> Verkhovna Rada of Ukraine Official Web Portal. Resolution of the Verkhovna Rada of Ukraine from November 12, 2015 "On the genocide of the Crimean Tatar people". See: <http://zakon4.rada.gov.ua/laws/show/792-19> (accessed 02.03.2016).

<sup>92</sup> Human Rights Watch: "Crimea: Disappeared Man Found Killed." March 18, 2014. See: [www.hrw.org/news/2014/03/18/crimea-disappeared-man-found-killed](http://www.hrw.org/news/2014/03/18/crimea-disappeared-man-found-killed) (accessed 02.03.2016).

<sup>93</sup> QHA Crimean News Agency: "18 Crimean Tatar already missing in Crimea: Jemilev." October 3, 2014. See: <http://qha.com.ua/en/politics/18-crimean-tatar-already-missing-in-crimea-jemilev/132375/> (accessed 02.03.2016).



according to Rakhat Chubarov, the leader of Mejlis<sup>94</sup>, there is limited information on those who were killed.<sup>95</sup>

According to the monitoring of international organisations, there was a tendency to increase the violence and repression of the Crimean Tatar representatives from both the government and the self-proclaimed informal groups of "self-defense". The repression against Crimean Tatars in annexed Crimea and the oppression of their rights have left many displaced from their native land and forced many to leave the peninsula.

In relation to indigenous Crimean Tatars, the occupation authorities launched a totally offensive strategy of the displacement of these people outside their homeland. The beginning of this implementation was a ban policy on entry to Crimea for the national leaders Mustafa Dzhemilev, Rakhat Chubarov and Hayana Uksel. Russian occupation authorities in Crimea forced Crimean Tatars leave the peninsula, using different methods. One of the ways to displace Crimean Tatars was a call to serve in the armed forces of the Russian Federation. In case of refusal to serve in the Russian army, they would face criminal prosecution. Due to this, many Crimean Tatars would have to travel out of the peninsula, which seems more like an organised "voluntary" deportation of the Crimean Tatars by the occupation authorities.<sup>96</sup>

Ten months after the invasion began, around twenty thousands people had to leave Crimea. Half of these, around ten thousand people were Crimean Tatars.<sup>97</sup> According to Mustafa Dzhemilev, as of December 15th, 2015, from the beginning of the conflict already 35 thousand persons have been forced to leave Crimea. Out of this number of people, proportionally there are many Crimean Tatars. For example, since the Russian annexation of the Crimean peninsula, approximately 100 searches have been conducted amongst the local residents. In particular, 95% of the searches were carried out in homes and mosques of the Crimean Tatars.<sup>98</sup>

Local authorities applied measures to control the activities of religious communities. There were attempts to deprive the legitimacy of the mosque, or transfer them to subordinate community, which is more loyal to the new government, or are controlled by it. On the territory

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<sup>94</sup> Mejlis Crimean Tatar people official website: "The leader of Mejlis is the single highest executive- representative of the Crimean Tatars." See: <http://qtm.org/en/general-information-about-mejlis> (accessed 05.04.2016).

<sup>95</sup> Liha.Biznes.Inform: "During the year of occupation the Crimea was killed up to 10 of the Crimean Tatars - Chubarov. February 23, 2015. See: [http://news.liga.net/news/politics/5150484-za\\_god\\_okkupatsii\\_v\\_krymu\\_Ubili\\_do\\_10\\_krymskikh\\_tatar\\_chubarov.htm](http://news.liga.net/news/politics/5150484-za_god_okkupatsii_v_krymu_Ubili_do_10_krymskikh_tatar_chubarov.htm) (accessed 05.04.2016).

<sup>96</sup> National Institute for Strategic Studies under the President of Ukraine: "Concerning the rights of the Crimean Tatar people in annexed Crimea ". (n.d.). See: <http://www.niss.gov.ua/articles/1798/> (accessed 05.04.2016).

<sup>97</sup> Krym.Realii: "Crimea have left 10 thousand Crimean Tatars - Jemilev." August 2, 2015. See: <http://ua.krymr.com/content/news/27165502.html> (accessed 05.04.2016).

<sup>98</sup> Ukrainski Novyny: "Crimea left 35 thousand internally displaced persons, - Jemilev." December 15, 2015. See: <http://ukranews.com/news/192922.Krim-pokinulo-35-tis-vinuzhdennih-pereselentsev---Dzhemilev.ru> (accessed 05.04.2016).

of Crimea, there were a series of searches in mosques, madrasahs and private homes of Muslims, during which security forces were looking for extremist literature, which up until recently this literature was not recognised as extremist in the Ukrainian Crimea.<sup>99</sup>

The dismantling of organisations of Crimean Tatars suppressed their political identity. Mejlis of the Crimean Tatar people have been a recognized organisation long ago. De facto, it is a representative body of the Crimean Tatar community, including in relations with the authorities worldwide. On May 18th, 2014, in an interview with the head of the recently established Crimean administration, Sergei Aksenov said that the Majlis will need to register in accordance with the Russian legislation, because otherwise it will not receive any recognition from the authorities. The government of Crimea implemented policies aimed at eliminating the Mejlis. Bank accounts belonging to "Fund of Crimea", which was supporting the activities of Majlis were seized and closed down. There were forced evictions from their own buildings, which provided office to the Mejlis by the fund. These actions have resulted in the suspension of any further activities by this organisation.

The Russian authorities believe that the Crimean Tatars, with the historical experience of struggle against the regime can lead in the development of Tatar, Turkic or even Muslim world in Russia, what possibly could be a threat to the current government. According to the head of the Mejlis, the Russian authorities in the occupied territory of Crimea are looking for those individuals who will guarantee them control over their people. The result of this search was the creation in early December 2014, of the movement of the Crimean Tatar people "Къыгым", which aims to operate in eight regions of the Russian Federation and promises to be loyal to the recently established regime.<sup>100</sup>

On April 26th, 2016, the Crimean Supreme Court granted the petition of Natalia Poklonska, the public prosecutor of Crimea, to recognize the Mejlis of the Crimean Tatars as an extremist organisation and ban its activities on the territory of Russia. The main official argument for such a decision was that the Mejlis are supported by international terrorist organisations and aim to destroy Russia's territorial integrity. In reaction to these statements, the Ministry of Foreign Affairs of Ukraine expressed dissent regarding such a decision, as it was

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<sup>99</sup> DSnews: "Why the FSB is looking for "centers of Islamic extremism" in the Crimea." June 24, 2014. See: <http://www.dsnews.ua/society/chomu-fsb-shukae-tsentri-islamskogo-Ekstremizmu-v-krimu-24062014202200> (accessed 05.04.2016).

<sup>100</sup> Depo.ua: "Putin is looking for own "Kadyrov" among the Crimean Tatars". October 28, 2014. See: <http://www.depo.ua/rus/politics/putin-ishchet-dlya-krymskih-tatar-svoego-kadyrova---Chubarov-28102014150000> (accessed 05.04.2016).

made by an illegal authority on the occupied territory of Ukraine.<sup>101</sup>

Despite the fact that the decision to recognize Mejlis as an extremist organisation is unlawful, this has nevertheless placed the highest representative body of the Crimean Tatars into a difficult situation, where the headquarters have to be relocated out of Crimea in order to avoid the prosecution. During a press conference, Rakhat Chubarov, the leader of Mejlis, announced that starting from April 26th, 2016, the organisation will be acting in an emergency mode and the headquarters of the organisation will be relocated to the city of Kyiv.<sup>102</sup>

The invasion of Crimea turned out as a tragedy not only for those Ukrainians and Russians who do not agree with the occupation of this peninsula. This military and political campaign initiated with the higher leadership of the Russian Federation puts on the brink of extinction the whole nation of Crimean Tatars.

### **3.5. Mechanisms of responsibility**

After the occupation of the Crimean peninsula and the proclamation of it as part of the Russian Federation, the government of Ukraine, which at the time was experiencing turbulent times, lost the control and influence over a significant part of its territory.

It became increasingly difficult to effectively use any of the existing national legal mechanisms to prevent these events and bring the perpetrators of these actions to justice.

Before the full-blown occupation, numerous experts worldwide believed that the Budapest memorandum from December 5th, 1994, on security assurances in connection with Ukraine's accession to the Treaty on Non-proliferation of Nuclear Weapons, will provide serious guarantees to Ukraine in terms of its security.<sup>103</sup>

According to the following document, USA, Russia and Britain pledged to respect the independence, sovereignty and existing borders of Ukraine, never use force against the territorial

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<sup>101</sup> Ministry of Foreign Affairs of Ukraine: Statement on decision of the illegal judicial authority of the occupied Autonomous Republic of Crimea to ban the Mejlis of the Crimean Tatar people. April 26, 2016. See: <http://mfa.gov.ua/en/press-center/news/46887-zajava-mzs-ukrajini-u-zvjazku-z-nezakonnoju-zaboronoju-okupacijnoju-vladoju-v-avtonomnij-respublici-krim-medzhlisu-krimsykotatarsykogo-narodu> (Accessed 29.04.2016).

<sup>102</sup> The New York Times: "Tatar Legislature Is Banned in Crimea" by Ivan Nechepurenko. April 26, 2016. See: [http://www.nytimes.com/2016/04/27/world/europe/crimea-tatar-mejlis-ban-russia.html?\\_r=0](http://www.nytimes.com/2016/04/27/world/europe/crimea-tatar-mejlis-ban-russia.html?_r=0) (Accessed 29.04.2016).

<sup>103</sup> David S. Yost: The Budapest Memorandum and Russia's intervention in Ukraine. *International Affairs* 91(3). May 2015, pp. 505-538.

integrity and political independence of Ukraine, and seek for immediate action by the UN Security Council to assist Ukraine, if it will become a victim of an act of aggression.<sup>104</sup> Despite the fact that the Russian Federation was part of this agreement, it still had enough courage and political will to breach this international legal document. As a result, this did not have any consequences on the breaching party, nor as it turned out did not carry any serious value or obligations for the other member parties. The Budapest Memorandum failed to deter Russian aggression, because it imposed no immediate penalty for its violation. The political assurances it provided rested on the goodwill and self-restraint of the guarantors, an arrangement that can work between allies but not potential adversaries.<sup>105</sup>

This legal mechanism of protection for Ukraine from the Russian occupation was not effective and appeared to carry no grounds for resolution in this particular case. According to a report by the Freedom House, the invasion of the Crimea peninsula led to such abuses as the imposed Russian citizenship, restrictions on freedom of speech and assembly, takeover of private and Ukrainian state property, clampdowns on independent media outlets, persecution of annexation critics and proponents of Ukrainian unity, and harassment of ethnic and religious groups perceived as disloyal to the new order.<sup>106</sup>

This created a legal possibility to appeal to the European Court of Human Rights, jurisdiction of which applied to all Member States of the Council of Europe that have ratified the European Convention on Human Rights (ECHR). On March 13th, 2014, the Government of Ukraine submitted an application to the ECHR, number 20958/14 under article 33 of the European Convention on Human Rights, which initiated various other applications on a state level. This document described facts of violations of the Convention Rights due to military occupation and control of the Autonomous Republic of Crimea. The Government of Ukraine rely on the following: article 2, the right to life; article 3, the prohibition of torture and inhuman or degrading treatment; article 5, the right to liberty and security; article 6, the right to a fair trial; article 8, the right to respect for private life; article 9, freedom of religion; article 10, freedom of expression; article 11, freedom of assembly and association; article 13, the right to an effective remedy, and article 14, the prohibition of discrimination of the Convention, as well as, article 1

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<sup>104</sup> Budapest memorandum in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, signed December 5, 1994. See: [http://www.larouchepub.com/eiw/public/2014/eirv41n08-20140221/34-35\\_4108.pdf](http://www.larouchepub.com/eiw/public/2014/eirv41n08-20140221/34-35_4108.pdf) (12.04.2016).

<sup>105</sup> Budjeryn, M. The Breach: "Ukraine's Territorial Integrity and the Budapest Memorandum". Nuclear Proliferation International History Project, Issue Brief No. 3 (2014) available at <https://www.wilsoncenter.org/sites/default/files/Issue%20Brief%20No%203--The%20Breach--Final4.pdf>.

<sup>106</sup> Andrii Klymenko: "Human rights abuses in Russian-occupied Crimea." Freedom House, March 2015 pp.1-20.

of Protocol No. 1 on the protection of property and article 2 of Protocol No. 4, freedom of movement.<sup>107</sup>

Due to the fact that the Russian Federation officially recognized Crimea as their own territory, submitting applications to ECHR regarding various abuses as a result of the occupation, seemed to be a convenient mechanism for Ukraine to fight for their territorial rights. Today, ECHR holds numerous cases from private persons and companies, regarding the violations of human rights by Russia in Crimea, initiated by Ukraine. According to the press release of ECHR, on April 13th, 2015, more than 20 individual applications have been filed in relation to the events in Crimea, mainly in the context of the assumption of control over the peninsula by Russia. These complaints were mostly regarding the right to respect private life, peaceful enjoyment of possessions, freedom of movement, deprivation of liberty and several aspects of criminal proceedings taken by the Russian Federation.<sup>108</sup>

Concerns remain regarding legal mechanisms, which could be used by the ECHR in order to compel Russia to enforce the court's decisions. It seems that the judgments of the European Court about Crimea will be either partial or worthless. For instance, in order to avoid possible negative impacts, on July 14th, 2015, the Constitutional Court of the Russian Federation declared the Judgment regarding the applicability of the ECHR decisions.<sup>109</sup> According to this resolution, in case of a conflict of statements between the Constitution of the Russian Federation and the ECHR, the decision made will be ruled in favor of the Russian Constitution. This decision places Ukraine in an unfavourable position, where the Russian Federation holds the trump card on an international level in order to avoid facing possible responsibilities for the extensive violations of human rights in occupied Crimea.

The real international mechanism of punishment for the Russian Federation regarding the occupation of Crimea has a relation to the resolution of the Parliamentary Assembly of the Council of Europe 1990 (2014) regarding the “Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation”.<sup>110</sup>

In accordance with the resolution of the PACE number 1990 (2014), the Council of

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<sup>107</sup> European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine. *Ukraine v. Russia* (application no. 20958/14).

<sup>108</sup> ECHR: Press release issued by registrar of the court “European Court of Human Rights extends time allowed for Russia’s observations on admissibility of cases concerning Crimea and Eastern Ukraine”. (13.04.2015).

<sup>109</sup> Constitutional Court of Russian Federation: “July 14, 2015 the Russian Constitutional Court ruled that the ECHR decision should be executed based on the rule of the Constitution.” See: <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3244> (12.04.2016).

<sup>110</sup> PACE Resolution 1990 (2014) on “Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation”. See: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=20882&lang=en> (Assecced 30.04.2016).

Europe denied the Russian Federation their voting rights, representative rights in the bureau of the PACE, the Committee of Ministers and the Committee of Permanent Representatives of the Council of Europe. Paragraph 16 of this resolution leaves the PACE the right to continue to revoke powers of the Russian Federation, if it fails to take appropriate measures in the de-escalation of conflict and the return of Crimea to Ukraine. The politics of the Russian Federation towards Ukraine remain to exhibit a threat of force, and the violation of the sovereignty and territorial integrity of the nation. These facts in the documents and legal acts of the Council of Europe are violations by Russia of its obligations, which from the position of *de lege ferenda* may become basis for the deprivation of its membership in the Council of Europe.<sup>111</sup>

On January 28th, 2015, PACE adopted resolution number 2034 (2015), that continued the restrictions, which were established for one more year.<sup>112</sup> This international institution has observed the growing tendency of Russian aggression towards Ukraine. Careful international legal analysis of the Crimean situation in 2014-2015, indicated that the Russian Federation had violated almost all state obligations, related to its territorial integrity. The state has not acquired sovereignty over the peninsula legally, under any international law on territorial acquisition. Instead, there was a military occupation and the annexation of the peninsula.<sup>113</sup>

In the context of mechanisms of responsibility for various human rights violations and the occupation of Crimea, it is important to mention the “Geneva Plus” initiative, proposed by the president Petro Poroshenko. In the hopes of achieving the aim of de-occupation of Crimea, it is in Ukraine’s favor to create negotiable international format of participants, which will consist of partners from EU, USA and countries-participants of the Budapest Memorandum.<sup>114</sup>

The creation of this plan was supported by the European Parliament, which in its resolution from February 3rd, 2016, has recognized unprecedented human rights violations in Crimea, especially regarding the Crimean Tatars. The document “welcomes the Ukrainian initiative to establish an international negotiation mechanism on the reestablishment of Ukrainian sovereignty over Crimea in the ‘Geneva plus’ format, which should include direct engagement by the EU” and “calls on Russia to start negotiations with Ukraine and other parties on the de-

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<sup>111</sup> Українська Революція гідності, агресія РФ і міжнародне право. - К.: К.І.С., 2014. - 1016 с. Р. 286.

<sup>112</sup> PACE Resolution 2034 (2015) on “Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation”. See: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21538&lang=en> (Accessed 30.04.2016).

<sup>113</sup> Задорожній О.В. Порушення агресивною війною Російської Федерації проти України основних принципів міжнародного права: монографія%; Укра.асоц.міжнар.права, Ін-т міжнар. відносин Київ. нац. ун-ту ім. Тараса Шевченка, каф. міжнар. права. - Київ: К.І.С., 2015. - 712 с. р.184.

<sup>114</sup> President of Ukraine official website: “Introduction by the President at a press conference January 14, 2016”. See:<http://www.president.gov.ua/news/vstupne-slovo-prezidenta-na-pres-konferenciyi-14-sichnya-201-36613> (Accessed 27.04.2016)

occupation of Crimea”.<sup>115</sup> Geneva Plus was designed as a mechanism of political pressure on Russia regarding the unlawful occupation of Crimea and to return it under the control of Ukraine. It is difficult to say, whether or not this format of international negotiations will carry with itself resolutions in the future. However, there are certain doubts whether this pressure has a strong enough power, which would convince higher leadership of Russia to step back.

The problem of the unlawful occupation of the peninsula by Russia does not merely lie in the precedent of new redistribution of national borders in Europe, this is also a case of the numerous human rights violations committed by the state-aggressor. At the current stage of events, it is quite difficult to come up with effective workable solution to resolve this problem. An even more difficult task in practice is the use of existing legal mechanisms to punish perpetrators.

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<sup>115</sup> European Parliament: Joint Motion for a Resolution “On the human rights situation in Crimea, in particular of the Crimean Tatars” (2016/2556(RSP)) from February 3, 2016. See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P8-RC-2016-0173+0+DOC+PDF+V0//EN> (Accessed 27.04.2016).

## **4. Violations of human rights during the military conflict in Donetsk and Luhansk regions**

### **4.1. Hostility overview**

Donbass is an industrial and densely populated territory in the eastern part of Ukraine, which includes Donetsk and Luhansk cities and most of their regions. Shortly after the Revolution of Dignity in Ukraine, the president of the Russian Federation, Vladimir Putin has lost the control over the loyal and controlled government with the head of Viktor Yanukovich. This government was removed and changed for the current officials.

Due to this situation in 2014, Russia initiated a number military campaigns and political actions, which had an aim to destabilize Ukraine by supporting separatist movements in the regions with the highest percent of Russian language speaking population of Ukraine. Crimea was occupied by Russia without high military resistance, using temporary disruption of state institutions. Some regions such as Kharkiv, Dnipropetrovsk and Odesa were quickly regained back by the Ukrainian government and civil activists.

The main arena for the hybrid war between Ukraine and Russia became the territory of Donbass. This conflict has been ongoing for almost two years and currently it seems like it is not going to be finished soon. According to the United Nations Security Council, as of December 11th, 2015, the Russian Federation's aggression in Donbass had left more than 9,000 people dead and over 20,000 injured.<sup>116</sup> The unofficial statistics have indicating that these numbers should be doubled or tripled. Due to the military actions, many people from Donbass have left and continue to leave their residences and are becoming refugees, usually migrating to other parts of Ukraine or abroad. It has been officially registered that there are more than one million internally displaced persons from the zone where the military conflict is present in Donbass as of December 14th, 2015.<sup>117</sup>

In accordance with the information provided above, it is understandable that this hybrid war initiated by the Russian Federation has caused many violations of human rights and the

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<sup>116</sup> United Nations: "Situation in Eastern Ukraine Remains 'Tense and Volatile' Despite Post-Ceasefire Reduction in Fighting, Security Council Told during Briefing." December 11, 2015. See: <http://www.un.org/press/en/2015/sc12154.doc.htm> (accessed 12.04.2016).

<sup>117</sup> Ukranews: "Ministry of Social Policy has put on record 1,647,903 internally displaced persons from the area of anti-terrorist operation (ATO) and Russia annexed the Crimea, as of December 14, 2015." December 14, 2015. See: <http://ukranews.com/news/192700.Minsotspolitiki-obnovilo-dannie-po-kolichestvu-pereselentsev-iz-zoni-ATO-i-Krima.ru> (accessed 12.04.2016).



international humanitarian law. Experts estimate that the present situation is a humanitarian disaster caused by the destruction of the industrial, transport and social infrastructure, the loss of part of the population's possibility to meet their needs for security, food, water, basic household services and others. Humanitarian convoys arriving in the Donbas are not solving the situation currently prevalent in the region.

#### **4.2. Conflict developments and security concerns**

Due to the low level of support for the pro-Russian separatist demonstrations among the local population, only Donetsk and Luhansk became victim to the armed terrorist actions. With the assistance of the Russian Federation in supplying financial, organisational and advocacy support, the intervention was made possible with the takeover and maintenance of the administrative office buildings, infrastructure facilities and local law enforcement offices.

The active capturing of buildings began on April 6th, 2014, and on April 7th, Donetsk was proclaimed the so-called Donetsk People's Republic, DNR, and adopted the "Declaration of Sovereignty of the DNR", while pleading with the president of neighboring Russia to send troops in Donbass. Subsequently, these actions were repeated in Luhansk. On April 28th, in the same way the Luhansk People's Republic was "created".

The day before the events in Donetsk took place, the so-called "Army of the South East" was the main driver of the failure of the Ukrainian authorities in Donbass. Soon, the armed militants captured other cities in the region such as Yenakieve, Makiivka, Mariupol, Horlivka, Hartsysk, Zhdanivka, Kirovske, Novoazovsk, Siversk, Komsomolske, Starobesheve, Krasnoarmiysk, Rodynske and numerous smaller cities and villages. The armed individuals quickly swept away corrupt and weak local authorities, destabilizing the situation to their desired level. Only in some locations they ran into resistance. One of the examples was the assault of Horlivka police department. However, despite of it all, the Ukrainian central authorities began to react to these events in these regions only in mid-April.

On April 14th, 2014, Ukrainian authorities officially announced the Antiterrorist Operation (ATO) in Donbass. However, on April 12th, 2014, a few days earlier, near the city of Sloviansk, a group of officers from the Security Service of Ukraine (SBU) under the coverage of special military forces "Alpha" who carried out the reconnaissance of the area, were captured to the ambush of armed illegal militants from DNR. One of the features of this armed conflict is that the Russian Federation denies any involvement. For an explanation of the presence of the Russian regular army in eastern Ukraine, the officials came up with absurd justifications.

In August 2014, the Security Service of Ukraine reported about the arrest of ten servicemen from the 98th Airborne Division of the Russian Federation on the territory of Donetsk region. They were carrying with them weapons and personal documents. However, according to the Russian Defense Ministry, Russian soldiers, who were detained by the Ukrainian officials, crossed the Russian-Ukrainian border by accident.<sup>118</sup> The Russian Federation justified its presence in Donbass region as a "humanitarian intervention" under the guise of humanitarian convoys and in violation of the procedures of the International Committee of the Red Cross, it continuously imported military equipment and ammunition.<sup>119</sup>

A special monitoring mission of the Organisation for Security and Co-operation in Europe, in its reports often observed transportation through the Russian-Ukrainian border with military equipment, which later also discovered machinery without marking and license plates.<sup>120</sup> Parallely, Ukrainian posts, which are located near the border, were regularly fired at from the territory of the Russian Federation using multiple launch rocket systems "Grad". Local inhabitants, who live in the territory of the Russian Federation, particularly in the village of Hukovo, which is located near the border of Ukraine, recorded these actions in several occasions on video.<sup>121</sup>

Thus, the present armed conflict has an international character, according to information from Reuters, it was even non-publicly recognized as such by the International Committee of the Red Cross.<sup>122</sup> At the same time, the efforts of Russian diplomacy at the international level and aggressive Russian propaganda in different countries, is now trying to show the international conflict as an internal one, through the use of local agents, the so-called Luhansk and Donetsk People's Republics. However, the Russian Federation provides effective control over DNR and LNR, which occupies parts of Donbass and is responsible for all violations of human rights and international humanitarian law in these areas.

The European Parliament in its Resolution on January 15th, 2015, found that the so-called Luhansk and Donetsk People's Republics are using terrorist methods of activity. It has also

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<sup>118</sup> Interfax: "In Moscow was called an accident the fact of intersection of Ukrainian border by Russian Militants." August 26, 2014. See: <http://www.interfax.ru/world/393265> (accessed 12.04.2016).

<sup>119</sup> Unian: "In the seventh Russian humanitarian convoy was only ammunition - LODA." November 17, 2014. See: <http://www.unian.ua/society/1010021-u-somomu-rosijskomu-gumkonvoji-buli-tilki-boepripasi-loda.html> (accessed 12.04.2016).

<sup>120</sup> Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 9 November 2014. See: <http://www.osce.org/ukraine-smm/126485> (accessed 27.04.2016).

<sup>121</sup> BigmirNet: "A Russian person took a video shelling territory of Ukraine from the Russian territory." July 17, 2014. See: <http://news.bigmir.net/ukraine/831118-Rossijanin-snjal-video-obstrela-Ukrainy---Gradami---s-rossijskoj-teritorii> (accessed 14.04.2016).

<sup>122</sup> Reuters: "Ukraine war crimes trials a step closer after Red Cross assessment." July 22, 2014. See: <http://www.reuters.com/article/us-ukraine-crisis-warcrimes-idUSKBN0FR0V920140722> (accessed 14.04.2016).

announced that Russia is engaging in an undeclared war on the territory of Ukraine. Thus, parts of the document refer to the undeclared hybrid war that Russia is in with Ukraine, which includes an information war with elements of cyber-war, the use of regular and irregular forces, propaganda, energy blackmail and economic pressure, diplomatic and political destabilization. Separately in the resolution, it was emphasized that these actions are in violation of international law and pose a serious challenge to the security situation in Europe.<sup>123</sup>

Despite the agreements and armistices, the military actions in Donbass are still going on and it is continuing to affect the lives of more and more people. In order to get a better understanding of the events taking place in Eastern Ukraine, a thorough analysis of the circumstances and their consequences on the nation and its people follows.

### **4.3. Human rights and international humanitarian law violations**

Organised armed groups in areas under their control implemented systematic and large-scale terror against peaceful civilians to establish control over the region. Daily practices were beatings, abductions, hostage taking, torture, extrajudicial executions, and forced exclusion of private property. It started as a systematic persecution of real or alleged supporters of state sovereignty of Ukraine, which is attributed to people on different grounds, such as political views, religious beliefs, language, and affiliation to public service in case of refusal to side with combatants. Consistency and magnitude of committed acts indicate the existence of deliberate planning and organised violence.

Armed groups consciously violated rules of international humanitarian law. Human rights organisations, including monitoring visits of Ukrainian Helsinki Human Rights Union, constantly documented cases of civilian use as human shields, mining civilian objects, shooting of peaceful corridors, deliberate attacks on civilian objects, murder and torture of Ukrainian prisoners of war.

It should be emphasized that the territories of organised militias followed no legal regulations. The rules of national legislation of Ukraine and international law do not apply. Members of these organised armed groups were guided, usually by the oral orders from higher management and had broad discretion to independent decisions making about property, health and life of civilians. There are no institutions of human rights protection.

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<sup>123</sup> European Parliament resolution on the situation in Ukraine (2014/2547(RSP)). See: [www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2014-0138&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2014-0138&language=EN) (accessed 14.04.2016).

During the occupation, there were numerous human rights violations in parts of the Donbass region, and included: the right to life, liberty and security; the right to decent treatment and no application of tortures to humans, cruelty and inhuman treatment; the right to a fair trial and protection against arbitrary arrest or exile; the right to freedom of movement; the right to property; the right to freedom of opinion and expression; the freedom of participation in one's government, the right to elections and referendum; the right to social protection, and the right to education and personal development.<sup>124</sup>

The organised armed groups declared "enemies of the nation" and launched a wide range of persecutions addressed to those civilians who were real or alleged supporters of Ukraine's state sovereignty. The victims of these actions were primarily representatives of civil society, such as human rights activists, journalists, participants of peaceful actions for Ukraine's unity, community members, volunteers, priests, local deputies, and civil servants.

One of the first victims of persecution became a local government deputy, Volodymyr Rybak from the city of Horlivka, who was kidnapped on April 17th, 2014. The Security Service of Ukraine released a recording of the telephone conversation, where the involvement in the murder of Vladimir Rybak was a so-called group of "Strelka", which operated in the Donetsk region. The main initiator of this operation was a citizen of Russian Federation, Igor Bezler, colonel of the Main Intelligence Directorate (GRU).<sup>125</sup>

Generally, any person who was actively engaging in activities not controlled by the organised armed groups, such as social volunteering, became victims of persecution. The policy of organised armed groups aimed at suppressing public activity. Therefore, in many cases, victims of violent kidnappings and hostage scenarios were volunteers who provided assistance to the civilian population of Donbass.

The situation in the conflict zone has not been easy for journalists since the beginning of war, where there have been fixed 297 violations of the rights of journalists and interferences to their work.<sup>126</sup> Overall, more than a few dozen journalists have been taken hostage. Some of them offered to shoot scenes for Russian propaganda channels in exchange for their release.<sup>127</sup>

Undoubtedly, one of the most significant issues is the cross shooting of both sides of the conflict, affecting civilian residential areas. Donbass is a densely populated region and fights for

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<sup>124</sup> Human Rights Watch. World Report 2015: Events of 2014. Policy Press, February 24, 2015. - 700 pages. pp. 571-574.

<sup>125</sup> NBnews: "With Horlivka deputy Rybak separatists brutally murdered student of KPI." April 25, 2014. See: <http://nbnews.com.ua/ua/news/119533/> (accessed 14.04.2016).

<sup>126</sup> Institute of Mass Information. Barometer of freedom of speech. See: <http://imi.org.ua/barametr/> (14.04.2016).

<sup>127</sup> Hromadske TV: "Journalist Nastya Stanko and operator are in captivity of separatists." See: [www.radiosvoboda.org/content/article/25440849.html](http://www.radiosvoboda.org/content/article/25440849.html) (accessed 14.04.2016).

every city are resulting in the suffering of many civilians. The civil organisation “DonbassSOS” has created a map of the places, which were ruined due to the conflict in three main cities of Donetsk, Luhansk and Horlivka.<sup>128</sup> On several occasions, it was fixated how military groups opened fire while located in the cities where civilians live, to provoke the shooting back from the Ukrainian army. In this way, they were using civilians as human shield. This kind of war crime can also confirm the fact that these military groups fighting against Ukrainian army were controlled by the Russian Federation, as they did not recognize the people who were used as human shields as their own citizens. The use of human shield is prohibited by the international law, in particular by Geneva Conventions 1949, Additional Protocol I to the Geneva Conventions 1977 and the Rome Statute 1998.

Certain attention should be brought to the question of illegally arrested and prosecuted citizens of Ukraine. During this military conflict in Donbass, a Ukrainian woman pilot, Nadiya Savchenko, was captured by a pro-Russian militia group and violently sent to the city of Voronezh. She was subsequently charged with the murder of two journalists. Today, Nadiya Savchenko has become a worldwide known political prisoner for the time of the Russian aggression in Ukraine. This has been recognized as an unlawful restriction of freedom on an international level. Thus, the European Parliament has adopted the resolution on the case of Nadiya Savchenko with references to various statements and international agreements, in particular the Third Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, calling for immediate release of Nadiya Savchenko and all other political prisoners, who became victims of the Russian aggression in Ukraine.<sup>129</sup>

Probably the most resonant cases of the hybrid war between Russia and Ukraine is the case of the Malaysian Boeing 777, flight MH17 from Amsterdam to Kuala Lumpur, which was shot down on July 17th, 2014, over a part of Donetsk region controlled by the pro-Russian separatists, resulting in 298 people losing their lives in this tragedy.<sup>130</sup>

All parties of the conflict in Donbass have denied any involvement in the crash of the liner. The government of Ukraine and a number of Western countries argue that there is sufficient evidence that the plane was shot down by the “Buk” missile system, which was in the hands of pro-Russian rebels. The leaders of self-proclaimed Donetsk and Luhansk People's

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<sup>128</sup> DonbassSOS: “Information Card of destructions in the Donbas.” See: [http://donbasssos.org/destroy-map\\_ru/](http://donbasssos.org/destroy-map_ru/) (accessed 14.04.2016).

<sup>129</sup> European Parliament resolution on the case of Nadiya Savchenko (2015/2663(RSP)). See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P8-RC-2015-0406+0+DOC+PDF+V0//EN> (accessed 30.04.2016).

<sup>130</sup> Mirror: “The faces of Malaysian Airlines Flight MH17: Tributes paid to 298 who lost their lives”. July 20, 2016. See: [www.mirror.co.uk/news/world-news/faces-malaysian-airlines-flight-mh17-3882146](http://www.mirror.co.uk/news/world-news/faces-malaysian-airlines-flight-mh17-3882146) (accessed 14.04.2016).

Republics claimed that they had no means, which could bring down an airplane at such a height. As a result, during an international investigation, it was found that on July 17th, 2014, rocket launchers "Buk" with the Russian 53rd Artillery Brigade, based at the Russian city of Kursk, were driven out on the route Donetsk-Snizhne. Then, it was unloaded from the trailer and drove on its own to a field south of Snizhne, where at about 16:20 pm a missile was launched "surface to air" that hit the Malaysian Airlines Flight 17, flying over Ukraine.<sup>131</sup>

On July 29th, 2015, the UN Security Council held a vote on the creation of an international tribunal to investigate the shootdown plane. The proposal to create the international tribunal was initiated by Australia, Belgium, Malaysia, the Netherlands and Ukraine. Permanent Security Council members such as United States, Great Britain and France supported the creation of the tribunal, however China had abstained. In addition, two non-permanent members of the UN Security Council: Angola and Venezuela abstained from the vote. With 11 votes "for" the decision to create the Tribunal, it was blocked by Russia, who is a permanent member.<sup>132</sup>

Further analysis will be on understanding and the reasoning behind the Russian Federation's powerful right to ban all kinds of initiatives inside the United Nations Security Council. Nevertheless, this particular case provides strong arguments, which confirms the involvement of Russian political interest in these events.

#### **4.4. Legal Responsibility**

On July 8th, 2015, an OSCE Parliamentary Assembly meeting in Helsinki approved a resolution condemning Russia's actions in Ukraine. The actions of the Russian Federation were clearly recognized as acts of military aggression. It was also requested that the Russian state cease the destabilization in eastern Ukraine, stop the supply of weapons, ammunition, and troops and fulfill international agreements.<sup>133</sup> Parliamentarians voted by a margin of 96 in favor to 7 against with 32 abstentions on the above-mentioned resolution. This international document condemns Russia's unilateral and unjustified assault on Ukraine's sovereignty and its territorial integrity. This means that the unlawful actions of the Russian Federation against Ukraine are globally recognised and for this must carry legal responsibility.

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<sup>131</sup> The Guardian: "MH17 crash report: Dutch investigators confirm Buk missile hit plane - live updates." See: [www.theguardian.com/world/live/2015/oct/13/mh17-crash-report-ukraine-live-updates](http://www.theguardian.com/world/live/2015/oct/13/mh17-crash-report-ukraine-live-updates) (accessed 14.04.2016).

<sup>132</sup> BBC News: "Russia has used its veto at the UN to block a draft resolution to set up an international tribunal into the MH17 air disaster in July 2014." July 29, 2015. See: [www.bbc.com/news/world-europe-33710088](http://www.bbc.com/news/world-europe-33710088) (14.04.2016).

<sup>133</sup> OSCE Parliamentary Assembly, 08.07.15: Resolution on The Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation (Helsinki, 5-9 July 2015), See: <https://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki/2015-helsinki-final-declaration/2282-07> (Accessed 30.04.2016).

The international criminal responsibility process for numerous human rights violations and breaches of humanitarian law in Ukraine can be organised by the two main institutions: The United Nations Security Council and International Criminal Court.

The Security Council has the power to organise an international ad hoc tribunal for the concrete case or group of cases, as it happened with the creation of the special tribunals for Rwanda and former Yugoslavia. However, this body has many shortcomings, which can be explained by the way it was constructed. The security Council, which was established after World War II, has five permanent members: USA, USSR (now it is just Russia), France, China and Great Britain. These countries have a privileged right to ban and turn down any initiative that was proposed to the Security Council. It is impossible to adopt a decision if one of the permanent members of the body is voting against it.

Since the beginning of its membership as a permanent member of the Security Council, Russia has been the most frequent user of its veto power, having exercised the right to block more than one hundred resolutions since the council's founding. The second place in the frequency of exercising the veto right took the United States. Last time a US representative in the Security Council made a veto on a resolution regarding the Middle East situation, including the Palestinian case.<sup>134</sup> The United Kingdom, France, and China use their vetoes sparingly. China's use of the veto has risen notably in recent years.<sup>135</sup> For instance, in May 2014, China joined Russia in vetoing a council resolution S/2014/348 that would have referred actors in the Syrian War, including the Bashar al-Assad regime, to the International Criminal Court.<sup>136</sup>

As can be seen, the Security Council is a powerful organisation, which is called to ensure the peace and security on the planet. However, in many situations, this UN body tends to be ineffective, as its power is not spread equally. Due to statutory limitations, it became a stagnant organisation. Each of one of the five permanent members is defending their own geopolitical interests, which makes it literally impossible to bring to responsibility those subjects, which are located in the area of interest of Security Council permanent members.

Considering the recent Ukrainian cases, there are almost no chances to organise a tribunal regarding the massive cases of serious human rights violations, which include the involvement of the Russian Federation, as every disadvantageous for Russia resolution would be banned right

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<sup>134</sup> Vetoes - Security Council - Quick Links - Research Guides at United Nations Dag Hammarskjöld Library. See: <http://research.un.org/en/docs/sc/quick> (accessed 14.04.2016).

<sup>135</sup> Newsteam Staff: "The UN Security Council (UNSC)." September 2, 2015. See: [www.cfr.org/international-organizations-and-alliances/un-security-council-unsc/p31649](http://www.cfr.org/international-organizations-and-alliances/un-security-council-unsc/p31649) (accessed 14.04.2016).

<sup>136</sup> United Nations Security Council resolution S/2014/348 See: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2014/348](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/348) (accessed 14.04.2016).

away. This statement can be proved by the resolutions concerning recent cases of international violations of human rights in Ukraine, vetoed by Russian diplomat Vitaly Churkin:

- Resolution S/2015/508 from July 8th, 2015, which confirms sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders and noted that the referendum in Crimea has no authorized status.<sup>137</sup>

- Resolution S/2015/562 from July 29, 2015, regarding organising the international tribunal to investigate the causes of the shot down Malaysia Airlines flight MH 17 on July 17th, 2014, in Donetsk Oblast, Ukraine and to find people involved in this incident.<sup>138</sup>

Besides the obvious lack of functionality of the Security Council regarding Ukrainian questions, it would be fair to say that the positive moments in this legal impasse are that these two resolutions could rise and attract international attention. In addition, the fact is that one of the UN Security Council's permanent members, while defending their own interest, not the investigation, informally pointed on its guilt and involvement in these crimes.

Starting from January 2016, Ukraine is a non-permanent member of the Security Council representing the Eastern European group of countries.<sup>139</sup> There is some assurance that the representative will be raising up Ukrainian questions more often. However, the fact that every resolution regarding Ukrainian cases will be blocked by the Russian Federation's representative, leaves not much of optimism to start the process of finding and punishing perpetrators of the many human rights violations in Ukraine by such international institution as the United Nations Security Council.

The *International Criminal Court* is an international judicial institution dealing with international crimes and has its own jurisdiction over those countries, which have signed the Treaty of Rome. It is situated and based in the city of Hague, Netherlands. ICC does not belong to the official structures of United Nations Organisation, although may prosecute proceedings on the proposal of the UN Security Council.

According to Article 7 of the Rome Statute, "the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole". The Court has

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<sup>137</sup> United Nations Security Council resolution S/2014/189 See: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2014/189&referer=http://www.un.org/depts/dhl/resguide/scact\\_veto\\_table\\_en.htm&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/189&referer=http://www.un.org/depts/dhl/resguide/scact_veto_table_en.htm&Lang=E) (accessed 14.04.2016).

<sup>138</sup> United Nations Security Council resolution S/2015/562 See: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/562&referer=](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/562&referer=) (accessed 14.04.2016).

<sup>139</sup> Members of the United Nations Security Council. See: <http://www.un.org/en/sc/members/> (accessed 14.04.2016).



jurisdiction in accordance with this Statute with respect to the following crimes: the crime of genocide, crimes against humanity, war crimes; and the crime of aggression.<sup>140</sup>

It is important to note that several countries fundamentally opposed the idea of the ICC, which restricts the sovereignty of states and provides a broad competence to the court. Such countries are USA, China, India, Israel and Iran.<sup>141</sup> The Russian Federation and Ukraine belong to those countries, which have signed the Rome Statute, but did not ratify its provisions. In this case, the International Criminal court does not have a direct jurisdiction over these two countries, as they are not officially parties of the Agreement.

If Ukraine would ratify the Treaty of Rome, this would technically allow the prosecutor of the International Criminal Court to start proceedings regarding the massive violations of human rights on the territory of Ukraine. Since Ukrainian representatives have signed the Treaty of Rome, but still have not ratified the document, the ICC currently does not have grounds on which it can proceed with investigations.

In order to continue this process, there should be a technical addition to article 124 of Ukraine's Constitution, where the annex should carry the following content: "Ukraine may recognize the jurisdiction of the International Criminal Court under the terms of the Rome Statute of the International Criminal Court".

There are several reasons why the current Ukrainian leadership has not implemented these changes to the constitution thus far and as it seems is not in a hurry with the ratification of the Treaty of Rome in the nearest future. One of these reasons is the lack of political will. In Ukrainian realities, many politicians have an interest to not allow the international body to play a role of the independent court, which would be controlling their actions in the future and would be able to bring them to responsibility for crimes. According to the statement of the Deputy Head of Information-analytical center of the National Security Council, Vladimir Polevyi, after the ratification of the Rome Statute by Ukraine, Russia will receive an additional tool of propaganda and influence on the Ukrainian leadership. In a statement he mentioned, "Russia has not ratified the Rome Statute, but Georgia did it. In August 2008, the Russian army invaded Georgia. However, International Criminal Court is currently considering more than 3,000 requests from the Russians, who received Russian citizenship in South Ossetia and allegedly suffered damage

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<sup>140</sup> Rome Statute of the International Criminal Court See: [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf) (accessed 14.04.2016).

<sup>141</sup> Coalition for the International Criminal Court. Overview of the United States' Opposition to the International Criminal Court. See: [http://www.iccnw.org/documents/CICCFUS\\_US\\_Opposition\\_to\\_ICC\\_11Dec06\\_final.pdf](http://www.iccnw.org/documents/CICCFUS_US_Opposition_to_ICC_11Dec06_final.pdf) (accessed 14.04.2016).

from the actions of the Georgian authorities. It ended up that Russians (and not vice versa) are on the side of the prosecution and the actions of the Georgian side are investigated by the court.”<sup>142</sup>

According to this, Ukraine fears of a similar situation, and for this reason, it made some unique decisions from the international law point of view. The Constitution was not changed, however, two declarations with the reference to the Rome Statute were passed.

On September 8th, 2015, the Government of Ukraine drafted a second declaration under article 12(3) of the Statute, accepting ICC jurisdiction over alleged crimes committed on its territory from February 20th, 2014, and onwards.<sup>143</sup> This declaration guided the ICC to take attention and focus on the crimes committed by “senior officials of the Russian Federation and leaders of terrorist organisations “DNR” and “LNR”. According to this information, the Office of the Prosecutor is now a preliminary examination institution of the situation in Ukraine together with such countries as Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq, Nigeria and Palestine.<sup>144</sup>

However, Ukraine is still considered to be a country, which is not a part of the Treaty of Rome, as it did not ratify the legal document. Therefore, the chances that the International Criminal Court will fully establish its jurisdiction and power on the territory of Ukraine and punish the perpetrators are relatively limited. Additionally, on October 2nd, 2015, Ukraine has signed the “Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism”.<sup>145</sup> This protocol is open for signature and 27 parties have already signed it. The document will come into force after the ratification by six countries, including four of the Council of Europe.

The purpose of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism is to supplement the provisions of the Convention, opened for signature in Warsaw on May 16th, 2005. It regards the criminalisation of the acts described in Articles 2 to 6 of the Protocol, thereby enhancing the efforts of parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by

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<sup>142</sup> Vitaliy Sych: “Why Ukraine should appeal to the Hague Court? - Ukrinform, February 9, 2015. See: [www.ukrinform.ua/rubric-other\\_news/1813317-chomu\\_ukraini\\_neobhidno\\_zvernutisya\\_do\\_gaazkogo\\_sudu\\_2019620.html](http://www.ukrinform.ua/rubric-other_news/1813317-chomu_ukraini_neobhidno_zvernutisya_do_gaazkogo_sudu_2019620.html) (accessed 14.04.2016).

<sup>143</sup> Resolution of the Verkhovna Rada of Ukraine "On the Ukraine jurisdiction of the International Criminal Court" from September 8, 2015. See: [www.icc-cpi.int/iccdocs/other/Ukraine\\_Art\\_12-3\\_declaration\\_08092015.pdf#search=ukraine](http://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine) (accessed 14.04.2016).

<sup>144</sup> International Criminal Court Official web-portal. Preliminary examinations. See: [https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/Pages/communications%20and%20referrals.aspx](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/Pages/communications%20and%20referrals.aspx) (accessed 14.04.2016).

<sup>145</sup> Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism See: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/217> (accessed 14.04.2016).

measures to be taken at a national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the parties.<sup>146</sup>

Although this may not seem to be much, for Ukraine, signing such a document may create in the near future, an additional international mechanism for investigation of human rights violations, committed in the form of aggressive attacks against its nation and its people.

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<sup>146</sup> Council of Europe: “Signing ceremony of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.” See: <http://www.coe.int/en/web/human-rights-rule-of-law/signing-ceremony-of-the-additional-protocol-to-the-council-of-europe-convention-on-the-prevention-of-terrorism> (accessed 14.04.2016).

## 5. Conclusions

### 5.1 Research and analysis in brief

In the course of this thesis, much has been discussed and analysed on the human rights violations in Ukraine starting from the Revolution of Dignity to the occupation of Crimea and the presently ongoing armed conflict in the eastern part of the nation. This period marks challenging times for Ukraine, as it continues to struggle with its external aggressor, resulting in numerous cases of human rights violations of its citizens. This research was aimed at, first and foremost, highlighting the various types of human rights that were violated during the course of the major recent events stated above. Furthermore, this paper intended to analyse and suggest the legal solutions that could be used to punish perpetrators, responsible for inflicting these violations in Ukraine.

In order to get a general background, the paper *firstly* outlined the history of the human rights development. An overview of the historical international development was imperative in order to achieve a better understanding and a theoretical framework for further analysis. Although the modern understanding of human rights appeared after World War II, the origins of this phenomenon are an important factor in order to grasp the full spectrum of which standards are present today in this field. This concept has developed over time into the natural idea of human rights being equally distributed to everybody in the world without the differentiations of countries and nationalities. It is an achievement of the whole world's population in one-way or another.

Further analysis focused on the development of human rights on the territory of Ukraine. The paper went on to specify Ukraine's contribution to the modern understanding of the concept in the aspects of the international arena. Many nations over time have worked together to define the terms under which every human being is considered to be treated equally and with utmost respect. These terms outline how human rights can be violated, and show their applicability to be the same in all parts of the world, wherever humans may reside.

It was also crucial to consider the historical development of international legal responsibility for the violations of human rights and humanitarian law. The important shift, which occurred in the XX century, when the focus transitioned from the state to the individual as the subject of international legal responsibility, related to further understanding of the concept. Additionally, the research continued to explore the development of international institutions that deal with investigations of international crimes, as well as, tapped into the roles of the main

countries that have the biggest influence in the decision-making process in this field on a global scale. This aspect of the paper was central for the subsequent analysis of the violations that occurred in Ukraine.

The theoretical framework of human rights paved the grounds for the *second* part of the paper, which described multiple cases and provided an analysis of the systematic violations of human rights in Ukraine, covering the period of three months starting November 21st, 2013, until February 22nd, 2014. An important event that sparked the entire conflict and the beginning of human rights violations in Ukraine was the active protests in favor of the European Integration and against the former president Viktor Yanukovich and his government. This event had controversial preconditions between the political leadership and the civil society, which escalated into several systematic acts of violence on behalf of the government. The evidence of these affairs have been recorded and noted by multiple media outlets, as well as, average individuals that were present during these incidents. Legally, these events have also been recognized and recorded.

The people that came out to the Revolution of Dignity stood for democratic values, which were not promoted at the time. Limits to freedom of expression, media and peaceful gatherings were among the many values people wanted change in. However, due to the aggressive resistance of the government officials, it was unfortunately confirmed that more than one hundred people died, not too mention the numerous cases of illegal detentions, arrests, kidnappings, tortures and brutal treatment that were documented during this time. Many other violations and illegal actions were discussed in detail and analysed in this section, pertaining to the Revolution of Dignity.

The protests on Maidan significantly affected the Ukrainian nation. However, the complexity of the investigation procedures, as well as, the lack of political will from government authorities, have left Maidan cases without sufficient judgments of convictions.

Ukraine is not a party to the treaty of the International Criminal Court, and so it is unfortunate that this institution cannot play an active role in the resolution of these crimes. As a result, to this day, there hasn't been sufficient criminal punishment regarding the numerous cases of human rights violations, including those of freedom of assembly, excessive use of force, killings, disappearances, torture and ill-treatment. The drawbacks of the legal mechanisms and the lack of international attention to the substantial violations that took place are continually challenging the further investigations of these events.

The *third* part of the thesis explored the human rights violations committed by the aggressive actions towards the intervention of Crimea and the establishment of the Russian order

on the territory of the peninsula. An important focus was placed on the Crimean Tatars and their historic connections to the peninsula. Despite the international public order and legal regulations of the Budapest Memorandum of Security Assurances, which confirmed the territorial integrity of Ukraine, and obliged the most powerful nuclear countries to uphold it, the High Command of the Russian Federation consciously invaded part of a neighbouring state. The Russian troops blocked Ukrainian military bases in Crimea, seized administrative buildings, established control of highways and other strategic facilities. This takeover led to the numerous types of human rights violations of the citizens of Ukraine. The Budapest Memorandum failed to deter Russian aggression and imposed no immediate penalty for the violation of its terms. An appeal process to the European Court of Human Rights was made nearly impossible after the Russian Federation declared a judgment regarding the applicability of the ECHR decisions, placing the Russian Constitution and its statutes above all else, and ultimately dodging the potential responsibility of any aggressive actions against Ukraine and its people.

Following the events in Crimea, the *fourth* section of the paper described and analysed the violations of human rights during the Russian aggression on the territory of Donetsk and Luhansk regions, where a hybrid war broke out and continues to this day. The United Nations Security Council and the International Criminal Court were examined as the two main institutions for dealing with international criminal responsibility of the human rights violations and breaches of humanitarian law in the eastern parts of Ukraine. Challenges and difficulties of starting the processes of bringing the responsible perpetrators to justice and trying to acquire international assistance in this matter were discussed as well. The lack of political will of the current Ukrainian government, as well as some shortcomings of the procedures of international institutions were noted. Russia's permanent residency on the Security Council has time and time proved with its veto power, and the exercise thereof, that it is nearly impossible to examine the aggression caused by the Russian Federation on the territory of Ukraine.

Punishment is a mechanism, which can effectively help prevent these kinds of crimes in the future. Lack of responsibility unleashes the hands of perpetrators and encourages them to commit more misconduct in the future, which may have even bigger consequences. Even if today there is no real physical decision on the international level regarding the violations of human rights in Ukraine, it is important to collect relevant information, analyse it and reinforce it with legal acts and principles.

## **5.2. Propositions for future developments**

Numerous challenges present themselves that make it difficult to properly investigate and bring to justice those individuals who are responsible for the events and human rights violations described and analysed in this thesis. Special attention needs to be brought into the issue of responsibility mechanisms, which could be used in order to punish perpetrators.

Accordingly, it is recommended that several legal changes be made in the near future in order to improve the mechanisms of responsibility for serious violations of human rights on the territory of Ukraine. These recommendations may be divided into two main categories in compliance with the type of changes that could be done on a national and also an international level.

Regarding the massive human rights violations during the Revolution of Dignity in Ukraine, the main reason for the insufficient investigating of the crimes committed is a lack of political will from the current state elite. Furthermore, the influence of some representatives of the highest-level politicians from Viktor Yanukovich's government, who are interested in the concealment of crimes committed during the protests, still have a significant power and influence in Ukraine.

Alternatively, from the side of society, there is a great demand and interest in the proper and effective investigation of the Maidan crimes. Due to that fact, a recommendation is to accelerate the reform process of the Prosecutor General of Ukraine by appointment on each position through transparent competition. The most attention in this context should be given to the Special Investigations Department of the Prosecutor General's Office of Ukraine, who are investigating the crimes committed during the Maidan protests.

Expediting the investigation processes on Maidan crimes carries strategic importance for respect of law from the side of governmental representatives. The severe consequences for the violations of human rights will create a fear of punishment and repercussions, and will prevent from similar situations in future, deterring those representatives from repeating the actions of the past officials.

In the context of changes that should be made on a national level in Ukraine, it is also recommended that Ukraine should immediately demonstrate a higher political will to join the Treaty of Rome and entirely ratify the appropriate documentation. This would allow the International Criminal Court to share its own jurisdiction over the territory of Ukraine and investigate possible future international crimes, which may occur on the currently occupied territories.

There are certain doubts that the acts which have been accepted already without the ratification of the Rome Statute, are providing enough power to ICC to allow this court to make significant decisions regarding bringing to justice those responsible for organising and committing various international crimes in Crimea and Donbass regions of Ukraine. Obviously, there are no guarantees that ICC will initiate and organise an international tribunal for massive human rights violations in Ukraine in the upcoming years. However, the ratification of the Rome Treaty is the least that can be done by Ukraine on its way to achieving fruitful cooperation with the International Criminal Court.

Additionally, it is recommended to stimulate certain changes at an international level. The United Nations Security Council, which is called to bring peace and security into the international arena, has significant shortcomings that need to be addressed. It consists of five permanent and ten non-permanent members, which have a huge difference in power and rights. The so-called winners established the council soon after World War II: USA, USSR, China, Great Britain and France. Nowadays, this organisation unties the hands of some of its members to conduct aggressive behaviors in terms of international policy, without facing consequences for their unfavorable conduct.

In terms of international public law, every country must have equal value and benefits, and everyone should carry the same scale of responsibility for creating and maintaining peace in the world. It is thus proposed that the UN Security Council be reformed through the cancellation of the vetoing right for permanent members. In this case, it would prevent future abuses of a dominant position in the security field from the side of the permanent members, which has been recently demonstrated by the Russian Federation regarding Ukraine. Additionally, for future considerations, it is suggested that the position of the permanent members be cancelled altogether, because every country as a subject of the international public law, should have equal rights to influence the security process in the world.

The present thesis has built on a considerable amount of events where the rights of Ukrainian people have been violated on their territory, starting from the beginning of the Revolution of Dignity to the Crimean peninsula occupation and the ongoing hybrid war in the eastern part of the nation. The study has not by far thoroughly examined every single human rights violation that has taken place over this period in Ukraine. These are but a few research ideas that scholars can use to continue collecting adequate evidence of the occurred events and the further developing conflicts.

These accounts when compiled together will play a significant role in the investigation process to prosecute all those perpetrators responsible for inflicting undue harm and infringing



upon the universal human rights statutes. For this reason, the works of scholars and academia can greatly contribute to further development and resolution of the said events. During a period when it is difficult to implement certain legal mechanisms of punishment, one of the key roles is the formulation of an argumentation database to coincide with and accompany the future prosecution proceedings. The suggestions on the potential changes to the mechanisms of justice on a national and international level are no means of legal advice, but rather thought-provoking ideas for scholars and other professionals to further examine.

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