



THE ROLE OF HUMAN RIGHTS IN THE UKRAINE CONFLICT: EU AND US PERSPECTIVES

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1 Abstract

This thesis analyses the Ukrainian crisis and the role of human rights in the conflict, according to the EU and US perspectives.

In the first chapter, it starts from the origins of the Ukrainian crisis, underlying a background to the crisis and a chronology of the events of the conflict. Then it considers the human rights implications of the conflict and the various violations of human rights that occurred. It also analyses the latest developments of human rights that took place in Ukraine. Analysing the chronology of the events related to the Ukrainian crisis, it's a good starting point.

In the second chapter, the EU and US attitude on Human Rights, with their differences on economic, social and cultural rights, are taken into consideration. There is a definition and the description of the implications of economic, social and cultural rights, an analysis of the International Covenant on Economic, Social and Cultural Rights and the similarities and the differences between this Covenant and the one on Civil and Political Rights. Afterwards, violations of economic, social and cultural rights are addressed. In a further analysis there is the description of the Maastricht Guidelines and the Limburg Principles on economic, social and cultural rights. To conclude the chapter, human rights policies in the last 40 years are taken into consideration.

The third and final chapter is about the influence of Human Rights policies in US and EU proposals to solve the Ukrainian crisis. It analyses the EU-Ukraine and US-Ukraine relationships and their perspectives about the solution of the conflict. It addresses human rights violations related to the Maidan protests and the recent US policies on human rights. It takes into consideration, in general the role of human rights in Ukraine before and after the crisis and it approaches to a possible solution of the conflict, considering also the economic front and the different US and EU perspectives.

2 Introduction

This work tries to analyse the impact that the diverse perception of the respect of human rights has caused in the policies utilized by the European Union and the United States to deal with the Ukraine crisis.

The crisis in Ukraine is an open conflict, which can be collocated in the post-cold war era with economic, political and military implications. However, it has a heavy setback on the violation of the fundamental human rights of the populations involved. The crisis sees the clash between the country's internal forces but

also suffers the heavy influence of external actors, such as Russia, the United States and the European Union.

Staying in the area of Western democracies, in order to understand if and how the policy towards human rights has affected the more general policies to address the crisis in Ukraine, first of all, I will start from a chronological reconstruction of the events of the crisis beginning in November 2013, highlighting the violations of human rights occurred. In the next chapter, we will consider the theoretical-doctrinal and practical approaches that underlie the different conceptions of human rights as it has emerged over the time in the United States and the European Union.

Finally, in the conclusive chapter, I will analyse how such a different approaches has influenced the American and European policies towards the Ukraine crisis, and how this has helped to create a complex scenario difficult to solve.

3 Origins of the Ukrainian crisis

3.1 Background to the crisis

The Ukrainian crisis is the crisis of the Ukrainian identity. To really understand its root cause, we need to consider the historical development of the Ukrainian identity and its ties with Russia and Europe.

First of all, Ukraine is a border land. Literally, its name means “on the border”. The country is crossed by linguistic, religious, social and cultural faults.

According to the World Affairs Journal¹, Ukraine is a country long divided by ethnic, linguistic, religious, cultural, economic and political differences—particularly its western and eastern regions, but not only. When the current crisis began in 2013, Ukraine had one state, but it was not a single people or a united nation. Some of these divisions were made worse after 1991 by corrupt elite, but most of them had developed over centuries.

There exists a nation called “Ukraine” and a “Ukrainian people” who yearn to escape centuries of Russian influence and to join the West (Affairs 2015)².

Statfor³ explains that there was once no distinction between the Russian and Ukrainian nations in their earliest forms; both peoples belonged to the loose federation of eastern Slavic tribes known as Kievan Rus that emerged in Eastern Europe toward the end of the ninth century. Over time, the medieval state grew to become one of the largest on the Continent, spanning between the Baltic and the Black seas. But it was different from its neighbors to the west: Orthodox Christianity was the dominant religion in Kievan Rus, setting it apart from the mostly Catholic Western Europe.

As the Russian Empire expanded throughout the 18th and 19th centuries, its influence in Ukraine grew. The Partitions of Poland gradually chipped away at the commonwealth's territory, granting the Austro-Hungarian Empire control of the far western Galicia region while giving the rest of the country to Russia.

In the early 20th century, after the fall of the Russian Empire, a Ukrainian nationalist movement emerged in the western province of Lviv. When the Soviet Union was founded in 1922, Lviv was the only Ukrainian territory that was not incorporated into the new Soviet state. Instead, it became the Ukrainian Soviet Socialist Republic, and Kiev was its capital.

¹ J. Motyl, ‘The Surrealism of Realism: Misreading the War in Ukraine’, in World Affairs, January/February 2015, page 1 <http://www.worldaffairsjournal.org/article/surrealism-realism-misreading-war-ukraine>

² J. Motyl, ‘The Surrealism of Realism: Misreading the War in Ukraine’, in World Affairs, January/February 2015, page 1 <http://www.worldaffairsjournal.org/article/surrealism-realism-misreading-war-ukraine>

³ Stratfor. “Ukraine: caught between east and west.” Stratfor, 29 December 2015: 1-2. <https://www.stratfor.com/analysis/ukraine-caught-between-east-and-west>.

The end of the Cold War, after 1989, brought an unprecedented degree of independence to Ukraine. Nevertheless, the legacy of the Cold War lingered, making the country's political scene more volatile. Russia continued to influence Ukraine from the east, while the newly formed European Union began to exert its power over the country from the west. Within Ukraine, competing political factions emerged that were loyal to one foreign patron or the other.

At the beginning of the 21st century, the weak Ukrainian government attempted to rebuild the country while maintaining a precarious balance between Russia and the West in its foreign policy. But when the pro-Russia Viktor Yanukovich won a narrow and contested victory over his pro-West opponent, Viktor Yushchenko, in Ukraine's 2004 presidential election, mass protests erupted. After what became known as the Orange Revolution, the election results were deemed illegitimate, and Yushchenko assumed the presidency instead.

During the decade of political polarization that followed, Ukraine began to politically re-orient itself toward the West, and it formally pursued membership in the European Union and NATO. This aggravated tensions with Russia. Moscow responded by cutting its natural gas flows to Ukraine in 2006 and 2009 and by expressing explicit discomfort with Kiev's new pro-West policies.

Still, the defining feature of this period was the infighting taking place within Ukraine's own government, especially between Yushchenko and his running mate, Yulia Tymoshenko. Their dispute, which divided the government, prevented the country from meaningfully integrating with the West and led to a steep decline of the government's popularity among Ukrainian voters. By the next presidential election in 2010, the political tides had turned: Yushchenko garnered a mere 5 percent of the vote and ceded the presidency to Yanukovich accordingly.

A look at Ukraine's long history shows that major shifts in the country's foreign policy and political orientation are not unique to the Euromaidan uprising. The country has frequently pivoted between Russia and the West as the pro-Russia east and the pro-Europe west vie for power (Stratfor 2015).

In this chapter, we will go through the events that have caused points of break in these faults. We will describe the chronology of the events of the Ukrainian crisis, their geographical collocation, the figures of casualties, incidents of violation of human rights, as reported by the international observers. We will see the monitoring actions by the UN, OSCE and the European Union and clarify better the context in which the policies to address the crisis in Ukraine were made, that we will develop in the next chapters.

3.2 Chronology of the events of the Ukrainian crisis

Analysing the chronology of the events related to the Ukrainian crisis, it's a good starting point.

We will analyse the situation after the Maidan uprising. But what happened during those protests?

According to the High Commissioner on Human Rights⁴, the Euromaidan was a wave of demonstrations and civil unrest in Ukraine, which began on the night of 21 November 2013 with public protests in Maidan Nezalezhnosti, "Independence Square", in Kiev, demanding closer European integration. The scope of the protests expanded, with many calls for the resignation of President Viktor Yanukovich and his government in 2013 (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016).

According to the Guardian⁵, during the days of waiting and of celebrating people's power on Kiev's Independence Square, the world had the chance to meet many ordinary Ukrainians as well as political leaders and celebrities who joined in the protests.

On November 30 and December 1, 2013, riot police violently dispersed and severely beat numerous peaceful demonstrators in Kiev, protesting Yanukovich's rejection of a political and trade agreement with the European Union. Police detained some of the protesters and beat them in custody.

Violent clashes between police and street fighters, who intermingled with protesters, killed over 100 people between January 19-21 and February 18-20, including some police, and injured many more. Police used rubber bullets, tear gas, and live munitions against protesters and street fighters armed with bats, firearms, and improvised explosives. Between February 18-20, at least 98 people were killed, including dozens by sniper fire presumably from Ukrainian security forces, although several former officials later claimed that Maidan organizers orchestrated the shooting. An investigation was pending in 2014⁶ (Balmforth 2014).

Riot police trying to disperse street fighters and protesters assaulted dozens of journalists. Police beat journalists who were covering the protests and sometimes deliberately shot them with rubber bullets or injured them with stun grenades.

Ukraine is not party to the treaty of the International Criminal Court (ICC), but in April 2014, the acting government lodged a declaration accepting the court's jurisdiction over alleged crimes committed in the country between November 17, 2013, and February 22, 2014. The ICC prosecutor's examines which criteria they need for opening a full investigation, as set out in the ICC's treaty.

⁴ United Nations Human Rights Office of the High Commissioner. 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21.

⁵ Irina Stelmakh and Tom Balmforth, 'Ukraine's Maidan protests - one year on', in The Guardian, 21 November 2014.

⁶ Irina Stelmakh and Tom Balmforth, 'Ukraine's Maidan protests - one year on', in The Guardian, 21 November 2014.

Former Ukrainian president Viktor Yanukovich fled to Russia in February and made occasional press statements in the ensuing months. His former prime minister, Mikolay Azarov, is also in Russia. He has reportedly bought a lavish mansion outside Moscow and has been seen consulting with members of the Russian State Duma. The Ukrainian Interior ministry has said that both Yanukovich and Azarov have been granted Russian citizenship, and authorities are investigating claims that both men continue to receive Ukrainian pensions⁷ (Balmforth 2014).

The World Report of Human Rights watch explains that the “Maidan” uprising in Kiev led to the expulsion of President Viktor Yanukovich in February and a complete review of Ukraine’s political system⁸.

Yanukovich’s overthrow, and a law that would have disfavored the Russian language, voted by the interim president, prompted violent clashes in southeastern Ukraine between pro and anti-Kiev protesters. The clashes of May in Odessa alone left 46 people dead. After Russia’s occupation of Crimea in March, Russia-backed armed insurgents seized control of many cities and towns in the Donetsk and Luhansk regions. This resulted in armed conflict with Ukrainian forces. Both sides violated laws of war in the conflict that by October took the lives of over 4,000 combatants and civilians and wounded over 9,000⁹.

Mounting evidence, including the capture of Russian soldiers in Ukraine, exposed Russian forces’ direct involvement in military operations, constituting an international armed conflict between Russia and Ukraine.

Between April and October 2014, hostilities resulted in over 450,000 displaced persons, including 16,000 from Crimea, having to flee their homes to other parts of Ukraine.

“Russian officials and state media distorted, manipulated, and at times invented information about the conflict. In response, the Ukraine government imposed excessive restrictions on freedom of media. This includes banning Russian channels and barring foreign journalists from entering the country” the World Report of Human Rights Watch reported¹⁰.

Following a September (2014) cease-fire agreement between the Kiev government and pro-Russian rebels, parliament passed a law granting three years of semi-autonomy to rebel-controlled areas. This law granted also amnesty to rebels who have not committed grave abuses. In November, after insurgents organized elections in the Donetsk and Luhansk regions, which Kiev deemed illegal, President Petro Poroshenko

⁷ Irina Stelmakh and Tom Balmforth, ‘Ukraine's Maidan protests - one year on’, in The Guardian, 21 November 2014.

⁸ Watch, Human Rights. “World Report.” 2015; Page 568.

Human Rights Watch is an international non-governmental organization, which deals with the defense of human rights and it’s financed by George Soros.

⁹ Watch, Human Rights. “World Report 2015.” 2015. Page 568.

¹⁰ Watch, Human Rights. “World Report 2015.” 2015. Page 568.

requested that parliament to repeal the law. Also in November, Poroshenko issued decrees shutting down all governmental institutions and banking services, as well as cutting all state funding to rebel-held areas¹¹.

In September 2014, the Ukrainian government stated the need for a new defense doctrine. The government defined Russia as an “aggressor state” and moved towards joining the North Atlantic Treaty Organization (NATO), introducing into parliament a draft law abolishing Ukraine’s non-bloc status.

Since February 2014, extra-legal, so-called self-defense units, aided by Russian security forces, seized administrative buildings and military bases across Crimea and installed a pro-Russian leadership. Following an unrecognized referendum on Crimea’s status (16 March 2014), Russian President Vladimir Putin and Crimea’s leadership signed agreements claiming to make Crimea and the city of Sevastopol part of the Russian Federation. Ukraine’s authorities and most international actors declared the referendum unlawful, and there was no lawful transfer of sovereignty to Russia. In 2014, Russia remained an occupying power of Crimea under international law.

Between February and April 2014, “self-defense” units committed serious abuses, including abductions, attacks, torture and harassment of activists, journalists, and others they suspected of being pro-Kiev¹².

Crimean Tatars, the predominantly Muslim ethnic minority of the Crimean peninsula, faced increased harassment and persecution. Since March, local authorities issued several warnings to Mejlis, the Crimean Tatar highest representative body, for “extremist” activities and threatened it with closure¹³.

In April and July 2014, respectively, authorities banned Tatar elders Mustafa Jemilev and Refat Chubarov from entering Crimea for five years. In September, they seized all property and bank accounts of the charitable fund that administered Mejlis, claiming it violated the law by having Jemilev, a Ukrainian citizen banned from Russia, on the board of directors¹⁴.

Police searched the homes of dozens of Crimean Tatars, as well as Islamic schools and mosques, for “prohibited literature.” In May, the authorities banned all mass gatherings before the 70th anniversary of the community's deportation.

Over 16,000 people have fled Crimea since March, primarily for mainland Ukraine¹⁵.

Between May and September 2014, mortar, rocket, and artillery attacks killed hundreds of civilians in the Donetsk and Luhansk regions. Both armed insurgents and government forces violated laws of war by using

¹¹ Watch, Human Rights. “World Report 2015.” 2015. Page 568.

¹² Watch, Human Rights. “World Report 2015.” 2015. Page 569.

¹³ Watch, Human Rights. “World Report 2015.” 2015. Page 571.

¹⁴ Watch, Human Rights. “World Report 2015”. 2015. Page 571.

¹⁵ Watch, Human Rights. “World Report 2015.” 2015. Page 571.

weaponry indiscriminately, including unguided rockets in civilian areas. Both sides fired salvos of Grad rockets into heavily populated civilian areas¹⁶.

The use of ground-launched Smerch and Uragan cluster munition rockets with explosive sub-munitions was recorded in several parts of eastern Ukraine after June. While evidence suggests all parties may have used cluster munitions, it was not possible to determine which forces were responsible for each attack, although the evidence indicates Ukrainian government forces were responsible for some attacks on Donetsk in October. Neither Ukraine nor Russia are parties to the 2008 Convention on Cluster Munitions that comprehensively bans the weapons¹⁷.

Between April and September 2014, intense fighting led to the complete collapse of law and order in several rebel-controlled areas, as reported by UNHCR Monitoring Mission. Rebels attacked, beat, and threatened hundreds of people whom they suspected of supporting Kiev, including journalists, local officials, and political and religious activists, and carried out several summary executions. They also subjected detainees to forced labor and kidnapped civilians for ransom, using them as hostages. In May 2014, militants kidnapped eight military observers with the Organization for Security and Co-operation in Europe (OSCE) and held them for several weeks¹⁸.

Also in May 2014, Ukrainian authorities captured the “defense minister” of the self-proclaimed Donetsk Republic. The next day, the leader of Ukraine’s Radical Party posted on his social media page photos of the detained man, naked, scratched, and with hands bound, stating that he planned to exchange him for the ousted President Yanukovich. Ukrainian authorities held the man in custody until September, when he was released in exchange for a Ukrainian serviceman during prisoner exchanges between insurgents and government forces¹⁹.

As counterinsurgency operations continued, Ukrainian security services and pro-Kiev volunteer battalions detained over 1,000 persons suspected of involvement in the insurgency, sometimes holding them for over 14 days and subjecting them to ill-treatment. In September 2014, Kiev authorities opened a criminal investigation into alleged crimes by the pro-Kiev Aydar battalion, which have reportedly included arbitrary detention, enforced disappearances, and torture²⁰.

Armed militants obstructed work of journalists covering the conflict. In some cases, rebels physically assaulted journalists they accused of “biased” reporting. In July, insurgent leaders prohibited journalists from filming in combat zones and public places, threatening them with prosecution before a military tribunal if they did so. Rebels harassed, threatened, beat, and abducted domestic and international journalists. At time

¹⁶ Watch, Human Rights. “World Report 2015.” 2015. Page 571.

¹⁷ Watch, Human Rights. “World Report 2015.” 2015. Page 571.

¹⁸ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

¹⁹ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

²⁰ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

of writing, most abducted journalists had been released, although the whereabouts of at least three remained unknown²¹.

Kiev's forces disappeared and arbitrarily detained 13 journalists, often accusing them of assisting insurgents. For example, in May 2014, security services detained two Russian reporters and held them for a week in incommunicado detention for suspected assistance to insurgents. The reporters later alleged they were beaten and threatened with execution.

As of 2015, At least seven media workers had been killed since the fighting began²² (Watch 2015).

3.3 Human rights implications of the events of the Ukrainian crisis

Worried about the escalation of the humanitarian crisis, in March 2014, the Office of the United Nations High Commissioner for Human Rights deployed to Ukraine a Human Rights Monitoring Mission to evaluate and report on the human rights situation and to provide support to the Government of Ukraine in the promotion and protection of human rights²³.

The Mission covers human rights developments in the whole country, with human rights monitors based in Kyiv, Donetsk, Odesa, Kharkiv, and Lviv.

On April 14, 2014 “misinformation, propaganda and incitement to hatred need to be urgently countered in Ukraine to avoid the further escalation of tension in the country” according to a UN human rights report²⁴.

The Report of May 15, 2014 says that the Assistant Secretary General Ivan Simonovic presented in Kyiv the second Report on the human rights situation in Ukraine with the focus on human rights challenges in the East and the South of Ukraine, and developments with regard to recommendations made in the first report. It also contains its own concrete recommendations, which are especially important ahead of the forthcoming presidential elections²⁵.

On June 18, 2014 the Office of the UN High Commissioner for Human Rights issued a report on Ukraine that describes the breakdown of law and order in the areas held by armed groups in the east of the country –

²¹ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

²² Watch, Human Rights. “World Report 2015.” 2015. Page 573.

²³ Office of the High Commissioner for Human Rights (OHCHR), Reports on the human rights situation in Ukraine, available at <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UAReports.aspx>.

As part of its work, the Mission prepares monthly reports describing the human rights situation and making recommendations. These reports are public and are available in English with unofficial translations into the Ukrainian and Russian languages.

²⁴ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. pages 1-21.

²⁵ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. pages 1-21.

with increasing evidence of abductions, detentions, torture, and killings – as well as a number of “worrying trends” emerging in Crimea²⁶.

On July 28, 2014, “a total breakdown of law and order and a reign of fear and terror have been inflicted by armed groups on the population of eastern Ukraine” according to a new report issued by the Office of United Nations High Commissioner for Human Rights²⁷.

On August 29, 2014 “there were intense fighting, including the use of heavy weaponry by both sides, in densely populated areas of eastern Ukraine, has increased the loss of civilian life, with an average of around 36 people being killed every day” says a new report issued by the Office of the High Commissioner for Human Rights²⁸.

On October 8, 2014, “in spite of a fragile ceasefire over the past month in the east of Ukraine, the protracted conflict continues to kill and wound civilians, and deprive the more than five million residents in areas directly affected by the violence of their basic human rights” UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein said²⁹

On November 20, 2014, civilians have continued to be killed, unlawfully detained, tortured and disappeared in eastern Ukraine, and the number of internally displaced people has risen considerably despite the announcement of a ceasefire on 5 September³⁰ (Ukraine 2014).

3.4 The EU response to the human rights implications of the Maidan events

The EEAS³¹ explains, which are the EU policy priorities, in relation to Ukraine. According to the EU Annual Report on Human Rights and Democracy in the World, the EU policy priorities are: the judicial reform, the respect for fundamental human rights, the right to free and fair elections and the measures to combat arbitrary detention, torture and discrimination³².

²⁶ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. Pages 1-21.

²⁷ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. pages 1-21.

²⁸ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. Pages 1-21

²⁹ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. pages 1-21.

³⁰ United Nations Human Rights Office of the High Commissioner. March 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf. Pages 1-21.

³¹ European Union External. European Union External Action. 2014. http://eeas.europa.eu/factsheets/news/eu-ukraine_factsheet_en.htm.

The European Union's diplomatic service helps the EU's foreign affairs chief – the High Representative for Foreign Affairs and Security Policy – to carry out the Union's Common Foreign and Security Policy.

³² Report, Annual. “Human Rights and Democracy in the World.” 2014. Page 121.

However, the many challenges confronting Ukraine throughout 2014 have shifted the EU's attention in the area of respect for human rights and fundamental freedoms to the violence committed against peaceful demonstrators during the EuroMaidan revolution, the situation in the

illegally annexed Crimean peninsula, and the ongoing conflict in parts of the Donetsk and Lugansk regions.

The EU reacted immediately to the unprecedented violent crackdown on peaceful demonstrators of November 2013. A flexible coordination channel was established between the EU Delegation and the staff of EU Member States' EU Annual Report on Human Rights and Democracy in the World in 2014 Embassies to coordinate spot-checks and share information in real time about alleged human rights violations. The main activities included monitoring of demonstrations and peaceful gatherings; observation of court hearings involving detained demonstrators, focusing in particular on cases of arbitrary detention and torture; contacts with lawyers and families of persons subject to arbitrary detention; and visits to hospitals where injured demonstrators were receiving medical treatment, as well as to hospitals and other venues where detained demonstrators were receiving treatment (Report 2014).

After the violence on the peaceful demonstrations, during the Euromaidan, the EU reaction was to send a EU delegation and EU member states on Ukraine, who stepped up their activities in the field of human rights³³ (Report 2014).

The Council of the European Union describes which are the main activities that the EU has been doing related to the Ukrainian crisis: monitoring of demonstrations and peaceful gatherings, observations of court hearings, involving detained demonstrators (cases of arbitrary detention and torture), contacts with lawyers and families of persons subject to arbitrary detention, visits to hospitals, where injured demonstrators were receiving medical treatment. The European Union has also supported the monitoring mission of the OSCE and the UN (Union, Outcome of proceedings 2015)³⁴.

The EU deals also with the monitoring of situations outside Kyiv. Throughout the period of the protests, EU leaders used all bilateral contacts with Ukrainian authorities to voice concern about respect for human rights, calling for a solution to the crisis to be found, based on respect for human rights and the rule of law³⁵

According to the Office of the High Commissioner for Human Rights, the head of the EU delegation visited opposition leader Lutsenko, who was in hospital after being beaten in a standoff with police officers, as well as civic activist Bulatov, kidnapped in 2014 and subjected to extreme torture (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016)³⁶.

³³ Report, Annual. "Human Rights and Democracy in the World." 2014 page 121.

³⁴ Union, Council of the European. "Outcome of proceedings." 2015 page 164.

³⁵ Union, Council of the European. "Outcome of proceedings." 2015 page 162.

³⁶ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Pages 1-21.

3.5 The free trade agreement between Ukraine and EU

According to the European Commission, on 1 January 2016, the European Union (EU) and Ukraine starts applying the Deep and Comprehensive Free Trade Area (DCFTA) which forms part of the Association Agreement signed in June 2014. The rest of the Association Agreement, containing political and cooperation provisions, has already been provisionally applied since November 2014. With the entry into force of the DCFTA both sides ensures that markets for goods and services are mutually opened on the basis of predictable and enforceable trade rules so that new opportunities are created for the EU and Ukraine businesses, investors, consumers and citizens. By more closely aligning Ukraine's regulations with EU legislation, the DCFTA promotes higher quality standards for products and increases the levels of consumer and environmental protection. Economic cooperation and exchanges are also enhanced, contributing to increased stability and prosperity for Ukraine³⁷.

The application of the DCFTA of the EU-Ukraine Association Agreement constitutes a milestone in the bilateral relationship, as it will offer new economic benefits to both sides. Ukrainian businesses receive stable and predictable preferential access to the largest market in the world with 500 million customers, while EU businesses will be able to benefit from easier access to the Ukrainian market and build new relationships with Ukrainian suppliers and cooperation partners. This will also be to the benefit of Ukrainian citizens, as they will have better access to high quality products, and increased competition and the lowering of import tariffs should lead to lower prices (Trade 2015)³⁸

3.6 The Humanitarian implications of the Ukrainian crisis

According to the United Nations High Commissioner for Refugees (UNHCR), at least 450,000 people have been displaced from the armed conflict in Ukraine and Crimea; according to the Russian government, approximately 814,000 went to Russia. Ukrainian authorities struggled to provide adequate protection and assistance for internally displaced people (IDPs) and, the bodies that the government tasked with coordinating efforts in various regions to provide housing and social assistance to IDPs lacked resources to carry out those tasks³⁹.

³⁷ Trade, European Commission-. European Commission- Trade. 31 December 2015. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1425>. Page 1-2.

³⁸ Trade, European Commission-. European Commission- Trade. 31 December 2015. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1425>. Page 1-2.

³⁹ World, Annual Report: Human Rights and Democracy in the. *Annual Report: Human Rights and Democracy in the World*. 2014. http://eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf pages 121-125.

In October 2014, parliament passed a law extending a specific set of rights to IDPs, including protection against discrimination and forcible return, and simplifying access to social and economic services, including residence registration and unemployment benefits⁴⁰.

Throughout the year 2014, central authorities imposed excessive restrictions on freedom of media. By September, the authorities, seeking to control slanted reporting and to counter Russian propaganda, banned 15 Russian channels from broadcasting in Ukraine, arbitrarily denied entry to at least 20, and barred 35 Russian journalists from entering Ukraine for between three and five years. During the year, authorities expelled at least nine Russian journalists covering the armed conflict⁴¹.

In March 2014, members of a Ukrainian nationalist party stormed the office of a major Ukrainian television station and attacked its acting president, hitting him several times and forcing him to resign over its Crimea coverage. Authorities opened a criminal investigation into the incident but closed the case in September due to “lack of evidence.”⁴²

After Russia’s occupation of Crimea, local media outlets in Crimea identified as pro-Ukrainian increasingly came under threat. Authorities issued warnings to critical journalists and bloggers, searched their homes, and detained several of them.

Unlike last year, the Kiev 2014 March for Equality was cancelled, because authorities in the city were afraid they could not protect lesbian, gay, bisexual, and transgender (LGBT) participants and their allies.

Throughout the year, the European Union, United States, NATO, and other key actors showed overwhelming support for the Ukrainian government without adequately pressing human rights issues. The EU, the US and NATO condemned Russia’s occupation of Crimea and it’s backing of the armed insurgency in the east.

In March 2014, the United Nations General Assembly passed a resolution, supported by 100 members states but with 58 abstentions, on the territorial integrity of Ukraine, which underscored that the referendum held in Crimea in March had “no validity” and could not “form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol.”⁴³

⁴⁰ World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

⁴¹ World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://www.eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

⁴² World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://www.eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

⁴³ World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://www.eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

In June 2014, President Petro Poroshenko stated that Russia and Ukraine were at war, and in August accused Russia of invading Ukrainian territory. More than a dozen nations have condemned the reported use of cluster munitions in Ukraine⁴⁴ (World 2014).

3.7 UN monitoring missions of Human Rights

Since the beginning of the conflict in the east, the UN Office of the High Commissioner for Human Rights and the OSCE have set up a Human Rights Assessment mission and deployed teams of human rights monitors to Ukraine, providing regular reports and updates on human rights abuses. In June, the UN Human Rights Council adopted a resolution on cooperation and assistance to Ukraine in the field of human rights, calling upon the government of Ukraine to investigate all allegations of rights violations and upon all concerned parties to provide access to human rights monitors in Ukraine, including Crimea (Ukraine 2014)⁴⁵.

Throughout the year 2014, the OSCE's representative on media freedom issued numerous statements expressing concern over deteriorating media freedom in Ukraine. In September, the representative called for an immediate stop to "hostile behavior" against media in Crimea, citing in particular the fate of the weekly newspaper of the Mejlis of the Crimean Tatar People, which had faced intimidation by the de facto authorities since early September⁴⁶.

In April, the secretary general of the Council of Europe (CoE) set up an international advisory panel to oversee investigations into violence during the Maidan protests and in Odessa in May⁴⁷. The Council's Parliamentary Assembly held three urgent debates on the situation in Ukraine, suspending the Russian delegation's voting rights in April (Watch 2015)⁴⁸.

The CoE commissioner for human rights visited Ukraine three times. Following his trip to Crimea in September, he called for an effective investigation into abuses by the "self-defense" units in March. In February, the Committee for the Prevention of Torture visited Kiev to look into treatment of people held during the Maidan protests⁴⁹.

In September, the European Parliament and Ukrainian authorities ratified the Association Agreement on deeper political association and free trade between the EU and Ukraine. In response to Russia's threat to

⁴⁴ World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://www.eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

⁴⁵ Ukraine, UN Human Rights Monitoring Mission in. UN Human Rights Monitoring Mission in Ukraine. 2014. <http://www.un.org.ua/en/information-centre/news/1870>. Page 1-2

⁴⁶ Ukraine, UN Human Rights Monitoring Mission in. UN Human Rights Monitoring Mission in Ukraine. 2014. <http://www.un.org.ua/en/information-centre/news/1870>. Page 1-2

⁴⁷ Watch, Human Rights. "World Report 2015." 2015. Page 589.

⁴⁸ Watch, Human Rights. "World Report 2015." 2015. Page 589.

⁴⁹ Watch, Human Rights. "World Report 2015." 2015.

impose harsher trade conditions on Ukraine if the agreement went into effect immediately, Ukraine and the European Union agreed to postpone implementation of the agreement until December 2015⁵⁰.

3.8 Alleged violations of human rights during the conflict

During the reporting period (2013-2014), despite a reduction in hostilities, the armed conflict in eastern Ukraine continued to, significantly, affect people residing in the conflict zone and all their human rights. The Government of Ukraine continued, to not have effective control over considerable parts of the border with the Russian Federation (in certain districts of Donetsk and Luhansk regions). Reportedly, this facilitated an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups. The ceasefire in certain districts of Donetsk and Luhansk regions in eastern Ukraine agreed upon during the previous reporting period was further strengthened by the “regime of complete silence” introduced on 23 December 2015 (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016)⁵¹.

However, in January and February 2016, the Special Monitoring Mission of the Organization for Security and Cooperation in Europe (OSCE) observed systematic violations of the ceasefire. During the same period, clashes and exchanges of fire have escalated in several flashpoints, predominantly near the cities of Donetsk and Horlivka (both controlled by the armed groups), and in small villages and towns located on the contact line, such as Kominternove (controlled by armed groups) and Shyrokyne and Zaitseve (divided between Ukrainian armed forces and armed groups)⁵².

The risk of re-escalation of hostilities remained high. The conflict continued to cause civilian casualties. Between 16 November 2015 and 15 February 2016, OHCHR recorded 78 conflict-related civilian casualties in eastern Ukraine: 21 killed (13 men and eight women), and 57 injured (41 men, eight women, six boys and two girls) – compared with 178 civilian casualties recorded (47 killed and 131 injured) during the previous reporting period of 16 August – 15 November 2015⁵³.

Overall, the average monthly number of civilian casualties during the reporting period was among the lowest since the beginning of the conflict. In total, from the beginning of the conflict in mid-April 2014 to 15

⁵⁰ Watch, Human Rights. “World Report 2015.” 2015.

⁵¹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21.

⁵² Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf Pages 1-21

⁵³ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

February 2016, OHCHR⁵⁴ recorded 30,211 casualties in eastern Ukraine, among civilians, Ukrainian armed forces, and members of armed groups – including 9,167 people killed and 21,044 injured. In the absence of massive artillery shelling of populated areas, ERW (Energy Return Wheel) and IEDs (Improvise Explosive Devices) remained the main cause of civilian casualties in the conflict zone during the reporting period. Given the threat that is presented by such weapons, there is an urgent need for extensive mine action activities, including the establishment of appropriate coordination mechanisms, mapping, mine risk education and awareness, on either side of the contact line. People living in the conflict-affected area shared with OHCHR that they feel abandoned, particularly in villages located in the ‘grey’ or ‘buffer’ zone (See down Map of Ukraine: Civilian casualties along the contact line, 16 November 2015 – 15 February 2016).



Often trapped between Government and armed group checkpoints, some of these areas, such as Kominternove, have been deprived of any effective administration for prolonged periods of time. Others are divided by opposing armed forces (such as Shyrokyne and Zaitseve), while some towns are located near frontline hotspots (such as Debaltseve and Horlivka). The contact line has physically, politically, socially

⁵⁴ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

and economically isolated civilians, impacting all of their human rights and complicating the prospect for peace and reconciliation. Over three million people live in the areas directly affected by the conflict and urgent attention must be paid to protect and support them. Their incremental isolation emboldens those who promote enmity and violence, and undermines the prospect for peace. Some assistance to territories under armed group control is being provided by local humanitarian partners, bilateral donors, and reportedly the Russian Federation, which delivers convoys, without the full consent or inspection of Ukraine. However, this aid is insufficient to respond to all the needs of 2.7 million civilians living in territories under the control of armed groups, and particularly those 800,000 living close to the contact line, who are particularly vulnerable⁵⁵.

3.9 The status of Internally Displaced Persons

The Government has registered 1.6 million internally displaced persons (IDPs), who have fled their homes, as a result of the conflict. OHCHR has observed that some IDPs are returning to their homes, while others are unable to do so due to the destruction or military use of their property. According to government sources in neighbouring and European Union countries, over 1 million Ukrainians are seeking asylum or protection abroad, with the majority going to the Russian Federation and Belarus⁵⁶.

The State Border Service reported that some 8,000 to 15,000 civilians cross the contact line on a daily basis, passing through six checkpoints in each transport corridor: three checkpoints operated by the Government, and three by the self-proclaimed 'Donetsk people's republic', with a stretch of no-man's land in between. OHCHR has regularly observed up to 300-400 vehicles waiting in rows on either side of the road. Passengers spend the night in freezing temperatures and without access to water and sanitation. As a result of recent passport checks introduced by the self-proclaimed 'Donetsk people's republic', freedom of movement has been further restricted, aggravating the isolation of those living in the conflict-affected areas. Policy decisions by the Government of Ukraine have further reinforced the existing contact line barrier. Moreover, there remains an almost total absence of information regarding procedures at checkpoints, subjecting civilians to uncertainty and arbitrariness. Residents of territories under the armed groups' control are particularly vulnerable to human rights abuses, which are exacerbated by the absence of the rule of law and any real protection. OHCHR continued to receive and verify allegations of killings, arbitrary and

⁵⁵ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016 http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁵⁶ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

incommunicado detention, torture and ill-treatment in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’⁵⁷

In these territories, armed groups have established parallel ‘administrative structures’ and have imposed a growing framework of ‘legislation’ which violate international law, as well as the Minsk Agreements. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continued to deny OHCHR access to places of detention. OHCHR⁵⁸ is concerned about the situation of individuals deprived of their liberty in the territories controlled by armed groups, due to the complete absence of due process and redress mechanisms.

Of particular concern, are those currently held in the former Security Service building in Donetsk and in the buildings currently occupied by the ‘ministries of state security’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. OHCHR⁵⁹ is also increasingly concerned about the lack of space for civil society actors to operate and for people to exercise their rights to freedoms of expression, religion, peaceful assembly and association in the territories controlled by armed groups. In January 2016, the ‘ministry of state security’ carried out a wave of arrests and detention of civil society actors in the ‘Donetsk people’s republic’. OHCHR⁶⁰ documented allegations of enforced disappearances, arbitrary and incommunicado detention, and torture and ill-treatment, perpetrated with impunity by Ukrainian law enforcement officials, mainly by elements of the Security Service of Ukraine (SBU).

3.10 Investigation of Human Rights violations

OHCHR urges the Ukrainian authorities to ensure prompt and impartial investigation into each reported case of human rights violations, as well as the prosecution of perpetrators. Accountability is critical to bring justice for victims, curtail impunity, and foster long-lasting peace. OHCHR⁶¹ was granted access to official pre-trial detention facilities throughout areas under Government control and, following some of its

⁵⁷ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁵⁸ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁵⁹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶⁰ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶¹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

interventions, noted some improvements in conditions of detention and access to medical care for some detainees in pre-trial detention in Odessa, Kharkiv, Mariupol, Artemivsk and Zaporizhzhia.

In some cases, OHCHR intervention also led to due attention being afforded to allegations of ill treatment and to law enforcement investigations into violations of other human rights in custody. These improvements confirm the importance for OHCHR⁶² to enjoy unfettered access to all places of detention. OHCHR is concerned about the lack of action toward clarifying the fate of missing persons and preventing persons from going missing as a result of the armed conflict in eastern Ukraine. There should be a clear commitment at the highest levels of the Government of Ukraine and by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to fully cooperate on missing persons cases.

Mechanisms to clarify the fate of missing persons need to be effective, impartial and transparent, and the victims and their families should always be at the centre of any action. OHCHR⁶³ continued to monitor the investigations and proceedings into the killings that occurred during the 2014 Maidan events, the 2 May 2014 Odessa violence, the 9 May 2014 Mariupol incidents and the 31 August 2015 Kyiv violence.

The lack of progress in these cases undermines public confidence in the criminal justice system. It is essential that they be, promptly, addressed with absolute impartiality, as their mishandling can jeopardize the peaceful resolution of disputes and fuel instability.

During this period, the Government of Ukraine took steps towards ensuring greater independence of the judiciary, adopted a plan of action for the implementation of the National Human Rights Strategy⁶⁴, and improved its legislation on internally displaced persons (IDPs). However, some critical measures remain to be adopted, including the much-awaited parliamentary vote on decentralization, which has been postponed and should take place by 22 July 2016.

Envisioned as part of the Minsk Process, this vote is to be the precursor to a series of steps toward peace. Decentralization is conceived as part of a package of confidence-building measures. These measures include the immediate and full ceasefire; pull-out of all heavy weaponry by either side of the contact line; dialogue on the modalities of conducting local elections, in accordance with Ukrainian legislation; pardon and amnesty through law; release and exchange of all hostages and illegally-held persons; safe access and delivery of humanitarian aid; modalities for the full restoration of social and economic connections;

⁶² Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶³ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶⁴ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

restoration of control of the state border by the Ukrainian government in the whole conflict zone; pull-out of all foreign armed formations, military equipment, and mercenaries; constitutional reform containing the element of decentralization and approval of the special status of particular districts of Donetsk and Luhansk regions.

The Government of Ukraine extended the territorial scope of its intended derogation from certain provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to territories it does not effectively control, as well as to areas it partially or fully controls in Donetsk and Luhansk regions⁶⁵ This may further undermine human rights protection for those affected. Despite being denied access to the peninsula, OHCHR continued to closely follow the situation in the Autonomous Republic of Crimea (“Crimea”), primarily relying on first-hand accounts.

OHCHR (guided by the United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine) remains concerned about violations taking place in Crimea, which is under the effective control of the Russian Federation. The imposition of the citizenship and the legislative framework of the Russian Federation, including penal laws, and the resulting administration of justice, has affected human rights in Crimea, especially for ethnic Ukrainians, minority groups, and indigenous peoples, such as Crimean Tatars. During the reporting period, OHCHR documented a continuing trend of criminal prosecution of Crimean Tatar demonstrators as well as arrests of Crimean Tatars for their alleged membership in ‘terrorist’ organizations⁶⁶.

In a significant and worrying development, on 15 February, the prosecutor of Crimea filed a request with the supreme court of Crimea to recognize the Mejlis, the self-governing body of the Crimean Tatars, as an extremist organization and to ban its activities⁶⁷.

Some decisions by the Government of Ukraine also affected the human rights of Crimeans, including those limiting their access to banking services in mainland Ukraine. The ‘civil blockade’ which Crimean Tatar and

⁶⁵ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶⁶ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶⁷ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

Ukrainian activists imposed as of 20 September 2015 – and which led to some human rights abuses – was lifted on 17 January 2016⁶⁸.

The illegal annexation of Crimea and Sevastopol and the activities of the illegal armed groups and the aggression by the Russian armed forces in Donetsk and Lugansk regions are a number of challenges in the area of human rights.

The EU condemned the illegal annexation and supported the sovereignty and territorial integrity of Ukraine⁶⁹ EU leaders feel the need for independent and transparent investigations of all human rights violations and for their perpetrators to be brought to justice.

EU supported the work of OSCE special monitoring mission, which did a monthly reporting on the human rights situation in Ukraine⁷⁰.

3.11 The different initiatives of the EU to approach the Ukrainian crisis

To deal with the Ukrainian crisis, the EU has undertaken various measures, such as the calling for an end to the systematic curtailment of human rights, it has conducted law-enforcement operations, the fight against arbitrary detention and torture and the fight against gender discrimination. Furthermore, the EU encouraged investigations on the abuses of human rights and it has provided financial support through the civil society organizations and Local Authorities Programme and the Neighbourhood Civil Society Facility. It has encouraged political and economic reforms in Ukraine. It has supported Ukraine's territorial integrity and made reference to the implementation of the Minsk Agreements.

European Parliament delegations sent observers to the presidential elections on May 25, 2014 and parliamentary elections on October 26, 2014. To support existing missions of OSCE, the European Parliament called for an end to the systematic curtailment of human rights, perpetrated by the separatists, mercenaries and regular Russian troops and for the adoption of anti-discrimination law in line with European standards. For the EU-Ukraine human rights dialogue, in the framework of Justice, Liberty and Security Subcommittee (Kyiv, July 2, 2014), the conduct of law enforcement operations in the conflict area and the right to a fair trial, the fight against arbitrary detention and torture, the fight against discrimination on the

⁶⁸ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁶⁹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21

⁷⁰ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21.

basis of sexual orientation and gender identity (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016).

The EU⁷¹ encouraged Ukraine to conduct effective investigations into reported human rights abuses during the Euro-Maidan protests, to adopt a legal framework governing freedom of assembly in line with international standards, to enhance media ownership transparency and to complete the work on comprehensive anti-discrimination legislation (delegation 2014).

The new Yatsenyul government and president Poroshenko spoke in favour of reforming the law enforcement agencies, to improve human rights standards. Human Rights are, also, factored in by the EU Advisory Mission for Civilian Security Reform in its work, assisting the UA authorities to reform the Ukrainian security sector⁷².

The EU provided financial support through the civil society organizations and Local Authorities Programme and the Neighbourhood Civil Society Facility. The EU adopted in 2014 a Special Measure for Ukraine, worth EUR 365 million, of which EUR 10 million was intended for supporting civil society's role in monitoring the reform process. Some EIDHR (European Instrument for Democracy and Human Rights) projects, dealing with issues encompassing voting rights against discrimination and measures to combat ill-treatment and torture continued to be carried out throughout Ukraine (World 2014)⁷³.

According to the EEAS⁷⁴, the European Commission is determined to make sure that Ukraine has all the support it needs, in the short and long term, to undertake the political and economic reforms that are necessary to consolidate a democratic, independent, united and prosperous Ukraine.

Since 2014 the Commission has agreed on a number of concrete measures for the short and medium term to help stabilise the economic and financial situation in Ukraine, assist with the transition, encourage political and economic reforms and support inclusive development for the benefit of all Ukrainians. A further package of financial assistance was proposed on 8 January 2015. The EU is both currently and since the country's independence the biggest international donor to Ukraine.

In order to meet the particularly acute challenge presented by the situation as it was then developing, in mid-2014 the Commission established the Support Group for Ukraine. The Support Group concentrates and coordinates the resources and expertise of the European Commission in order not just to monitor but also to assist Ukraine in the implementation of the Association Agreement and, crucially, in undertaking the deep and systemic reforms that will be necessary if the country is to draw maximum benefit from a closer

⁷¹ delegation, European Union- EU. EAAS Europa. 2014. Page 1-2

⁷² delegation, European Union- EU. EAAS Europa. 2014. Page 1-2

⁷³ World, Annual Report: Human Rights and Democracy in the. Annual Report: Human Rights and Democracy in the World. 2014. http://www.eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf. Pages 121-125.

⁷⁴ Action, European Union External. "EU financial and technical assistance for Ukraine." 2014.

—. European Union External Action. 2014. http://eeas.europa.eu/factsheets/news/eu-ukraine_factsheet_en.htm. Pages 1-2.

relationship with the European Union. This is the first time such a Support Group has been established for any country outside the borders of the EU (Action, EU financial and technical assistance for Ukraine 2014).

The EAAS explains the EU's support of Ukraine's territorial integrity, condemning violations of Ukrainian sovereignty and territorial integrity by acts of aggression by the Russian armed forces. The EU has supported all initiatives aimed at bringing political solutions to the conflict in Eastern Ukraine. Restrictive measures and diplomatic efforts and continuing dialogue are enhanced in the region. On July 24, 2014, there was the first package of economic sanctions against Russia and the implementation of the Minsk agreement (for a ceasefire between Russia and Ukraine). The EU supported the OSCE mission for the Humanitarian Assistance in Ukraine and the forefront for the humanitarian crisis. There was a financial support by the EU, who provided supplies by air and road (Action, European Union External Action 2014)⁷⁵

The European Council⁷⁶ refers to the implementation of the Minsk Agreement. The European Council agrees on the restrictive measures to Russia, applied on July, 31, 2014. The European Council doesn't recognize the annexation of Crimea and Sevastopol by Russia and supports Ukraine Reform process. There was a Foreign Affairs Council meeting in Brussels, held January 29, 2015 (Action, European Union External Action 2015).

⁷⁵ Action, European Union External. "EU financial and technical assistance for Ukraine." 2014.

—. European Union External Action. 2014. http://eeas.europa.eu/factsheets/news/eu-ukraine_factsheet_en.htm.

⁷⁶ *European Union External Action*. 2015. http://eeas.europa.eu/ukraine/docs/index_en.htm.

3.12 Official EU statements in the early stage of the Ukrainian crisis

As registered in the 2014 EU Annual Report on Human Rights, during his opening speech at the New Narrative for Europe conference in Milan in 2014, President Barroso also made the following remarks on the current situation in Ukraine: "My appeal to all the intellectuals, to all men and women of culture, to all citizens, is not to give up to this defeatism, is to have the courage to fight the negative forces because yes, the populist forces, the extremist forces are negative forces that are today under a theme that is very often an anti-European theme, making the revival of the all demons of Europe, like extreme nationalism, like xenophobia, sometimes racism – these are negative values. It is important, in face of these challenges - instead of keeping ourselves in the comfort zone, namely the so called establishment parties - to have the courage to go out and fight, not to give up to those arguments, to explain with reasonable and rational arguments - sometimes for some of us with emotion - why we care about Europe, why Europe is something we must cherish precisely to defend these values⁷⁷.

And I hope that the European forces will show their commitment to our common project. Because it is not true that is it just in the Western part of Ukraine. No, most of the Ukrainians care about a future in peace and freedom. And I think we have this duty to recognise them today. Because precisely our history is a history of openness (...)."78

3.13 The status of Human Rights in the Ukrainian crisis

A report of the Institute of International Relations⁷⁹ took a snapshot of the Human rights situation in 2014. Since the outbreak of Ukrainian crisis, a vicious circle has opened causing a significant concern to Europe and international community regarding human rights' evolution. The peaceful demonstrations against President Yanukovich led to mass violations of basic human rights, the country was divided in two parts (separatists and pro-Ukrainian forces) and, since then attacks have become a daily phenomenon in many

⁷⁷ Council of the European Union, 'EU Annual Report on Human Rights and Democracy in the World in 2014' 10152/15 (Luxembourg, 22 June 2015). Page 161

⁷⁸ Council of the European Union, 'EU Annual Report on Human Rights and Democracy in the World in 2014' 10152/15 (Luxembourg, 22 June 2015). Page 161

⁷⁹ Natasa Asimakopoulou, Mary Stratigou, Chloe Thanopoulou, Maria Yiannakis, 'Ukrainian crisis: the impact on Human Rights under the European perspective', Institute for International Relations, June 2014.

regions of Ukraine. The annexation of Crimea to Russia was the first step and then, the referenda in eastern provinces of the country gave the opportunity to Russia for taking on a more active role⁸⁰

Basic freedoms and rights of people are constantly being undermined by armed groups and the rising number of killings, abductions and detentions of journalists, activists and politicians causes not only Europe's but also the United Nations' concern. The hatred and propaganda have contributed to the escalation of the crisis in Ukraine, while the danger of spiraling out of control is obvious. It is a fact that impunity and toleration enjoyed by armed forces are factors that contribute to significant deterioration of human rights' situation. Indeed, 127 people have been killed, whereas 112 cases of unlawful detentions have been documented. The increasing prevalence of hate speech and the harassment of journalists not only threaten the right on freedom of speech and deepen divisions between the two parts of the country, but also indicate the breakdown in law and order. Consequently, these factors lead to more violence and exacerbate the tensions between the two communities⁸¹

As far as Russia's response is concerned, it has repeatedly been blamed for intensifying instability in eastern Ukraine, but Russia continues condemning and ignoring every report concerning "the crudest violations of human rights by the self-proclaimed Kiev authorities"⁸². The invocation of the need to protect the Russian speaking people and their rights was an excuse which permitted a more intense role in the Ukrainian territory. However, although western governments have suggested and implemented economic sanctions against Moscow and threatened for more severe measures, Russia encourages separatism in the eastern regions by ignoring every invitation to dialogue.

Nevertheless, violations of basic human rights are motivated by important factors such as racism, xenophobia and ethnic intolerance. These factors should be confronted and prevented through united efforts of both the international community and the Ukrainian government. Otherwise, the consequences for stability, peace and democratic development in Europe would be devastating. The need for judicial and security-sector reform, the importance of addressing corruption and ensuring equal access are essential in order to protect human rights and prove accountability. The Ukrainian people in collaboration with European countries should investigate allegations and bring perpetrators to justice, as the international community is faced with the risk of ramifications for international peace and security caused by a potential escalation of the Ukrainian crisis.

⁸⁰ Natasa Asimakopoulou, Mary Stratigou, Chloe Thanopoulou, Maria Yiannakis, 'Ukrainian crisis: the impact on Human Rights under the European perspective', Institute for International Relations, June 2014.

⁸¹ Natasa Asimakopoulou, Mary Stratigou, Chloe Thanopoulou, Maria Yiannakis, 'Ukrainian crisis: the impact on Human Rights under the European perspective', Institute for International Relations, June 2014.

⁸² Natasa Asimakopoulou, Mary Stratigou, Chloe Thanopoulou, Maria Yiannakis, 'Ukrainian crisis: the impact on Human Rights under the European perspective', Institute for International Relations, June 2014.

Despite the widespread violation of human rights in Ukraine, some recent developments indicate that there are chances for improvement of the human rights' situation in the country. The constitutional reform, which includes both the decentralization of power and the protection of the Russian language, and the reform of the judiciary will attribute greater independence to the regions. The respect of the ethnic diversity of the country will restore confidence in the judiciary, as the latter has committed gross violations of professional and ethical standards and finally, will reinforce the rule of law. However, the reinforcement of the legislative framework for torture prevention is considered necessary according to international norms and standards.

Regarding the presidential elections, since the election proceeded normally in most regions of the country, there are hopes that the crisis in Ukraine will eventually be resolved. The biggest achievement of the new government so far, is that it emerged through a democratic election process, unlike the acting government whose power was considered illegitimate, especially by the eastern regions of Ukraine. Therefore, it is possible that the relations between Kyiv and the eastern part of the country will be restored. The actions of the new President towards the pro-Russian separatists and the continuation of the constitutional reform will determine the future of Ukraine.

In conclusion, it could be stated that Ukrainian government and separatists, respectively, violate human rights in order to achieve the effectiveness in the field of their own interests. Politic tactics and the satisfaction of each of the two parts' demands tend to replace legitimacy, and consequently, the protection of basic human freedoms. It is true that the lack of democracy and the atmosphere of civil war in Ukraine will not improve without strong efforts for dialogue. However, hopes are disappearing as any attempt for negotiations, including the Geneva Agreement, has failed. Russian Federation and Ukraine remain neighbors with complex but close ties and positive relations between the two nations directly affect Europe and international community in general . It is, therefore, Moscow and Kiev that should discuss diplomatic solutions for restraint and de-escalation in the current crisis, taking always into consideration the respect of the victims and the protection of human rights (Filis, Ukrainian crisis: the impact on Human Rights under the European perspective 2014)⁸³.

3.14 Latest developments of the EU Eastern Partnership Policy

According to the European Union External Action Service⁸⁴, through its European Neighbourhood Policy (ENP), the EU works with its southern and eastern neighbours to achieve the closest possible political association and the greatest possible degree of economic integration. This goal builds on common interests

⁸³ Natasa Asimakopoulou, Mary Stratigou, Chloe Thanopoulou, Maria Yiannakis, 'Ukrainian crisis: the impact on Human Rights under the European perspective', Institute for International Relations, June 2014.

⁸⁴ Service, European Union External Action. European Union External Action Service. 2016. http://eeas.europa.eu/enp/about-us/index_en.htm.

and on values — democracy, the rule of law, respect for human rights, and social cohesion. The ENP is a key part of the European Union's foreign policy.

Partner countries agree with the EU an ENP action plan or an Association Agenda demonstrating their commitment to democracy, human rights, rule of law, good governance, market economy principles and sustainable development. The EU supports the achievement of these objectives (Service 2016).

According to the European Parliament⁸⁵ proceedings, relations between the European Union (EU) and the six Eastern Partnership (EaP) countries have evolved profoundly since those countries became independent states in 1991. The first five years of the EaP have borne witness to the most challenging period of relations between the EU and Eastern Europe since the dissolution of the Soviet Union. The year 2014 was a pivotal one, marked by the signing of Association Agreements (AAs) with the EU by three EaP countries, namely Ukraine, Republic of Moldova, and Georgia, and by Russian military intervention in Ukraine, including the annexation of Crimea. The Russian factor has been a persistent destabilising element since the birth of the EaP. An earlier Russian intervention, a short war with Georgia in August 2008, in fact accelerated the launch of the EaP. Russia's hostile actions in Ukraine in 2014 have fundamentally changed the situation, not only in Eastern Europe, but in Europe as a whole, and have repercussions at the global level, because the Kremlin has violated the ground rules of international relations. The continued aggression of a revanchist and intransigent Russia has altered the political and social landscape, and the old ideas and concepts of the EU's relations with its neighbours, however well-intentioned and suitable for a previous era, are now obsolete. Therefore, the EU needs to rethink its policy towards the EaP countries and Russia, and build new approaches to suit the new reality. The EaP concept shaped in 2009 is not a relevant and viable policy framework at the beginning of 2015. Taking into account the challenges linked with this new reality and the experience of the past five years, it is clear that a retuned EaP should be a much more politically oriented and less technically oriented project than it is today.

This study offers a careful consideration of which elements of the EaP have proven to be successful in their stated goals, and which have not. In general, bilateral relations between the EU and partner countries proved to be much more effective than the multilateral track of the EaP.

The recommendations call for a major policy shift in how the EU views, and deals with, the six EaP countries, not least because a clear division of the EaP countries into two groups has become inevitable. The first group contains those that have signed an AA, including the establishment of a Deep and Comprehensive Free Trade Area (DCFTA), namely Ukraine, Republic of Moldova, and Georgia. The second group consists

⁸⁵ department, Directorate General for external policies- policy. "The Eastern Partnership after five years: time for deep rethinking." European parliament, 2015.

of Belarus, Azerbaijan and (requiring a more nuanced approach) Armenia. More than ever, the EU will need to focus its attention on relations with those EaP countries that have demonstrated the will to cooperate more closely, and who truly wish to integrate with the Union, politically, economically and socially. Ukraine, Republic of Moldova, and Georgia should be perceived as more than partners. Such an approach would send a clear political signal to all the parties involved that a deeper level of integration is a common endeavour, and make for a better use of limited resources.

In a returned 'Eastern Partnership' initiative, the 'more for more' principle should be further strengthened through a reformed Comprehensive Institution Building programme (CIB), providing systematically more support in expertise, twinning, technical assistance, and financial assistance in proportion to the achievements and effectiveness of implementation to date.

Bilateral relations have to become a priority even more than now, building on the greater success of the bilateral track compared against the multilateral track. The strengthened clarity of this bilateral approach should be complemented by a more customised approach to multilateral relations, driven more to foster regional cooperation than to link all partners to participation in EU policy frameworks (department 2015)⁸⁶.

⁸⁶ department, Directorate General for external policies- policy. "The Eastern Partnership after five years: time for deep rethinking." European parliament, 2015.

4 US and EU attitude on Human Rights: Divergence on Economic, Social and Cultural Rights

4.1 Different focus of EU and US about Human Rights in the Conflict in Ukraine

European and American approach concerning economic, social and cultural rights (ESC) is significantly different. This difference affects US and European Union policies in dealing with the Ukrainian crisis, as we will better see in the next chapter.

As a matter of fact, in the Ukrainian conflict scenario, the US focus mainly on the violation of civil and political rights, while the EU takes into account also the situation of economic, social and cultural rights.

4.1.1 Definitions and implications of ESC rights

Economic, social and cultural rights include the rights to adequate food, to adequate housing, to education, to health, to social security, to take part in cultural life, to water and sanitation, and to work. Economic, social and cultural rights are protected under various international and regional treaties as well as in national constitutions. International Covenant on Economic, Social and Cultural Rights is the most comprehensive treaty which provides protection of these rights at international level (U. N.-O. Commissioner 2016)⁸⁷.

The Universal Declaration on Human Rights recognises a number of economic, social and cultural rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which I will explain in the following paragraph, is the primary international legal source of economic, social and cultural rights. The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women recognises and protects many of the economic, social and cultural rights recognised in the ICESCR in relation to children and women. The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination, on the basis of racial, or ethnic origin in relation to a number of economic, social and cultural rights. The Convention on the Rights of Persons with Disabilities also prohibits all discrimination, on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of economic, social and cultural rights.

⁸⁷ Commissioner, United Nations Human Rights- Office of the High. United Nations Human Rights- Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/Issues/ESCR/Pages/ESCRIndex.aspx>.

Eide⁸⁸ writes that for social rights, we mean the right to an adequate standard of living, where everyone enjoys necessary subsistence rights: adequate food and nutrition rights, clothing, housing and necessary conditions of care (Rosas 1995). He continues describing what economic rights are. The author explains that economic rights have a dual function: they imply the right to property and the right to work. They are the basis for entitlements, which can ensure an adequate standard of living and the basis of independence and freedom. Not all can enjoy the right to property on an equal basis. The right to work and the right to social security must supplement it⁸⁹.

Cultural rights, instead, are the right to take part in cultural life, the right to enjoy the benefits of scientific progress; right to benefit from the protection of the moral and material interests, resulting from any scientific, literary or artistic production of which the beneficiary is the author and freedom for scientific research and creative activity⁹⁰.

They are linked to the right to education. Minorities and indigenous people also have rights in this sense: equality in the enjoyment of economic and social rights; ensure conditions for maintenance of their cultural identity.

In this context, two concepts are relevant to analyse: absorption and global institutionalization. For Eide, absorption is when, within all nation societies, the rights of the Universal Declaration of Human Rights (UDHR) shall be recognized as ideals to be implemented in national law and administration through necessary political and social reform⁹¹.

For global institutionalization, Eide means the development of mechanisms at the international level, which can monitor the implementation of human rights and generate cooperation in economic, social and cultural matters to establish the conditions for their full enjoyment worldwide⁹².

Eide explains the duty holders and their obligations. Under International Law, obligations for HR are hold by states. Duties to respect the rights of other persons and to contribute to common welfare. According to the UDHR, there is a moral obligation on all states to seek to realize social and economic rights. Obligations on state parties: to respect, to protect and to fulfil: to facilitate and to provide. States must respect the resources owned by the individual. Collective rights are important: when unemployment sets in, for the disadvantaged

⁸⁸ Asbjorn Eide was the member of UN subcommission for Human rights from 1981 to 2003

⁸⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995; Pages 133-149.

⁹⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995; Pages 133-149.

⁹¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 3-9.

⁹² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 3-9.

and the elderly, during sudden situation of crisis or disaster and for those who are marginalized (Rosas 1995)⁹³.

The International Bill of Human Rights is the primary legal source about Human Rights and it consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols⁹⁴.

Human rights had already found expression in the Covenant of the League of Nations, which led, inter alia, to the creation of the International Labour Organisation. At the 1945 San Francisco Conference, held to draft the Charter of the United Nations, a proposal to embody a "Declaration on the Essential Rights of Man" was put forward but was not examined because it required more detailed consideration than was possible at the time⁹⁵.

The Charter clearly speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1, para. 3). The idea of promulgating an "international bill of rights" was also considered by many as basically implicit in the Charter⁹⁶.

Eide identifies three fields of state duties for individual rights:

- 1) Individual must be protected from state interference in the exercise of certain freedoms (obligation to respect). This obligation requires states to refrain from interfering with the enjoyment of economic, social and cultural rights.
- 2) The State protects the individual from other actors interference (obligation to protect). The obligation requires states to prevent violations of such rights by third parties.
- 3) The State provides certain public goods that would be undersupplied if their provisions were left to market mechanisms (Obligation to fulfil). This obligation requires states to take appropriate legislative, budgetary, judicial and other measures for the full realization of such rights (Rosas 1995)⁹⁷.

4.1.2 The International Covenant on Economic, Social and Cultural Rights

The Universal Declaration of Human Rights (UDHR), was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A as a common standard of

⁹³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 3-9.

⁹⁴ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁹⁵ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁹⁶ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁹⁷ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected⁹⁸.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁹ is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of 2015, the Covenant has 164 parties. A further six countries, including the United States, have signed but not ratified the Covenant¹⁰⁰.

The ICESCR is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols¹⁰¹.

It is very important to note that the United States have not ratified the Covenant.

The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

If we want to analyse the violations of economic, social and cultural rights we need to distinguish these rights from the political and civil ones. In order to do so, we need to differentiate between the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016)¹⁰².

4.1.3 Similarities and differences of the two Covenants

According to Jaichand¹⁰³, the two International Covenants have similarities and differences. Both have the same language in the first paragraph of the first articles, which recognizes the right to self-determination. But art. 2 paragraph 1 is different because in the ICCPR obliges each State party to respect and ensure the rights in the Covenant while the ICESCR permits State parties to take steps to the maximum of its available resources to achieve progressively the full realization of rights.

⁹⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995; Pages 3-9.

⁹⁹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> pages 1-3

¹⁰⁰ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> pages 1-3

¹⁰¹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>. Pages 1-3

¹⁰² Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>. Pages 1-3.

¹⁰³ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In An Introduction to International Human Rights Law , di Azizur Chowdhury & Jahid Bhuyian. 2010. Jaichand is the Deputy Director of the Irish Centre for Human Rights.

A fundamental difference comes from these premises: non-justiciability of economic, social and cultural rights. That is to say, the doctrine of separation of powers in a democratic state where the courts are not empowered to encroach into the legislative arena, which makes policy for the state. The courts are better suited to protect civil and political rights where states have a negative duty like permitting the freedom of speech or the right to demonstrate. In an economic, social and cultural right, the State has a positive duty to act and such action is likely to be costly¹⁰⁴.

All economic, social and cultural rights are always protected in all circumstances. The requirement to protect rights in the ICESCR is much higher.

There are some overlapping provisions in the two covenants. Both deal with trade union rights, right to life. The ICCPR norms create respect for these rights under sanction of the law. These rights are absolute, immediate, and justiciable in the courts of state parties and they are negative rights, they do not cost much. The economic, social and cultural rights, instead, are not justiciable; they are likely to be more costly and impose positive obligations on the state and are best left to charity or welfare organizations who are specialists in dealing with these issues (Jaichand 2010)¹⁰⁵.

4.1.4 Violations of Economic, Social and Cultural Rights

The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

The Committee on Economic, Social and Cultural rights¹⁰⁶ evaluates the violations of ECSCR, that occur when a state fails to ensure the satisfaction of the minimum essential level required to be free from hunger.

Any discrimination on the grounds of race, colour, sex, language, age, religion, political opinion, national or social origin, property, birth with the purpose of nullifying the equal enjoyment of economic, social, cultural rights constitutes a violation of the Covenant¹⁰⁷.

What part of state resources are allocated to the realization of economic, social and cultural rights compared to other purposes? Expenditure of death should be turned into expenditure of life (public action to combat

¹⁰⁴ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010.

¹⁰⁵ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010.

¹⁰⁶ United Nations Human Rights Office of the High Commissioner. 2016.

<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx> page 1-3

¹⁰⁷ United Nations Human Rights Office of the High Commissioner. 2016.

<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx> page 1-3

poverty), which could solve problems insoluble due to the lack of resources at international and national level (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016)¹⁰⁸.

4.1.5 US attitude towards the violations of economic, social and cultural rights

Let us first consider the American attitude towards economic, social and cultural rights. According to Eide¹⁰⁹, in the United States, as in the UK, there is a juridical tradition, which dates back to the habeas corpus, a writ requiring a person to be brought before a judge or court, especially for investigation of a restraint of the person's liberty, used as a protection against illegal imprisonment.

The American Declaration of Independence (1776) mentions the habeas corpus right. Furthermore, during the F. D. Roosevelt administration in the US, it was initiated a social reconstruction with the goal to eliminate poverty. In 1941, Roosevelt elaborated the Four Freedoms doctrine, stating that true individual freedom cannot exist without economic security and independence (freedom from want).

According to De Schutter¹¹⁰, if we consider the US attitude towards the violation of Economic and social human rights, we can look at the administration of Jimmy Carter, which transmitted the International Covenant on Economic, Social and Cultural Rights to the US Congress for approval in 1978. The ICESCR was not approved by the US Congress.

Possible violations of ICESCR is the failure to take appropriate steps as required under the Covenant and to utilize the maximum of the available resources towards the full realization of the Covenant (Schutter 2013)¹¹¹.

According to Eide¹¹², from an historical perspective, the United States referred to the Human Rights issue since their independence, in the American Declaration of Independence in 1776 and in The Atlantic Charter promoted by Churchill and Roosevelt (1941), reaffirms is the protection of fundamental human rights. In the same year, , Roosevelt spoke about the Four Freedoms, saying that true individual freedom cannot exist without economic security and independence (Rosas 1995)¹¹³.

¹⁰⁸ United Nations Human Rights Office of the High Commissioner. 2016.

<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx> page 1-3

¹⁰⁹ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 2001.

¹¹⁰ Shutter, Olivier De. «Economic, Social and Cultural Rights as Human Rights.» In *Economic, Social and Cultural Rights as Human Rights*, di Olivier De Schutter. 2013.

¹¹¹ Shutter, Olivier De. «Economic, Social and Cultural Rights as Human Rights.» In *Economic, Social and Cultural Rights as Human Rights*, di Olivier De Schutter. 2013. De Schutter until 2014 is the UN rapporteur on Right to food and formerly chairman of the EU Network of Independent Experts on Fundamental Rights.

¹¹² Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 2001.

¹¹³ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 2001.

4.1.6 European attitudes towards economic, social and cultural rights

When we talk about Europe, we must distinguish between the European Union (28 members) with its bodies including the Council of the European Union (at the level of ministers), the European Parliament and the European Court of Justice (which deals the disputes between the European Union and the Member States) and the wider European level represented by the 47 countries participating in the Council of Europe.

In 1950 the governments of the countries member of the Council of Europe, have signed the European Convention on Human Rights (ECHR)¹¹⁴ (Europe, European Convention on human rights 1950)¹¹⁵ and have set up the European Court on Human Rights, to which appeal citizens or groups, who believe they have suffered human rights violations by one of the member States. The European social charter (ESC European social Charter)¹¹⁶ signed in 1961 and revised in 1996 is a treaty between the member countries of the Council of Europe that broaden the scope of protected fundamental civil and political rights to include social and economic rights. According to the European Commission¹¹⁷, In 2014, the Council and the European Parliament adopted the new external financial instruments (2014-2020), in which human rights and democracy feature as key principles and are covered by dedicated programmes, including in the EIDHR (the European Instrument for Democracy and Human Rights), in the thematic programme on Civil Society Organisations and Local Authorities (CSOLA), under the DCI (Development Cooperation Instrument) and in the Instrument contributing to Stability and Peace (IcSP) (E. Commission, International Cooperation and Development- Funding Instruments 2016)

All of the above programmes are used, directly or indirectly, to promote human rights and democracy, in line with the EU Strategic Framework on Human Rights and Democracy (Union, EU Strategic Framework and Action Plan on Human Rights and Democracy 2012)¹¹⁸ and the Agenda for Change (E. Commission, Agenda for Change 2011)¹¹⁹. In 2014, the EEAS and Commission services finalised the bilateral programming exercise with partner countries, the Commission adopted strategic programming documents and multiannual indicative programmes for 2014-2020. Human rights, democracy and other key elements of good governance were addressed either as key focal sectors or through the implementation of the rights based approach in other areas of cooperation¹²⁰.

¹¹⁴ Europe, Council of. *European Convention on human rights*. 1950. http://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹¹⁶ European Social Charter <http://www.refworld.org/pdfid/3ae6b3678.pdf>

¹¹⁷ Commission, European *International Cooperation and Development- Funding Instruments*. 2016. https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments_en

¹¹⁸ Union, Council of the European. "EU Strategic Framework and Action Plan on Human Rights and Democracy." 2012. Pages 1-24.

¹¹⁹ Commission, European. Agenda for Change. 2011. https://ec.europa.eu/europeaid/policies/european-development-policy/agenda-change_en. Page 1-2.

¹²⁰ Union, Council of the European. "Council of the European Union." 2015.

The EU commitment to the rights-based approach was formalised in the 2014 Commission Staff Working Document¹²¹ on "a right based approach, encompassing all human rights for EU development cooperation". In May 2014, the Council conclusions welcomed this significant step and highlighted the key principles it contains. The main points outlined in the Commission Staff Working Document (SWD) provides concrete guidance on how to apply a rights-based approach to any development programme or project, using five working principles: 1) applying all rights, 2) participation and access to the decision-making process, 3) non-discrimination and equal access, 4) transparency and 5) access to information (E. Commission, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL 2015).

In parallel with the programming exercise, the Commission continued to assess respect for fundamental values in its budget support programmes. As of 1 January 2013, the methodology laid down in this respect in the Budget Support Guidelines¹²² is fully implemented for all new budget support programmes (Budget 2016).

In 2014, the EU continued to shape its position and strategy for the follow-up to Rio+20 and the post-2015 development agenda. The EU has been a vocal advocate for the integration of human rights, rule of law and governance issues in the global development agenda. The EU drafted a number of policy statements which were endorsed at Council level, most recently in December 2014. The EU contributed actively to many international discussions, including the UN Open Working Group sessions, the Human Rights Council and informal debates of the General Assembly (Union, Council of the European Union 2015).

If we consider the European approach (Council of Europe perspective), according to Scheinin¹²³, we can look at the procedural safeguards. The right to free legal assistance is a social dimension of the right to fair trial, emphasized by the European Court of Human Rights (Europe, European Court of Human Rights

¹²¹ Commission, European. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL. 2015. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0248>.

¹²² Budget, European Commission-. Financial Regulation and Rules of Application. 2016. http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm?archive=1.

¹²³ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In Economic, Social and Cultural Rights: A textbook, di Rosas Eide. 2001. Scheinin is Professor of International Law and Human Rights at European University Institute.

2016)¹²⁴ in the Airey case (ESCR-Net 1979)¹²⁵. In this case the Court discussed the relationship between civil and political, and economic and social rights.

Art. 6 of the ECHR (Europe, European Convention on Human Rights 1948)¹²⁶ relates to access to courts in social security disputes. “Everyone is entitled to a fair and public hearing with an independent and impartial tribunal established by law” in the determination of his civil rights and obligations. Furthermore, according to the same article, state parties are obliged to provide access to courts, full equality of arms with administrative authorities, free legal aid under certain conditions, independent, impartial and timely decision-making, full reasoning for the decision and under certain conditions, oral hearing¹²⁷.

In the cases *Feldbrugge v. Netherlands*¹²⁸ and *Deumeland v. Germany*¹²⁹, the ECtHR (European Court of Human Rights): took its first major step in extending the protection of art. 6 to social security benefits. In 1993 the ECtHR took a second major step: in the cases *Salesi v. Italy*¹³⁰ and *Schuler-Zgraggen v. Switzerland (E. C. Rights 1993)*¹³¹: the protection of Art. 6 was extended to statute-based social security benefits with a public law character¹³².

In the cases of *James and Others vs. the UK (Weekly 2012)*¹³³, there was an emphasis posed on the protection of economic rights (protection of the right to housing). For the ECtHR there was no breach of the Covenant involved, the right to housing was treated as legitimate aim for restricting the right to peaceful enjoyment of one’s possessions in the case of *Mellacher and Others v. Austria (Swarb.co.uk 1989)*¹³⁴. All of this is due to the weak role of direct horizontal effect in the legal implications of existing treaty provisions on economic and social rights¹³⁵.

¹²⁴ Europe, Council of. European Court of Human Rights. 2016. <http://www.echr.coe.int/Pages/home.aspx?p=home>. Page 1-2.

¹²⁵ ESCR-Net. *Airey v Ireland* 32 Eur Ct HR Ser A (1979): [1979] 2 E.H.R.R. 305. 1979. <https://www.escr-net.org/caselaw/2006/airey-v-ireland-32-eur-ct-hr-ser-1979-1979-2-ehrr-305>. Page 1-2.

¹²⁶ Europe, Council of. European Convention on Human Rights. 1948. http://www.echr.coe.int/Documents/Convention_ENG.pdf. Pages 1-30.

¹²⁷ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 2001.

¹²⁸ Europe, Council of. *CASE OF FELDBRUGGE v. THE NETHERLANDS*. 29 may 1986. <http://www.nuigalway.ie/media/housinglawrightsandpolicy/files/councilofeurope/CASE-OF-FELDBRUGGE-v-THE-NETHE.pdf>. Page 1-27.

¹²⁹ Europe, Council of. *CASE OF DEUMELAND v. GERMANY*. 29 May 1986. <file:///C:/Users/Michela/Downloads/001-57468.pdf>. Page 1-40

¹³⁰ Europe, Council of. *CASE OF SALESİ v. ITALY*. 26 February 1993. <file:///C:/Users/Michela/Downloads/001-57814.pdf>. Page 1-9.

¹³¹ Rights, European Court of Human. *Schuler-Zgraggen v. Switzerland - 14518/89*. 24 June 1993. <file:///C:/Users/Michela/Downloads/002-9638.pdf>. Pages 1-3.

¹³² Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 2001.

¹³³ Weekly, Criminal Law and Justice. *James and Others v. UK*. 28 September 2012. <http://www.criminallawandjustice.co.uk/cli-reporter/James-and-others-v-United-Kingdom-App-Nos-2511909-5771509-and-5787709-2012-All-ER-D-109>. Pages 1-2.

¹³⁴ Swarb.co.uk. *Mellacher and Others v. Austria*. 19 December 1989. <http://swarb.co.uk/mellacher-and-others-v-austria-echr-19-dec-1989/>. Pages 1-2.

¹³⁵ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 1995.

Scheinin¹³⁶ continues stating that, under the European Social Charter, there is a control mechanism, which strengthens the legal nature of the treaty obligations (Scheinin 1995).

The European Social Charter¹³⁷ is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare. The Charter is seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture (Europe, The European Social Charter 2016).

According to Scheinin¹³⁸, The Parliamentary Assembly proposed a system of petitions already in 1978. The role of the European Committee of Social rights was strengthened in the 1991 Amending Protocol to the ESC, which is implemented in practice already. The European Committee of Social Rights has not decided many cases, but its approach to the Additional Protocol indicates that the procedure for collective complaints will be important for the understanding of the legal nature of the provisions of the ESC.

When it comes to the European Union, on the European Regional Level, the EU provides opportunities for strengthening the legal character of social and economic rights. The Treaty establishing the European Community (EUR-lex 2002)¹³⁹ includes a social dimension, but generally not in the form of individual social rights. Art. 41 establishes the principle of equal pay for equal work. The provision has a direct effect: being invocable by individuals in court and a horizontal direct effect, establishing obligations for private employers. In 1989 a Community Charter of Fundamental Social Rights of Workers was approved as a declaration of the heads of state or governments of the Member States of the European Community¹⁴⁰.

In the same year, the European Parliament approved a declaration of fundamental rights and freedoms, including several provisions on social, economic and cultural rights. 11 Member States committed themselves to certain treaty obligations to continue along the path laid down in the 1989 Social Charter, by signing a Protocol on Social Policy and an Agreement on Social Policy¹⁴¹.

¹³⁶ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 1995.

¹³⁷ Europe, Council of. *The European Social Charter*. 2016. <http://www.coe.int/en/web/turin-european-social-charter/home>.

¹³⁸ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 2001.

¹³⁹ EUR-lex. *EUR-lex*. 2002. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12002E%2FTXT>. Pages 1-4.

¹⁴⁰ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 2001.

¹⁴¹ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In *Economic, Social and Cultural Rights: A textbook*, di Rosas Eide. 2001.

In the Treaty of Amsterdam, there is the reference to the Economic, Social and Cultural and the 1989 Community Charter into art. 136 of the Treaty establishing the European Community. In the EU charter of fundamental rights, adopted by the European Council in Nice in December 2000, much attention has been given to economic and social rights, with a varying level of precision¹⁴².

The Charter was a non-binding document, formally, but has influence to the operation of the European Court of Justice (ECJ) as to what rights receive protection as part of general principles of Community law (Scheinin 1995)¹⁴³.

Let us consider the EU attitude towards Economic, Social and Cultural Rights. According to Flinterman¹⁴⁴, article 55 of the UN Charter (adopted in 1945) prescribes that "the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development." It is a sad fact that in 1997 living conditions for a large part of the world's population are still in a poor state and are actually declining at alarming rates. The gap between the rich and the poor is widening¹⁴⁵.

The 1987 Limburg Principles (UN 1987)¹⁴⁶ and more recently, the 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (University of Minnesota 1997)¹⁴⁷ set out what may constitute a violation of the ICESCR.

The Ontario Human Rights Commission¹⁴⁸ explains that the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights state that legislative measures alone are not sufficient: administrative, judicial, policy, economic, social and educational measures will be required by governments to ensure ICESCR rights (O. H. Commission s.d.).

According to the Handbook for National Human Rights Institutions¹⁴⁹, the 1998 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights emphasize: Promotional and monitoring bodies, such as

¹⁴² Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In Economic, Social and Cultural Rights: A textbook, di Rosas Eide. 2001.

¹⁴³ Scheinin, Martin. «Economic, Social and Cultural Rights as legal rights.» In Economic, Social and Cultural Rights: A textbook, di Rosas Eide. 2001.

¹⁴⁴ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" Human Rights Quarterly, pages 705-730, 1998. Flinterman is the former Ministry of Foreign Affairs of the Netherlands, Professor of Human Rights.

¹⁴⁵ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" Human Rights Quarterly, pages 705-730, 1998.

¹⁴⁶ UN. The Limburg Principles on the Implementation of the international covenant on economic, social and cultural rights. 1987. http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UN_Limburg_Principles_1987_En.pdf. Pages 1-9.

¹⁴⁷ University of Minnesota, Human Rights Library. Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht. 22-26 January 1997. <https://www1.umn.edu/humanrts/instreet/Maastrichtguidelines.html>. Pages 1-3.

¹⁴⁸ Commission, Ontario Human Rights. *OHCHR*. n.d. <http://www.ohrc.on.ca/en/human-rights-commissions-and-economic-and-social-rights/social-cultural-and-economic-rights-under-international-law>.

¹⁴⁹ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights (Nations 2005).

Principle 6 of the Limburg Principles reads that "the achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures."¹⁵⁰

Since 1989, the trend has been to emphasize the relevance of market economies to resolve problems of human welfare. It is clear, however, that the free market principle cannot be regarded as a panacea for all social problems. States cannot sit idly by when a part of their population prospers while a much bigger part lives in poor social conditions and while the gap between the two grows instead of lessens. States must at all times fulfil their obligations flowing from the UN Charter and from relevant international human rights instruments, such as the ICESCR. They are and should be held accountable by individuals, NGOs, and the international community for any non-compliance with their obligations under international law in the promotion and protection of economic, social and cultural rights. Furthermore, in a free market economy, the state is obliged to provide basic social services to fulfil inter alia the rights to health care, employment, and education¹⁵¹.

Since the adoption in 1986 of the Limburg Principles by the Committee on Economic, Social and Cultural rights, there have been also some positive developments, particularly in the legal field. Guideline 3 of the Maastricht Guidelines, refers to some examples of new standards at the European and Inter- American level. It is equally relevant to refer to the developments within the Economic, Social and Cultural Rights Committee, the monitoring body of the International Covenant on Economic, Social and Cultural Rights¹⁵².

This Committee is playing an increasingly important role by inter alia its adoption of general comments, which further elaborate on the obligations of state parties under the ICESCR as well as by its practice of formulating recommendations and conclusions at the end of its debate of a state party's periodic report. In general, the Committee has given a most meaningful significance to the only implementation procedure provided in the Covenant: the obligation of state parties to submit periodic reports¹⁵³. This Committee has become more important and competent to receive individual complaints under the 2009 Protocol, which entered into force in 2013.

¹⁵⁰ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

¹⁵¹ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

¹⁵² Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

¹⁵³ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

Guideline 3 also refers to two pending developments in the standard setting field. This is the drafting of optional protocols to the ICESCR, and to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Both protocols would contain an individual and a collective complaint procedure¹⁵⁴.

In the first half of the 1990s there were different conferences that addressed the issue of economic, social and cultural rights: in Vienna in 1993, in Cairo in 1994, in Copenhagen in 1995 and in Beijing in 1995¹⁵⁵.

¹⁵⁴ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

¹⁵⁵ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

4.2 Human Rights and the UN Millennium Development Goals

In his essay of 2010, Professor Jaichand¹⁵⁶ says that there is a division on ideological lines between the western liberal states and the socialist states on the nature and protection of HR. There is an impact of non-implementation of economic, social and cultural rights, which is more discernable and the UN responded to the extent that its Member States have permitted it to, through the Millennium Development Goals.

The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world's countries and all the world's leading development institutions¹⁵⁷.

They have galvanized unprecedented efforts to meet the needs of the world's poorest. The UN is also working with governments, civil society and other partners to build on the momentum generated by the MDGs and carry on with an ambitious post-2015 development agenda¹⁵⁸.

The study of economic, social and cultural rights must be an inter-disciplinary one in which law would be a component.

Many other branches, other than law, continue to make major contributions. This does raise the question about whether or not all best efforts in economic, social and cultural rights are being placed in creating parity with civil and political rights¹⁵⁹.

It is time that economic, social and cultural rights shed the yoke of history and claimed their legitimate place as HR in the legal system of the world (Jaichand 2010)¹⁶⁰.

¹⁵⁶ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010, page 22. Jaichand is the former deputy director of the Irish Center of Human Rights, head of the school of law at University of Witwatersand, in Johannesburg.

¹⁵⁷ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010, page 22.

¹⁵⁸ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010, page 22.

¹⁵⁹ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010.

¹⁶⁰ Jaichand, Vinodh. «An Introduction to Economic, Social and Cultural Rights: Overcoming the Constraints of Categorization through Implementation.» In *An Introduction to International Human Rights Law*, di Azizur Chowdhury & Jahid Bhuyian. 2010.

4.2.1 Maastricht Guidelines

The fourth guideline of the Maastricht Guidelines reemphasizes the oft-quoted phrase from the Vienna Declaration and Programme of Action (Second World Conference on Human Rights, Vienna, 1993) that the universal nature of human rights and fundamental freedoms is beyond question and that all human rights and fundamental freedoms are "indivisible, interdependent, interrelated and of equal importance for human dignity."¹⁶¹

All states are obliged to observe and protect all human rights and fundamental freedoms for all people in accordance with the UN Charter, other instruments relating to human rights, and international law. This implies inter alia that states can be held responsible for violations of both civil and political rights and economic, social and cultural rights¹⁶².

The concept of violations of economic, social and cultural rights has given rise to some difficulties in the past; these difficulties were mainly due to the view that economic, social and cultural rights are not legal rights amenable to judicial enforcement. However, Principle 1 of the Limburg Principles rightly pointed out that "economic, social and cultural rights are an integral part of international human rights law"; this view is now the dominant one¹⁶³.

The Limburg Principles constitute a first effort to substantiate the meaning of violations of economic, social and cultural rights. It was, however, clear that this notion needed more reflection and that it would be important to spell out a catalogue of types of violations of economic, social and cultural rights¹⁶⁴.

An attempt in this respect has been made in the following guidelines, which like the Limburg Principles relate primarily to the ICESCR. The guidelines are, however, phrased in a general way, so as to facilitate their use in the interpretation and application of economic, social and cultural rights provided for in either domestic law or other regional and international instruments¹⁶⁵.

Section II of the Maastricht Guidelines examines different aspects of state obligations associated with the recognition of economic, social and cultural rights, and places particular emphasis on the obligations arising pursuant to the ICESCR. This section gives substance to a range of fundamental issues relating to violations of economic, social and cultural rights and concludes with a detailed listing of particular acts and omissions

¹⁶¹ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" *Human Rights Quarterly*, pages 705-730, 1998.

¹⁶² Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" *Human Rights Quarterly*, pages 705-730, 1998.

¹⁶³ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" *Human Rights Quarterly*, pages 705-730, 1998.

¹⁶⁴ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" *Human Rights Quarterly*, pages 705-730, 1998.

¹⁶⁵ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" *Human Rights Quarterly*, pages 705-730, 1998.

viewed as violations of these rights. Guidelines 6 through 15, and indeed the entire text, should be read in conjunction with the Limburg Principles, upon which these guidelines expand and elaborate¹⁶⁶.

Guideline 6 begins by reaffirming the indivisible nature of all human rights not only in generic terms, but also in terms of state parties' legal obligations to respect, protect, and fulfil human rights. The vision of equality of rights, has been, consistently, reiterated by the international community. This, since the now well-known sentiments established in the Proclamation of Teheran of 1968, and more recently, the Vienna Declaration and Programme of Action of 1993¹⁶⁷.

This three-level (respect, protect, fulfil) "typology" of obligations, as it has come to be known, is now widely accepted as an interpretive tool, utilized in discerning the duties incumbent upon states (Leckie 1998)¹⁶⁸.

4.3 Examples of economic, social and cultural rights

Within the United Nations, this approach towards clarifying economic, social and cultural rights was initiated by Asbjorn Eide¹⁶⁹ during his tenure as Special Rapporteur on the right to food, which culminated in 1987 with his final report. This includes those working on economic, social and cultural rights (Danilo Tirk) and the right to adequate housing (Rajindar Sachar), also embraced this methodology. Three important examples are used in the guidelines to describe the nature of the totality of these obligations.

The essence of the obligation to respect economic, social and cultural rights is captured aptly by the first example, arbitrary forced evictions, a practice widely condemned as a violation of a broad range of human rights, in particular the right to adequate housing. Although this duty of restraint upon states closely resembles the obligations generally associated with civil and political rights, it is also intimately a part of economic, social and cultural rights as well. The second example deals with the obligation of states to protect human rights against violations by third parties¹⁷⁰.

This obligation is currently expanding, encompassing a responsibility on states to regulate the behavior of third parties so that the possibility that private persons, acting within the private domain, can violate these rights is precluded. The way this issue (also often referred to as "Drittwirkung" or the "horizontal

¹⁶⁶ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" Human Rights Quarterly, pages 705-730, 1998.

¹⁶⁷ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" Human Rights Quarterly, pages 705-730, 1998.

¹⁶⁸ Flinterman, Leckie. "Commentary to the Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights" Human Rights Quarterly, pages 705-730, 1998.

¹⁶⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 9-29.

¹⁷⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 9-29.

effectiveness" of human rights) is addressed within the guidelines is by using private employers as an example of the third-party actors involved¹⁷¹.

However, school administrators, teachers, doctors, landlords, or other private actors capable of violating economic, social and cultural rights also could have been used as illustrations¹⁷².

4.3.1 The realization of economic, social and cultural rights by States:

The third example, addressing the obligation to fulfil economic, social and cultural rights, relates closely to the duty of states to devote the maximum of available resources towards the progressive realization of the rights established under Article 2(1) of the ICESCR¹⁷³.

This duty emphasizes that a comprehensive set of interventionary measures requires action by states, including those relating to legislation, administration, budget, and the judiciary. This formulation stresses the positive nature of the obligations assumed under the ICESCR and asserts that a failure to undertake positive interventions can result in violations of economic, social and cultural rights¹⁷⁴.

Examples of "positive interventions" of states to protect/fulfil economic, social and cultural human rights are states' obligations to provide free compulsory primary education, as required by ICESCR Article 13(2)(a), and to protect children from economic and social exploitation, inter alia through legislation, as required by ICESCR Article 10(3)¹⁷⁵.

When states fail to fulfil such positive obligations, sanctions are rather difficult to impose. On the international level, public exposure through Committee review of periodic reports is one of the few possibilities. For other remedies, such as restitution or reparation, the individual almost exclusively relies on national (semi)judicial procedures, which may not be available at all¹⁷⁶.

Guideline 7 describes that in 1977 the International Law Commission (ILC) maintained that Article 2(1) of the ICESCR imposed only obligations of result upon state parties¹⁷⁷.

¹⁷¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 9-29.

¹⁷² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 9-29.

¹⁷³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 9-29.

¹⁷⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁷⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁷⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁷⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

In Guideline 8, the legal doctrine allowing states a degree of latitude in terms of the implementation of human rights obligations (also known within the European Convention on Human Rights and Fundamental Freedoms (ECHR) framework as a "margin of appreciation") is a necessary adjunct of human rights policy. It takes into account the many cultural, historical, religious, and developmental distinctions between states possessing the same legal obligations¹⁷⁸.

Guideline 8 reminds states that although the progressive nature of the realization of these rights is an important aspect of all human rights discourse, including civil and political rights, immediate steps must be taken by states to secure these rights. Guideline 8 concludes with an important reaffirmation of the inherently universal nature and relevance of all human rights, emphasizing that different social, religious, or cultural backgrounds cannot be utilized by states as an excuse or rationale for infringing the rights established pursuant to the ICESCR¹⁷⁹.

4.4 The ratification of the ICESCR by The US

if we consider the US approach on economic, social and cultural rights we need to make different considerations.

In 1979 Carter tries to make the US Senate ratify the ICESCR but he uses unconvincing arguments. In particular he minimizes the impact that the ratification would have, explaining that immediate and binding measures are not required¹⁸⁰.

Nevertheless, these were not the only comments to suggest that there was more to the obligations contained in the Covenant, than the Carter administration was prepared to concede. Thus, a critique submitted by the Lawyers Committee for International Human Rights noted that the language used in the administration's understanding regarding Article 2(1) "undercuts the basic character of the Covenant: it does not merely establish goals, it also creates obligations."¹⁸¹

The point was made with greater precision by Professor Louis Sohn, who noted that "while it is sometimes said that the U.S. can easily ratify this Covenant as it does not oblige us really to do anything, this is not exactly true." In his view, the terminology used in Article 2(1) is obligatory language; States are under a legal duty to take such steps, and this duty needs to be fulfilled in good faith¹⁸².

¹⁷⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 29-55.

¹⁷⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁸⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁸¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁸² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 29-55.

While the obligation is qualified by the words "to the maximum of its available resources" and "progressively," these words do not attenuate the obligation to the point of extinction. Perhaps Bangladesh or Mali might plead that they do not have sufficient resources to take any meaningful steps toward the fulfilment of the goals of the Covenant; but the United States, one of the richest countries in the world, does not have that excuse¹⁸³.

Similarly, though the word "progressively" makes it clear that this Covenant, unlike the one on civil and political rights, does not impose on a ratifying State the obligation to ensure an immediate implementation of the rights defined therein, it needs to be applied in the same spirit as the Supreme Court decision to desegregate "with all deliberate speed."¹⁸⁴

One cannot procrastinate forever; and there is certainly a clear presumption that one has to go forward, not backward. According to another witness, the proposed understanding amounted to a reservation, whose effect would be to submit "the principle of progressive implementation itself to progressive implementation."¹⁸⁵

In this view, these criticisms of the proposed understanding are clearly correct. A careful analysis of the Covenant reveals that the most general obligation of an immediate nature is, to use the wording of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, "to begin immediately to take steps towards full realization of the rights contained in the Covenant."¹⁸⁶

This interpretation is also confirmed by the *travaux préparatoires*, in which it was said that "it would be deceiving the peoples of the world to let them think that a legal provision was all that was required." But the proposed U.S. understanding would remove even the need for the adoption of formal legal provisions¹⁸⁷.

Since a detailed review of the type of steps that might be taken "immediately" is well beyond the scope of the present analysis, one such example must suffice. The starting point for a program to implement economic and social rights is to ascertain, as precisely as possible, the nature of the existing situation with

¹⁸³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁸⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁸⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 29-55.

¹⁸⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁸⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

respect to each right, so as to identify more clearly the problems that need to be addressed and provide a basis for principled policy making (Rosas 1995)¹⁸⁸.

4.4.1 Further steps made by US regarding the protection of Human Rights

According to Eide, in January 1989, in the follow-up to the Conference on Security and Co-operation in Europe (the so-called Helsinki process), the United States signed the Vienna Declaration, in which it recognized "that the promotion of economic, social, cultural rights . . . is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual."¹⁸⁹

To that end, the United States in signing the declaration undertook, inter alia, to guarantee "the effective exercise" of economic, social and cultural rights and to consider acceding to the International Covenant on Economic, Social and Cultural Rights. These undertakings seem to warrant renewed consideration of proposals, that have been made at various times over the past quarter of a century for the United States to ratify the Covenant on Economic, Social and Cultural Rights¹⁹⁰.

Almost invariably, the proposal has been put forward as part of a package deal under which the United States would also ratify several other international human rights treaties, including in particular the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights¹⁹¹.

These four treaties constituted the package that President Carter sent to the U.S. Senate in 1978 for its advice and consent. Since that time, however, the ratification process has remained virtually dormant, although human rights and other groups have urged, from time to time, that it be re-activated¹⁹².

The thrust of the analysis that follows is to endorse the call for U.S. ratification of the Covenant on Economic, Social and Cultural Rights but to suggest at the same time that the strategy that will be required if success is to be achieved is very different from that pursued so far by the proponents of ratification. In the past, the tendency has been to portray the Covenant as though it did not differ significantly from the other treaties whose ratification was being advocated¹⁹³.

¹⁸⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁸⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁹⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁹¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁹² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

¹⁹³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

Two different reasons provide possible explanation for that tendency. The first is that it was assumed that the best hope of achieving ratification of a potentially controversial Covenant was to smuggle it through as part of a "package" of treaties, the majority of which would presumably be endorsed fairly readily because of their similarity to the U.S. Bill of Rights¹⁹⁴.

A second, alternative, explanation is that it was assumed that the Covenant could be "sold" as part of a package deal largely because it could convincingly be portrayed as being devoid of any substantive practical or legal significance. Metaphorically speaking, it could be characterized as being the ultimate toothless tiger. There is good reason, however, to question whether the Covenant can, or should, be "sold" to the U.S.¹⁹⁵.

Of even greater relevance is the extent to which it seems to be viewed with suspicion by many Americans, who tend to think of it less as an international treaty seeking to promote the satisfaction of basic material needs than as a "Covenant on Uneconomic, Socialist and Collective Rights."¹⁹⁶

Only by facing that reality, and by taking it as a starting point for an open and animated public debate, is there any real prospect of securing the broad-based support and momentum without which the Senate is unlikely ever to act. The Covenant on Economic, Social and Cultural Rights thus finds itself in a very different situation from that of the other principal international human rights treaties. It is now generally agreed that there is no fundamental incompatibility between the latter and U.S. law¹⁹⁷.

As a result, the principal issues to be resolved relate to only two matters. The first concerns the exact nature and scope of the reservations and understandings to be attached to any act of ratification, and whether those proposed by President Carter are acceptable for current purposes. The second issue is whether the Bush (father) administration is prepared to distance itself from the preference for unilateralism and general disinterest in multilateral organizations that characterized so much of the Reagan foreign policy” stated Eide¹⁹⁸.

In the absence of a clear willingness to make such a break with the immediate past, the strengthening of international procedures for promoting and monitoring respect for human rights is most unlikely to be placed

¹⁹⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁹⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁹⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁹⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

¹⁹⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 55-85.

on the agenda. Although the prospects in that regard do not seem particularly encouraging, the point is simply that political will is the basic ingredient required to achieve ratification of those other treaties¹⁹⁹.

By contrast, the obstacles to be overcome to secure ratification of the Covenant on Economic, Social and Cultural Rights are much more formidable. They arise essentially from the absence of clear agreement on values between the United States and the international community when it comes to the very concept of economic, social and cultural rights. The lack of the necessary community of values is most clearly attested to by the fact that the U.S. Government, for almost a decade, has categorically denied that there is any such thing as an economic, a social or a cultural human right²⁰⁰

This denial has given rise to the placement of the word "rights" in quotation marks every time it follows the phrase "economic, social and cultural" and to the equally pointed rebuff of inserting "so-called" in front of the full phrase whenever its use cannot be avoided²⁰¹.

The evolution of this policy will be traced briefly below, but it is appropriate to emphasize here that this obstacle could be removed as quickly as it was created (by a decision of the Secretary of State during the first months of the Reagan administration). The second obstacle is rather more complex and will prove considerably more difficult to overcome.²⁰²

It derives from the conjunction of two factors. The first is that the nature of the obligations contained in the Covenant on Economic, Social and Cultural Rights, while by no means the object of precise agreement among governments or scholars, is nevertheless considerably more substantial and demanding than has been assumed in most of the ratification debate in the United States so far²⁰³.

Moreover, as the "jurisprudence" relating to individual economic, social and cultural rights becomes clearer, and as the recently established Committee on Economic, Social and Cultural Rights" begins to generate a deeper and more widely shared understanding of the nature of the obligations in the Covenant,' a decision by the United States to ratify will take on more and more significance²⁰⁴.

¹⁹⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

The second complicating factor is the lack of consensus within the United States as to the desirability, or philosophical and political acceptability, of the domestic recognition of economic, social and cultural rights²⁰⁵.

Perceptions in that regard differ considerably at present and it is not the intention here to argue that these rights are unacceptable either to the majority of the U.S. public or to Congress. For present purposes, the point is that ratification of the Covenant by the United States would entail the acceptance of certain obligations, and that it is by no means certain that in the current political, ideological and economic climate, those obligations will be acceptable if they are subjected to the scrutiny they deserve²⁰⁶.

The problem with this analysis, of course, is that even if the premises on which it is based are accepted, the implications that flow from it will be unpalatable, at best, to many U.S. human rights advocates. The principal argument is that the existing strategy for ratification is both ineffectual and inappropriate and that an entirely new strategy needs to be devised. One hopes that this prescription, rather than discouraging efforts to achieve ratification of the Covenant, will instead stimulate more careful consideration of the issues and the launching of a far more nuanced and broadly based ratification campaign²⁰⁷.

Before elaborating on the main points outlined above, it is appropriate to summarize the content of the Covenant and its current status in terms of ratification and implementation (Rosas 1995)²⁰⁸.

4.4.2 Controversial issues about the ICESCR

Eide continues saying that the Covenant is sometimes described by its critics as though it were really a "holidays with pay treaty." The reason is that some of its most persistent detractors have long singled out that particular provision as indicative of the utopian and highly demanding nature of all of the rights recognized. It is in the must suffice in this context to note that although the right to take an occasional break from work (a sabbath, in religious terms) is an important one, it is perhaps less self-evidently fundamental than several of the other rights dealt with²⁰⁹.

²⁰⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁰⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²⁰⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

They include the right to work, which, notwithstanding allegations to the contrary, has always been interpreted by international organizations so as to avoid the implication that a job is guaranteed by the state to all and sundry. The relevant provision, however, does indicate that the job in question should be freely chosen or accepted (Art. 6(1)) and that appropriate policies should be pursued "under conditions safeguarding fundamental political and economic freedoms to the individual" (Art. 6(2))²¹⁰.

The link between the two sets of rights is thus strongly reaffirmed. Articles 7 and 8 deal with conditions of work, including fair pay, equal pay for work of equal value, safe and healthy working conditions, and the right to form and join trade unions. Article 9 provides for the right to social security—exactly the term the United States has opted for since the Great Depression²¹¹.

Article 10 confirms the importance of the family as a social group and calls for special protection for children and young persons and for mothers during a reasonable period before and after childbirth. None of these provisions appear to be controversial or out of step with widespread practice in the United States. The same can be said of Article 15, which in most respects raises issues that seem more relevant to the Covenant on Civil and Political Rights. It confirms the right to take part in cultural life, the right to enjoy the benefits of science and the right of authors to have their creative work protected²¹².

The remaining articles (Arts. 11-14), however, are more problematic from a U.S. perspective. In essence, they deal with the rights to food, clothing and housing, the right of access to physical and mental health care, and the right to education. In terms of the "ratifiability" of the Covenants by the United States, the issues raised by that cluster of rights are twofold. Is the United States prepared to commit itself to the general proposition that there is indeed a human right to each of these social goods or, put differently, to the satisfaction of each of these basic human needs? And, even if it is, is it prepared to accept the specific level of obligation in that regard provided for by the Covenant?²¹³

The latter question raises the most technically complex and politically controversial issue pertaining to the Covenant: the precise scope and nature of its various obligations clauses.

The most important of these is Article 2(1), which provides: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available re- sources, with a view to achieving progressively

²¹⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures²¹⁴.

The implications of that and related provisions are dealt with below (in part III) in connection with the interpretation proposed by the Carter administration. The Covenant makes clear that the responsibility for monitoring and promoting the implementation of the various rights is principally incumbent upon the state party itself²¹⁵.

This fact is sometimes downplayed by human rights advocates, who are anxious to emphasize the element of international accountability but do so at the expense of underestimating the central importance of domestic activities in this regard. The sole international implementation mechanism provided for in the Covenant until 2013, consisted of the duty assumed by each state party to report at regular intervals on the measures adopted, the progress made and the difficulties encountered in fulfilling its obligations. If the United States were to ratify the Covenant, it would be required under existing arrangements to produce an initial comprehensive report within 2 years and to submit follow-up (or so-called periodic) reports at 5-year intervals thereafter (Rosas 1995)²¹⁶.

4.4.3 UN Committee on Economic, Social and Cultural Rights

These reports are examined by the UN Committee on Economic, Social and Cultural Rights²¹⁷, to which they are presented by representatives of the state parties with expertise in at least some of the fields covered. On the basis of these presentations, members of the Committee pose questions, to which answers are expected at a later stage. The procedure is based on the assumption that a constructive dialogue between the Committee and the state party, in a non-adversarial, cooperative spirit, is the most productive means of prompting the government concerned to take the requisite action.

The process can be expected to become gradually more sophisticated and effective over time as the Committee improves its procedures, develops greater expertise and elicits enhanced responsiveness from governments. An important example in this regard is the Committee's first "General Comment", adopted in

²¹⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 455-473.

²¹⁷ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>.

February 1989, which deals with "reporting by States parties." In it, the Committee identifies seven different objectives of the reporting process²¹⁸.

For present purposes, it is sufficient to cite the first two of those objectives to demonstrate that the process is not merely a pro forma exercise but, rather, is one that, at least in the future, will come to have substantive implications:]o ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant. . . .²¹⁹

To ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction. In general terms, the potential effectiveness of the reporting procedure clearly lies less in the formal exchanges between the Committee and the state party and more in the mobilization of domestic political and other forces to participate in monitoring government policies and providing a detailed (assuming that one is warranted) of the government's own assessment of the situation²²⁰.

Although we noted above that the principal thrust of the implementation provisions of the Covenant is to emphasize the responsibility of the state party itself, the element of international accountability is not thereby rendered irrelevant or meaningless²²¹.

It is therefore important to clarify the following commentary on the Covenant contained in the Restatement (Third) of the Foreign Relations Law of the United States: by adhering to this Covenant, the United States would be obligated to take legislative, executive, and other measures, federal or State, generally of the kind that are already common in the United States, "to the maximum of its available resources," "with a view to achieving progressively the full realization" of those rights²²².

Since there is no definition or standard in the Covenant, the United States would largely determine for itself the meaning of "full realization" and the speed of realization, and whether it is using "the maximum of its available resources" for this purpose. If the word "largely" were to be interpreted in a controlling sense to

²¹⁸ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²¹⁹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²⁰ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²¹ Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²² Commissioner, United Nations Human Rights Office of the High. United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

indicate that the United States would have the sole and exclusive right to determine whether it had satisfied its obligations, the analysis would clearly be inaccurate²²³.

The provisions of many human rights treaties, including, for example, the International Covenant on Civil and Political Rights, are not necessarily susceptible of precise "definitions or standards." Nevertheless, what constitutes "cruel, inhuman or degrading treatment or punishment" for the purposes of international law (to take but one example) is not solely a matter for a state party itself to decide²²⁴.

Vesting such auto-interpretive authority in a state would clearly undermine the concept of accountability, which the Covenant is designed to achieve, as the United States Government would undoubtedly be quick to point out if the Soviet Union were to make such a self-serving claim for its own purposes. Thus, the word "largely" in the Restatement must be read as indicating that the question of full U.S. compliance would still ultimately be subject to (albeit advisory and thus unenforceable) determination by the Committee²²⁵.

However, lest it be feared that the Committee will thus take it upon itself to sit in judgment on the United States, it should be noted that it has to date demonstrated a strong reluctance to determine, in any formal sense, the existence of policies or practices that it considers not to be in compliance with the Covenant. For such an approach would in many instances not be conducive to the development of the constructive dialogue sought by the Committee. A final point to be made in this overview is that as of 2016, the Covenant had been ratified by 170 states, including the vast majority of Western states²²⁶.

Indeed, of the 22 states other than the United States in the Western European and Others regional grouping, only 3 have not ratified the Covenant: Ireland, Malta and Turkey. Of those, Ireland has recently indicated its intention to do so. The United States is thus soon to be left with Malta and Turkey as the only Western group states that are not parties to the Covenant. Insofar as resource constraints are relevant to a decision to ratify, it is appropriate to note that the per capita gross national product of the United States is 5 times that of Malta and 16 times that of Turkey (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016)²²⁷.

²²³ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²⁴ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²⁵ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

²²⁶ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>.

²²⁷ Commissioner, United Nations Human Rights Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/HRBodies/Pages/CESCRIndex.aspx>.

4.5 US Human Rights policies in the last 40 years

4.5.1 The Reagan administration

Eide describes the early days of the Reagan administration, when an internal memorandum of the Department of State on human rights policy was leaked to the press and reprinted in full in the New York Times²²⁸.

The memorandum, which was apparently approved by then Secretary of State Alexander Haig, has subsequently been shown to have had a major impact on U.S. policy. It dealt with a variety of issues and, although it exhibited a degree of subtlety and caution on most of them, it nevertheless endorsed the unqualified rejection of economic, social and cultural "rights" as rights. Human rights were to be explicitly defined for the purposes of future U.S. policy as "meaning political rights and civil liberties."²²⁹

To entrench this highly restrictive definition, the memorandum urged that the administration "move away from 'human rights' as a term, and begin to speak of 'individual rights,' 'political rights' and 'civil liberties.'" "This strategy of simply defining economic rights out of existence was rapidly put into place by deleting the sections dealing with "economic and social rights" from the first of the State Department's annual Country Reports on Human Rights Practices submitted to Congress by the Reagan administration in February 1982. This deletion was strongly defended by Assistant Secretary of State Elliott Abrams in a congressional hearing to review the report"²³⁰.

A suggestion, to the effect that United Nations human rights organs have exceeded their mandates by discussing economic, social and cultural rights, was made by Richard Schifter²³¹.

In his view, the Reagan "Administration opposed dilution of the Commission's activities regarding civil and political rights by introduction of such matters as a 'right to development' or 'a right to housing' " because it "believed that development, housing and similar topics could be discussed in other, more appropriate, international fora by qualified experts." But such suggestions run counter to the clearly defined and

²²⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 455-473.

²²⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 455-473

²³⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 455-473

²³¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 455-473. Schifter was Assistant Secretary of State for Human Rights and Humanitarian Affairs from 1985 to 1992

frequently endorsed mandate of the Commission on Human Rights," which unquestionably includes economic, social and cultural rights and has never formally been challenged by any government²³².

This process of reinventing the concept of human rights to make it resemble more close to the ideological predilections of the U.S. Government reached a high point in a June 1988 statement by the Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, in which she sought to dispel a number of "myths" about human rights, the first of which was that " 'economic and social rights' constitute human rights." (Rosas 1995)²³³.

4.5.2 Critics of the Reagan administration

Eide continues by saying that even some of the seemingly more conciliatory statements by administration representatives invariably ended up taking the same line. This argument has been expressed by Assistant Secretary Schifter in the following terms: Critics of the Western democracies used to contend that, while emphasizing free speech and a free press, the democracies ignored such basic needs as food, jobs, housing and medical care. These critics, particularly those affiliated with the Soviet bloc, stressed that their governments guaranteed citizens the right to obtain these basic needs. Supporters in democracies responded that, people needed, not guarantees of food, jobs, housing and medical care, but delivery of these benefits²³⁴.

But the "critics" of whom he speaks have not assailed "the Western democracies" in general, since, with the sole exception of the United States, all the Western democracies have accepted the validity and equal importance of economic, social and cultural human rights, at least in principle²³⁵.

Moreover, this approach is by no means limited to Western Europe, as is most pertinently demonstrated by the adoption, in November 1988, of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which was already signed by 13 Latin American states by December 31, 1988²³⁶.

²³² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

A final element that is open to challenge in Schifter's argument is the suggestion that a choice must be made between formal guarantees and the actual delivery of things such as medical care and housing²³⁷

What the world needs regarding economic and social development is action-oriented programs, not declarations". No specific analysis is offered to support the assumption that formal guarantees will inevitably be hollow and meaningless and that a society, which makes such undertakings will therefore fail to honor them²³⁸.

There will always be governments that make empty promises and some will even clothe those promises in the garb of formal guarantees. But many other governments have given carefully worded guarantees and delivered as well. They include the United States with respect to a limited, but nonetheless important, range of social benefits. This brief survey of official U.S. policy statements plainly demonstrates that ratification of the Covenant on Economic, Social and Cultural Rights could not even be contemplated without a major, and by now rather fundamental, shift in U.S. human rights foreign policy and ideology²³⁹.

From the domestic policy side, the effort by the Carter administration during 1978 and 1979 to promote ratification of the Covenant on Economic, Social and Cultural Rights was predicated upon a highly contentious assumption²⁴⁰.

In the letter that accompanied the transmission of the Covenant to the Senate, the President, on the advice of the Departments of Justice and State, recommended the adoption of the following understanding²⁴¹.

The United States understands paragraph (1) of Article 2 as establishing that the provisions of Articles 2 through 15 of this Covenant describe goals to be achieved progressively rather than through immediate implementation²⁴².

He expressed the view that the obligation, contained in Article 2(1) of the Covenant would violate the U.S. Constitution: "I find totally inconsistent and incompatible with the Constitution a purported exercise of the treaty power which would henceforth and for a long time determine the level of subsistence (welfare

²³⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²³⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴² Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

payments) and the quality of education (in reality, expenditure on schools) as being at the maximum of the nation's available resources, political forces being excluded from participation in that determination."²⁴³

Thus, to take the case of the right to adequate food, an immediate and feasible step that the United States could take would be to adopt legislation requiring the various levels of government to collaborate periodically on a detailed survey of the nutritional status of the American people, with particular emphasis on the situation of the most vulnerable and disadvantaged groups and regions²⁴⁴.

Such a survey could then constitute the basis for carefully targeted legislative, administrative and practical measures aimed at enhancing realization of the right. Article 2(2) of the Covenant imposes another, even more explicitly immediate, obligation. It requires a state party to the Covenant "to guarantee that the rights enunciated . . . will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Similarly, Article 3 requires states parties "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."²⁴⁵

It is important to dispose of a separate, although related, issue that can sometimes mistakenly dominate discussions of this subject. At the opening session of the Senate committee hearings in 1979, Ambassador Yost claimed that the U.S. "record . . . on economic, social, and cultural rights, is as good as, or better than, [that] of almost any other nation." Similarly, the State Department's Legal Adviser asserted that the "minimum standard of rights for the individual as set forth by the treaties [including the Covenant on Economic, Social and Cultural Rights] . . . is met by our domestic system in practice, although not always in precisely the same way that the treaties envision."²⁴⁶

In fact, such claims stand in marked contrast to the findings of most serious studies of U.S. economic and social policy. To take but one example, a major recent comparative study of eight Western countries concluded that the poverty of American children contrasts glaringly with the poverty of the young in every other country but Australia. The poverty rate for American children was 70 percent higher than the rate for children in Canada, our closest neighbour. In fact, American children are at a disadvantage relative to their peers in all the other countries examined here, except Australia (Rosas 1995)²⁴⁷.

²⁴³ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁴ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁵ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁶ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

4.5.3 Individualism as a value in the United States

Eide²⁴⁸ notes that the United States have chosen individualism as a central value. It has sustained its complex multicultural and multi-religious diversity, and avoided value confrontations by separating church from state and keeping national government out of the family, unless it can define a particular family as dangerous or endangered.

This is the land of incrementalism; we enact programs and policies without voting on or explicating values, and we try to avoid actions that create major value confrontations. The conclusion to be drawn from this sketchy, and inevitably highly selective, collection of evidentiary snapshots is not necessarily that the concept of economic, social and cultural rights is, by definition, incompatible with the philosophy of the American people or even of recent U.S. administrations²⁴⁹

Rather, it is that the acceptability to the American people and their political representatives in the U.S. Senate of the assumptions implicit, and the obligations explicit, in the Covenant cannot readily be assumed. There is, in fact, ample evidence to support the argument that the rejection of economic, social and cultural rights in the context of U.S. foreign policy was largely motivated by the desire to ensure consistency with a comparable domestic policy agenda that has been pursued with vigor and considerable success throughout the 1980s (Rosas 1995)²⁵⁰.

4.5.4 The Clinton presidency

According to the Council on Foreign Relations²⁵¹, President Clinton used institutions effectively to advance human rights. Prioritizing the enlargement of the North Atlantic Treaty Organization (NATO), he accelerated European Union (EU) steps to offer Eastern European countries membership too. That there were human rights standards for joining NATO and the EU created a potent incentive for those countries to improve their records. But like other U.S. presidents, Clinton picked his fights.

²⁴⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁴⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁵⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In *Economic, social and cultural rights: a textbook*, di Rosas Eide. 1995. Pages 55-85.

²⁵¹ Relations, Council on Foreign. *Promoting Human Rights: Is U.S. Consistency Desirable or Possible?* October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>. The Council on Foreign Relations (CFR) is an independent, nonpartisan membership organization, think tank, and publisher. Each of these functions makes CFR an indispensable resource in a complex world.

He flipped his position and delinked trade and human rights with China in his first year, and Secretary of State Madeleine K. Albright later observed, “We do not have a cookie-cutter approach to policy” when asked why China and Cuba were treated differently (C. o. Relations, Promoting Human Rights: Is U.S. Consistency Desirable or Possible? 2011)²⁵².

4.5.5 The George W. Bush administration

In the Report of October 2011, the Council on Foreign Relations (CFR) continues describing the status of human rights under the Bush administration. The younger President Bush had the most forward-leaning rhetoric on human rights, culminating in his second inaugural address, where he proclaimed “the ultimate goal of ending tyranny in our world.” He rejected “the soft bigotry of low expectations” regarding the people of the Middle East allegedly not being suited to exercise full liberties. Yet he too was inconsistent in his actions: he dismayed human rights activists by saying the Beijing Olympics were only about sports, he turned a blind eye to Pakistani generals' manipulation of the judicial system, he walked back from pressuring Egyptian leader Hosni Mubarak, and his policies on detaining supposed terrorists undermined U.S. credibility (C. o. Relations, Promoting Human Rights: Is U.S. Consistency Desirable or Possible? 2011)²⁵³.

4.5.6 The Obama administration

According to the Centre for Economic and Social rights²⁵⁴, the election of President Obama in 2008 created new hope that the position of past governments would be rectified. There have been increased efforts among the US human rights community to encourage the new administration to change its stance on economic, social and cultural rights and to ratify the Covenant.

In the Report of October 2011, the CFR explains the status of human rights under the Obama administration. The question about the early Obama administration was whether it would be more like that of George H.W. Bush (coldly realist) or Bill Clinton (morally inclined, but picking his battles). Likely alluding foremost to Iran, Obama declared in his January 20, 2009, inaugural address, "To those who cling to power through corruption and deceit and the silencing of dissent, know that you are on the wrong side of history, but that we will extend a hand if you are willing to unclench your fist." According to the Obama White House, the

²⁵² Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>.

²⁵³ Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>.

²⁵⁴ The Center for Economic and Social Rights (CESR) is an international human rights organization that functions primarily as a research and advocacy nonprofit in the area of economic and social rights.

Arab Spring events led him to shift from this realist policy of engagement to a more morally inclined approach like President Clinton's²⁵⁵.

Presidents Carter and Reagan were both moralistic in tone and each pressed allies to reform. President Obama was no more willing or able proactively to shutter the Guantanamo Bay detention facility than his predecessor. All recent presidents have been tough on Myanmar's leaders and cautious in pressuring China's²⁵⁶.

What kind of consistency would be desirable and achievable? Four precepts would help. First, despite how a human rights emphasis at times clashes with important priorities in bilateral relationships (e.g., trade, counterterrorism, and military bases), it is important not to assume that human rights always intrinsically contradict U.S. interests. For instance, repression of expression and real-time information may only retard economic growth and turn regimes into pressure cookers ready to blow²⁵⁷.

Second, it is false to suggest that the greater a country's relative power, the less the U.S. can afford to confront its human rights failings. Addressing liberties in Russia and China is all the more important due to their geopolitical weight. Indeed, if it is too inflexible in absorbing societal demands, China's autocracy could face a rupture threatening global stability²⁵⁸.

Third, governments that regularly deny a large category of their citizens equal access to justice are not only violating universal rights, but also squandering assets. For example, the United States could advance a quiet, sustained dialogue with India about the national government's role in transcending cultural practices of discrimination against broad social groups that relegate valuable human capital to squalid lives. Persistent bonded labor of disadvantaged castes despite a 1976 ban and remedy law in India is not unlike segregation persisting in the American South until U.S. national authorities—in another federal system—pushed states to implement laws²⁵⁹.

Most of all, countries that deny women and girls property and inheritance rights, free expression, and political participation are forsaking enormous assets for civic conciliation and economic dynamism—which is neither in their interests nor those of the United States²⁶⁰.

²⁵⁵ Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁵⁶ Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁵⁷ Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁵⁸ Relations, Council on Foreign. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁵⁹ Council on Foreign Relations. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁶⁰ Council on Foreign Relations. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

Fourth, the Middle East should not be seen as an exception. It is a bigotry of low expectations to think Muslims and Arabs are incapable of respecting and protecting universal rights. That said, there are those who would use newly won tools of freedom to institutionalize repression (as some elected Islamists might). Without covertly handpicking winners, the United States should offer a range of actors who appear authentically committed to pluralism and peaceful contestation help to develop their capacity to compete for power and to govern (C. o. Relations, Promoting Human Rights: Is U.S. Consistency Desirable or Possible? 2011)²⁶¹.

4.5.7 Evolution of EU and US policies attitudes on economic, social and cultural rights

According to the University of Applied Sciences of Vienna²⁶², “*Si c’était à refaire, je commencerais par la culture*” (“If I were starting over, I would begin with culture”) Jean Monet.

Whether Jean Monet really said this or not, it is a fact that he and Robert Schuman started with the economy and the preponderance of the economic integration still characterises the European Union today. Nevertheless, Monet’s quip epitomises the importance of culture in any form of unity in Europe. The virtues of Europe today as compared to the United States are the emphasis on trans-national cooperation, not only on an economic level, and the humane attitude to law, society and the environment. However, Europe has lost a sense of purpose. The EU was built institutionally, not democratically; it would probably not even have come about if there had been national votes on establishing a union after World War II. Nowadays you cannot go around public opinion, and it seems to be fashionable in Europe today to oppose the EU. Politicians exploit the EU for their purposes without considering the costs, as they just take the benefits of the EU for granted. There is definitely a lack of direction. The EU as an ideal is no longer supported by the majority of Europeans, not even by the new members in Central and Eastern Europe. They rather imitate the

²⁶¹ Council on Foreign Relations. Promoting Human Rights: Is U.S. Consistency Desirable or Possible? October 2011. <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228>

²⁶² Vienna, University of Applied Sciences in. Comparative European Social & Economic History. September 2008. http://www.fhvie.ac.at/var/em_plain_site/storage/original/application/a79ca704c4e61f23601cf35b4286639e.pdf. Pages 7-8.

American way of life, especially the economic and consumer aspect of it, and the focus on the virtues of Europe has got lost in recent years. In Western Europe many people are either supporters of the neo-liberalist American approach or they take up a crude anti-Americanist stance. Yet the EU is the only model of peaceful and economically successful cooperation we have that embodies a sense of collective interest, regulates the market and induced nation states to abdicate some of their sovereignty to build common institutions.

Can a further integration of Europe be achieved today by the common will of the countries concerned? Should it? Will the governments make concessions and sacrifice more of their sovereign rights? Or will Europe be unable to catch up with the interdependent world of today and the future and continue to believe that nationalistic self-interest still makes sense or that European nationalism can carry on where the nation states of Europe were forced to leave off? Those building Europe today never seem to go beyond the purely highly technical level of specialists who are brilliant experts and indispensable, but not understood by the people living in Europe. Yet we misunderstand Europeans if we give them sums and statistics only, which look wan alongside the waves of enthusiasm that have enlivened Europe in the past. Can a European consciousness be achieved solely through statistics? It is disturbing that Europe as a cultural ideal and objective is the last item on the current agenda. No one is concerned with a mystique, an ideology. Europe will not be built unless it draws on the old forces that formed it in the first place and are still lingering below the surface. “The Europe of the peoples” will have to work with the people or they will overturn it with their historical taste for revolution and cast it away.

The disappearance of national frontiers in the movement of goods, capital, services and people could forge a new kind of peoples who feel for instance Austrian and European. The community has been formed largely to avert a return to a tragic past and less to build a clearly envisioned future. So Europeans are bound together by the unpleasant memory of their national antagonisms and their desire to keep those at bay, and now increasingly by a common fear of being run over by waves of immigrants and being wiped out economically by globalisation. Yet the European Union could become a model of how independent states integrate and cooperate. To adapt Churchill’s famous remark about democracy: “Democracy is the worst form of government – except all those other forms that have been tried from time to time”, the European Union is the worst possible Europe, apart from all the other “Europes” that have been tried from time to time (Vienna 2008).

5 The influence of Human Rights policies in US and EU proposals to solve the Ukrainian crisis

5.1 US and EU perspectives on the solution of the Ukrainian crisis

5.1.1 EU contribution to the solution of the conflict in Ukraine

The United States and the European Union have different perspective on the solution of the Ukrainian crisis and different relations with Ukraine.

The European Agenda for Reform²⁶³, which has been developed jointly during 2014 by the Ukrainian Government, on the one side, and the European Commission and the European External Action Service (EEAS)²⁶⁴, on the other side, is a comprehensive road map of the Commission's and EEAS's contribution to the paramount task of the development and fundamental transformation of Ukraine. The document combines Ukraine's short- and medium-term needs and matches them with support actions from the EU side. It provides clear indications on specific steps, the timelines and points of contacts in the respective administrations.

Both sides started to jointly build up the contents of the European Agenda, on the occasion of the visit to Kyiv of a high level delegation from the European Commission and the EEAS headed by Commissioners Füle and Lewandowski, on 25-26 March 2014, with the support of the EU Delegation in Kyiv. Since that period, the Agenda has evolved and become richer; more actions have been added and their implementation has progressed steadily²⁶⁵.

Today, the European Agenda for Reform has grown into a credible roadmap, which is not only about the smooth delivery of the EU support package, but encompasses a wide-ranging set of measures that reflect the priorities of the Ukrainian Government and the expectations of the Ukrainian people. Its measures range from assistance, to constitutional reform, to cooperation on energy matters, from financial assistance by the

²⁶³ Commission, European. EU-Ukraine a european agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁶⁴ The EEAS is the European Union's diplomatic service. It helps the EU's foreign affairs chief – the High Representative for Foreign Affairs and Security Policy – carry out the Union's Common Foreign and Security Policy.

²⁶⁵ Commission, European. EU-Ukraine a european agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

EU to the unilateral opening of its markets for Ukrainian products, from the reform of the judiciary to the visa liberalisation process²⁶⁶.

The fact that it has been made public, enables an open discussion with the representatives of the Ukrainian civil society on the major direction and the specific actions foreseen. This Agenda has been conceived as a living document, that should take stock of progress and reflect evolving priorities. Thus, it is always possible to adjust it to the changing situation, to ensure an adequate matching between needs and actions, thereby furthering the consultation process²⁶⁷.

The implementation of the European Agenda for Reform is a joint effort of both sides and is coordinated, on the one hand, through the Support Group for Ukraine set up by the European Commission. On the other hand, it is coordinated with the institution to be set up within the Government of Ukraine dealing with the process of political association and economic integration with the European Union²⁶⁸.

These bodies will be in contact and interact regularly, ensuring that there is consistency between the needs of Ukraine and the assistance offered by the EU. Such close cooperation and coordination can ensure that in the event of problems and obstacles prompt action is taken to let the implementation of the Agenda progress smoothly²⁶⁹.

Many of the measures aimed at stabilization of Ukraine act in order to favour the re-establishment of the human rights of the population in the areas affected by the conflict, with particular attention to economic and social rights.

It should be noted that since the launch of this process, several of the measures indicated in the European Agenda have already been implemented or launched. This confirms that there is clear added value, in framing mutual commitments in visible, incremental and operational terms²⁷⁰.

Recent milestones in the implementation of the European Agenda for Reform include:

- The new “State Building Contract” programme signed on 13 May, worth €355 million, plus €10 million to support civil society, which will help the government of Ukraine to address short-term economic

²⁶⁶ Commission, European. EU-Ukraine a European agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁶⁷ Commission, European. EU-Ukraine a European agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁶⁸ Commission, European. EU-Ukraine a European agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁶⁹ Commission, European. EU-Ukraine a European agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁷⁰ Commission, European. EU-Ukraine a european agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

stabilisation needs and implement governance reforms in order to promote inclusive socio-economic development.

- The approval of an emergency Macro-Financial Assistance (MFA) loan programme for Ukraine of up to €1 billion. It complemented an existing MFA package of up to €610 million, bringing the total EU assistance under this financial instrument to €1.61 billion. The disbursements under the two MFA programmes totalled €600 million as of 17 June²⁷¹.

While these are all important actions, they represent only a small part of the comprehensive European Agenda.

These measures represent only a start of the reform process for Ukraine. The European Commission as well as the EEAS wish to be sure that they contribute, in the most efficient manner to the political and economic stabilisation of Ukraine, as well as to the political association and economic integration of Ukraine with the European Union (E. Commission, EU-Ukraine a european agenda for reform 2014)²⁷².

5.1.2 US-Ukraine relationship

Let us consider the relationship between the US and Ukraine. According to Garnett²⁷³, Ukraine relates with the United States with the special challenge of more clearly defining its role in the new Eastern and Central Europe. For the United States, the question remains how best to protect its overarching security interests - in nuclear issues, in the moderation and transformation of Russian power, in Ukrainian independence, and in regional stability.

Garnett argued that these interests can be protected in the best way, by a new engagement in Ukraine and the region as a whole. Such a new engagement would neither cede Ukraine to some mythical Russian geopolitical space, nor force the United States to play the role of constant counterbalance to Russia. Neither role is consistent with U.S. interests or capabilities²⁷⁴.

A policy of engagement in Ukraine requires a definition of U.S. interests not chained to Cold War thinking about spheres of interest. It requires that the United States work toward an outcome in which Russian power

²⁷¹ Commission, European. EU-Ukraine a european agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁷² Commission, European. EU-Ukraine a european agenda for reform. 2014. http://ec.europa.eu/archives/commission_2010-2014/fule/docs/ukraine/a_european_agenda_for_reform.pdf.

²⁷³ Garnett, Sherman. «U.S.-Ukrainian Relations: Past, Present, and Future.» Harvard Ukrainian studies, 1996.

Garnett is Professor at James Madison College, its interests include the former Soviet Union, especially Russian foreign and security policy, Ukraine and comparative political and security issues for the post-Communist world.

²⁷⁴ Garnett, Sherman. «U.S.-Ukrainian Relations: Past, Present, and Future.» Harvard Ukrainian studies, 1996.

is moderated both by its internal transformation and by the success of its neighbours, which are neither sources of instability in their own right nor the pawns of other great powers. Russia has had little experience with this kind of neighbour²⁷⁵.

It is not impossible, but it is unlikely that Russia and Ukraine or its other neighbours will be able to work out this kind of relationship on their own. There is, clearly, a role for the United States and its allies in encouraging the emergence of a genuinely regional system but, it requires that the United States understand the power it has to shape a new order in the region - in particular its interests in and influence over the stability of Ukraine and of Ukrainian-Russian relations. With the end of the Cold War and the emergence of crises in regions unknown to most Americans, the temptation is strong to narrow U.S. policy focus and limit U.S. commitments²⁷⁶ (Garnett 1996).

5.1.3 US policy towards the solution of the conflict in Ukraine

As far as the US policy towards the solution of the conflict in Ukraine is concerned, Evans²⁷⁷ makes some suggestions.

Evans suggests that there should be three priorities for the United States in the wake of developments in Ukraine. First, U.S. policy should “show strength.” Second, it should seek to stabilize the relationship between Russia and Ukraine. Finally, U.S. policy should seek to “revitalize NATO.” These three goals describe an outline of the approach that the president Obama has taken on his trip to Europe. He has given strong assurances to NATO allies as well as warnings to Russia, advocated a diplomatic solution to the crisis, and called for revitalizing the alliance²⁷⁸.

First, Evans approaches all of these questions largely from the first school of thought: the United States and its allies made mistakes that helped create the circumstances forcing President Putin to move against Ukraine. His approach to stabilizing the crisis in fact grows directly out of this analysis. In return for Russia backing down (not leaving Crimea, but abstaining from trying to bite off more of Ukraine), he recommends that NATO members pledge not to invite Ukraine to join the alliance. In addition, he recommends, NATO should acknowledge that impeachment of former Ukrainian President Yanukovich “might not have been” constitutional²⁷⁹.

²⁷⁵ Garnett, Sherman. «U.S.-Ukrainian Relations: Past, Present, and Future.» Harvard Ukrainian studies, 1996.

²⁷⁶ Garnett, Sherman. «U.S.-Ukrainian Relations: Past, Present, and Future.» Harvard Ukrainian studies, 1996.

²⁷⁷ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014. Stanley works for Evans, Non-resident Senior Fellow, Brent Scowcroft Centre on International Security.

²⁷⁸ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014

²⁷⁹ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014.

The concessions suggested above, in theory, might sufficiently reassure President Putin that NATO is no longer threatening Russia's "historic lands;" that is, if in fact Putin was motivated to respond to a threat from the West. However, Evans goes on to suggest that President Obama write a letter to President Putin affirming, that "the United States made some regrettable and counterproductive decisions in its relations with Russia in the 1990s..." Realistically, not only is President Obama very unlikely to engage in such a "mea culpa" exercise, but not everyone will see it as based on an objective analysis of what actually happened in the 1990s²⁸⁰.

Another point of view suggests that, in the 1990s, the United States and its NATO allies responded to the pleas of those who had been under Soviet control for protection from any future reassertion of hegemonic control from Moscow. At the same time, the allies held out the hand of cooperation to Russia. Now it is certainly possible that the offers of cooperation were insufficient to offset Russia's loss of hegemonic control in the region, but one might question, was this a "mistake" for which President Obama should, in effect, apologize on behalf of Bill Clinton?²⁸¹

One can make a case, that it was a mistake in 2008 for the Bush administration to insist the NATO allies promise that Georgia and Ukraine would ultimately become NATO allies but, it is much less compelling to suggest, that the United States should have left Poland, the Czech Republic, and Hungary to their own devices, and now should apologize for supporting their desire to share in the NATO treaty's affirmation of "individual liberty, democracy and the rule of law."²⁸²

Meanwhile, the suggestion made by Evans, that Moscow might be willing in the long run to agree to demilitarize Crimea in a deal to neutralize Ukraine infers that Putin sees no value in its naval port at Sevastopol. While the value of this asset may be overrated, it is hard to imagine Putin giving it up, particularly when he thinks he has other levers (such as energy dependence) to use in relations with any government in Kiev²⁸³.

5.2 Economic, Social and Cultural Rights in the context of the Ukrainian crisis

According to the Office of the United Nations, High Commissioner for Human Rights, there were committed serious violations of economic, social and cultural rights, during the Ukrainian crisis. Corruption, remains one of the most serious problems in Ukraine and has affected all human rights, whether civil, political,

²⁸⁰ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014.

²⁸¹ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014.

²⁸² Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014.

²⁸³ Sloan, Stanley. «Differing perspectives on Ukraine, Russia, NATO and US policy.» War on the rocks, 31 March 2014.

economic or social, exacerbated inequalities, eroded public trust in state institutions including the justice system, led to impunity and undermined the rule of law. It may be noted that in 2013, Transparency International ranked Ukraine 144th out of 176 countries (the country being ranked first is considered the least corrupt) (O. o.-H. Rights 2014)²⁸⁴.

There has been only patchy implementation of international commitments to tackle corruption made under the UN Convention against Corruption, which entered into force in December 2005 and was ratified by Ukraine four years later. A National Anti-Corruption Strategy for 2012 – 2015 was adopted by presidential decree in October 2011, but there is currently no comprehensive anti-corruption law in Ukraine. The Ministry of Justice informed the OHCHR delegation that a draft law containing provisions applicable to corruption in both the public and private sectors was presented by the end of March 2014²⁸⁵.

Corruption has disproportionately affected the poor and the most vulnerable. It impacts, negatively on the enjoyment by all of economic and social rights, including the right to health services. Health service allocations make up 3.5% of the country's GDP, which falls well short of the minimum recommended by the WHO (7%). The poorest segment of the population cannot afford costly treatment in a situation where the country has no medical insurance system²⁸⁶.

The Ministry of Health supports reform of management of medical services to move away from a centralized medical system and enable greater medical self-governance. Insufficient salaries for employees in the health service have led to emigration of qualified staff. It has also affected professional competency and fed corruption practices, thus leading to inequalities in access to health care²⁸⁷.

More generally, the socio-economic situation in Ukraine is of concern and constitutes one of the causes of recent events. In its 2008 review of the implementation of the International Covenant on Economic, Social and Cultural Rights in Ukraine, the Committee on Economic, Social and Cultural Rights expressed a number of concerns. In particular, it referred to a finding that 28 per cent of the population reportedly lived below the official poverty line, that the minimum wage does not provide an adequate standard of living, and that unemployment benefits amount to 50 per cent of the minimum subsistence level. It also expressed concern at the inadequate level of social assistance, and that several hundreds of thousands of children below the age of

²⁸⁴ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

²⁸⁵ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

²⁸⁶ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

²⁸⁷ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

15 were working in the informal and illegal economy and several thousands of children living in the street²⁸⁸.

“These concerns should constitute priorities for any new Government in Ukraine in the coming months and years.” Office of the United Nations- High Commissioner for Human Rights The Ukrainian Authorities must, as a matter of priority, put in place measures to eradicate corruption, while ensuring good governance and the rule of law. In addition, efforts should be made to redress disparities in standards of living and ensure equal access to, and quality of, health, education, employment and social support structures for all, including marginalised communities throughout the country²⁸⁹.

5.2.1 Human Rights violations related to the Maidan protests

There have been notable failures to respect the right to freedom of peaceful assembly in line with international human rights standards since protests started in November 2013.

In some cases, local authorities sought to ban or restrict public gatherings through court decisions. On 22 November, the Kyiv district administrative court banned the use of “temporary structures such as tents, kiosks and barriers” from 22 November to 7 January. Local authorities in Odesa applied to a court to ban a demonstration that had attracted several hundred people on 23 November. On 24 November, the court endorsed the ban and the remaining demonstrators were violently dispersed by the police²⁹⁰.

The Ukrainian Authorities attempted to disperse the demonstration in Kyiv twice, on 30 November and on 11 December, respectively. On 30 November, the Authorities justified the decision to disperse the demonstration by claiming that a New Year tree needed to be erected in the square. On 11 December, the Minister of Interior stated that the decision to remove barricades from the roads surrounding the Maidan was in response to citizens’ complaints that the demonstration was blocking traffic. There have also been reports of individuals having been prevented from attending demonstrations or who were harassed for having done so²⁹¹.

²⁸⁸ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

²⁸⁹ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 10-11.

²⁹⁰ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 13-14.

²⁹¹ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 13-14.

The first instance of excessive use of force against demonstrators took place in the early hours of 30 November 2013, when 290 riot police officers (known as ‘Berkut’) dispersed Maidan protesters, mainly students and youths. Witness testimony and footage of the incident shows that the riot police used excessive force to clear demonstrators, forced assessed as both indiscriminate and disproportionate, including through chasing and beating demonstrators who ran away. The violence escalated on 1 and 2 December and there were serious clashes in nearby streets between demonstrators and riot police, and an attempt to storm the presidential administration building. At least 50 riot police and hundreds of protestors were injured, and twelve persons detained on charges of “organizing mass disorder”. A third instance of excessive use of force and violent clashes, occurred on 10 and 11 December 2013, when the riot police attempted to remove barricades, and left 36 persons hospitalized, including 13 policemen. Violent clashes resumed on 19 January 2014, following the adoption of controversial new laws on 16 January limiting the ability to conduct unsanctioned public demonstrations. Demonstrators, many of whom were linked to the far right wing “Right sector” group, attacked governmental buildings, throwing stones, firecrackers and Molotov cocktails at the police. The response of the police included the use of water cannons, in sub-zero temperatures and live fire, as a result of which five demonstrators were killed²⁹².

The violence in Kyiv reached its peak between 18 and 20 February 2014, when mass violent clashes took place mainly on Institutska Street. During these three days around 90 people were killed, mostly from sniper shots allegedly from rooftops. The new Minister of Health, Mr. Oleg Musii, indicated to OHCHR that, as chief of the medical services on Maidan, he saw law enforcement officers removing the bodies of individuals who are still unaccounted for. He noted that snipers were aiming to kill (targeting the head and vital organs of the victims) and also depicted cases of police brutality, including beatings of medical staff and preventing medical personnel from attending the wounded. According to information gathered so far, in the period from December 2013 to February 2014, in total 121 people were killed, either as a result of severe beating or gunshots. This number includes 101 Maidan protesters, 17 officers of the internal affairs/police, 2 members of NGO “Oplot” that attacked Maidan in Kharkiv and a Crimean Tatar found dead²⁹³.

²⁹² Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 13-14.

²⁹³ Rights, Office of the United Nations- High Commissioner for Human. Report on the Ukraine situation. 15 April 2014. http://webcache.googleusercontent.com/search?q=cache:4QqRya3od9sj:www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc+&cd=2&hl=it&ct=clnk&gl=it. Pages 13-14.

5.2.2 US recent policies on human rights in the Ukrainian crisis

There is a program initiated by the US on the protection of human rights in Ukraine, it is called USAID.

According to the Government of the United States²⁹⁴, USAID helps Ukraine become more democratic by supporting participatory, transparent, and accountable governance processes. Working with the Ukrainian parliament, USAID improves legislative processes and increases public engagement and accountability, strengthens the rule of law by improving judicial accountability and independence, builds a foundation for decentralization and local government accountability, and supports programs that prevent trafficking in persons and help victims.

Civil society is critical to sustaining democracy in Ukraine. USAID develops the capacity of non-governmental organizations to monitor the government, protect human rights, and ensure that citizens have a voice in government decision making. By training Ukraine's independent media, USAID enhances journalistic professionalism, ethics, and monitoring capabilities. USAID political processes programs ensure that elections are free and fair, at the same time making political parties and elected officials more accountable to their constituents (Government of the United States 2016).

5.3 Human Rights in the Ukrainian crisis

5.3.1 The main issues about the Human Rights in the Ukrainian crisis

Unemployment is already a significant problem, despite the official unemployment rate continuing to be low by European standards. The sad reality is that many, especially in the West of the country, are chronically unemployed and underemployed, and are therefore not included in the statistics. Moreover, many Ukrainians make their living in the informal economy, making them invisible in the unemployment calculations. The stark difference in economic conditions between the poor, agricultural West and the relatively more affluent, industrial East and South, only further exacerbates the political divide between the two²⁹⁵.

The ascension to power of right wing fascist forces, many of which identify very closely with Nazi ideology, is particularly troubling. As elements such as Right Sector, Svoboda and UNA-UNSO officially occupy key government posts, it will create further rifts between their political base in the West, and regions in the East

²⁹⁴ Government of the United States, USAID. DEMOCRACY, HUMAN RIGHTS AND GOVERNANCE. 25 April 2016. <https://www.usaid.gov/where-we-work/europe-and-eurasia/ukraine/democracy-human-rights-and-governance>.

²⁹⁵ Draitsler, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

and South who will correctly recognize these forces as an existential threat, particularly to the ethnic and religious minorities²⁹⁶.

The outlawing of two of the largest and most influential political parties, the Ukrainian Communist Party and Yanukovich's Party of Regions, has thoroughly alienated (and disenfranchised) large segments of the population who, quite correctly, believe that there is no political future for them in the "new Ukraine" where the government is controlled by "liberal" and fascist elements. How can these millions of Ukrainians be won back into the political process?²⁹⁷

The question of Constitutional reform is also a major issue that must be addressed. One of the central demands of many of the protesters was a return to the Constitution of 2004 in order to curb presidential powers and return more authority to the Ukrainian Rada (Parliament). This was a key aspect of the February-21 agreement brokered by Poland, Germany, and France, and agreed to by Yanukovich and Russia. However, with the collapse of order in Kiev, and the abandonment of the agreement, the issue of constitutional reform has taken a back seat²⁹⁸.

Finally, the ethnic and religious minorities in Ukraine see themselves, to a large extent, under assault from an intolerant putsch government in Kiev that would like nothing more than to marginalize them completely, if not force them out of the country. The ideology of the fascist groups, which see Ukraine's multi-ethnic character as a negative rather than a positive asset, must be reconciled with the political and social reality. Of course, there can be no future in Ukraine for these ethnic and religious groups, unless they are granted protection from a government they recognize as legitimate²⁹⁹.

Any comprehensive solution in Ukraine must address the issues of territorial integrity, regional autonomy, economic stabilization and development, and protection of political and civil rights³⁰⁰.

After the referendum on March 16, 2014, Crimea has proclaimed independence and moved to integration with the Russian Federation. However, the political future of other eastern and southern regions of Ukraine must be determined. It would seem logical then that Russia, together with the EU and other interested parties, would need to come to an agreement regarding the territorial integrity of these regions. This would require assurances from Russia regarding their non-intervention. On the flip side, the Ukrainian government and its western allies would need to provide guarantees of protection of ethnic Russians throughout Ukraine, as well as other vital Russian interests in the region³⁰¹.

²⁹⁶ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

²⁹⁷ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

²⁹⁸ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

²⁹⁹ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁰ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰¹ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

A central plank in the February-21 agreement was constitutional reform, and this will have to take place in earnest. In doing so, a framework for a true democratic election, rather than a legitimization of the illegal government currently in Kiev, will need to be established. Using the 2004 Constitution as a baseline, negotiations could take place, mediated by Russia and European partners, wherein a new constitution built on compromise, and guaranteeing the rights of minorities, increased democratic participation, and other key factors could be written. This would undoubtedly satisfy Moscow, as it would eliminate the immediate need for any military presence³⁰².

Of course, any political settlement would need to contain provisions for what course of action should be taken, if the rights of minorities are violated by the elected government. It seems clear that some of the ultra-nationalist individuals and parties will win seats in the Rada and in the new administration. Given this eventuality, how will Russia and the international community respond if they proceed to leverage government powers in a discriminatory way against minorities? Of course, this is one of the principal concerns for Moscow³⁰³.

Moreover, the new Constitution would need to, explicitly, enumerate the rights of political parties, including the recently outlawed Communist Party and Party of Regions, in order to guarantee the democratic rights of all Ukrainians. By doing so, Ukraine would take a huge step toward true political progress and the establishment of an authentic participatory democracy³⁰⁴.

Additionally, economic solutions will play a major role in negotiations. While the US, Europe, and the IMF continue to discuss bailouts for Ukraine, there would need to be a comprehensive package provided by both Russia and the West. Russia could make concessions regarding the Ukrainian bonds they recently purchased, as well as generous terms on the energy debts Kiev has racked up. The billions Ukraine would save could then be used to address the pressing fiscal crisis and fund much needed economic development. In return, Ukraine would guarantee Russia's continued access to the energy delivery infrastructure and Ukrainian export market – a sticking point for Moscow³⁰⁵.

For this sort of progress to be made, there will need to be concessions on all sides. The interests of the people of Ukraine, all people of Ukraine, must be considered and made central in any agreement. Of course, the US and its allies must deescalate their rhetoric and punitive measures and threats of further sanctions against Russia. Not only do such threats exacerbate an already tense situation, they cannot possibly have a positive impact on the crisis. Instead, they will merely harden Russia's resolve, forcing Moscow to take

³⁰² Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰³ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁴ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁵ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

counter-measures which could be devastating to an already fragile European and global economy. Any solution must begin with a rapprochement, rather than bellicose rhetoric³⁰⁶.

What has taken place in Kiev cannot be undone. However, the situation need not deteriorate further. A mutually beneficial solution is entirely possible, so long as all sides are willing to work toward that goal. Hopefully, for the future of Ukraine, all the interested parties have long since realized this³⁰⁷.

The statements, views and opinions expressed in this column are solely those of the author and do not necessarily represent those of RT (Draitser 2014)³⁰⁸.

5.3.2 The International Framework for the solution of the Ukrainian crisis

As the crisis in Ukraine was evolving, the international community decided for the first time in months to establish a framework for the ease of internal tensions in the country. The Geneva Agreement is the result of the intense negotiations between the representatives of Ukraine, USA, EU and the Russian Federation (despite earlier threats by the latter not to participate in the talks). During the Geneva talks on the 17th of April 2014, which lasted more than six hours, the above states agreed on a series of concrete steps to de-escalate tensions and restore security for all people. The deal calls on all sides in Ukraine to refrain from violence or provocative behavior and to reject expressions “of extremism, racism and religious intolerance, including anti-Semitism”³⁰⁹.

Furthermore, according to the Geneva agreement “all illegal armed groups must be disarmed; all illegally seized buildings must be returned; all illegally occupied streets and other public places in Ukrainian cities and towns must be vacated” and “amnesty will be granted to the protestors and to those who have left buildings and other public places and surrendered weapons, with the exception of those found guilty of capital crimes”. The deal also states that the Organization for Security and Cooperation in Europe (OSCE) will play a leading role in helping the authorities to implement the agreement, and the constitutional reform will be inclusive, transparent and accountable carried out through a broad national dialogue. Finally, the participants underlined the importance of economic and financial stability in Ukraine and expressed their willingness to discuss additional support as the above steps are implemented³¹⁰.

³⁰⁶ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁷ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁸ Draitser, Eric. «Solving the crisis in Ukraine.» RT Questions More, 19 March 2014.

³⁰⁹ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁰ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

According to the BBC news³¹¹, the Minsk Accords can be summarized in these key points:

1. Immediate and full bilateral ceasefire

To take effect in parts of Donetsk and Luhansk regions, from 00:00 local time on 15 February (22:00 GMT on 14 February).

2. Withdrawal of all heavy weapons by both sides

To equal distances to create a buffer zone of: at least 50km (30 miles) separating both sides for artillery systems of 100mm calibre or more; 70km for multiple rocket systems and 140km for the heaviest rocket and missile systems such as Tornado, Uragan, Smerch and Tochka.

Ukrainian troops to withdraw heavy weapons from the current frontline.

Separatist forces to withdraw theirs from the line of 19 September 2014.

Heavy weapons withdrawal must start no later than day two of the ceasefire and be completed within two weeks. The OSCE security body will assist in the process.

Map of Ukraine rebel-held areas

3. Effective monitoring and verification regime for the ceasefire and withdrawal of heavy weapons

To be carried out by the OSCE from day one, using all necessary technology such as satellites and radar.

4. From day one of the withdrawal begin a dialogue on the holding of local elections

In line with the Ukrainian law on temporary self-rule for parts of Donetsk and Luhansk. There will also be a dialogue on those areas' political future.

5. Pardon and amnesty by banning any prosecution of figures involved in the Donetsk and Luhansk conflict

6. Release of all hostages and other illegally detained people

On the basis of "all for all". To be completed at the latest on the fifth day after the military withdrawal.

Minsk - leaders meeting, 11 Feb 15

Image caption

The Minsk leaders (from left: Vladimir Putin, Francois Hollande, Angela Merkel, Petro Poroshenko)

7. Unimpeded delivery of humanitarian aid to the needy, internationally supervised

8. Restoration of full social and economic links with affected areas

³¹¹ News, BBC. Ukraine ceasefire: New Minsk agreement key points. 12 February 2015. <http://www.bbc.com/news/world-europe-31436513>.

Including social transfers, such as payment of pensions. To that end, Ukraine will restore its banking services in districts affected by the conflict.

9. Full Ukrainian government control will be restored over the state border, throughout the conflict zone

To begin on the first day after local elections, and be completed after a comprehensive political settlement, by the end of 2015. (Local elections in rebel-controlled Donetsk and Luhansk regions will be based on Ukrainian law and a constitutional reform.)

10. Withdrawal of all foreign armed groups, weapons and mercenaries from Ukrainian territory

To be monitored by the OSCE. All illegal groups to be disarmed.

11. Constitutional reform in Ukraine, with adoption of a new constitution by the end of 2015.

A key element of which will be decentralisation (taking account of the special features of certain parts of Donetsk and Luhansk regions, agreed with representatives of those regions), and adoption of permanent laws on the special status of those areas (News 2015).

5.3.3 Confrontation between Russia and the West on the Ukrainian crisis

The Ukrainian crisis gave rise to the worst confrontation between Russia and the West since the Cold War and the Geneva Agreement was designed to resolve this crisis through a peaceful political settlement. Although many hoped that the agreement would lower the internal and international tensions around Ukraine, from the beginning it did not seem capable of achieving it, as several key aspects of the crisis are absent from the declaration. To start with, the joint statement does not mention the Russian annexation of Crimea. This absence was seen by Russia as an effective acknowledgement of its rule over the peninsula, and was merely done because Ukraine and the West intended to facilitate the talks. No reference, however, has been made to Ukraine's sovereignty and territorial integrity³¹².

Another aspect that was excluded from the declaration is the presence of Russian troops across Ukraine's borders, which perpetuates Moscow's military intimidation of Kiev and the threat of war. Although Russia has managed to stay away from direct military intervention in the neighbouring country, the threat of war still exists as long as its troops remain in the Ukrainian territory. Particularly, the joint statement does not require Russia to remove the approximately 40,000 troops from Ukraine's border, something that could help de-escalate the crisis in Ukraine. Until May 30, the Russian troops remained in Ukraine, but later Russia

³¹² Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

withdrew most of them. What is more, the deal does not involve Russia's commitment to hold direct talks with the interim Ukrainian government³¹³.

Furthermore, the presidential elections of May 25th are not mentioned in the joint statement, putting into question their legitimacy by Russia. The elections could be seen as a crucial element of any political solution to the crisis. Since the interim government of Arseniy Yatsenyuk was viewed as illegitimate by many pro-Russians of the eastern Ukraine, the new democratically elected President Petro Poroshenko, the forthcoming parliamentary elections and the new constitution will manage to restore the trust of the Ukrainian people to the government. In other words, the proper conduct of the Ukrainian elections marked the end of the first phase of the crisis, notwithstanding the situation in the country is far from being stable. Finally, the agreement did not set a timeline during which its terms should be implemented. The crisis are absent from the declaration. To start with, the joint statement does not mention the Russian annexation of Crimea. This absence was seen by Russia as an effective acknowledgement of its rule over the peninsula, and was merely done because Ukraine and the West intended to facilitate the talks. No reference, however, has been made to Ukraine's sovereignty and territorial integrity³¹⁴.

Another aspect, which was excluded from the declaration is the presence of Russian troops across Ukraine's borders, which perpetuates Moscow's military intimidation of Kiev and the threat of war. Although Russia has managed to stay away from direct military intervention in the neighbouring country, the threat of war still exists as long as its troops remain in the Ukrainian territory. Particularly, the joint statement does not require Russia to remove the approximately 40,000 troops from Ukraine's border, something that could help de-escalate the crisis in Ukraine. Until May 30, the Russian troops remained in Ukraine, but later Russia withdrew most of them. What is more, the deal does not involve Russia's commitment to hold direct talks with the interim Ukrainian government³¹⁵.

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³¹³ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁴ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁵ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

Finally, the agreement did not set a timeline during which its terms should be implemented. The timeline would be useful to the Western governments to determine their own actions, including sanctions³¹⁶.

Regarding the implementation of the Geneva Agreement, most of its terms were ignored. The pro-Russian forces, immediately after the accord had been signed, declared that it did not apply to them. In particular, the self-declared leader of pro-Russian separatists in eastern Ukraine, Denis Pushilin, said his men are not bound by an agreement between Russia and Ukraine requiring illegal groups to disarm and vacate buildings, claiming that the Russian Foreign Minister Sergei Lavrov “did not sign anything for us, he signed on behalf of the Russian Federation”. Meanwhile, Ukraine announced a military-backed operation against pro-Russian separatists in the eastern regions to regain control of towns held by the latter³¹⁷.

The subsequent clashes between the Ukrainian government forces and the pro-Russian separatists in eastern Ukraine resulted in the increase of violence and the death of several people from both sides. The cities, which the pro-Russian forces are most active, are Slavyansk -which serves as the “armed operations base” of the so-called “Slavyansk self-defense unit” -, Donetsk, Luhansk and Kramatorsk. In Donetsk and Luhansk, following the example of Crimea, self-rule referendums were conducted on 11th of May, asking for political independence from Kiev and absorption into Russia. In both areas, the majority of voters supported self-rule, but the European Union and the United States did not recognize the referendums, stating that they are illegal, illegitimate and inaccurate³¹⁸.

Incitement to hatred and extremism continues to exist in Ukraine, especially in the eastern regions, in contradiction to the terms of the Geneva Agreement. Russia has been supporting and inciting nationalist extremists in South-Eastern Ukraine since the 1990s but, in recent years, the support has been more active, especially after Victor Yanucovich was elected President of Ukraine in 2010. Even now, Moscow supports extreme-right parties and pro-Russian separatists, and uses them as proxies to infiltrate the public discourse, weaken the democratic consensus and the political institutions, and also to promote regionalization and at times separatism. The pro-Russian rebels are increasingly well-trained, heavily armed and there are claims that armed groups are coming from across the Ukrainian borders³¹⁹.

On the other hand, the Svoboda party within the Ukrainian government and the supporters of a united Ukraine, among whom are extremists of the radical party “Right Sector”, are responsible for inciting violence, racism and hatred against the Russian-speaking population of Ukraine and national minority

³¹⁶ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁷ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁸ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³¹⁹ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

groups such as the Crimean Tatars and the Roma. Therefore, extremism, hate speech and provocative actions continue to fuel tensions in the country³²⁰.

Concerning the return of illegally seized buildings to legitimate owners, many government sites across several cities in Donetsk remained occupied after the agreement was signed. With the aim to ease tensions and resolve the crisis in the country, five draft laws on ‘amnesty’ for the activists who have participated in the protests after the 22nd of February 2014 were submitted to the Parliament. The draft laws, which were submitted from 9 to 23 April 2014, seek amnesty legislation that covers the actions to overthrow legal government, the organization of riots and the seizure of administrative and public buildings. Also, Oleksandr Turchynov promised to provide amnesty to all armed separatists who had not committed grave crimes and agreed to surrender, after a military operation against the pro-Russian separatists of Slavyansk on 2nd of May 2014³²¹.

The Order “On the organization of the discussion of amendments to the provisions of the Constitution of Ukraine on the decentralization of State power”, which was issued by the Cabinet of Ministers on April 17th 2014 and the public parliamentary hearings that were held on amendments to the Ukrainian Constitution on April 29th 2014, are actions towards the constitutional reform in Ukraine. While Ukraine, the EU and the US support the constitutional changes that will strengthen decentralization, regional and local self-government as well as minority languages, Russia is in favor of the federalization of Ukraine and the right of the regions to their own foreign and economic relations. This different approach by the parties to the context of the Geneva Agreement, as far as the constitutional amendment of Ukraine is concerned, was another sign that the accord would have had little chances of accomplishing its aim: to defuse tensions in Ukraine³²².

Moreover, the OSCE observers in Ukraine helped to the conduct of the presidential elections, which - according to them- were transparent and legitimate. They were held in accordance with international commitments and provided adequate conditions for free expression of will of the Ukrainian people on the election’s day. The OSCE mission in Ukraine, apart from its assistance in the elections, confirmed its support to the Ukrainian authorities in implementing the program of reforms. The economic assistance which is necessary to Ukraine will be provided by the European Commission through the “State Building Contract” program and the International Monetary Fund (IMF)³²³.

³²⁰ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³²¹ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³²² Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³²³ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

In conclusion, the Geneva Agreement is far, from being implemented due to the different interpretations the parties gave to its terms, the absence of many crucial elements from the declaration, and the intransigence that the opposing sides inside Ukraine have shown. It will be significant for the new government to cease the military operation in the eastern regions, which has only worsened the situation in Ukraine, and to conduct dialogue with the separatists³²⁴.

5.3.4 Human Rights in Ukraine during the crisis: a government and people perspective

If we want to look at the situations of Human Rights in Ukraine before and after the crisis, according to Dr. Filis (Filis, *Ukrainian Crisis: the impact on Human Rights under the European Perspective* 2014), Ukraine, as a part of the former Soviet republics, is deeply affected by the soviet mentality and although it is now an independent country, the effects of its past are evident on the government's human rights policy. Until recently, according to some organizations such as Freedom House, Ukraine had been labeled as "free" and its human rights' status was better in comparison to other former Soviet republics. However, a significant deterioration of human rights was observed in 2011³²⁵.

At this point, it would be very useful to mention that Ukraine has ratified and, as a consequence, has become a party to International and European human rights treaties³²⁶.

Among other International Treaties, we could name the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, International Covenant on Economic, Social and Cultural Rights. Also, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its Optional Protocol, Convention on the Rights of the Child (CRC) and its Optional Protocol concerning the involvement of children in armed conflict. Also, International Convention on the Elimination of all Forms of Racial Discrimination, Convention relating to the Status of Refugees (1951) and the Protocol relating to the Status of Refugees (1967), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention against Torture. As far as the European treaties, Ukraine is a party of European Convention for the Protection of Human Rights and Fundamental Freedoms

³²⁴ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

Dr. Filis is a specialist in Russian and former Soviet space affairs and a strategic planning expert on Greek foreign policy on the broader region of the Black Sea, the Caucasus and Central Asia.

³²⁵ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³²⁶ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

(1950) and of the Framework Convention on the Protection of National Minorities. However, the Rome Statute of the International Criminal Court has not been ratified yet³²⁷.

In 2009, some reports stated that “Ukraine has one of the most vibrant civil societies in the region. Citizens are increasingly taking issues into their own hands, protesting against construction and exposing corruption. There were no limits seen on NGO activities. Trade unions function, but strikes and workers protests were infrequently observed, even though dissatisfaction with the state of economic affairs was pervasive in the fall of 2008. Factory owners were seen as still able to pressure their workers to vote according to their owners’ preferences”. What is more, according to the Council of Europe, the function of civil society in Ukraine is satisfactory and since it is considered as a democratic state, it secures the rights of national minorities and generally human rights as a national policy³²⁸.

However, since the election of President Victor Yanukovich in 2010, many international organizations started to be concerned about the evolution and defense of human rights in Ukraine. The government became less democratic and tolerant, which deeply affected basic freedoms of assembly and speech. For instance, a selective prosecution of opposition figures and a worrisome intrusiveness by the Security Service were evident in the society. Organizations, such as Freedom House which had labeled Ukraine as “free”, downgraded the country to “Partly Free”. It should be noticed that 2010 was the landmark year when an increasing number of allegations of torture, restrictions on the freedom of speech and assembly and mass manifestations of xenophobia appeared. Allegations of torture in police, pretrial detention centers and prisons contributed in the deterioration of fundamental human rights’ situation, while the International Federation for Human Rights stated that “Ukraine is one of the countries seeing the most serious violations against human rights activists”. In addition to that, on January 17, 2013 Ukraine lost all of its 211 cases at the European Court of Human Rights³²⁹.

More specifically, amendments to the judicial system of the country affected the right to fair trial and led to the failure to execute court rulings, non-observance of the presumption of innocence and high level of corruption. The process became less independent and transparent. As far as the media freedom and the freedom of conscience and expression, since the election of Victor Yanukovich as President of Ukraine, there have been observed many complaints about the deterioration of press freedom. During demonstrations, protestors were impeded to attend, while many rallies and marches have been banned because they are considered not to satisfy the government’s interests. The system concerning the conditions in detention,

³²⁷Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³²⁸Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³²⁹Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

migrants and refugees barely functions, too. Nevertheless, human trafficking is quite alarming in Ukraine. The end of communism led to an increase of this phenomenon and the majority of victims are women who are forced into prostitution. Although the government of Ukraine has pledged to combat trafficking, it has still remained a country of transit and destination for a large number of people³³⁰.

In November of 2013, the President Victor Yanukovich (who had been in office since the 2010 elections) caused civil unrest by turning down a long negotiated Association Agreement with the EU, opting to support a closer relationship with Russia. It was a political decision of great importance for a recently independent country that still has strong cultural ties to Russia (e.g. the powerful Russian speaking minority in Eastern Ukraine) – not to mention the fact that its economy is largely dependent on this wealthy, gas-providing neighbor. Therefore, the decision of signing the EU Association Agreement or not turned quickly into a full blown dilemma, questioning the very nature of Ukraine's future: does the country want to go west and maintain a European mindset or east and treasure its Russian background? As it was, Yanukovich's "pro-Russian" choice naturally alienated the west-oriented half of the country, which led to the occupation of the Independence Square in Kiev by protesters demanding the signing of the Agreement and eventually calling for his resignation³³¹.

However, the peaceful protests lasted for weeks and then, turned into a wave of riotous episodes that mesmerized the media on a worldwide scale granting it a reluctant comparison to the events of the Orange Revolution. The turning point came on January 16 when the Ukrainian government approved the Bondarenko-Oliynyk laws. The Anti-Protest laws, (as they came to be known), immediately deemed anti-democratic by international observers, were seen as dictatorial and considered as one more proof of Yanukovich's unsuitability. Most importantly, these laws breached a lot of norms. For instance, their approval was the result of an unconventional vote by show of hands in a loosely attended parliament session. While typically within the rules, this procedure offers an exploitable excuse when trying to delegitimize Yanukovich's last initiatives as president. Mimicking Russia's NGOs as "foreign agents" laws and foreseeing, among others, a prison sentence for mass violation of public order, these laws defied recognized human rights, including the right to assembly and the freedom of speech³³².

The occupation of public buildings and the set up of barricades intensified the situation, which soon turned violent resulting in dozens of deaths, thousands of injuries and, at least, a hundred of people missing. With the protests spreading to the east of the country – to regions that had previously supported Yanukovich – it

³³⁰ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³¹ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³² Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

was obvious that it was no longer a question of changing a decision; what the protesters wanted was a change in the governance³³³.

As he was obliged to deal with the powerful front of the opposition, President Yanukovich tried to offer an olive branch by guaranteeing negotiations with the leaders of the protest movement and promising to change the formation of the government, giving the prime ministerial post to Arseniy Yatsenyuk (a comrade of Tymoshenko's) and naming Vitali Klitschko Deputy Prime Minister but his efforts proved to no avail. On February 22, the Ukrainian parliament finally voted to remove Victor Yanukovich from office and announced the snap presidential elections that took place in late May. Consequently, Yanukovich fled the country claiming he feared for his life while a parliament vote ordered his arrest. Afterwards, Yulia Tymoshenko, the leader of the opposition, was immediately released³³⁴.

The apparent fulfillment of the protesters' wishes, Yanukovich's exit from the country, raises a number of issues. Even if his actions as President of Ukraine were against popular opinion, was his pursuit off power really compliant with democratic values? After all, his actions, decisions and choices – whether they were popular or unpopular, “right” or “wrong” (notions hugely subjective when it comes to politics) – were the political decisions of an elected official. While the last year of Yanukovich's presidency was evidently disapproved of by the masses, it was those same masses who had voted for him in 2010 and it was up to them not to vote for him in the next elections. Did the missed EU Agreement, the event that triggered the crisis, provide enough justification for the urgency of the proceedings? It all comes down to this: when does an elected leader lose his legitimacy? And what happens when it is lost? The question of legitimacy is really hard to answer. Theoretically, an elected representative of the people within a democratic system has guaranteed legitimacy by the fact that he has been voted to that position by the majority of the people. In today's society, however, the majority of the votes is hardly ever big enough to allow just one elected representative (or party) freedom of political movement. And the support of this – already fragile – majority is put to the test when hard decisions have to be made. Yanukovich's choice not to sign the Association Agreement (whatever the reasons for it may have been) was objectively a very hard decision, one that resulted in a deficit of legitimacy³³⁵.

The Yanukovich presidency was already crippled in that regard. The 2010 elections that landed Victor Yanukovich in office had given him a very slight edge on his opposition, Yulia Tymoshenko. It was a tiny advantage that made all the difference, but it had practically left half the voting population disappointed. People were politically divided in two parts (less than a decade since the Orange Revolution nonetheless)

³³³ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³⁴ Dr. Filis, "Ukraine Orientation Choices", Essay docs, 2016. Page 2. Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³⁵ Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

that had to deal with the leader of the opposition being imprisoned under the charges of embezzlement; an unjust, politically motivated, basically anti-democratic imprisonment according to the global outrage that followed. By February 2014, Yanukovich had very little popular support. However, the fact remains that he was still an elected representative, ousted through rather speedy procedures. It would seem that by denouncing the former President, the Ukrainian parliament tried simultaneously to correct the errors of his past. For instance, freeing Tymoshenko by the apparently instant decriminalization of the actions for which she was imprisoned. While haste was definitely a factor in these decisions, they were most likely inevitable given the state of unrest the country was in at the time³³⁶.

It is still expected to be proved whether the reinstallation of a democratic rule is authentic or not. Unfortunately, though, the prolonged state of crisis due to the war-like conditions in the eastern provinces is not very optimistic as far as the chances of a fully democratic system in the short term are concerned. The traumatizing uncertainty of such conditions leads to the possible insurgence of a variety of counter-democratic factors such as the rise of extreme nationalism (and its consequent acts of discrimination) and the prevalence of efficacy over transparency and just treatment³³⁷.

After February 22nd 2014, when the Ukrainian parliament voted to dismiss President Victor Yanukovich, the human rights situation in the country -as it is mentioned above- has worsened. Human rights organizations have been closely following the developments in Ukraine and have expressed their concerns regarding the human rights abuses. The following examples, which cover the period March-May 2014, constitute violation of human rights and Ukraine's non-compliance with the international and European human rights treaties that has ratified³³⁸.

To start with, the economic and social rights have been deeply affected due to the corruption, which has intensified inequalities, eroded public trust in state institutions including the justice system, led to impunity and undermined the rule of law. It has negatively influenced all people in the country and prevented them from the enjoyment of social and economic rights, including the right to health services. In eastern Ukraine, the presence of armed groups and their particular control of towns are resulting in the disruption of many aspects of daily life, such as the closure of shops and the termination of operations of several major banks due to the numerous incidents of attacks at their offices. However, the economic and social rights are

³³⁶ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³⁷ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³³⁸ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

protected in the International Covenant on Economic, Social and Cultural Rights (CESCR), and especially the right to health is enshrined in article 12 of the CESCR³³⁹.

Furthermore, the right to freedom of expression has been restricted, as well as the right to free access to information. On 6th of March, analogue broadcasts Ukrainian television channels (Ukraine's First National Channel, Inter, Channel Five etc.) were shut off in Crimea, and the vacated frequencies started broadcasting Russian TV channels. In another case, on 18th of March 2014, members of the political party Svoboda arrived to the National Television Company of Ukraine, intimidated and assaulted its Head, forcing him to sign a resignation letter. Moreover, in the eastern Ukraine the freedom of expression is facing significant challenges, as journalists are being intimidated, threatened, attacked and in some cases deported, while TV station "Center" in Horlivka stopped broadcasting its programs and local newspaper "Province" in Konstantinovka was burnt down due to a Molotov cocktail attack. They were both located in the Donetsk region. Article 19 of the International Covenant on Civil and Political Rights (CCPR) provides the freedom of opinion and expression, and consequently the freedom to hold opinions without any interference. The right to free access to information is also enshrined in article 19 of the CCPR³⁴⁰.

As far as the minority rights, the need for their protection has increased, especially since the annexation of Crimea by Russia. The Crimean Tatars face discrimination, violence and intimidation by armed groups. Their right to peaceful assembly has been restricted and they face pressure to give up their Ukrainian citizenship for a Russian one or to acquire a "resident permit", becoming in this way foreigners in their own land. There are concerns about the Russian-speaking minority in eastern Ukraine, because of the numerous reports stating that the "Right Sector", a right wing group that expresses paramilitary ambitions, has used violence against political opponents, representatives of the former ruling party and their elected officials. In addition, the violation of the rights of the Roma and LGBT communities is of great concern, as there are credible reports of stigmatization and discrimination, as well as reports of hate speech, harassment, and hate-motivated attacks respectively. Discrimination on grounds of sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status is prohibited by article 14 of the European Convention on Human Rights (ECHR) and the article 2 of the CCPR and CESCR. The minority rights are protected in the Framework Convention for the Protection of National Minorities³⁴¹.

³³⁹ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁴⁰ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁴¹ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

What is more, armed groups in Ukraine have committed human rights abuses such as abductions, unlawful detentions, enforced disappearances, killings, torture and ill-treatment, which has led to violation of the right to life, liberty and security. In this case, Articles 9 and 10 of the CCPR, where the basic right to liberty and protection against arbitrary detention are being developed, have been violated as well as Article 5 of the ECHR. Article 7 of the CCPR and article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) forbid torture, cruel, inhuman or degrading treatment or punishment and medical and scientific experiments against one's will and also, determine what constitutes cruel or unusual treatment³⁴².

With a view to the Ukrainian elections, which were held on May 25th, the candidates and the Ukrainian citizens were prevented from or restricted in exercising their political rights. Women's rights is also an issue that should be taken into account since there is very little participation and inclusion of women in efforts to resolve the current crisis in Ukraine. Their more active inclusion in such activities is thought to be critical to the success of possible steps to secure good governance, respect of human rights and the rule of law. Indeed, the Article 25 of the CCPR states that every citizen has the right without unreasonable restrictions to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections. As far as the women's rights is concerned, the Article 7 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) guarantees their right to participation in the political and public life of a country on equal terms with men³⁴³

Finally, it has been noted that rallies of opposing groups are being held simultaneously and they often lead to violent confrontations and clashes, such as the Odessa events, which resulted in the death of 46 people. The Article 64 of the Ukrainian Constitution provides for the freedom of peaceful assembly, but there is no law that regulates the conduct of such assemblies. Thus, this gap in the legislative framework creates confusion, irregularities and an ad hoc approach to policies and practices that regularize and manage peaceful assemblies. It is important to mention that, in some cases the local authorities turn to administrative courts to decide on the prohibition of assemblies, due to the police's inability to ensure the safety of the participants and the lack of police staff. These practices constitute violation of the right to peaceful assembly, whereas the Article 21 of the CCPR and article 11 of the ECHR establish the necessity to the freedom of peaceful assembly³⁴⁴.

³⁴² Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³⁴³ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³⁴⁴ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

5.3.5 Human Rights' evolution in Ukraine

Since the outbreak of Ukrainian crisis, a vicious circle has opened causing a significant concern to Europe and international community regarding human rights' evolution. The peaceful demonstrations against President Yanukovich led to mass violations of basic human rights, the country was divided in two parts (separatists and pro-Ukrainian forces) and, since then attacks have become a daily phenomenon in many regions of Ukraine. The annexation of Crimea to Russia was the first step and then, the referenda in eastern provinces of the country gave the opportunity to Russia for taking on a more active role³⁴⁵.

However, basic freedoms and rights of people are constantly being undermined by armed groups and the rising number of killings, abductions and detentions of journalists, activists and politicians causes not only Europe's but also the United Nations' concern. The hatred and propaganda have contributed to the escalation of the crisis in Ukraine, while the danger of spiraling out of control is obvious. It is a fact that impunity and toleration enjoyed by armed forces are factors that contribute to significant deterioration of human rights' situation. Indeed, 127 people have been killed, whereas 112 cases of unlawful detentions have been documented. The increasing prevalence of hate speech and the harassment of journalists not only threaten the right on freedom of speech and deepen divisions between the two parts of the country, but also indicate the breakdown in law and order. Consequently, these factors lead to more violence and exacerbate the tensions between the two communities³⁴⁶.

As far as Russia's response, it has repeatedly been blamed for intensifying instability in eastern Ukraine, but Russia continues condemning and ignoring every report concerning "the crudest violations of human rights by the self-proclaimed Kiev authorities" . The invocation of the need to protect the Russian speaking people and their rights was an excuse which permitted a more intense role in the Ukrainian territory. However, although western governments have suggested economical sanctions against Moscow and threatened for more severe measures, Russia encourages separatism in the eastern regions by ignoring every invitation to dialogue³⁴⁷.

Nevertheless, violations of basic human rights are motivated by important factors such as racism, xenophobia and ethnic intolerance. These factors should be confronted and prevented through united efforts of both the international community and the Ukrainian government. Otherwise, the consequences for stability, peace and democratic development in Europe would be devastating. The need for judicial and

³⁴⁵ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³⁴⁶ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

³⁴⁷ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe , 2014: 3-26.

security-sector reform, the importance of addressing corruption and ensuring equal access are essential in order to protect human rights and prove accountability³⁴⁸.

The Ukrainian people in collaboration with European countries should investigate allegations and bring perpetrators to justice, as the international community is faced with the risk of ramifications for international peace and security caused by a potential escalation of the Ukrainian crisis³⁴⁹.

Despite the widespread violation of human rights in Ukraine, some recent developments indicate that there are chances for improvement of the human rights' situation in the country. The constitutional reform, which includes both the decentralization of power and the protection of the Russian language, and the reform of the judiciary will attribute greater independence to the regions. The respect of the ethnic diversity of the country will restore confidence in the judiciary, as the latter has committed gross violations of professional and ethical standards and finally, will reinforce the rule of law. However, the reinforcement of the legislative framework for torture prevention is considered necessary according to international norms and standards³⁵⁰.

Regarding the presidential elections, since the election proceeded normally in most regions of the country, there are hopes that the crisis in Ukraine will eventually be resolved. The biggest achievement of the new government so far, is that it emerged through a democratic election process, unlike the acting government whose power was considered illegitimate, especially by the eastern regions of Ukraine. Therefore, it is possible that the relations between Kyiv and the eastern part of the country will be restored. The actions of the new President towards the pro-Russian separatists and the continuation of the constitutional reform will determine the future of Ukraine³⁵¹.

In conclusion, it could be stated that Ukrainian government and separatists, respectively, violate human rights in order to achieve the effectiveness in the field of their own interests. Politic tactics and the satisfaction of each of the two parts' demands tend to replace legitimacy, and consequently, the protection of basic human freedoms. It is true that the lack of democracy and the atmosphere of civil war in Ukraine will not improve without strong efforts for dialogue. However, hopes are disappearing as any attempt for negotiations, including the Geneva Agreement, has failed. Russian Federation and Ukraine remain neighbors with complex but close ties and positive relations between the two nations directly affect Europe and international community in general. It is, therefore, Moscow and Kiev that should discuss diplomatic solutions for restraint and de-escalation in the current crisis, taking always into consideration the respect of

³⁴⁸ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁴⁹ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁵⁰ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁵¹ Filis, Dr. "Ukrainian Crisis: the impact on Human Rights under the European Perspective." Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

the victims and the protection of human rights (Filis, Ukrainian Crisis: the impact on Human Rights under the European Perspective 2014)³⁵².

The Ukrainian crisis has a severe impact on the human rights situation in the country.

“The armed conflict in eastern Ukraine has had devastating effects on the human rights of the population. The humanitarian situation is also extremely difficult and people continue to suffer greatly” stated Nils Muižnieks, Council of Europe Commissioner for Human Rights, following a visit to Ukraine from 30 November to 5 December which included the capital Kyiv, as well as the eastern regions of the country, where he visited Dnipropetrovsk, Dniprodzerzhinsk, Kurakhove and Krasnoarmiysk. The latter two towns are situated 15 and 30 kilometres, respectively, from the front line of fighting³⁵³.

“Numerous serious human rights violations have occurred, as reported by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and others, implicating primarily the rebel forces, but also governmental forces and volunteer battalions fighting alongside them,” stressed the Commissioner, referring to the hundreds of cases of unlawful killings, abductions and enforced disappearances, as well as torture and ill-treatment”³⁵⁴.

The need to ensure accountability for such grave crimes has been one of the key messages I have been giving during each of my four trips to Ukraine in the course of this year.” He once again underlined that effective investigations should be conducted, incorporating the criteria of the European Court of Human Rights, and reiterated to the Ukrainian authorities the importance of cooperating fully with the International Advisory Panel established by the Council of Europe Secretary General, tasked with reviewing the investigations into the Maidan and Odessa events. The Commissioner discussed these matters in detail with Prosecutor General Yarema and Foreign Minister Klimkin, who agreed with the importance of sending a signal that those responsible should be held to account, irrespective of the side of the conflict on which they stand. Certain steps have been taken in this regard and a large number of criminal proceedings have been initiated by the Ukrainian prosecutorial authorities³⁵⁵.

The Commissioner also looked into the situation of internally displaced persons (IDPs), whose number within Ukraine is at least half a million. The Commissioner visited places of accommodation and/or registration for IDPs in the Kyiv region and in the other locales noted above. “I was informed by civil society organisations that 70-100 people continue to arrive daily in Dnipropetrovsk from the conflict zones

³⁵² Filis, Dr. “Ukrainian Crisis: the impact on Human Rights under the European Perspective.” Center of Russia, Eurasia & Southeastern Europe, 2014: 3-26.

³⁵³ United Nations Handbook for National Human Rights Institutions. 2005.
<http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁵⁴ United Nations, Handbook for National Human Rights Institutions. 2005.
<http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁵⁵ United Nations, Handbook for National Human Rights Institutions. 2005.
<http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

and territories in the Donetsk and Luhansk regions outside the control of the Ukrainian authorities, whereas at the height of the hostilities in August the daily influx of IDPs was between 300 and 350”, he noted³⁵⁶.

“Volunteers, local and regional authorities, and business leaders have been making considerable – and laudable - efforts and investments to meet the needs of IDPs, but many localities are overburdened and it is essential to have high-level involvement and coordination by the national authorities.” The Commissioner welcomed the adoption of the law on IDPs and pointed out that there was a need to address some specific obstacles to its implementation at local level. In this respect, he recommended that the national authorities rapidly look into developing a detailed plan for the implementation of the new IDP law, find solutions for the long-term integration of IDPs who are unable or unwilling to return to their homes and consult civil society, local actors and the United Nations High Commissioner for Refugees (UNHCR) when taking policy decisions in this area³⁵⁷.

Pension payments have been suspended to persons residing in the territories outside the control of the Ukrainian authorities. The Commissioner expressed great concern in this regard and warned that this is leading to further isolation of those regions and exacerbating the hardship of the populations therein, who have already suffered considerably from the active hostilities, the destruction of infrastructure, and lawlessness. “Many of the IDPs I met endured five months without running water and electricity. Moreover, I have been alarmed by reports about extreme hardship – even hunger - experienced by vulnerable groups in the Donetsk and Luhansk regions, including the elderly, persons with disabilities, and persons living in prisons and psychiatric hospitals.” The Commissioner encouraged the Ukrainian authorities to adopt a flexible approach in paying pensions to persons travelling from the conflict areas and to work in close cooperation with international organisations and humanitarian groups to find a solution and to reach people in need³⁵⁸.

When talking to various interlocutors on the ground, including many ordinary people who were displaced or otherwise experienced severe hardship due to the conflict – as well as the local authorities and civil society organisations working to help them - the Commissioner frequently heard appeals for peace and an end to the fighting. “A peaceful solution must be found to end the fighting and violence and prevent further violations”³⁵⁹.

³⁵⁶ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁵⁷ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁵⁸ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁵⁹ Nations, United. Handbook for National Human Rights Institutions. 2005. <http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

5.4 A solution to the Conflict in Ukraine is pending

While a solution to the conflict is still pending, steps can nevertheless be taken with a view to ensuring better human rights protection in Ukraine over the longer term. To this end, the Commissioner organised, in partnership with UN OHCHR, a meeting which took place on 1 December in Kyiv on developing a national action plan for human rights in Ukraine. The situation of IDPs and other vulnerable groups should be at the core of the action plan. “I believe it is essential to place human rights at the heart of democratic governance, and I am encouraged by the determination expressed by the Ukrainian Government in this regard” concluded the Commissioner (Nations 2005)³⁶⁰.

According to the Eurasia center, the United States and Europe must engage with Russia in designing a new roadmap toward an end of hostilities³⁶¹.

Allowing Russia to create such instability and develop a viable insurgency without a strong dynamic political position will only encourage further aggression and insurgency throughout this new East-West divide. Supporting a new policy, which guarantees language and cultural rights would be key toward removing the distrust and fear exacerbated via political propaganda which seeks to create a wartime hysteria. Based on interviews with people living in the war-torn East of Ukraine, residents feel that if Kiev viewed them as citizens of value, this would make a difference. For many pensioners who remain and make a large part of the population, the dream of receiving Russian pensions is over and many are disillusioned with the separatists³⁶².

5.4.1 The economic front

On the economic front, a great possibility for Ukraine would be for it to be declared a free trade zone by both East and West. Its economic situation would be improved dramatically if the East and the West would allow it to be a bridge towards economic development rather than economic strife and chaos. Clearly, the concept of Ukraine as a free trade zone would be beneficial for Ukrainians, Europeans and Russians. However, structuring this new economic status would be a key priority for officials who can recognize this

³⁶⁰ Nations, United. Handbook for National Human Rights Institutions. 2005.
<http://www.ohchr.org/Documents/Publications/training12en.pdf>. Page 1-2.

³⁶¹ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4. The Eurasia Center and its Eurasian Business Coalition has been an important hub of activity and a meeting place for networking, scholarship, publishing, and idea exchange among diplomats, government, business, investment, economic development, education, health care, and environmental sustainable development leaders engaged to promote the ideals of peace, democracy, economic cooperation, environmental quality, and homeland security since 1988

³⁶² Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

as an important step out of the current crisis and an important resolution for the Russians who perceive their economic viability as being threatened³⁶³.

If Ukraine was able to provide an inclusive policy to its citizens in the East, this would remove huge barriers of mistrust and misperceptions that undercut Russia's position in the East. Once an official position was set, where citizens in the east of Ukraine could feel part of a nation that would embrace their rights, then all other forms of integration and collaboration would be possible. Without a basic plan to offer citizens in the East to part of a united Ukraine again, there would be no hope for integrating these regions back within Ukraine except through military victory and the defeat of the Russian insurgency. Removal of the very basis of Russian propaganda in Ukraine, would be to promote a new policy of inclusion and cooperation with the citizens in the East, with an explanation of what benefits are possible if a cessation of fighting occurs and Ukrainian authority is accepted in the Donbass and Luhansk regions for ordinary citizens³⁶⁴.

Russia, for its part, must understand that with the current economic crisis, it may only face economic dislocation and disaster if it continues on a course of not only supporting an insurgency but creating one which brings no value for itself in future world economic and political developments. To create such situations in eastern Ukraine and then blame Ukraine and the West for this civil war begins a chapter in world events which may only end in catastrophic consequences for Russia.

There is still time left to reverse this course and devise a strategy in which Russian objectives are acknowledged and respected and yet begin a new vector strategy which cultivates Ukraine as a new bridge towards peace and economic development and not the current course of destroying that bridge, that country, and severing political and economic relations with Europe and the United States³⁶⁵.

The key for the Russian leadership must entail a sober detailed understanding that the only way for Ukraine to be that bridge of peace and prosperity once again, and to ensure its own economic sustainability, is to develop new strategies which must employ a new diplomatic framework which can create not only a new European regional security arrangement but also a new Eurasian/European economic vision.

This new vision must begin with the realization that Ukraine not become a zone of death and destruction, as was the case in World War I and World War II, but that this tragedy is averted through the creative genius of diplomacy and statesmanship which is necessary to avoid such a disaster. Naturally, the United States and Europe are waiting for such an opportunity, however, to continue on a tangent towards a wider regional war

³⁶³ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁶⁴ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁶⁵ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4

can only bring wider devastation and disorder, the greatest tragedy being that this crisis can be avoided now with the proper diplomatic leadership promoting such steps³⁶⁶.

First, The Eurasia Center proposes that Ukraine looks towards the model of many nations within the world that have regions of peoples who speak more than one language, have more than one historical narrative, yet share in and are a part of a sovereign nation state. Belgium, Switzerland and many other countries can serve as a model of development in which the rights of minority, be it language or heritage, are protected and inclusively integrated within the nation's laws, with guarantees for future positive growth and development. Revenge and chauvinism will incur no willingness on the part of the citizens of the East to participate in a future Ukrainian state, whether in a federation or a region given autonomy if their basic rights of language and heritage are not protected and a strategy for inclusiveness included within a peace plan for the citizens of the East³⁶⁷.

Second, based on the model of many states in which civil war, insurgency and economic dislocation have crippled nations, The Eurasia Center proposes that the United States, Europe and Russia consider the proposal that Ukraine become a free trade zone in which all nations can trade and invest to bring about greater collaboration and harmony of economies through this nation which can serve as an economic bridge between East and West. Economic, financial and trade ministers must build up this idea as a worthwhile solution to the current crisis in East-West relations, rather than drive Ukraine to accept membership into one trading bloc or another. As a gateway to both trading zones, enjoying the benefits of both, a brighter economic future for Ukraine, East and West, would be ensured³⁶⁸.

Thirdly, the model of alliances and the current security arrangement in Europe needs to be discussed at a Summit in which leaders from the United States, Russia and Europe understand that the current course of political/military relations may evolve into a wider regional war, with the potential for a wider European or nuclear war, given the fact that there has been not only a greater stratification of forces, but a new engagement of forces from Russia and NATO within the region³⁶⁹.

Failure to act and resolve the growing conflict may only let the Ukrainian crisis escalate toward new levels of conflict, which both Europe and Russia have experienced within the last century. Summits among nations during crisis, seeking solutions rather than escalating toward war, are an important way of clearing any misperceptions and allowing a great understanding of positions vis-à-vis participants within summit process.

³⁶⁶ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁶⁷ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁶⁸ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁶⁹ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4

Finally the removal of foreign forces and equipment from the East is necessary for Ukraine to be an integral whole again. Must ever village, town and city be converted into a new Stalingrad³⁷⁰.

If the Russians do not honor the Minsk Agreements and continue steps towards destabilizing the territorial integrity and stability of Ukraine and its people, then it may be necessary for the West to support Ukraine sovereign right to defend itself. As Ukraine had relinquished the third largest nuclear weapons inventory for security guarantees of its borders from the United States, Russia United Kingdom, France and China, 1994 Budapest Memorandum on Security Assurances, Russia's violation of this agreement may provide the United States with the right to provide military support for Ukraine's independence³⁷¹.

Finally, if the leaders of the United States, Europe, Ukraine, and Russia cannot make progress concerning the current state of relations, it may be up to the citizens of these nations to apply pressure on officials to start considering these new steps for solving the current crisis, not only in Ukraine, but in East-West relations. This, given the fact that failure to resolve the crises may not only destroy the economic prosperity of future generations within the global village of what we call the international community of nations but revert back to the days of tribalism. Furthermore, entangled alliances, and a nationalism, which cripples peaceful solutions to current crisis in East-West relations boiling within the Ukraine (Center s.d.)³⁷².

5.4.2 The different US and EU policies in the field of economic, social and cultural rights in the Ukrainian crisis

According to the Council on Foreign Relations³⁷³, there are various methods, in which governments have intervened in the crisis: aid and political pressure to impose sanctions on Russia, which has aggravated the situation of human rights, so extensively for human rights we can also consider sanctions.

In response to the developments in Crimea and eastern Ukraine, EU and U.S. policymakers have taken a series of steps that include: economic aid, sanctions, energy aid and military aid.

As far as economic aid is concerned, The IMF in the spring approved a loan package for Ukraine for \$17 billion over two years. The EU has delivered hundreds of millions of dollars of an announced \$15 billion support package for Ukraine, with payments conditioned on Ukraine enacting tough reforms like ending gas subsidies. Washington has promised more than \$1 billion in U.S. loan guarantees and technical assistance. In late August 2014, German chancellor Angela Merkel pledged nearly \$700 million in aid to help Ukraine rebuild war-damaged areas in the east and aid refugees.

³⁷⁰ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁷¹ Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁷² Center, The Eurasia. «Solving the Crisis between Ukraine and Russia.» Page 1-4.

³⁷³ Relations, Council on Foreign *Ukraine in Crisis*. 25 August 2014. <http://www.cfr.org/ukraine/ukraine-crisis/p32540>.

For the sanctions, the United States, the EU, Japan, and Canada have imposed sanctions on scores of Russian and Ukrainian officials and businesses said to be linked to the seizure of Crimea and the escalation in tensions. The measures include travel bans and the freezing of assets. The United States and European Union announced more severe measures in late July that blocked some Russian banks from U.S. and European capital markets, and generally target Russian finance, energy, and defense industries. Russia was hit by a slowdown in growth and investment in the first quarter of 2014, and the scope of the new sanctions suggest a substantial, longer-term cost to the Russian economy, says CFR's Robert Kahn. Russia retaliated by banning imports of food stuffs from the United States and many European states in July 2014.

As for energy aid, some experts and U.S. lawmakers have called for accelerating the approval of U.S. natural gas proposals, which would take advantage of booming U.S. production to help lessen the reliance of European partners and Ukraine on Russian natural gas. U.S. law currently excludes the sale of natural gas to countries that are not free-trade partners, but the Energy Department can approve sales that are deemed in the public interest. But some analysts caution that even with the lifting of export restrictions, it could take years and cost billions of dollars to set up the necessary infrastructure.

About military aid, the United States has bolstered NATO's air presence over the Baltic states and deployed about six hundred soldiers in Latvia, Lithuania, and Estonia, as well as Poland to train with local forces as part of Operation Atlantic Resolve. NATO secretary-general Anders Fogh Rasmussen called the crisis the greatest threat to European security since the end of the Cold War, and reasserted alliance ties with Ukraine through the Partnership For Peace Program. The 2014 NATO summit in Wales is expected to be dominated by the alliance's response to the crisis in Ukraine (C. o. Relations, Ukraine in Crisis 2014).

5.4.3 The European Union and the Council of Europe: 'Strengthening the Implementation of European Human Rights Standards in Ukraine', June 2015

On June 24, 2015 the new Joint Project between the European Union and the Council of Europe "Strengthening the Implementation of European Human Rights Standards in Ukraine" was officially launched.

According to the Council of Europe³⁷⁴, the Project is implemented within Programmatic Co-operation Framework between the European Union and the Council of Europe for the countries of Eastern Partnership.

³⁷⁴ Europe, Council of, *Launching the new Joint Project between the European Union and the Council of Europe "Strengthening the Implementation of European Human Rights Standards in Ukraine"*. 22 July 2015. <http://www.coe.int/en/web/kyiv/>

The Project's goal is to support the alignment of Human Rights policies and practices by ensuring compliance of legislative and regulatory frameworks with European standards and capacity-building activities for legal professionals and National Human Rights Institutions. The Project will cover the following directions:

- a) Support to police reform and fight against ill-treatment and impunity;
- b) Strengthening the Ombudsperson's Office operational capacities in Ukraine (ill-treatment in places of deprivation of liberty, non-discrimination, data-protection);
- c) Implementation of European Convention on Human Rights via trainings (Europe, Launching the new Joint Project between the European Union and the Council of Europe "Strengthening the Implementation of European Human Rights Standards in Ukraine" 2015).

5.4.4 How effective policies on human rights can help to solve the Ukrainian crisis

As we have seen, the US and the EU, have different vision concerning human rights on how to resolve the crisis in Ukraine.

The political differences reflect the different interests of US and EU. The US wants a stable Ukraine and close to the West, which can provide itself of democratic institutions and to has the function of contain Russia. The US insist more on political rights and has not ratified the ICESCR. Their objective is to strengthen Ukraine as an autonomous independent country to contain Russian expansionism.

Europe directly borders the Ukraine and it's interested in enlarging the air free trade because a Ukraine, economically developed and pacified, can become a market for the European industry. The standards of human rights in Ukraine in the economic, social and cultural fields has to be similar to those of the EU. This explains the increased attention of Europe to intervene for the protection of economic, social and cultural rights.

For the economic interests, Europe is dependent on Russian gas supplies. For this reason, some countries do not favour sanctions to Russia.

Attempts to reach a solution that is based solely on political and strategic agreements (territorial, linguistic), have not yielded great results but it might be a good start to invest more on human rights protection in the region, in particular in social, economic and cultural rights (for example the respect of linguistic minorities).

/launching-the-new-joint-project-between-the-european-union-and-the-council-of-europe-strengthening-the-implementation-of-european-human-rights-standar.

5.5 Conclusions

This thesis analyses the Ukrainian crisis and the role of human rights in the conflict, according to the EU and US perspectives.

In the first chapter, it starts from the origins of the Ukrainian crisis, underlying a background to the crisis and a chronology of the events of the conflict. Then it considers the human rights implications of the conflict and the various violations of human rights that occurred. It also analyses the latest developments of human rights that took place in Ukraine. Analysing the chronology of the events related to the Ukrainian crisis, it's a good starting point.

In the second chapter, the EU and US attitude on Human Rights, with their differences on economic, social and cultural rights, are taken into consideration. There is a definition and the description of the implications of economic, social and cultural rights, an analysis of the International Covenant on Economic, Social and Cultural Rights and the similarities and the differences between this Covenant and the one on Civil and Political Rights. Afterwards, violations of economic, social and cultural rights are addressed. In a further analysis there is the description of the Maastricht Guidelines and the Limburg Principles on economic, social and cultural rights. To conclude the chapter, human rights policies in the last 40 years are taken into consideration.

The third and final chapter is about the influence of Human Rights policies in US and EU proposals to solve the Ukrainian crisis. It analyses the EU-Ukraine and US-Ukraine relationships and their perspectives about the solution of the conflict. It addresses human rights violations related to the Maidan protests and the recent US policies on human rights. It takes into consideration, in general the role of human rights in Ukraine before and after the crisis and it approaches to a possible solution of the conflict, considering also the economic front and the different US and EU perspectives.

As we have seen, this works underlines that the EU and US perspectives in matters of economic, social and cultural rights are consistently different. We can see this difference in the various policies undertaken in Ukraine by US and EU to deal with human rights issues.

In conclusion, we can refer to the analysis of the Institute of International Relations³⁷⁵ According to it, it could be stated that Ukrainian government and separatists, respectively, violate human rights in order to achieve the effectiveness in the field of their own interests. Politic tactics and the satisfaction of each of the

³⁷⁵ Relations, Institute of International. Ukrainian crisis: the impact on Human Rights under the European perspective. June 2014. https://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiwkLy28qfNAhUHVSwkHatIBvcQFggjMAA&url=http%3A%2F%2Fwww.idis.gr%2Fwp-content%2Fuploads%2Fukrainian-crisis-human-rights.docx&usq=AFQjCNGlPnHgeQNZmhwg9pMV70yOCC_tAQ&cad=rjt.

two parts' demands tend to replace legitimacy, and consequently, the protection of basic human freedoms. It is true that the lack of democracy and the atmosphere of civil war in Ukraine will not improve without strong efforts for dialogue. However, hopes are disappearing as any attempt for negotiations, including the Geneva Agreement, has failed. Russian Federation and Ukraine remain neighbors with complex but close ties and positive relations between the two nations directly affect Europe and international community in general. It is, therefore, Moscow and Kiev that should discuss diplomatic solutions for restraint and de-escalation in the current crisis, taking always into consideration the respect of the victims and the protection of human rights (I. o. Relations 2014).

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7 Summary of the thesis

This work tries to analyse the impact that the diverse perception of the respect of human rights has caused in the policies utilized by the European Union and the United States to deal with the Ukraine crisis.

The crisis in Ukraine is an open conflict, which can be collocated in the post-cold war era with economic, political and military implications. However, it has a heavy setback on the violation of the fundamental human rights of the populations involved. The crisis see the clash between the country's internal forces but also suffers the heavy influence of external actors, such as Russia, the United States and the European Union.

Staying in the area of Western democracies, in order to understand if and how the policy towards human rights has affected the more general policies to address the crisis in Ukraine, first of all, I will start from a chronological reconstruction of the events of the crisis beginning in November 2013, highlighting the violations of human rights occurred. In the next chapter, we will consider the theoretical-doctrinal and practical approaches that underlie the different conception of human rights as it has emerged over the time in the United States and the European Union.

Finally, in the conclusive chapter, I will analyse how such a different approach has influenced the American and European policies towards the Ukraine crisis, and how this has helped to create a complex scenario difficult to solve.

I will analyse deeply what each chapter is about.

This thesis analyses the Ukrainian crisis and the role of human rights in the conflict, according to the EU and US perspectives.

In the first chapter, it starts from the origins of the Ukrainian crisis, underlying a background to the crisis and a chronology of the events of the conflict. Then it considers the human rights implications of the conflict and the various violations of human rights that occurred. It also analyses the latest developments of human rights that took place in Ukraine.

Analysing the chronology of the events related to the Ukrainian crisis, it's a good starting point.

We will analyse the situation after the Maidan uprising. But what happened during those protests?

According to the High Commissioner on Human Rights³⁷⁶, the Euromaidan was a wave of demonstrations and civil unrest in Ukraine, which began on the night of 21 November 2013 with public protests in Maidan Nezalezhnosti, "Independence Square", in Kiev, demanding closer European integration. The scope of the protests expanded, with many calls for the resignation of President Viktor Yanukovich and his government in 2013 (U. N. Commissioner, United Nations Human Rights Office of the High Commissioner 2016).

According to the Guardian³⁷⁷, during the days of waiting and of celebrating people's power on Kiev's Independence Square, the world had the chance to meet many ordinary Ukrainians as well as political leaders and celebrities who joined in the protests.

On November 30 and December 1, 2013, riot police violently dispersed and severely beat numerous peaceful demonstrators in Kiev, protesting Yanukovich's rejection of a political and trade agreement with the European Union. Police detained some of the protesters and beat them in custody.

Violent clashes between police and street fighters, who intermingled with protesters, killed over 100 people between January 19-21 and February 18-20, including some police, and injured many more. Police used rubber bullets, tear gas, and live munitions against protesters and street fighters armed with bats, firearms, and improvised explosives. Between February 18-20, at least 98 people were killed, including dozens by sniper fire presumably from Ukrainian security forces, although several former officials later claimed that Maidan organizers orchestrated the shooting. An investigation was pending in 2014³⁷⁸ (Balmforth 2014).

Riot police trying to disperse street fighters and protesters assaulted dozens of journalists. Police beat journalists who were covering the protests and sometimes deliberately shot them with rubber bullets or injured them with stun grenades.

Ukraine is not party to the treaty of the International Criminal Court (ICC), but in April 2014, the acting government lodged a declaration accepting the court's jurisdiction over alleged crimes committed in the country between November 17, 2013, and February 22, 2014. The ICC prosecutor's examines which criteria they need for opening a full investigation, as set out in the ICC's treaty.

Former Ukrainian president Viktor Yanukovich fled to Russia in February and made occasional press statements in the ensuing months. His former prime minister, Mikolay Azarov, is also in Russia. He has reportedly bought a lavish mansion outside Moscow and has been seen consulting with members of the Russian State Duma. The Ukrainian Interior ministry has said that both Yanukovich and Azarov have been

³⁷⁶ United Nations Human Rights Office of the High Commissioner. 2016.

http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf pages 1-21.

³⁷⁷ Irina Stelmakh and Tom Balmforth, 'Ukraine's Maidan protests - one year on', in The Guardian, 21 November 2014.

³⁷⁸ Irina Stelmakh and Tom Balmforth, 'Ukraine's Maidan protests - one year on', in The Guardian, 21 November 2014.

granted Russian citizenship, and authorities are investigating claims that both men continue to receive Ukrainian pensions³⁷⁹ (Balmforth 2014).

The World Report of Human Rights watch explains that the “Maidan” uprising in Kiev led to the expulsion of President Viktor Yanukovich in February and a complete review of Ukraine’s political system³⁸⁰.

Yanukovich’s overthrow, and a law that would have disfavored the Russian language, voted by the interim president, prompted violent clashes in southeastern Ukraine between pro and anti-Kiev protesters. The clashes of May in Odessa alone left 46 people dead. After Russia’s occupation of Crimea in March, Russia-backed armed insurgents seized control of many cities and towns in the Donetsk and Luhansk regions. This resulted in armed conflict with Ukrainian forces. Both sides violated laws of war in the conflict that by October took the lives of over 4,000 combatants and civilians and wounded over 9,000³⁸¹.

Mounting evidence, including the capture of Russian soldiers in Ukraine, exposed Russian forces’ direct involvement in military operations, constituting an international armed conflict between Russia and Ukraine.

Between April and October 2014, hostilities resulted in over 450,000 displaced persons, including 16,000 from Crimea, having to flee their homes to other parts of Ukraine.

“Russian officials and state media distorted, manipulated, and at times invented information about the conflict. In response, the Ukraine government imposed excessive restrictions on freedom of media. This includes banning Russian channels and barring foreign journalists from entering the country” the World Report of Human Rights Watch reported³⁸².

Following a September (2014) cease-fire agreement between the Kiev government and pro-Russian rebels, parliament passed a law granting three years of semi-autonomy to rebel-controlled areas. This law granted also amnesty to rebels who have not committed grave abuses. In November, after insurgents organized elections in the Donetsk and Luhansk regions, which Kiev deemed illegal, President Petro Poroshenko requested that parliament to repeal the law. Also in November, Poroshenko issued decrees shutting down all governmental institutions and banking services, as well as cutting all state funding to rebel-held areas³⁸³.

In September 2014, the Ukrainian government stated the need for a new defense doctrine. The government defined Russia as an “aggressor state” and moved towards joining the North Atlantic Treaty Organization (NATO), introducing into parliament a draft law abolishing Ukraine’s non-bloc status.

³⁷⁹ Irina Stelmakh and Tom Balmforth, ‘Ukraine's Maidan protests - one year on’, in *The Guardian*, 21 November 2014.

³⁸⁰ Watch, Human Rights. “World Report.” 2015; Page 568.

Human Rights Watch is an international non-governmental organization, which deals with the defense of human rights and it’s financed by George Soros.

³⁸¹ Watch, Human Rights. “World Report 2015.” 2015. Page 568.

³⁸² Watch, Human Rights. “World Report 2015.” 2015. Page 568.

³⁸³ Watch, Human Rights. “World Report 2015.” 2015. Page 568.

Since February 2014, extra-legal, so-called self-defense units, aided by Russian security forces, seized administrative buildings and military bases across Crimea and installed a pro-Russian leadership. Following an unrecognized referendum on Crimea's status (16 March 2014), Russian President Vladimir Putin and Crimea's leadership signed agreements claiming to make Crimea and the city of Sevastopol part of the Russian Federation. Ukraine's authorities and most international actors declared the referendum unlawful, and there was no lawful transfer of sovereignty to Russia. In 2014, Russia remained an occupying power of Crimea under international law.

Between February and April 2014, "self-defense" units committed serious abuses, including abductions, attacks, torture and harassment of activists, journalists, and others they suspected of being pro-Kiev³⁸⁴.

Crimean Tatars, the predominantly Muslim ethnic minority of the Crimean peninsula, faced increased harassment and persecution. Since March, local authorities issued several warnings to Mejlis, the Crimean Tatar highest representative body, for "extremist" activities and threatened it with closure³⁸⁵.

In April and July 2014, respectively, authorities banned Tatar elders Mustafa Jemilev and Refat Chubarov from entering Crimea for five years. In September, they seized all property and bank accounts of the charitable fund that administered Mejlis, claiming it violated the law by having Jemilev, a Ukrainian citizen banned from Russia, on the board of directors³⁸⁶.

Police searched the homes of dozens of Crimean Tatars, as well as Islamic schools and mosques, for "prohibited literature." In May, the authorities banned all mass gatherings before the 70th anniversary of the community's deportation.

Over 16,000 people have fled Crimea since March, primarily for mainland Ukraine³⁸⁷.

Between May and September 2014, mortar, rocket, and artillery attacks killed hundreds of civilians in the Donetsk and Luhansk regions. Both armed insurgents and government forces violated laws of war by using weaponry indiscriminately, including unguided rockets in civilian areas. Both sides fired salvos of Grad rockets into heavily populated civilian areas³⁸⁸.

The use of ground-launched Smerch and Uragan cluster munition rockets with explosive submunitions was recorded in several parts of eastern Ukraine after June. While evidence suggests all parties may have used cluster munitions, it was not possible to determine which forces were responsible for each attack, although the evidence indicates Ukrainian government forces were responsible for some attacks on Donetsk in

³⁸⁴ Watch, Human Rights. "World Report 2015." 2015. Page 569.

³⁸⁵ Watch, Human Rights. "World Report 2015." 2015. Page 571.

³⁸⁶ Watch, Human Rights. "World Report 2015". 2015. Page 571.

³⁸⁷ Watch, Human Rights. "World Report 2015." 2015. Page 571.

³⁸⁸ Watch, Human Rights. "World Report 2015." 2015. Page 571.

October. Neither Ukraine nor Russia are parties to the 2008 Convention on Cluster Munitions that comprehensively bans the weapons³⁸⁹.

Between April and September 2014, intense fighting led to the complete collapse of law and order in several rebel-controlled areas, as reported by UNHCR Monitoring Mission. Rebels attacked, beat, and threatened hundreds of people whom they suspected of supporting Kiev, including journalists, local officials, and political and religious activists, and carried out several summary executions. They also subjected detainees to forced labor and kidnapped civilians for ransom, using them as hostages. In May 2014, militants kidnapped eight military observers with the Organization for Security and Co-operation in Europe (OSCE) and held them for several weeks³⁹⁰.

Also in May 2014, Ukrainian authorities captured the “defense minister” of the self-proclaimed Donetsk Republic. The next day, the leader of Ukraine’s Radical Party posted on his social media page photos of the detained man, naked, scratched, and with hands bound, stating that he planned to exchange him for the ousted President Yanukovich. Ukrainian authorities held the man in custody until September, when he was released in exchange for a Ukrainian serviceman during prisoner exchanges between insurgents and government forces³⁹¹.

As counterinsurgency operations continued, Ukrainian security services and pro-Kiev volunteer battalions detained over 1,000 persons suspected of involvement in the insurgency, sometimes holding them for over 14 days and subjecting them to ill-treatment. In September 2014, Kiev authorities opened a criminal investigation into alleged crimes by the pro-Kiev Aydar battalion, which have reportedly included arbitrary detention, enforced disappearances, and torture³⁹².

Armed militants obstructed work of journalists covering the conflict. In some cases, rebels physically assaulted journalists they accused of “biased” reporting. In July, insurgent leaders prohibited journalists from filming in combat zones and public places, threatening them with prosecution before a military tribunal if they did so. Rebels harassed, threatened, beat, and abducted domestic and international journalists. At time of writing, most abducted journalists had been released, although the whereabouts of at least three remained unknown³⁹³.

Kiev’s forces disappeared and arbitrarily detained 13 journalists, often accusing them of assisting insurgents. For example, in May 2014, security services detained two Russian reporters and held them for a week in incommunicado detention for suspected assistance to insurgents. The reporters later alleged they were beaten and threatened with execution.

³⁸⁹ Watch, Human Rights. “World Report 2015.” 2015. Page 571.

³⁹⁰ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

³⁹¹ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

³⁹² Watch, Human Rights. “World Report 2015.” 2015. Page 572.

³⁹³ Watch, Human Rights. “World Report 2015.” 2015. Page 572.

As of 2015, At least seven media workers had been killed since the fighting began³⁹⁴ (Watch 2015).

In the second chapter, the EU and US attitude on Human Rights, with their differences on economic, social and cultural rights, are taken into consideration. There is a definition and the description of the implications of economic, social and cultural rights, an analysis of the International Covenant on Economic, Social and Cultural Rights and the similarities and the differences between this Covenant and the one on Civil and Political Rights. Afterwards, violations of economic, social and cultural rights are addressed. In a further analysis there is the description of the Maastricht Guidelines and the Limburg Principles on economic, social and cultural rights. To conclude the chapter, human rights policies in the last 40 years are taken into consideration.

Economic, social and cultural rights include the rights to adequate food, to adequate housing, to education, to health, to social security, to take part in cultural life, to water and sanitation, and to work. Economic, social and cultural rights are protected under various international and regional treaties as well as in national constitutions. International Covenant on Economic, Social and Cultural Rights is the most comprehensive treaty which provides protection of these rights at international level (U. N.-O. Commissioner 2016)³⁹⁵.

The Universal Declaration on Human Rights recognises a number of economic, social and cultural rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which I will explain in the following paragraph, is the primary international legal source of economic, social and cultural rights. The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women recognises and protects many of the economic, social and cultural rights recognised in the ICESCR in relation to children and women. The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination, on the basis of racial, or ethnic origin in relation to a number of economic, social and cultural rights. The Convention on the Rights of Persons with Disabilities also prohibits all discrimination, on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of economic, social and cultural rights.

Eide³⁹⁶ writes that for social rights, we mean the right to an adequate standard of living, where everyone enjoys necessary subsistence rights: adequate food and nutrition rights, clothing, housing and necessary conditions of care (Rosas 1995). He continues describing what economic rights are. The author explains that economic rights have a dual function: they imply the right to property and the right to work. They are the basis for entitlements, which can ensure an adequate standard of living and the basis of independence and

³⁹⁴ Watch, Human Rights. "World Report 2015." 2015. Page 573.

³⁹⁵ Commissioner, United Nations Human Rights- Office of the High. United Nations Human Rights- Office of the High Commissioner. 2016. <http://www.ohchr.org/EN/Issues/ESCR/Pages/ESCRIndex.aspx>.

³⁹⁶ Asbjorn Eide was the member of UN subcommission for Human rights from 1981 to 2003

freedom. Not all can enjoy the right to property on an equal basis. The right to work and the right to social security must supplement it³⁹⁷.

Cultural rights, instead, are the right to take part in cultural life, the right to enjoy the benefits of scientific progress; right to benefit from the protection of the moral and material interests, resulting from any scientific, literary or artistic production of which the beneficiary is the author and freedom for scientific research and creative activity³⁹⁸.

They are linked to the right to education. Minorities and indigenous people also have rights in this sense: equality in the enjoyment of economic and social rights; ensure conditions for maintenance of their cultural identity.

In this context, two concepts are relevant to analyse: absorption and global institutionalization. For Eide, absorption is when, within all nation societies, the rights of the Universal Declaration of Human Rights (UDHR) shall be recognized as ideals to be implemented in national law and administration through necessary political and social reform³⁹⁹.

For global institutionalization, Eide means the development of mechanisms at the international level, which can monitor the implementation of human rights and generate cooperation in economic, social and cultural matters to establish the conditions for their full enjoyment worldwide⁴⁰⁰.

Eide explains the duty holders and their obligations. Under International Law, obligations for HR are hold by states. Duties to respect the rights of other persons and to contribute to common welfare. According to the UDHR, there is a moral obligation on all states to seek to realize social and economic rights. Obligations on state parties: to respect, to protect and to fulfil: to facilitate and to provide. States must respect the resources owned by the individual. Collective rights are important: when unemployment sets in, for the disadvantaged and the elderly, during sudden situation of crisis or disaster and for those who are marginalized (Rosas 1995)⁴⁰¹.

³⁹⁷ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995; Pages 133-149.

³⁹⁸ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995; Pages 133-149.

³⁹⁹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 3-9.

⁴⁰⁰ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 3-9.

⁴⁰¹ Eide, Rosas. «Economic, social and cultural rights: a universal challenge.» In Economic, social and cultural rights: a textbook, di Rosas Eide. 1995. Pages 3-9.

The International Bill of Human Rights is the primary legal source about Human Rights and it consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols⁴⁰².

Human rights had already found expression in the Covenant of the League of Nations, which led, inter alia, to the creation of the International Labour Organisation. At the 1945 San Francisco Conference, held to draft the Charter of the United Nations, a proposal to embody a "Declaration on the Essential Rights of Man" was put forward but was not examined because it required more detailed consideration than was possible at the time⁴⁰³.

The Charter clearly speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1, para. 3). The idea of promulgating an "international bill of rights" was also considered by many as basically implicit in the Charter⁴⁰⁴.

Eide identifies three fields of state duties for individual rights:

- 4) Individual must be protected from state interference in the exercise of certain freedoms (obligation to respect). This obligation requires states to refrain from interfering with the enjoyment of economic, social and cultural rights.
- 5) The State protects the individual from other actors interference (obligation to protect). The obligation requires states to prevent violations of such rights by third parties.
- 6) The State provides certain public goods that would be undersupplied if their provisions were left to market mechanisms (Obligation to fulfil). This obligation requires states to take appropriate legislative, budgetary, judicial and other measures for the full realization of such rights (Rosas 1995)⁴⁰⁵.

The third and final chapter is about the influence of Human Rights policies in US and EU proposals to solve the Ukrainian crisis. It analyses the EU-Ukraine and US-Ukraine relationships and their perspectives about the solution of the conflict. It addresses human rights violations related to the Maidan protests and the recent US policies on human rights. It takes into consideration, in general the role of human rights in Ukraine before and after the crisis and it approaches to a possible solution of the conflict, considering also the economic front and the different US and EU perspectives.

⁴⁰² Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁴⁰³ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁴⁰⁴ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

⁴⁰⁵ Rosas, Eide. *Economic, Social and Cultural Rights: A textbook*. 1995. Pages 29-55.

According to the Council on Foreign Relations⁴⁰⁶, there are various methods, in which governments have intervened in the crisis: aid and political pressure to impose sanctions on Russia, which has aggravated the situation of human rights, so extensively for human rights we can also consider sanctions.

In response to the developments in Crimea and eastern Ukraine, EU and U.S. policymakers have taken a series of steps that include: economic aid, sanctions, energy aid and military aid.

As far as economic aid is concerned, The IMF in the spring approved a loan package for Ukraine for \$17 billion over two years. The EU has delivered hundreds of millions of dollars of an announced \$15 billion support package for Ukraine, with payments conditioned on Ukraine enacting tough reforms like ending gas subsidies. Washington has promised more than \$1 billion in U.S. loan guarantees and technical assistance. In late August 2014, German chancellor Angela Merkel pledged nearly \$700 million in aid to help Ukraine rebuild war-damaged areas in the east and aid refugees.

For the sanctions, the United States, the EU, Japan, and Canada have imposed sanctions on scores of Russian and Ukrainian officials and businesses said to be linked to the seizure of Crimea and the escalation in tensions. The measures include travel bans and the freezing of assets. The United States and European Union announced more severe measures in late July that blocked some Russian banks from U.S. and European capital markets, and generally target Russian finance, energy, and defense industries. Russia was hit by a slowdown in growth and investment in the first quarter of 2014, and the scope of the new sanctions suggest a substantial, longer-term cost to the Russian economy, says CFR's Robert Kahn. Russia retaliated by banning imports of food stuffs from the United States and many European states in July 2014.

As for energy aid, some experts and U.S. lawmakers have called for accelerating the approval of U.S. natural gas proposals, which would take advantage of booming U.S. production to help lessen the reliance of European partners and Ukraine on Russian natural gas. U.S. law currently excludes the sale of natural gas to countries that are not free-trade partners, but the Energy Department can approve sales that are deemed in the public interest. But some analysts caution that even with the lifting of export restrictions, it could take years and cost billions of dollars to set up the necessary infrastructure.

About military aid, the United States has bolstered NATO's air presence over the Baltic states and deployed about six hundred soldiers in Latvia, Lithuania, and Estonia, as well as Poland to train with local forces as part of Operation Atlantic Resolve. NATO secretary-general Anders Fogh Rasmussen called the crisis the greatest threat to European security since the end of the Cold War, and reasserted alliance ties with Ukraine through the Partnership For Peace Program. The 2014 NATO summit in Wales is expected to be dominated by the alliance's response to the crisis in Ukraine (C. o. Relations, Ukraine in Crisis 2014).

⁴⁰⁶ Relations, Council on Foreign *Ukraine in Crisis*. 25 August 2014. <http://www.cfr.org/ukraine/ukraine-crisis/p32540>.

The crisis in Ukraine is an open conflict, which can be collocated in the post-cold war era with economic, political and military implications. In this work, I will try to analyse how the conflict in Ukraine affected the human rights of the populations living in this territory.

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