



Ukraine, Russia crisis:

Q&A: breaches of international law and human rights issues

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As Russia's takeover of Crimea unfolds – including the Russian occupation, the illegal referendum in Crimea held by the Crimea local assembly on 16 March and declaration of independence from Ukraine, and later applying to become a member of the Russian Federation, an application accepted by Russia on 18 March – the Norwegian Helsinki Committee wants to point to some of the main legal and human rights issues.

Both during the three months of protests that led to the fall of the former President of Ukraine, Viktor Yanukovich, and during the escalation of conflict between Russia and Ukraine since the end of February, thousands of ordinary people have suffered from serious human rights violations, including killings, abductions, police violence, harassment, and restrictions of fundamental freedoms.

How did protests start and unfold?

The protests against then President Yanukovich and his government started in late November 2013 after he turned away from a negotiated Association Agreement with the European Union (EU) on 21 November. An estimated 100 000 protesters gathered in the streets of Kiev. Police tried to disperse the demonstrations by force, injuring and detaining many of the protesters. Images of injured demonstrators led to further mobilization of protest and international reactions.

In December 2013, several hundred thousand attended demonstrations.ⁱ The Maidan Square in central Kiev was transformed into a tent city, and the Kiev city hall was taken over by protesters.

In efforts to win over Ukraine for its own plans of a Eurasian free trade union, Russia offered on 17 December to buy USD 15 Billion worth of Ukrainian Eurobonds and reduce gas prizes by one third. The deal was heavily criticized by the opposition for being against Ukraine's national interests, while Western media and economic experts said it would not solve Ukraine's deeper economic problems.ⁱⁱ

On 16 January 2014, the Parliament in a surprise move passed a package of repressive laws intended to end the protests. Instead, the laws caused an outrage and the number of protesters swelled massively. After three months of peaceful demonstrations protesters were now met with violent police tactics. Three persons were killed.

On 28-29 January, the continued protests forced then Prime Minister Mykola Azarov to resign, the anti-protest laws were repealed and the government promised an amnesty to detained protesters on conditions that protests ended. Maidan protesters rejected this.

On 18 February, after a short period in which it seemed to be possible to reach a negotiated solution, severe violence erupted in clashes between protesters and police. 18 people were killed, including seven police officers. The Maidan Square was encircled by police and security forces, among them the Berkut Special Forcesⁱⁱⁱ. On 20 February, violence escalated dramatically leaving at least 88 killed, many of them by snipers in uniform.

On 21 February then President Yanukovich accepted to sign a deal with the opposition leaders, brokered by the French, Polish and German foreign ministers. According to the deal, a new national unity government should be established, along with constitutional changes handing powers back to Parliament and early elections.

However, the deal was not accepted by protesters who did not trust that Yanukovich would abide by it. On 22 February, Yanukovich disappeared and protesters took control of the presidential administration buildings without meeting any resistance.

In Parliament, MPs swapped sides *en masse* and voted to remove Yanukovich from power with Presidential elections set for 25 May. Having disappeared for several days, Yanukovich appeared on TV from his exile in Russia insisting in a recorded message that he was lawfully elected president and denouncing the "coup". His rival Yulia Tymoshenko, imprisoned for seven years in 2011, was freed and traveled from Kharkiv to address the Kiev crowds.

During the next days, the Parliament named Olexander Turchynov as interim President. Members of a proposed interim government appeared before the demonstrators, and Arseniy Yatsenyuk was nominated as new Prime Minister. The Berkut Special Forces, blamed for killing protesters, were disbanded.

On 23 February by the Ukrainian parliament abolished the language law dating from 2012, which gave official status to minority languages in regions having over 10% of minority language population. Although not signed in by Turchynov and thus not valid legally, this motion contributed to setting aflame ethnic Russian population in Crimea and Ukraine's eastern regions.

What were the reactions to these developments?

Different from Western countries, the Russian Federation did not accept the interim government as a lawful government. Starting from 27 February, pro-Russian militias took over key buildings in the Crimean capital, Simferopol. While under siege, the Prime Minister of the Crimea government was dismissed and replaced by the pro-Russian and separatist Serhiy Aksyonov, who took command over security forces. Aksyonov represents a party with very limited support (4 %) before the crisis.

In the coming days, militias took control over airports, established control posts all over Crimea and surrounded Ukrainian military bases. Although Russian authorities initially were reluctant to admit they were sending troops, the thousands of troops and military vehicles entering Crimea indicated otherwise. The soldiers were wearing unmarked camouflage uniforms, but some of the vehicles were registered in Russia.

Eventually, Russia admitted that troops had moved into Crimea in a mission to “protect Black Sea Fleet’s positions”. According to Russian authorities, the increased number of troops was still in accordance with the foundation Russian-Ukrainian agreement on the Black Sea Fleet.

The Ukrainian government denounced the influx of Russian soldiers and named their taking control over Crimea as an “armed intervention.”^{iv}

In the build-up of conflict, the President of the Russian Federation, Vladimir Putin was authorized by the Russian Parliament on 1 March to use military force if needed to “... protect ... Russian citizens, our fellow countrymen and the personnel of the military contingent ... deployed on the territory of Ukraine”.^v

While (pro-) Russian forces consolidated their hold on Crimea, the Regional Assembly asked on 6 March for Crimea to become a part of Russia. It declared that it would hold a referendum on the issue on 16 March. However, according to media reports, only 36 of 100 members took part in the vote.^{vi}

Pro-Russian demonstrations and provocations took place in Ukraine’s eastern cities, such as Kharkov and Donetsk. Ukraine mobilized military forces, and the NATO, although declaring that it would not consider military intervention, increased military surveillance and training from bases in neighboring EU countries.

Western leaders denounced Russia’s intervention and the referendum as illegal under international and Ukraine law. The US and later the EU-adopted sanctions, visa ban and assets freeze, on a list of Ukrainian and Russian citizens for these breaches.

What are the main legal issues?

In the view of the Norwegian Helsinki Committee, there have been several breaches of international and Ukrainian law by the Russian Federation and/or by the pro-Russian

actors on the Crimea. During the protests, the now ousted Ukrainian government committed widespread and serious human rights violations.

Firstly, the UN Charter article 2(4) prohibits “the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”. Sending Russian soldiers, even if stripped by identifying markers, into the Crimea or out of the Sevastopol Russian navy bases, to take control over Crimea is in clear breach of this fundamental norm of international law. In doing so, Russia also violated the 1975 Helsinki Final Act^{vii} as well as several treaties it had ratified guaranteeing the territorial integrity of Ukraine.

In the 1994 Budapest Memorandum Russia, the United Kingdom, and the United States promised that none of them would ever threaten or use force against the territorial integrity or political independence of Ukraine. They also pledged that none of them would ever use economic coercion to subordinate Ukraine to their own interests. The Memorandum is not a formal treaty, but rather a diplomatic document under which signatories made promises to each other.^{viii}

Secondly, Putin is not right in claiming that Russian forces took control over Crimea rightfully because former President Yanukovich had asked for help. Yanukovich was no longer in a position to ask for help on behalf of Ukraine. It is the Constitution of Ukraine that decides who has the right to govern the country. A new interim government was in charge, and it asked the Russian Federation to respect the territorial integrity of Ukraine.

Thirdly, when authorizing use of force, the Russian State Duma referred to protecting Russians in Crimea. However, no evidence shows that Russians have been under a real physical threat; there was no humanitarian or human rights crisis. Russia could in no way invoke a doctrine of *humanitarian intervention* in order to justify its intervention. Only extreme cases of gross violations against a people could legitimize it to invoke the right to self-determination under international law to mean *self-rule*. This is clearly not the case in Crimea.

Fourth, the 16 March 2014 referendum and the proclamation of independence of Crimea represent a clear breach of the Constitution of Ukraine. According to article 2, “The sovereignty of Ukraine extends throughout its entire territory. Ukraine is a unitary state. The territory of Ukraine within its present border is indivisible and inviolable.”^{ix} According to article 134, “The Autonomous Republic of Crimea shall be an integral constituent part of Ukraine and shall resolve issues relegated to its authority within the frame of its reference, determined by the Constitution of Ukraine.”^x

Secession of Crimea would require amendments of several provisions of the Constitution, some of which would require an “All-Ukrainian referendum called by the President of Ukraine.”^{xi}

Another important point is that international law does not directly regulate claims of independence from local authorities. That means that the outcome of the 16 March referendum simply adds nothing to an international law assessment of the legality of the secession of Crimea.

Has there been a crime of aggression?

In an important development in international criminal law, a Review Conference of the Rome Statute of the International Criminal Court (ICC) held in Kampala, Uganda between 31 May and 11 June 2010 adopted a definition of *the crime of aggression*. Even though the ICC will not be able to exercise jurisdiction over this crime until after 1 January 2017, and after states parties to the Rome Statute have decided so, the adoption of the definition in itself shows the importance that the international community places on the principle that states should refrain from the use or threats of use of military force to further their interests across borders. In the future, the ICC will be in a position to prosecute leaders who order acts of aggression.

According to the ICC definition, aggression means “the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State”. The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations. The perpetrator of the act of aggression is a person who is in a position to effectively exercise control over or to direct the political or military action of a State.^{xii}

There is little doubt that there are elements in this definition which fits the current situation on the Crimea, even though the military occupation was brought about without actual fighting.

What were the main human rights violations?

The most serious human rights violations were the target^{xiii}ed killing of protesters by snipers and as a result of police brutality. More than 100 people were killed during the protests. According to Ukrainian authorities, 16 police were also killed. In particular on 20 and 21 February, many were killed, while hundreds were seriously wounded. The exact numbers are not yet clear.

Protesters and those who supported them may also have committed abuses. Rumors that some of the snipers worked for the anti-Yanukovych forces have, however, not been substantiated.

Police brutality during the initial stages of the protest was an important factor in mobilizing protest. While the protesters initially demanded integration with the EU and Europe, they also joined because of the police violence against protesters on 30 November 2013. By the end of January 2014, the protests had been fueled by the perception of government corruption, abuse of power, and widespread violations of human rights.

From the end of February, the human rights situation on the Crimea deteriorated. Reports by local and international human rights organizations documented that the so-called self-

defense units abducted, attacked, and harassed activists and journalists.^{xiv} The climate for dissenting voices became more difficult by the day.

On 16 March, a Crimean Tatar activist, Reshat Ametov, was found dead. He went missing after participating in a 3 March protest against the presence of Russian troops.^{xv} A Ukrainian officer was killed by Russian troops on 18 March. 12 people remain missing.^{xvi}

In terms of responsibility for human rights violations committed in Crimea, arguable the Russian Federation may be deemed to bear the largest part of it. Crimea is now under occupation by Russia. On 13 March 2014 the Government of Ukraine lodged an inter-State application under Article 33 (Inter-State cases) of the European Convention on Human Rights against the Russian Federation. Ukraine also submitted a request under Rule 39 of the Rules of Court for an interim measure indicating to the Russian Government “that it should refrain from measures which might threaten the life and health of the civilian population on the territory of Ukraine.”

The Court decided to apply Rule 39 in order to prevent human rights violations, calling upon the states involved “to refrain from taking any measures, *in particular military actions* [emphasis added], which might entail breaches of the Convention rights of the civilian population”.^{xvii}

The building up of conflict has had direct consequences for media freedom. Networks in Ukraine stopped distributing Russian TV channels, and the same happened in Russia with Ukrainian TV channels.^{xviii} In a dramatic development, on 13 March a whole range of independent internet media was blocked or closed down by Russian authorities. New legislation gives the Prosecutor General’s Office free hands to instruct the blocking of websites if it deems them to contain “extremist” content.^{xix}

There is great concern that tensions are building up in cities in the Eastern part of Ukraine, such as Kharkiv and Donetsk. The clashes between pro-Ukraine and pro-Russian protesters have already led to the loss of lives. The clashes were according to several reports the result of provocations from Russia.^{xx} Also in these cases, the Russian Federation might be found responsible for human rights violations if it is proved that Russian authorities exert effective control over the provocateurs.

However, Ukrainian police also bears responsibility for respecting and protecting human rights of civilians in handling unrest. It must refrain from excessive use of force and abuse against detained persons.

How should Ukraine deal with the human rights violations?

Given a long list of human rights violations, many of which are not linked only to the Maidan protests or Russian intervention in Crimea or eastern Ukraine but having been endemic during Soviet as well as post-Soviet times, there is also a long list of measures which is needed. Fighting corruption, police abuse, ensuring fundamental freedoms, protecting the rights of minorities, ensuring fair trials, and holding free and fair elections is but a part of the list of problems. Extensive reforms are clearly needed.

Challenging Russia to abide by the European Convention of Human Rights by filing an inter-state complaint may prove an important legal tool to prevent further human rights abuses. There may also be other Council of Europe and UN mechanisms that can be used in order to hold Russia accountable, and to ensure that the authorities in Ukraine itself respect human rights.

However, making use of legal and quasi-legal international human rights mechanisms is only part of the solution. Russia should be under strong political pressure from the world community, including from the EU and the US, in order to ensure that it starts respecting international law and refrain from interfering in Ukraine. EU and the US visa ban and assets freeze against those with the biggest responsibility for breaches of international law, including human rights law, should be upheld and extended in response to further breaches. Norway and other countries outside of the EU should join these sanctions.

There should be no impunity for grave human rights violations. There must be genuine investigation and prosecution of those who shot or ordered the killing of protesters, and for other grave abuses. Without transparency and involvement of Ukrainian civil society such efforts will have limited credibility.

Courts and prosecution services in Ukraine have been politicized for a long time. Breaking with this tradition by adhering to universal standards of fair trials and prioritizing cases according to their gravity and not according to the political affiliation of the suspect will be an important part of enacting real reforms in Ukraine.

In order to send a strong signal that impunity for grave violations of human rights is not tolerated any more, the government should ratify the Rome Statute of the ICC as soon as possible. The government should also give the ICC jurisdiction over the Maidan situation, starting from late November until present.

In discussing the set-up of a commission to investigate the shootings and other serious violations of human rights at the Maidan Square, the government should ensure strong civil society participation and may also consider whether inviting international participation would be necessary to ensure a credible process. Eventually, international judges could also be invited to sit with Ukrainian colleagues to hear the Maidan cases.

A major challenge is to ensure that minorities and other vulnerable groups are treated fairly. Ensuring that the rights of persons belonging to the Russian minority are well protected may prove crucial in finding political solutions to the conflict with Russia; however the important point is that the human rights of all minorities should be protected.

Constitutional reforms should include strengthening national remedies for human rights violations. Bringing a heavily corrupted state and a divided country, with little trust in politicians and state structures, on the right track is not an easy task.

However, seldom have real reforms been more important for Ukraine, or indeed for any country.

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- ii Cf. BBC News, Ukraine Crisis Timeline, which estimates 800 000 protesters in early December. <http://www.bbc.com/news/world-middle-east-26248275>
- ii http://en.wikipedia.org/wiki/17_December_2013_Ukrainian%E2%80%93Russian_action_plan
- iii The "Berkut" are the special police of the Ukrainian within the Ministry of Internal Affairs.
- iv <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10668357/Russia-admits-that-it-has-moved-troops-in-Ukraine.html>
- v <http://www.bbc.com/news/world-europe-26399642>
- vi Per Kristian Aale, "Voting fraud secured pro-Russian majority in Crimean parliament", *Aftenposten*, 9 March 2014. <http://www.aftenposten.no/nyheter/uriks/Voting-fraud-secured-pro-russian-majority-in-Crimean-parliament-7496130.html#.Uyq8f4W00M0>
- vii <http://www.osce.org/mc/39501?download=true>
- viii http://en.wikisource.org/wiki/Ukraine_Memorandum_on_Security_Assurances
- ix <http://www.president.gov.ua/en/content/chapter01.html>
- x <http://www.president.gov.ua/en/content/chapter10.html>
- xi Cfr. Constitution, **Article 156**. "A draft law on making amendments to Title I *General Principles*, Title III *Elections, Referendum*, and Title XIII *Making Amendments to the Constitution of Ukraine*, shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by not less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine, provided that it is adopted by at least two-thirds of the constitutional members of the Verkhovna Rada of Ukraine, be approved by an All-Ukrainian referendum called by the President of Ukraine."
- xii http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/14.aspx
- xiv For a recent update, see Human Rights Watch: "Crimea: Attacks, 'Disappearances' by Illegal Forces", <http://www.hrw.org/news/2014/03/14/crimea-attacks-disappearances-illegal-forces>
- xv <http://www.rferl.org/content/crimea-tatar-killing-ukraine-russia-annexation-minority/25301602.html>
- xvi For updates on events in Crimea, see: <http://www.civicsolidarity.org/>
- xvii <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4699472-5703982#%22itemid%22:%22003-4699472-5703982%22>
- xviii <http://news.yahoo.com/russian-propaganda-war-full-swing-over-ukraine-085411498.html>
- xix For overview, see: Rachel Denber: "Dispatches: Black Thursday in Moscow", <http://www.hrw.org/news/2014/03/13/dispatches-black-thursday-moscow>
- xx <http://www.bbc.com/news/world-europe-26590745>. See also statement by US Secretary of State, John Kerry: "John Kerry urges Putin to stop 'continuing provocations' in eastern Ukraine". <http://www.rawstory.com/rs/2014/03/16/john-kerry-urges-putin-to-stop-continuing-provocations-in-eastern-ukraine/>