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## **UN LEGAL STANDARDS' APPLICATION TOWARDS THE INDIGENOUS PEOPLES OF UKRAINE**

### **1. Indigenous Peoples of Ukraine, international documents and UN practice**

The involvement of Indigenous Peoples of Ukraine into UN processes of the working out of International Legal standards of the Rights of Indigenous Peoples was impossible at the Soviet Totalitarian period but became topical one after 1991. However, the position of the diplomats of the Independent Ukraine on that question was not differing too much from the former Soviet or actual Russian one then. The researches bring the presentation of the official Representative of Ukraine at Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Комиссии UN Commission on Human Rights (UN ComHR), who considered that “the meaning of the terms “Indigenous People” and “Indigenous Community or Nation” is being still open question” and claimed the “universal definition” to be elaborated. Later the Representative of Ukraine in UN ComHR pointed out that “no one of National definitions of Indigenous Peoples or the definitions in International Documents may be used as Universal one” and “that this is very important to classified the ethnic groups in order to easy the conducting the National Policy of Minorities and Indigenous Peoples protection”

However, the aspiration of Indigenous Peoples of Ukraine to take part at the Global Processes of the determination of the Rights of Indigenous Peoples in UN System did not have the resistance form Ukrainian Government side at the international scene. By the decision of UNECOSOC 1995/317 in 1995 the lists of the «organizations of indigenous people» having no Consultative Status under ECOSOC had been approved for the facilitating of their next participation at UN Working Group, drafting the UN Declaration on the Rights of Indigenous Peoples (UN DRIP). Partially 25 of November of 1995 UN ECOSOC confirmed the list of 44 organizations of Indigenous Peoples of Australia, Canada, New Zealand, Norway, Peru, USA, Chile and at 2<sup>nd</sup> of November of 1995 the list of more 34 organizations of Argentina, Bolivia, Brazil, Venezuela, Guatemala, Italia, Kenya, Morocco, Nepal, Panama, Russia, Rwanda, Salvador, USA, Tanzania, Ukraine, Filipinas, Finland, France, Japan. At the second list among the organizations of Indigenous Peoples “Mejlis of Crimean Tatar People (Ukraine)” was named<sup>2</sup>.

It is necessary to point out that the procedure of the access of the organizations of Indigenous Peoples to UN Working Group was more exacting than for instance for the access of those organizations to UN Working Group on Indigenous Populations. The procedure provided for the obligatory receiving of the preliminary agreement of the organization nominee of Indigenous People between UN bodies and the Government of the registration (location) of that organization in accordance with the point 5 of Resolution UNECOSOC 1995/32 of 25 of July of 1995.<sup>3</sup> So mentioning of Mejlis of Crimean Tatar People at UN ECOSOC 1995/317 decision would not be possible without the preliminary received of the agreement of Government of Ukraine by UN bodies.

Obviously by that Dr. Brian G. Williams at the Study of 2001 year on the events of that time was pointing out that “Crimean Tatar Community” concerned of the defense of the rights of its rights demanded the appropriate status, and the Ukrainian State if respond to the claims had recognized Crimean Tatars as an Indigenous People” Dr. Brian G. Williams points to the activity in UN not MCTP as whole but a Foundation for Research and Support of the Indigenous Peoples of Crimea (FRSIPC) as Crimean Tatar organization, which was led by MCTP member<sup>4</sup>. The similar position was shared by other authors as well<sup>5</sup>.

The claims of Crimean Tatars and Crimean Karaites/imes (Karays) to be recognized as Indigenous Peoples in international Legal Frame in detail reflected and fixed in the studies<sup>6</sup>. It has a meaning to

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<sup>2</sup> <http://www.un.org/documents/ecosoc/dec/1995/edec1995-317.htm>

<sup>3</sup> <http://cwis.org/GML/UnitedNationsDocuments/>

<sup>4</sup> <http://www.iccrimea.org/scholarly/bwilliams.html>

<sup>5</sup> [http://www.minelres.lv/reports/ukraine/Parallel\\_Report.htm](http://www.minelres.lv/reports/ukraine/Parallel_Report.htm)

<sup>6</sup> <http://dspace.onua.edu.ua/handle/11300/1328>

enlighten the realization of those demands at the UN activities of UN, its Institutions and under its aegis organizations. At UN Secretariat's Department of Economic and Social Affairs web site there is the information about four organizations of Indigenous Peoples from Ukraine registered for the participation at UN Undertakings and sent their representatives. They are MCTP<sup>7</sup>, FRSIPC<sup>8</sup>, the Organization of Crimean Tatar Elders "Namus" (Dignity) and «All Ukrainian Association of Crimean Karays»<sup>9</sup>. That Department fixed the participation of MCTP at the sessions of UN Permanent Forum on Indigenous Issues (UNPFII) – since 8<sup>th</sup> till 12<sup>th</sup>, FRSIPC – since 7<sup>th</sup> till 13<sup>th</sup>, the participation of Crimean Karays in 6<sup>th</sup> and sessions of UNPFII.

By the memorials of Mr. Nadir Bekirov, the member of MCTP and President of FRSIPC at the end of XX century he attended the 11th session of UN Working Group on Indigenous Populations in 1994 already. With this except him at the sessions of the Group, "another Crimean Tatars and representatives of Karays and Krymchaks took part"<sup>10</sup>. At that period FRSIPC took part at the activities not only Working Groups and UN PFII interacted with the Office of the UN High Commissioner for Human Rights (OHCHR), with UN Development Program, with ILO and received at that time the international assistance to study the of the state of ethnic groups in Crimea<sup>11</sup>. At that period FRSIPC provided with the alternative reports to Treaty Bodies of UN on the observation of the ethnic rights in Crimea<sup>12</sup>, to the Working Groups of UN ComHR<sup>13</sup> and to World Intellectual Property Organization<sup>14</sup>.

It is important to point out that FRSIPC, who was trying a long time to get Consultative Status under UN ECOSOC has been rejected to receive it due to the joint position of Ministries do Foreign Affairs of Russian and Ukraine in 2008 in accordance with which that Foundation was seen in "extremist and nationalist activity"<sup>15</sup>. «Extremist» direction to defense the Rights of Indigenous Peoples you may see for example at the presentation of the representative of FRSIPC at UN FPII session of 2012, with the demand to Government of Ukraine to support UN DRIP and to recognize the Rights of Indigenous Peoples of Ukraine on the land of their traditional settlement.

The appointment of Mr. Nadir Bekirov by the decision of Secretary General of UN for the position of the Member of the Board of Trustees of UN Voluntary Fund for Indigenous Populations in 2003 with the mandate for 3 years and his re-appointment by the same procedure in 2006<sup>16</sup> was the obvious de-jure recognition of Crimean Tatars as an Indigenous People of Ukraine on the highest level of UN system.

This body especially was established by UN GA in order to involve Indigenous Peoples to the activities of UN bodies on Indigenous Issues and the members of that body are represented of Indigenous Peoples of different regions in their personal capacity. Such Mr. Nadir Bekirov was appointed as Crimean Tatar representing the region of Eastern Europe, Russia, Central Asia and Transcaucasia in accordance with the balance of the frame of Indigenous Peoples geographical distribution<sup>17</sup>.

The presentation held the appeal to UN Human Rights` Council (HRC) to stop the membership of Ukraine in HRC for the systematic violation of the Rights of Indigenous Peoples by that state<sup>18</sup>. At the session of UN FPII 2013 the representative of Crimean Karays Mrs. Natalia Kropotova declared that historical monuments of Karays in Ukraine the cemetery Balta Tiymez and City of Chufut-Kale "are exploited by the State without the taking into consideration of the opinion of the people and Karay People totally removed from control over his national shrines"<sup>19</sup>.

<sup>7</sup> <http://esango.un.org/civilsociety/showProfileDetail.do?method=showProfileDetails&profileCode=38710>

<sup>8</sup> <http://esango.un.org/irene/?page=viewProfile&type=ngo&nr=5815&section=9>

<sup>9</sup> <http://esango.un.org/civilsociety/showProfileDetail.do?method=showProfileDetails&profileCode=39198>

<sup>10</sup> <http://goloskrimanew.ru/nadir-bekirov-deklaratsiya-oon-o-pravah-korennyih-narodov-poleznyiy-instrument-v-reshenii-problem-kryimskih-tatar.html>

<sup>11</sup> <http://www.iccrimea.org/ngos/indigen.html>

<sup>12</sup> [http://www.minelres.lv/reports/ukraine/Parallel\\_Report.htm](http://www.minelres.lv/reports/ukraine/Parallel_Report.htm)

<sup>13</sup> <http://www2.ohchr.org/english/issues/minorities/docs/FRSIPC3b.doc>

<sup>14</sup> <http://www.wipo.int/tk/en/igc/panels.html>

<sup>15</sup> [http://www.mid.ru/rossia-nepravitel-stvennye-organizacii-i-oon/-/asset\\_publisher/aLRfN6MT9msV/content/id/338396](http://www.mid.ru/rossia-nepravitel-stvennye-organizacii-i-oon/-/asset_publisher/aLRfN6MT9msV/content/id/338396)

<sup>16</sup> <http://www.ohchr.org/Documents/Issues/IPeoples/Fund/MembersBoardTrustees.pdf>

<sup>17</sup> <http://www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/BoardofTrustees.aspx>

<sup>18</sup> [https://www.unngls.org/index.php/un-ngls\\_news\\_archives/2012/333-indigenous-peoples-in-central-and-eastern-europe-the-russian-federation-central-asia-and-transcaucasia](https://www.unngls.org/index.php/un-ngls_news_archives/2012/333-indigenous-peoples-in-central-and-eastern-europe-the-russian-federation-central-asia-and-transcaucasia)

<sup>19</sup> <http://www.milli-firka.org/content/DBAGEBGH/title/O-проблемах/>

Ukrainian researches admit the participation of “the representatives of some ethnic groups of Ukraine particularly and for the first of all of Crimean Tatars at the international legal forums on the problematic of Indigenous Peoples beginning from 1994”/ They think that “the recognition by the International Community of the right of these ethnic groups of Ukraine for the participation of the problem of Indigenous Peoples of the World can’t be regarded as a recognition the corresponding status of these ethnic groups de-jure but it may be with definite observations to be regarded as the admission of them as Indigenous Peoples de-facto”.<sup>2021</sup> However taking into consideration mentioned above the decision of UN ECOSOC 1995 in relation of MCTP the fact of the receiving of the formal approval by Ukraine to recognize MCTP from UN as an organization of Indigenous people should be regarded as proven one.

The beginning of Russian aggression, illegal occupation and annexation of Crimea by Russia (RF) have made Ukraine to undertake the internationally meaning steps to explain its position towards Indigenous Peoples and UN DRIP. By the Declaration of Parliament (Verkhovna Rada) of Ukraine about Guarantees of the Rights of Crimean Tatar People as a part of Ukrainian State by 20<sup>th</sup> of March of 2014 № 1140-VII Ukraine has obliged to preserve and develop the Ethnic, Cultural, Linguistic and Religious Identity of Crimean Tatar People as an Indigenous People, to ensure the protection and realization of inherent Right of Self-Determination of Crimean Tatar People as a part of Sovereign and independent Ukrainian State, recognized MCTP as an Executive Body of Kurultay of Crimean Tatar People and Kurultay as Highest Representative Body of Crimean Tatar People and stated its support to UN DRIP<sup>22</sup>.

After that at the session of UN Security Council of 1 of April of 2014 the spiritual leader of Crimean Tatar People Mr. Mustafa Djemilev made a speech with the hot critics of the policy of Ukraine and Russia in relation of Crimean Tatar People at 1991-2014 years.<sup>23</sup> 22 of May of 2014 at the session of 13<sup>th</sup> session of UN FPII Ukrainian Delegation made an official Statement on behalf of Ukrainian Government, where Ukraine claimed to regard it as a State officially supported the UN DRIP. The Permanent Mission of Ukraine at UN had arranged the parallel event at this session to cover the problems of the Crimean Tatar People in the conditions of foreign occupation<sup>24</sup>. May be stated that Ukraine had adhered to the practice that prevailed at that time, which states used to express their recognition of the UN DRIP<sup>2526</sup>.

At the noon of the UN World Conference on Indigenous Peoples, 18 of September of 2014 in occupied Crimea the President of FRSIPC Mr. Nadir Bekirov had been assaulted while being going to NY, due to which he had become unable to attend that UN undertaking. Several Russian experts invited by UN as representatives of organizations of Indigenous Peoples for the participation at the World Conference were assaulted while moving from RF to NY analogically by unknown persons, who had taken off or spoiled their passing and travel documents. They were citizens of Russia Mr. Rodion Sulandziga, Ms. Valenvina Sovkina and Ms. Anna Naykanchina, what was reported by the participants of the UN World Conference on Indigenous Peoples at the time of the undertaking. Totally 8 representatives of different Indigenous People were forcibly prevented by Russian authorities to attend the World Conference. The attack against Nadir Bekirov caused the change of leadership and the place of the registration of FRSIPC, it had moved from Simferopol in Crimea to the non-occupied territory of Ukraine Kherson City<sup>27</sup>.

After that 8-11 of April of 2015 the member (expert) of UN FPII, the citizen of RF Mrs. Kara-Kys D. Arakchaa visited by its own initiative without the agreement with the leadership of UN FPII and Ukrainian authorities occupied Crimea, where had meetings with the representatives of the organizations of Krymchaks and Karays as well as with “individual representatives of Crimean Tatar People”<sup>28</sup>. The

<sup>20</sup> <http://www.studfiles.ru/preview/2414605/>

<sup>21</sup> [http://nbuv.gov.ua/UJRN/Tpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Tpdu_2016_1_15)

<sup>22</sup> <http://zakon2.rada.gov.ua/laws/show/1140-18>

<sup>23</sup> <http://argumentua.com/novosti/tekst-vystupleniya-mustafy-dzhemileva-v-sovbeze-oon-kotorym-zhutko-razozlil-rossiyan>

<sup>24</sup> [http://nbuv.gov.ua/UJRN/Tpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Tpdu_2016_1_15)

<sup>25</sup> <http://www.studfiles.ru/preview/2414605/>

<sup>26</sup> <http://www.tandfonline.com/doi/abs/10.1080/10611959.2014.1024080>

<sup>27</sup> <http://www.reyestr.court.gov.ua/Review/60771626>

<sup>28</sup> [http://jusintergentes.com.ua/archives/acc/HR\\_1-29.pdf](http://jusintergentes.com.ua/archives/acc/HR_1-29.pdf)

Report on this visit at the session of UN FPII of 2016 was criticized by the member of UN FPII Mr. Oliver Loode, who stated the great number of Human Rights violations of Indigenous Peoples of Ukraine, which were not reflected at the Report of Mrs. Kara-Kys D. Arakchaa<sup>29</sup>. Mr. Oliver Loode many times with the permission and on behalf of UN FPII visited Ukraine at 2015-2016 with fact-finding missions in Kyiv. At that context it should be pointed out that since the establishment of UN FPII only the representatives of Indigenous Peoples of Russia have been becoming the representatives of the “Region of Central and Eastern Europe, Russia, Central Asia and Transcaucasia” at the Forum. At 2014-2016 it was Tuvian Mrs. Kara-Kys D. Arakchaa (although at the legislation of Russian Federation Tuvians are not recognized as “a small Indigenous People”)<sup>30</sup>.

At 2015-2016 the involvement of Ukraine and representatives of the Indigenous Peoples of Ukraine into activities of UN bodies on the issues of Indigenous Peoples raised. At 15<sup>th</sup> session of UN FPII in 2016 factually the joint delegation of Ukrainian States Bodies (Mr. Aslan A. Kyrymly and the First Deputy of the Minister of Informational Policy Mrs. Emine Djeppar) and MCTP (Mr. Eskender Bariiev and Mrs. Ayla Bakkal)<sup>31</sup>. At the time of the session of UN FPII Mr. Eskender Bariiev demonstrated important categories of the Sustainable Development of Indigenous People at the sphere of its land and natural resources.<sup>32</sup> The representatives of FRSIPC at 2014-2016 took part at 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> sessions of UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). At 2014 they submitted the Report about the Access of Indigenous Peoples to Justice at the conditions of the occupied Crimea<sup>33</sup>, and at 2015 on the Defense of The Rights of Indigenous Peoples guaranteed by UN DRIP<sup>34</sup> by European Court on Human Rights. In July of 2016 at the session of EMRIP FRSIPC presented the Report on the qualification of the Deportation of Crimean Tatar People, which began at 1944 as an International Crime and proposed to the attention of EMRIP the Draft of the Law of Ukraine “On the Rights of Indigenous Peoples”<sup>35</sup>.

The aggravation of the problem of protection of the rights of the indigenous peoples of Ukraine in the conditions of Russian aggression has its reflection at UN bodies acts devoted to the Ukraine-Russia conflict. So point 12 of UN HRC Resolution № 26/30 of 27 June of 2014 “Cooperation and Assistance to Ukraine in the Field of Human Rights” has a claim to “an immediate end to all acts of discrimination and harassment, in particular towards persons belonging to minorities and indigenous peoples and other residents of the Autonomous Republic of Crimea and the city of Sevastopol, including ethnic Ukrainians and Crimean Tatars”<sup>36</sup>. That Resolution was approved by HRC with 23 votes “for” and 19 votes “against; the resolutions of HRC with the same names were adopted at 2015-2016, but there were not mentioning of the Indigenous Peoples already. Researches pay attention to the meaning for the Indigenous Peoples of Ukraine the Resolution of UN GA “Situation of Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)” 71/205, adopted 19 of December of 2016. At the same time that Resolution does not name Crimean Tatar People as an Indigenous one, although that it indicates the legal banning of MCTP by Russian authorities as “self-governing body of the Crimean Tatars”<sup>3738</sup>.

The problem of the Protection of the Rights of Indigenous Peoples was mentioned at provisions of reports on the human rights situation in Ukraine of the OHCHR (Reports). Although the first such Report of 15 April of 2014 had not contained the appropriate mentioning<sup>39</sup>, the second Report of 15 of May of 2014 contained the special part “Rights of Indigenous Peoples” (articles 146-154). At the part it was indicated that “reports from Crimea raise serious concerns about on-going harassment towards Crimean Tatars”. The Report mentioned the desecration of the monument, the assaults of Russian

<sup>29</sup> <http://mip.gov.ua/news/1373.html>

<sup>30</sup> <http://goloskrimanew.ru/nadir-bekirov-deklaratsiya-oon-o-pravah-korennyih-narodov-poleznyiy-instrument-v-reshenii-problem-kryimskih-tatar.html>

<sup>31</sup> <http://qha.com.ua/ru/politika/djeppar-status-krimskih-tatar-zalog-vozvrashcheniya-krima/159302/>

<sup>32</sup> <http://qha.com.ua/ru/politika/krimskie-tatari-predstavleni-na-forume-oon/159264/>

<sup>33</sup> <http://www.tandfonline.com/doi/abs/10.1080/10611959.2014.1024080>

<sup>34</sup> <http://eppd13.cz/wp-content/uploads/2016/2016-3-4/04.pdf>

<sup>35</sup> <http://kntu.net.ua/index.php/ukr/content/view/full/35732>

<sup>36</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/083/76/PDF/G1408376.pdf?OpenElement>

<sup>37</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/205&referer=http://www.un.org/en/ga/71/resoluti](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205&referer=http://www.un.org/en/ga/71/resoluti)  
ons.shtml&Lang=E

<sup>38</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

<sup>39</sup> [www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15April2014.doc](http://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc)

paramilitaries to the building and the leadership of MCTP, about the actions of RF to press that leadership from Crimea. The Report contained the dreads that at the frame of the Russian legislation about the “extremist activities” the work of MCTP, “its activity may be considered as extremist”, and MCTP was named as a “Parliament of the Crimean Tatars People”<sup>40</sup>.

At the similar part “Rights of Indigenous Peoples” of the next Report of 15 of June of 2014 keynote was another one. In particularly it was about the anniversary of the deportation of “Crimean Tatars and *other minorities*”<sup>41</sup>, the “Decree” of the “Crimean Parliament” on “rehabilitation” of deportees was mentioned and nothing was indicated on the Human and Indigenous Rights violations taking place that time in Crimea<sup>42</sup>. The regular Report of 15 of July of 2014 already had not the particular part about the Rights of Indigenous Peoples and just mentioned about forced migrants, “mostly Tatars”, and about “the continuing harassment and discrimination against ethnic Ukrainians, Crimean Tatars, and representatives of minority groups in general”. In that document in the relation of Crimean Tatars several times the term “representatives of the Crimean Tatar community” was used<sup>43</sup>.

The next Reports mention Crimean Tatars not defining their status and using the neutral terms, for example “another four Crimean Tatars” at Report since 16 of February until 15 of May 2015<sup>44</sup>. In article 143 of the Report since 16 of August till 15 of November of 2015 it is indicated about the trade blockade of the Crimea initiated by “Crimean Tatar leadership”, and the parliament act about the Deportation of Crimean Tatars (but not Crimean Tatar People as it was at the original of the decision)<sup>45</sup>. In article 192 of the Report until 15 February of 2016 the episode of the battue by occupying authorities in Crimean village Dolinka is mentioned, which “appears to have been intended to intimidate local Crimean Tatars who take pride in their national identity and are keen to publicly demonstrate it”<sup>46</sup>.

Only at the Report for the period of 16 of February – 15 of May of 2016 the separate part under the name “Minority and Indigenous *Peoples’* Rights” appears, which in Russian version was incorrectly translated as “*Права меньшинств и коренного населения*” (“The Rights of Minorities and Indigenous *Population*”). The Report mentioned the on “police” operations of the occupying authorities against the “members of Crimean Tatar community” (article. 179) and relatively big attention paid to the banning of MCTP by Russian “prosecution office” and “court”. The MCTP was defined as “a self-governing body of the Crimean Tatar *people*”. The Report indicated that this banning might be regarded as “a collective punishment against the Crimean Tatar *community*”<sup>47</sup>. In the future, this section again disappears from the reports as well the mentioning of Crimean Tatars as a People or as an Indigenous People. So at the Report for the period of 16 of February – 15 of May 2017 says only about the violations of the Rights of the members of “Crimean Tatar *community*” (article 142, article 188, point “f”), and “Crimean Tatar *population*”(article 184)<sup>48</sup>.

Apart the Reports of the OHCHR we should point the Report of UN Special Rapporteur on Minority Issues Rita Izsák A/HRC/28/64/Add.1, submitted to HRC on the results of her visit to Ukraine at March-April of 2014. In article 6 of this Report it was pointed out that “some communities, notably Crimean Tatars, self-identify as indigenous peoples”. The Special Rapporteur made the special reservation on that case, that covering of them at the frame of “her mandate on minority issues in no way undermines or is incompatible with their claims to indigenous status and to enjoy the rights contained in the UN DRIP”<sup>49</sup>.

In article of the 29 Report indicated, that “The Special Rapporteur also interviewed representatives of groups, including Ruthenians, who felt that they had not been recognized as minorities or indigenous peoples, which is how they identified themselves”. Although the Special Rapporteur could not visit Crimea, she had the consultations with the leaders of MCTP, named by her “the self-governing body of Tatars” (article. 49). At the text the Special Rapporteur used both ethnonyms as “Tatars” as “Crimean

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<sup>40</sup> <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>

<sup>41</sup> Hereinafter the bold italic is the authors’ accentuation

<sup>42</sup> <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>

<sup>43</sup> [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15July2014.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15July2014.pdf)

<sup>44</sup> <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>

<sup>45</sup> <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>46</sup> [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>47</sup> [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf)

<sup>48</sup> [http://www.ohchr.org/Documents/Countries/UA/UARreport18th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UARreport18th_EN.pdf)

<sup>49</sup> [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_64\\_Add\\_1\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_64_Add_1_en.doc)

Tatars”, pointing among others the “return of Tatars, who are *indigenous inhabitants* of the Autonomous Republic of Crimea” and on “their claims to land rights as indigenous people”. Pointing out the restrictions of the rights and frightening of Crimean Tatar People by the occupying authorities Rita Izsák mentions as the Declaration of Verkhovna Rada of Ukraine № 1140-VII, so the “decree on measures to rehabilitate Armenian, Bulgarian, Greek, Crimean Tatar and German populations and State support for their revival and development”, adopted by RF authorities after the beginning of the occupation of Crimea<sup>50</sup>.

The issue of the restrictions of the rights of Crimean Tatar People at occupied Crimea among other was being put down into agenda at the lawsuit of Ukraine against Russia of 2017 at International Court of Justice (ICJ) on the violation of International Convention on the Elimination of All Forms of Racial Discrimination. The application of Government of Ukraine in this claim from 16 of January 2017 did not mention the status of Crimean Tatar People as an Indigenous one. Only p. 84 of the Application indicated “The Crimean Tatars are a Turkic *people* with a long history on the Crimean peninsula since the days of the Golden Horde in the 13th century”. Crimean Tatars time by time (p.p. 5, 36, 84, 91, 93, 95, 99, 100, 107, 110, 112, 113, 133) are named at the Application as “Tatar(s)”. The very Crimean Tatar ethnos is named at some parts of the Application “the people” (articles 5, 93), but mostly as “the community” (articles 15, 36, 84, 95, 97), and even as “minority” (article 15) and “ethnic Tatar population” (article 113)<sup>51</sup>.

ICJ Order for Request for the indication of Provisional Measures of 19 of April of 2017 at this case on the request of Ukraine for the establishing of the measures of the ensuring not once mentioned the Crimean Tatar issue at the context of ensuring of the educational and linguistic rights and MCTP activity. Significantly is that ICJ at the text of the Order escaped by all ways the very naming of Crimean Tatar ethnos as a people and mentioning of its Indigenous character; even MCTP at the text of ICJ Order successively is naming just “Mejlis”.

In this ICJ Order (articles 36, 79, 86, 91, 95, 105) as in relation of Crimean Tatar People as towards ethnic Ukrainians in Crimea the general term “community” was used. At separate parts of the document (articles 36, 79, 95) Crimean Tatars rather incorrectly were named “Tatar”. Only at article 97 Order ICJ has brought the quotation from Report OHCHR for the period since 16 of May until 15 of August of 2016 about “Crimean Tatars – an indigenous people of Crimea” not giving the own position on the topic. At the text also the position of the mentioned Application of Ukraine of 16 of January of 2017 was brought twice, that MCTP is “*community’s* central political and cultural institution” of Crimean Tatars (p.p. 36, 91) without any evaluation of this suggestion from the Court, In this Order ICJ by 13 votes against 3 decided the demand to RF “refrain, pending the final decision in the case, from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis”<sup>52</sup>.

The status of Indigenous Peoples of Ukraine was evaluated at the activities of European Institutions at the frame of UN standards. Parliamentary Assembly of the Council of Europe (PACE) at the Recommendation 1455 (2000) “Repatriation and integration of the Tatars of Crimea”<sup>53</sup> paid the particular attention to Crimean Tatar issue. The name and the content of this Recommendation in its official English version and its official translations into Russian and Ukrainian languages unfortunately have the essential semantic differences.

Crimean Tatars at the article 1 of the Recommendation are named respectively “entire Crimean Tatar population” (“*население крымских татар*» in Russian text and “*кримськотатарське населення*” in Ukrainian one). Article 3 says respectively about “Crimean Tatar *community*”, “*сообществе крымских татар*” (“Crimean Tatar *fellowship*”) and “*кримськотатарської громаде*” (“Crimean Tatar *sodality*”). Also in article 1 of Recommendation the Soviet Order of 1967 is mentioned, in accordance with which it “cleared the Crimean Tatars of all charges”, (same in Russian text, “*с крымских татар были сняты все обвинения*”) but in Ukrainian – “*кримськотатарський народ був повністю реабілітований*” (“Crimean Tatar *people* was rehabilitated completely”). So only at

<sup>50</sup> [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_64\\_Add\\_1\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_64_Add_1_en.doc)

<sup>51</sup> <http://www.icj-cij.org/docket/files/166/19314.pdf>

<sup>52</sup> <http://www.icj-cij.org/docket/files/166/19394.pdf>

<sup>53</sup> [http://www.coe.int/T/r/Parliamentary\\_Assembly/%5BRussian\\_documents%5D/%5B2000%5D/%5BAvril%5D/Rek1455.asp](http://www.coe.int/T/r/Parliamentary_Assembly/%5BRussian_documents%5D/%5B2000%5D/%5BAvril%5D/Rek1455.asp)

Ukrainian version of the translation of the Recommendation 1455 (2000) it says exactly about Crimean Tatar People.

From another side at p.7.8 of this Recommendation the Government of Ukraine and the regional authorities of Autonomous Republic of Crimea (AR of Crimea) were proposed to study an experience of other states-members of Council of Europe “concerning the representation of *minorities and indigenous peoples*, with a view to securing the effective representation of the Crimean Tatars in national, Crimean and local public affairs”<sup>54</sup>. This text in Ukrainian version looked as a wish of the accounting of the experience of “the representation of *small national minorities* in regional parliaments aiming to ensure and support the representation of Crimean Tatars at the Institutions of the Power of Crimea”<sup>55</sup>, i.e. the term “Indigenous Peoples” was taken off from the official Ukrainian translation of the Recommendation 1455 (2000) artificially.

It is necessary to point that this Recommendation of PACE was based on the Report of the member of Assembly from UK, Laborite Lord Frederick M. T. Ponsonby of 18 of February of 2000 for PACE Committee on Migration, Refugees and Demography. The Report was founded on the results of the visit to Ukraine, talks with the representatives of the State Power, Power Bodies of AR of Crimea and Mr. Refat Chubarov, the First Deputy of the Head of MCTP. At p. 4 of this Report Lord Frederick Ponsonby had recognized that Crimea is the “historic homeland” for Crimean Tatars and pointed, they “unlike other ethnic groups deported from Crimea...lay claim to the status of indigenous people”. As far as the Reporter ostensibly “could not get an answer as to what that status implies in legal terms” that PACE member expressed wrong opinion that the term is “a euphemism for titular nation”. Up to the Reporter the status of Indigenous People ostensibly “could be viewed by Crimean Tatar extremists as a first step to national autonomy”; he asserted, that “many Crimean Tatars, while making a decision to return to Crimea, were guided by unrealistic expectations fostered by some of their political leaders”<sup>56</sup>.

This situation demonstrated the total unavailability of PACE at 2000 to operate with the already existed International standards of UN on the Indigenous Issues. There searches point out the fact of the request of Cabinet of Ministers of Ukraine at May of 2004 to Council of Europe asking the expertise of the Draft of the Law “On status of Indigenous (autochthonous) peoples”. Venice Commission had approved at October of 2004 the Expert Conclusion on the theme. It pointed to the “insufficiency” of the definition of indigenous peoples proposed in the draft as those ones, who “have to live from the times immemorial or as a least before the arrival of late settlers”. With that it was pointed that such definition of Indigenous Peoples does not correspond to the “accepted standards of the International Law” (p. 23 of the Conclusion)<sup>57</sup>. Some proposals for the protection of the rights of Crimean Tatar People had the OSCE Study “The integration of formerly deported people in Crimea, Ukraine. Needs assessment” published on three languages at the August of 2013, which among other things proposed to legalize MCTP and to ensure equal political representation of Crimean Tatars<sup>5859</sup>.

It is worth adding that realizing the European Charter for Regional or Minority Languages of the Council of Europe, 1992<sup>60</sup> the participants pointed relevant languages, which received the guarantees. It had a sense for Indigenous Peoples of Ukraine. Therefore, Ukraine recognized the Crimean Tatar language as covered by the articles 7-14 of the European Charter; Karay and Krymchak as covered by only 7of Charter. At the same time Poland guaranteed for Karay and “Tatar” languages the implementation of the articles 7-14 of the European Charter, Romania guaranteed for “Tatar” language the article 7 of the Charter (it is necessary to clarify that so called Polish and Romanian Tatars have their historical origin from Crimea). Bosnia and Herzegovina, Serbia, Slovakia and Croatia at the same time gave guarantees to the Ruthenian language on articles 7-14 of the European Charter, Romania, Hungary and Ukraine on article 7<sup>61</sup>. By this way, the mechanisms of the European Charter obviously facilitate the realization the appropriate rights of Indigenous Peoples guaranteed by UNDRIP in Europe and particularly in Ukraine.

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<sup>54</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16793&lang=en>

<sup>55</sup> [http://zakon4.rada.gov.ua/laws/show/994\\_600](http://zakon4.rada.gov.ua/laws/show/994_600)

<sup>56</sup> <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8863&lang=en>

<sup>57</sup> <http://dspace.nbu.gov.ua/bitstream/handle/123456789/41771/30-Shapoval.pdf?sequence=1>

<sup>58</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

<sup>59</sup> <http://www.osce.org/hcnm/104309?download=true>

<sup>60</sup> [http://zakon0.rada.gov.ua/laws/show/994\\_014](http://zakon0.rada.gov.ua/laws/show/994_014)

<sup>61</sup> <http://www.coe.int/t/dg4/education/minlang/AboutCharter/LanguagesCovered.pdf>

The aggression of Russia and the annexation of Crimea produced the strengthening of the attention of Council of Europe bodies to the problem of Indigenous Peoples of Ukraine.

In article 3 the Resolution of PACE 2028 (2015) of 27 of January of 2015 on the results of the Report of Council of Europe's Commissioner for Human Rights about his visit to Crimea (September 2014), where persecutions and discrimination against "ethnic Ukrainian and Crimean Tatar populations" was pointed out. There is the appeal to the International Community in article 16.4 of this document to "continue to follow closely the situation in Crimea, in particular regarding the Crimean Tatars, with a view to ensuring their full enjoyment of all human rights and fundamental freedoms"<sup>62</sup>.

These issues were more developed in resolution PACE 2034 (2015) of 28 January 2015 "Challenge, on Substantive Grounds, of the Still Unratified Credentials of the Delegation of the Russian Federation", where PACE concern with the situation of "Minorities in Crimea, in particular the Crimean Tatar *community*" was stated. However, the same document characterized MCTP as "Mejlis (council of representatives of the Crimean Tatar *people*)"<sup>63</sup>. In articles 4 and 10.2 of the Resolution of PACE 2112 (2016) 21 April 2016 "The Humanitarian Concerns with regard to People Captured during the War in Ukraine" "Crimean-Tatar and Ukrainian activists" punished by RF are mentioned. Article 4 contains the conviction of the "recent banning of the Mejlis as an extremist organization, which is contrary to international standards and demonstrates the systematic violation of the Crimean Tatars' rights"<sup>64</sup>. Taking into account that the key International Standard in such situation must be UN DRIP it can be argued that PACE as a whole is agree with the status of Crimean Tatars as an Indigenous People although the clear position and glossary about this at the frame of Council of Europe has not worked out yet.

At the same time in p.p. 4.2, 4.3 of the Resolution of PACE 2132 (2016) of 12 October 2016 "Political Consequences of the Russian Aggression in Ukraine" the "persons belonging to minorities, in particular the Crimean Tatars" are mentioned, and the banning of MCTP is defined as a repressive measure directed against «the whole Crimean Tatar community»<sup>65</sup>. In the resolution of PACE 2133 (2016) adopted on the same day in p. 8 the terms "Tatar media and the Tatar's Muslim religious practice" are used. At the same time in p.p. 17.2.1 and 17.2.4 of this document the "historical rights of the Crimean Tatar *people*", the right of "Crimean Tatar *people* to choose their own self-governing institutions" are mentioned<sup>66</sup>.

Since the beginning of Ukrainian-Russian conflict the attention of OSCE to the issue of the rights of Indigenous Peoples of Ukraine consistently increased. Article 8 of Resolution 'on Clear, Gross and Uncorrected Violations of Helsinki Principles by the Russian Federation' of Parliamentary Assembly of the OSCE (PA OSCE), 2014 says about "particular vulnerability of Crimean Tatars, Roma, Jews and other minority groups"<sup>67</sup>. Article 31 of PA OSCE Resolution 'on the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation', 2015 mentions the frightening, persecutions and discrimination "directed against the Crimean Tatar and ethnic Ukrainian *populations*"<sup>68</sup>.

Later PA OSCE Resolution 'on Violations of Human Rights and Fundamental Freedoms in the Autonomous Republic of Crimea and the City of Sevastopol' 2016 along with the general notes about the necessity to RF as an occupying state to observe the demands of the International Law of Human Rights in Crimea article 12 contains the strong protest against "so-called decision of 26 April 2016 of the occupying power to ban the Mejlis of the Crimean Tatar *people*" and indicates several times the discrimination in relation of ethnic Ukrainians and Crimean. Article 21 of English version of the text of the Resolution says that "discrimination against the indigenous Crimean Tatar *people* and ethnic Ukrainians" with using of somewhat different lexical construction in French text ("*discrimination croissantes a l'encontre de la population autochtone des Tatars de Crimee et des Ukrainiens*"). In

<sup>62</sup> <http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21480&lang=en>

<sup>63</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21538 &lang=en>

<sup>64</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22750&lang=en>

<sup>65</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23166&lang=en>

<sup>66</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23167&lang=en>

<sup>67</sup> <https://www.oscepa.org/documents/all-documents/annual-sessions/2014-baku/declaration-2/2540-2014-baku-declaration-eng/file>

<sup>68</sup> <https://www.oscepa.org/meetings/annual-sessions/2015-helsinki-annual-session/2015-helsinki-final-declaration/2282-07>



official Russian text of the Resolution it is translated as “*дискриминация в отношении принадлежащих к коренному населению крымских татар и этнических украинцев*” (discrimination of belonging to Indigenous Population Crimean Tatars and ethnic Ukrainians)<sup>69</sup>. Thus the term “Indigenous People” in relation of Crimean Tatars is used at OSCE documents extremely inconsistent<sup>70</sup>.

Experts state the successive attempts of writing at Russian version texts of the international documents the word of “*крымскотатарский*” (adjective Crimean Tatar) as hyphenated one (that artificially separate the word “Tatar” from the word “Crimea” while Crimean Tatars regard it to be very important not to split their native ethnonym) and to impose to the “International Community the idea, that Crimean Tatars are the part of the one ethnos – Tatar People differing from other its parts only by territory of residence i.e. by geographical badge: “Tatars of Crimea” are put in the line with Tatars of Kazan, Trans-Volga and Astrakhan. The nominations of Crimean Tatar People “in numerous subsequent reports, resolutions, statements, recommendations” of UN, OSCE and Council of Europe bodies as “vulnerable minority” or “Crimean Tatar community” are sharply criticized, which illustration may be the joint statement on behalf of 41 states of 21 March 2016 at the meeting of 31<sup>st</sup> session of UN HRC<sup>71</sup>.

The European Parliament pays an attention to the issue of Indigenous Peoples of Ukraine at the conditions of occupation of Crimea by RF<sup>72</sup>. It should be pointed to the Resolution of this body of (EU) of 3 February 2016, 2016/2556 (RSP) “On the Human Rights Situation in Crimea, in particular of the Crimean Tatars”. Although there are among other things unsuccessful terms as “Tatar community” and “the Tatars” in that document nevertheless the part “H” points the deportation of “entire population of Crimean Tatars, an *indigenous people* of Crimea” and article 3 of part “H” indicates, that in accordance with the International Law “The Tatars, as an *indigenous people* of Crimea” have a right to support and to hold their own political, legal, economic, social and cultural institutions. The Resolution contains a claim to respect MCTP “as the legitimate representation of the Crimean Tatar *community*”. In Resolution 2016/2556 (RSP) European Parliament expresses its concern in the connection with the violation of property rights of Crimean Tatars with “intimidation and incarceration, and disrespect of their civic, political and cultural rights” by the occupying authorities of RF in Crimea<sup>73</sup>. The similar points appear at this period at the reports of International Human Rights organizations affiliated with EU, such as Minority Rights Group International<sup>74,75</sup>.

The next resolution of European Parliament devoted to Crimea of 12 May 2016 “Crimean Tatars” 2016/2692 (RSP) in its Preamble among relevant international standards directly refers to UN DRIP. This Resolution firstly devoted to the banning of Mejlis also is inconsistent in terminology. It says “Crimean Tatar *community*», the terms “*Tatars*” and “*Indigenous community* of Crimean Tatars”. This Resolution names Crimean Tatar People “minority”, and its language in p. 13 “Minority language”. Describing the deportation of Crimean Tatars Resolution 2016/2692 (RSP) uses the terms similar to Resolution 2016/2556 (RSP).

At the same time in Preamble of Resolution 2016/2692 (RSP) the term “Crimean Tatar people” is used twice and MCTP in p. 2 article “J” is defined as “legitimate and recognized representative body of the *indigenous people* of Crimea”. Crimea for this people in the Resolution is named “Historical Motherland” and p.9 uses the term “*indigenous Crimean Tatar people*”<sup>76</sup>. Many experts stress the meaning of these resolutions<sup>77,78</sup>.

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<sup>69</sup> <https://www.oscepa.org/documents/all-documents/annual-sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>

<sup>70</sup> <http://www.osce.org/ru/odihr/267866>

<sup>71</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

<sup>72</sup> <http://www.osce.org/ru/odihr/266981?download=true>

<sup>73</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2016-0173&format=XML&language=EN>

<sup>74</sup> <http://minorityrights.org/2014/03/13/crimean-tatars-become-target-of-ethnic-hatred-while-tension-is-rising-in-ukraine/>

<sup>75</sup> <http://minorityrights.org/wp-content/uploads/2016/07/MRG-SWM-2016.pdf>

<sup>76</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0218>

<sup>77</sup> [http://dspace.onua.edu.ua/bitstream/handle/11300/7868/Prykhodko\\_KD.pdf?sequence=5&isAllowed=y](http://dspace.onua.edu.ua/bitstream/handle/11300/7868/Prykhodko_KD.pdf?sequence=5&isAllowed=y)

<sup>78</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

## 2. UN Standards for Indigenous Peoples and National Practice of Ukraine

Until the beginning of Ukrainian-Russian conflict 2014 the aspects of the legal status of Indigenous Peoples, of coherent International Standards in this sphere were studied by the range of experts<sup>798081828384</sup>. Articles 11 and 92 of the Constitution of Ukraine, 1996 mentioned the rights of Indigenous Peoples, but a long time after there was no any special legislation in this issue. While analyzing the Recommendations of the Parliamentary Hearings “The Problems of the Legislative Regulation and Realization of the State Policy concerning the Ensuring of the Rights of Crimean Tatar People and National Minorities Deported and Voluntarily Coming Back to Ukraine” of 20 April 2000 № 1660-III<sup>85</sup>, the experts point, that this and other acts of the Ukrainian legislation till the March of 2014 did not recognized directly the Crimean Tatar People to be Indigenous one and that resumption was “reflected indirectly”<sup>86</sup>.

The publications of Ukrainian scientists of that period affirmed the “contradictories“ and ambiguities of the term of “Indigenous People”, made repeated attempts to include some National Minorities of Ukraine to the Indigenous Peoples. Referring to the norms of the Constitution of Ukraine it was interpreted that “there in Ukraine the existence of Indigenous Peoples is recognized, the using of the term of “Indigenous Peoples” in plural provides with that there are several Indigenous Peoples in Ukraine; that Indigenous Peoples differ as from the Ukrainian Nation so from the National Minorities; the regulation of the legal status of Indigenous Peoples goes at the context of the protection of their ethnic, cultural, linguistic and religious differences”<sup>87</sup>.

Wherein it was proposed to understand under Indigenous Peoples “peoples or their descendants, which in accordance with historical scientific sources appeared the first in the time among other Peoples populated the given geographical territory within the present borders of the state, seeking to preserve their religious, social, economic, cultural, linguistic and other differences, their own territory, which they did not conquered”<sup>88</sup>. The lack in Ukraine of the legislative ensuring and official interpretation of the constitutional provisions about Indigenous Peoples allowed to experts to affirm not only about the legal problem of the definition of the Indigenous Peoples and their rights, but about the same one in any public organizing activity in that sphere<sup>89</sup>.

Dr. Myroslava Antonovich mentions about guaranties of the ethnic, cultural, linguistic and religious identity of the Indigenous Peoples in article 11 of The Constitution of Ukraine, and points that “in this article the term “Indigenous Peoples” is introduced into the legislation of Ukraine on a very first time” and that “as a rule, this term indicates the category of National Minorities being an original ethnic group constructed historically and from everlasting lived on the territory of the state. The main difference of these Peoples from National Minorities, on the opinion of this author “is the presence of the special land property or usage rights at the regions where Indigenous Peoples reside”<sup>90</sup>

Dr. Bill Bowring proposed to recognize Crimean Tatar People to be the only Indigenous People of Ukraine. Dr. Tatiana Shapoval considered, that “in domestic conditions the Crimean Tatar People is the ethnic group corresponding to the criteria of article 1 of ILO Convention № 169, is” and that “some other groups (as Gagauzes, Krymchaks, Karays) may be regarded at the context of the term of

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<sup>79</sup> [http://irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE\\_FILE\\_DOWNLOAD=1&Image\\_file\\_name=PDF/SkhS\\_2013\\_4\\_18.pdf](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/SkhS_2013_4_18.pdf)

<sup>80</sup> [http://www.irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE\\_FILE\\_DOWNLOAD=1&Image\\_file\\_name=PDF/urykr\\_2010\\_2\\_9.pdf](http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/urykr_2010_2_9.pdf)

<sup>81</sup> <http://www.disslib.org/mizhnarodno-pravovyi-status-korinnykh-narodiv.html>

<sup>82</sup> [http://www.ypiend.gov.ua/?mid=11&action=monograph\\_detail&monograph\\_id=12](http://www.ypiend.gov.ua/?mid=11&action=monograph_detail&monograph_id=12)

<sup>83</sup> [http://www.ypiend.gov.ua/img/scholarly/file/nz\\_37\\_41.pdf](http://www.ypiend.gov.ua/img/scholarly/file/nz_37_41.pdf)

<sup>84</sup> [http://lib.nmu.org.ua/catalog/site/view.html?doc\\_id=683250](http://lib.nmu.org.ua/catalog/site/view.html?doc_id=683250)

<sup>85</sup> <http://zakon3.rada.gov.ua/laws/show/1660-14>

<sup>86</sup> [http://nbuv.gov.ua/UJRN/Ttpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Ttpdu_2016_1_15)

<sup>87</sup> <http://www.disslib.org/mizhnarodno-pravovyi-status-korinnykh-narodiv.html>

<sup>88</sup> <http://www.disslib.org/konstyutsiyni-harantiyi-zabezpechennja-prav-korinnykh-narodiv-i-natsionalnykh-menshyn.html>

<sup>89</sup> <http://dspace.nbuv.gov.ua/bitstream/handle/123456789/41771/30-Shapoval.pdf?sequence=1>

<sup>90</sup> [http://ekmair.ukma.edu.ua/bitstream/handle/123456789/2750/Antonovych\\_Spivvidnoshennia\\_poniat\\_narod\\_v\\_konteksti.pdf?sequence=1&isAllowed=y](http://ekmair.ukma.edu.ua/bitstream/handle/123456789/2750/Antonovych_Spivvidnoshennia_poniat_narod_v_konteksti.pdf?sequence=1&isAllowed=y)

Indigenous Peoples, but in order to recognize the relevant status for as a least unofficially their real self-definition as Indigenous Peoples and the restoration of their traditional social institutions is necessary<sup>91</sup>.

In 2004 experts pointed “there are no any acting international agreements ratified by Ukraine determining the status of Indigenous Peoples”. Then Ukraine could “accept only the general legal doctrine of the International Law used to discuss the problem of Indigenous Peoples and critically borrow certain features of the status of Indigenous Peoples from the constitutional law of selected countries”. The analyses of the scores of doctrinal definitions of the Indigenous Peoples allowed to the experts to insist of the accordance of “Crimean Tatars, Karays and Krymchaks to the most of those criteria” It was affirmed that “among the nationalities (ethnic groups) of Ukraine only Crimean Tatars, Karays and Krymchaks have the certain basis for the receiving of the Constitutional status of Indigenous Peoples of Ukraine and are able to use the collective rights of this legal institution for their ethnic preservation and development”<sup>92</sup>.

The range of the authors rather critically accepted the very idea to present the rights of indigenous Peoples to any ethnic groups of Ukraine<sup>93,94,95,96</sup>. Dr. Natalya Belitser in 2016 claimed, that “Indigenous Peoples are the particular, specific category of Minorities being both the “Peoples and Minorities at the same time”, and pointed that the specialty of the Rights of the Indigenous Peoples is reflected at UNDRIP and consists first of all in the recognition of collective character of these rights and in the recognition of the right of Indigenous People to self-determination”<sup>97</sup>.

Other Ukrainian researchers told that “today it is impossible to affirm about the creation of adequate mechanism of legal guarantees of the protection of the rights and freedoms of Indigenous Peoples of Ukraine” They claimed that “international institutions first of all ensure the protection of the rights and freedoms of the persons belonging to National Minorities, however, they do not exclude the opportunity to apply to this institutions for the protection of the representatives of the Indigenous Peoples too, so far as Human Rights are general as for the legal status of National Minorities so for he complex of the rights and freedoms of Indigenous Peoples”<sup>98</sup>.

The resulted ignorance or conscious ignoring of the international standards of the rights of Indigenous Peoples of the number of Ukrainian authors spread over the certain State bodies. The letter of the Commissioner of the President of Ukraine on the Crimean Tatar People Issues dated June 8, 2015 № 78/35-01 contained an original thesis, that “UN DRIP has the recommending character and does not establish judicial obligations, but only declares some expectations being an international document on its legal status.”

At the same time, after the occupation and annexation of Crimea by RF in 2014, the number of experts proposed to UN and OSCE to submit to Ukraine the assistances in the implementation of the mechanisms of UN DRIP, partly by the technical support for the elaboration the national legislation on Indigenous Peoples. These organizations could ensure of the observations by RF the standards of UN DRIP in occupied Crimea in relation on Crimean Tatars, Karays and Krymchaks and to monitor the relevant practice of Ukrainian and occupant Russian courts. The perspective of the UN DRIP application in the suits, claims and applications to the international Human Rights institutions about the encroachments to the rights of Indigenous Peoples of Ukraine is staying very important one<sup>99</sup>.

Only annexation of Crimea by RF in 2014 made the Ukrainian Parliament to pay some attention on the problem of Indigenous Peoples of Ukraine and on the relevant UN international standards. Among other things, it was reflected at the Declaration on the Guarantees of the Rights of Crimean Tatar People

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<sup>91</sup> <http://dspace.nbu.gov.ua/bitstream/handle/123456789/41771/30-Shapoval.pdf?sequence=1>

<sup>92</sup> <http://dspace.onua.edu.ua/handle/11300/1328>

<sup>93</sup> <http://periodicals.karazin.ua/apvvi/article/view/675>

<sup>94</sup> [http://irbis-nbu.gov.ua/cgi-bin/irbis\\_nbu/cgiirbis\\_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE\\_FILE\\_DOWNLOAD=1&Image\\_file\\_name=PDF/VKHisU\\_2011\\_939\\_14\\_19.pdf](http://irbis-nbu.gov.ua/cgi-bin/irbis_nbu/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/VKHisU_2011_939_14_19.pdf)

<sup>95</sup> [http://irbis-nbu.gov.ua/cgi-bin/irbis\\_nbu/cgiirbis\\_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE\\_FILE\\_DOWNLOAD=1&Image\\_file\\_name=PDF/Nchnpu\\_022\\_2014\\_14\\_4.pdf](http://irbis-nbu.gov.ua/cgi-bin/irbis_nbu/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Nchnpu_022_2014_14_4.pdf)

<sup>96</sup> <http://www.kbuapa.kharkov.ua/e-book/putp/2011-3/doc/2/04.pdf>

<sup>97</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

<sup>98</sup> <http://www.disslib.org/konstytutsiyini-harantiyi-zabezpechennja-prav-korinnykh-narodiv-i-natsionalnykh-menshyn.html>

<sup>99</sup> [http://e-notabene.ru/wl/article\\_12550.html](http://e-notabene.ru/wl/article_12550.html)

as Part of the Ukrainian State on March 20, 2014 №1140-VII. By this act, Ukrainian Parliament ordered to the Cabinet of Ministers (Government) of Ukraine to submit urgently the “drafts of the laws of Ukraine, legal and normative acts of Ukraine determining and fixing the status of Crimean Tatar People as the Indigenous People of Ukraine”. Additionally it was fixed that the development of the relevant laws and legal normative acts will be conducted by the consultations with MCTP, in close cooperation with UN, OSCE, Council of Europe, with agreement compliance with International Law and international standards ensuring the of Human Rights, rights of Indigenous Peoples and National Minorities”<sup>100</sup>.

However that instruction was not implemented in 2014-2017. We must point also on the Law of Ukraine on April 15, 2014 № 1207-VII “On Ensuring the Rights and Freedoms of the Citizens and Legal Regime on Temporary Occupied Territory of Ukraine”<sup>101</sup>. In its Preamble “the defense and full-fledged realization of national cultural, social and political rights of the citizens of Ukraine including the Indigenous Peoples and National Minorities” was established as a basis of the humanitarian, social and economic policy of the State towards of the population of the temporary occupied territory of Ukraine. This legal provision allowed to experts to point that Ukraine in such way “regarded the collective rights of Indigenous Peoples as a form of the realization of the rights of citizens of Ukraine”<sup>102103</sup>.

By the opinion of Ukrainian experts “that formulation allows to think, that the Rights of Indigenous Peoples of Ukraine are covered by the norms of the parts 1 and 3 of article 5, parts 1 and 2 of article 17 of this Law. In accordance with those norms Ukraine undertakes all necessary measures to ensure the rights and freedoms of human and citizen, established by the Constitution and laws of Ukraine, by international agreements, related to all citizens residing on the occupied territory. This law established that the responsibility for the violations of the rights provided with the Constitution and the Laws of Ukraine “on the territory occupied by RF is put down to RF as to the occupying state in accordance with the norms and principles of International Law”. Wherein UN DRIP “undoubtedly, may be regarded as a collection of the relevant norms of the International Law, which could be used by Ukraine to realize the demands of the Law № 1207-VII”<sup>104105</sup>.

The study on the prescriptions of the law of Ukraine of April 17, 2014 № 1223-VII “On Restoration of the Rights of the Persons, Deported by National Sign”<sup>106</sup> allows to conclude that this document does not contain the term “Indigenous Peoples” but mentions simultaneously “deported peoples” and “Crimean Tatar People” in its provisions. The experts point that the Law № 1223-VII has features of continuation the paternalist approach to the Crimean Tatar People’s problems, which prevailed in Ukraine as in a social State since 1990<sup>107</sup>. And the Law of Ukraine “On the Ensuring the Rights and Freedoms of Internally Displaced Persons”<sup>108</sup> on October 20, 2014 № 1706-VII in general does not provide any additional guarantees for displaced persons from AR of Crimea belonging to Indigenous Peoples despite the international standards on dealing with internally displaced persons mention the duty to take into account the characteristics of Indigenous Peoples, who had a special relation to their lands”<sup>109</sup>.

The experts mark the role of the Decree of President of Ukraine “On the Day of the Struggle for the Rights of Crimean Tatar People” issued before the 70<sup>th</sup> anniversary of the Deportation of Crimean Tatars<sup>110</sup>. This act stated, that 70 years after the deportation organized by totalitarian regime of USSR, Crimean Tatar People faces with the discrimination at the native land. So “aiming to support the struggle of the citizens of Ukraine – Crimean Tatars at the realization of their rights as the representatives of the

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<sup>100</sup> <http://zakon2.rada.gov.ua/laws/show/1140-18>

<sup>101</sup> <http://zakon2.rada.gov.ua/laws/show/1207-18>

<sup>102</sup> <https://books.google.com.ua/books?isbn=6176840880>

<sup>103</sup> [http://nbuv.gov.ua/UJRN/Ttpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Ttpdu_2016_1_15)

<sup>104</sup> [http://nbuv.gov.ua/UJRN/Ttpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Ttpdu_2016_1_15)

<sup>105</sup> <https://books.google.com.ua/books?isbn=6176840880>

<sup>106</sup> <http://zakon2.rada.gov.ua/laws/show/1223-18>

<sup>107</sup> <https://books.google.com.ua/books?isbn=6176840880>

<sup>108</sup> <http://zakon2.rada.gov.ua/laws/show/1706-18>

<sup>109</sup> [http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4\\_framework.pdf](http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4_framework.pdf)

<sup>110</sup> <http://zakon2.rada.gov.ua/laws/show/472/2014>

Indigenous People,” 18 May was declared in Decree as the Day of the Struggle for the Rights of Indigenous People”<sup>111</sup>.

It should be pointed on the limited experience of the legislative work in relation of the status of Indigenous Peoples, which Ukraine had before 2014. As some authors believe, already at 1991-1992 some drafts of Laws in relation to the Crimean Tatars were prepared, but by various reasons they were not submitted to the consideration of the Ukrainian Parliament<sup>112</sup>. As researchers pointed in 2016, the drafts about the special status of Indigenous Peoples of Ukraine i.e. Crimean Tatars, Karays, Krymchaks were however elaborated already during 20 years, but no one version of those drafts did not reach the official Parliamentary discussion and voting by different reasons mostly for political manipulative ones”<sup>113</sup>.

While analyzing the drafts of the laws proposed in Ukraine by the ethnic representative institutions, by individual specialists and MPs of Ukraine to ensure the rights of the Indigenous Peoples in 1991-2003, it is possible to mark their common disadvantages. This is a low level of legal technique, the presence of provisions contradicting the Constitution of Ukraine, confusion of the problems of ensuring the rights of the deported population and Indigenous Peoples, designation of the Crimean Tatar ethnos as a single Indigenous People of Ukraine<sup>114</sup>.

It is possible to cite a single draft, registered in the parliament in 2014 on the issues of Indigenous Peoples i.e. “On the Status of Crimean Tatar People” № 4098 on September 3, 2003, registered by the group of MPs of Ukraine including the representatives of MCTP Mr. Mustafa Djemilev and Mr. Refat Chubarov. That draft in article 1 fixed the orientation “to the integration of the Crimean Tatar People into Ukrainian society and to the preservation and development of the own ethnic identity of the Crimean Tatar People”. Draft defined the “legal status of Crimean Tatar People as an Indigenous People of Ukraine” and stated, that “Crimean Tatar People is an organic part of the Ukrainian People”, it “is a special category of ethnic communities living on the territory of Ukraine”, the draft № 4098 had not any mentioning about International Standards of the Rights of Indigenous Peoples”<sup>115</sup>.

The researches indicate the unsuccessful attempts to adopt in March 2014 the Law of Ukraine on the status of Indigenous Peoples. They point the relevant drafts of laws “On Restoration of the Rights of Indigenous People of Ukraine, Forcibly Displaced from the Territory of Crimea” № 4434 of March 13, 2014<sup>116</sup> and “On the Rights of Indigenous Peoples of Ukraine” № 4501 on March 20, 2014<sup>117</sup>. The draft № 4434 was made by analogy of a number of law projects in particular Governmental ones, which were proposed earlier in order to solve the problems of ethnic groups deported from Crimea (the National Minorities among them). In the draft № 4434 the category “deportees” was simply re-placed by term “Indigenous Peoples”. The most of its norms did not regulate the status of Indigenous Peoples but established a competence of public authorities to on the organization of their return back and resettlement. The draft № 4434 touched only the rights of Crimean Tatar People<sup>118</sup>.

The draft № 4501, by the experts’ opinion, was more perfect and of high quality, it put forward a goal to determine the Rights of Indigenous Peoples of Ukraine and peculiarities of their realization”. That document practically was the project of the direct “implementation of the norms of UN DRIP; it retranslated the list of the rights of Indigenous Peoples, established by this Declaration”<sup>119</sup>. The draft № 4434 defined the Indigenous People as a “People living at multiethnic societies of the independent States and being the descendant of those, who settled this country or its geographical area, since immemorial time, in the period of conquest or colonization or during the establishment of existing state borders”. This draft contained the special category of “Indigenous People of Ukraine forcible displaced from the territory of Crimea”<sup>120</sup>.

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<sup>111</sup> <http://argumentua.com/novosti/tekst-vystupleniya-mustafy-dzhemileva-v-sovbeze-oon-kotorym-zhutko-razozlil-rossiyan>

<sup>112</sup> <http://periodicals.karazin.ua/apvvi/article/view/675>

<sup>113</sup> [http://nbuv.gov.ua/UJRN/Ttpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Ttpdu_2016_1_15)

<sup>114</sup> <http://dspace.onua.edu.ua/handle/11300/1328>

<sup>115</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=15737](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=15737)

<sup>116</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50220](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50220)

<sup>117</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50327](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50327)

<sup>118</sup> <https://books.google.com.ua/books?isbn=6176840880>

<sup>119</sup> [http://nbuv.gov.ua/UJRN/Ttpdu\\_2016\\_1\\_15](http://nbuv.gov.ua/UJRN/Ttpdu_2016_1_15)

<sup>120</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50220](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50220)

The draft № 4501 proposed to consider Crimean Tatars, Karays and Krymchaks as Indigenous Peoples of Ukraine “compactly living on the territory of AR of Crimea, inherent part of Ukraine”. This definition in fact was borrowed by the authors from the Governmental Draft of the State Ethno-National Policy of Ukraine that has developed for many years and was not adopted yet. Those issues raised a number of comments because the ethnogenesis is too much complicate process in order to close it with the lines of the state borders. It should be taken into account that the tradition area of the residence of Crimean Tatars, with except of AR of Crimea, is the Sevastopol City (as well as for Karays) also as the number of districts of Kherson and Zaporizhzhya regions (oblasts)<sup>121</sup>.

In accordance with article 2 of the draft № 4501 the Indigenous Peoples of Ukraine were guaranteed “the Right for complete realization, collectively or individually, of all the Human Rights and Fundamental Freedoms, recognized at the Charter of UN, at the Universal Declaration of Human Rights and in other acts of International Law related to Human Rights and contained at the Treaties, agreed by Verkhovna Rada of Ukraine as well as of all ones, established by the Constitution and by the laws of Ukraine”,<sup>122</sup> without separate mentioning of the standards established by UN DRIP.

Later, since the beginning of 2015, the Department of Ensuring the Activities of the Commissioner of President of Ukraine on Issues of the Crimean Tatar People, led by Mr. Arsen Zhumadilov started to initiate the preparation of the draft of law about the Indigenous Peoples. The members of MCTP, the activists of the National Movement and the number of invitees experts continued to work with this issue<sup>123</sup>. In a short time on the initiative of Mr. Arsen Zhumadilov that work was divided into two drafts – on the Indigenous Peoples in common and on the status of Crimean Tatar People separately<sup>124</sup>.

These drafts prepared under aegis of Commissioner, were discussed at the Round Table on June 11, 2015 at the Institute of the Legislation of Verkhovna Rada of Ukraine devoted to the International Standards of the Protection and Defense of the Rights of the Indigenous Peoples, to the problems of their implementation into the domestic Ukrainian legislation, to the relevant legislative work and the foreign experience.

The Vice-Chair of UN FPII Mr. Oliver Loode was present at this meeting and analyzed in detail two related drafts of the laws of Ukraine on the rights of Indigenous Peoples prepared under aegis of Commissioner (“On Non-Numerous Indigenous Peoples of Ukraine” and “On the Status of Crimean Tatar People”). Mr. Oliver Loode pointed that classification for “Indigenous Peoples” and “Non-Numerous Indigenous Peoples” suggested at those acts, does not correspond to the international standards as all the Indigenous Peoples despite of their number are equal with all other Peoples and have a right to be free of any discrimination at the realization of their rights”<sup>125</sup>.

The recommendations of the Round Table stated the need to finalize the elaboration of the draft of the law “On the Indigenous Peoples of Ukraine” by the Working Group established under aegis the Commissioner of the President of Ukraine on the Issues of Crimean Tatar People on the basis of the maximal implementation of the demands of UN DRIP, on observation of the Constitution of Ukraine and maximal public and experts involvement at the conditions of Free, Prior Consent with the main provisions of the project from the Representative Bodies and leading Public Organizations of the Indigenous Peoples of Ukraine.

The Recommendations of The Round Table proposed to cover in the common legal draft all the Indigenous Peoples of Ukraine mentioned according the UN criteria (Crimean Tatars, Karays and Krymchaks) with the taking into account the practical needs of the ethnic groups indicated, including under the conditions of the temporary occupation of their historic homeland and the presence of a significant part of them in the legal regime of internally displaced persons as well as to translate it to the State language and to publish officially in Ukraine the UN DRIP<sup>126</sup>.

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<sup>121</sup> <http://www.studfiles.ru/preview/2414605/>

<sup>122</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50327](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50327)

<sup>123</sup> <http://qha.com.ua/ru/politika/status-quo-status-krimskih-tatar-kak-korennogo-naroda/160395/>

<sup>124</sup> [https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv\\_-Brehnya\\_-vidverta-brehnya-ta-politika-11126](https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv_-Brehnya_-vidverta-brehnya-ta-politika-11126)

<sup>125</sup> <http://instzak.rada.gov.ua/instzak/doccatalog/document;jsessionid=D0FC3C907136CF56B124F8FFFDB88CC7?id=83991>.

<sup>126</sup> <http://instzak.rada.gov.ua/instzak/doccatalog/document;jsessionid=D0FC3C907136CF56B124F8FFFDB88CC7?id=83991>.

Afterwards, by the initiative of Ministry of Justice of Ukraine, UN DRIP had been translated and published in October 2015 in Ukrainian and Crimean Tatar languages in the official Parliament bulletin “The Voice of Ukraine” (“Голос України”). The references on that publication were placed at the official Ukrainian Parliament’s web site and at the coherent link of the UN web site also<sup>127</sup>.

In 2015-2016 some members MCTP together with a group of non-governmental organizations and experts prepared after indicated events their own variant of the draft of Ukrainian law determining the legal status of the Indigenous Peoples. That process caused the draft of law elaboration on the basis of the recommendations and conclusions of the experts of UN and Ministry of Justice of Ukraine<sup>128</sup>.

This elaborated Draft “On the Indigenous Peoples of Ukraine” was proposed at the 9<sup>th</sup> session of Expert Mechanism on the Rights of Indigenous Peoples at July 2016 as by the representatives of FRSIPC so of MCTP members<sup>129</sup>. The basis of this text grounded on the FRSIPC’s work during 2007-2013, this draft, with the assistance of Crimean Tatar Resource Centre, got an evaluation and constructive comments from the number of the specialists, such comments were taken into account. Among others this draft based on the suggestions of the UN FP/II representatives and it was provided to the Community of Indigenous Peoples of the World, to the independent experts and to the representatives of the states in July 2016. Later this text was being discussed also during OSCE Human Dimension Implementation Meeting in September, 2016.<sup>130</sup>

This draft, elaborated by the representatives of MCTP and FRSIPC, has references not only to the UN DRIP, but rather consequently implemented its prescripts. The Draft proposes to categorize the Indigenous Peoples of Ukraine into the “Deported Indigenous People” (Crimean Tatar one) and “Indigenous Peoples under the Threat of Disappearance” (Karay and Krymchak ones). In accordance with this draft, the recognition of other ethnic groups as the Indigenous People may be realized by the adoption of the relevant Parliament Declaration and by its further official communication by Ukrainian authorities to the coherent UN bodies dealing with Indigenous Issues. This Draft in detail regimented the aspects of the interconnection of the Rights of Indigenous Peoples and the Human Rights, of Indigenous’ legal personality and institutionalization, of the Indigenous Peoples’ rights to exist, to identity, to sustainable development as well as cultural, educational, linguistic, informational rights of the Indigenous Peoples of Ukraine and of the coherent individual rights of persons belonging to them<sup>131</sup>.

Also it must be mentioned, that point 10 of article 112 of the Action Plan for Realization the National Strategy of Human Rights till 2020, approved by the Prescript of Cabinet of Ministers of Ukraine № 1393-p on November 23, 2015, appointed the Ministry of Culture of Ukraine, together with international experts and public organizations (that agreed to), as the responsible ones for the elaboration and providing to the consideration of the Cabinet of Ministers the draft of law, relating to the legislative settlement of the status of the Indigenous Peoples; that was expected to be done until the Fourth quarter of 2016<sup>132</sup>.

So FRSIPC and Crimean Tatar Resource Center, other non-governmental organizations, executing this provision of Action Plan, proposed the abovementioned draft of the law “On Indigenous Peoples of Ukraine” in August 2016 to Ministry of Culture for the acquaintance and as a basis for the following legislative work. The Ministry of Culture of Ukraine completely ignored this draft and coherent proposals for the future cooperation with FRSIPC and Crimean Tatar Resource Center.

For that moment this Ministry tried to work out its own draft of the Law of Ukraine “On the Support of Identity of Karay and Krymchak Peoples in Ukraine”, which was published at the Ministry’s official website for the public discussion on December 1, 2015. The analyses of this draft shows its incompatibility as to the Parliament Declaration of March 20, 2014, so to the proposals of UN PF/II Vice-Chair Mr. Oliver Loode and to the coherent norms of UN DRIP. It is enough to say that this draft guaranteed only three rights to Karay and Krymchak Peoples: to preserve their linguistic identity, their religious identity and to establish own self-government institutions. Experts distinguished this draft as one with the extremely low level of judicial techniques and with numerous errors<sup>133</sup>.

<sup>127</sup> <http://www.golos.com.ua/rus/article/260484>

<sup>128</sup> <http://qha.com.ua/ru/politika/status-quo-status-krimskih-tatar-kak-korennogo-naroda/160395/>

<sup>129</sup> <http://kntu.net.ua/index.php/ukr/content/view/full/35732>

<sup>130</sup> <http://www.osce.org/ru/odihr/266981?download=true>

<sup>131</sup> <http://kntu.net.ua/index.php/ukr/content/view/full/35732>

<sup>132</sup> <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>

<sup>133</sup> [http://mincult.kmu.gov.ua/control/publish/article?art\\_id=245026010](http://mincult.kmu.gov.ua/control/publish/article?art_id=245026010)

Further Ministry of Culture of Ukraine went ahead as a partner of the Working Group led by Mr. Arsen Zhumadilov. Under its aegis two seminars were conducted: on September 30, 2016 (“The Legislative Ensuring of the Rights of Indigenous Peoples of Ukraine”) and on April 5-6, 2017 (“Indigenous Peoples: Political Representation and Settlements of Disputes”). Wherein the leading Ukrainian experts and Indigenous Peoples’ representatives were not invited for the participation to the both of the seminars. Their organizers invited some European experts, who took part at the seminar 5-6 April, but those experts were not the experts at the field of the Indigenous Peoples’ rights of as well as the Indigenous representatives as themselves.

Such position of the Ministry of Culture of Ukraine became the subject of the sharp critics already at the Hearings at Parliament Committee on the Human Rights, National Minorities and Indigenous Peoples on March 22, 2017. These Parliamentary Hearings were devoted to the “situation with the realization of the National Strategy of Human Rights on the ensuring and protection of the rights of Indigenous Peoples and National Minorities of Ukraine and on the legislative initiatives for the establishment of the effective measure of that protection”. In particular its participants said that Ministry of Culture has become failure to elaborate own draft of Law, and it even did not explored the draft, elaborated by FRSIPC and Crimean Tatar Resource Centre<sup>134</sup>.

In addition, it should be pointed on results of the Parliamentary Hearings “The Strategy of the Reintegration of the Temporary Occupied Territory of AR of Crimea and Sevastopol City into Ukraine: Problematic Issues, Ways, Methods and Means”. Hearings’ recommendations were confirmed by the Parliamentary Decision № 1602-VIII 22 September 22, 2016. Decision proposed to the President of Ukraine to elaborate the legal drafts relating to the possible changes on the Constitution and Laws of Ukraine for the issues of the recognition of Crimean Tatars, Karays, Krymchaks as Indigenous Peoples of Ukraine and also for changing the status of AR of Crimea into Crimean Tatar Autonomous Republic.

Analyzing those provisions experts demonstrate more pragmatic opportunity to regulate the status of the Indigenous Peoples of Ukraine without amendments to the Constitution, just through an adoption the organic (regular) law on Indigenous Peoples<sup>135</sup>.

Later, on April 7, 2017 the group of Ukrainian MPs (including Mr. Mustafa Djemilev and Mr. Refat Chubarov) registered in the Parliament the Draft of the Law “On the Status of Crimean Tatar People in Ukraine” № 6315. This draft was elaborated by the group of the officials of the Department on the Religious Issues and Nationalities of Ministry of Culture of Ukraine also as a group of experts under aegis of abovementioned Mr. Arsen Zhumadilov (Dr. Natalia Belitzer, Mrs. Yulia Tyshchenko etc.). This draft mentions on the UN DRIP in its Preamble; its authors suggest “to be guided” by the DRIP norms, as well as “to take into account” the provisions of ILO Convention № 169. However practically this draft is devoted not to the complex of the pointed Indigenous People’s Rights, but to the aspects of its representative bodies’ activity, first of MCTP statute. Also it introduces the ethnic contingents for Crimean Tatar People at the elections to the Ukrainian Parliament, to the legislature of AR of Crimea and to the local councils.

The draft № 6315 defines “the Indigenous Crimean Tatar People” as “a holistic ethnos, that was formed on the territory of the Crimean peninsula, that preserved and tries to transmit the collective ethnic-cultural identity to the next generations, that is the holder of the distinctive language and culture, that has its traditional social, cultural and political institutions, that established the developed system of own self-government bodies, that is self-aware as an Indigenous People of Ukraine and that has no its own state or the kin-state outside of Ukraine”<sup>136</sup>.

This draft said nothing about the status of Crimean Karays and Krymchaks and also about the majority of the Indigenous Peoples’ Rights, guaranteed by UN DRIP. In particular there is nothing in draft about such rights of Indigenous People as: to the citizenship, to self-definition of its identity, to the restitution of the material values of the People’s culture, to the special status of the sites of the religious or cultural meaning, to the establishing of its own systems of the education and control over them, for own mass-media on Indigenous languages, to the elaboration of the national strategies of the development and to participation at the elaborating and realization the relevant State programs, to the participation for the protection of the environment and fertilities of the soils, to the consultations on the

<sup>134</sup> [http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art\\_id=57642&cat\\_id=46332](http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art_id=57642&cat_id=46332)

<sup>135</sup> [http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)

<sup>136</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61537)



military activity on their lands, to the international technical assistance. That one and number of other technical limitations turned this draft to the subject of sharp criticism<sup>137138</sup>.

It should be indicated that Russian authorities put into agenda in occupied Crimea the status of Karay and Krymchak Peoples as Indigenous Peoples too. So the “Decision” of Crimean “legislature”, being under occupants’ control (“The State Council of the Republic of Crimea”) № 2254-6/14 on June 25, 2014 submitted the formal nomination to the Government of RF about inclusion the Crimean Karays and Krymchaks into the Unified List of Indigenous Non-Numerous Peoples of RF “as a non-numerous Indigenous Peoples...historically formed exactly at this territory and having complicated and multilayered ethnogenesis, own ethnic identity, cultural identity and religious independence”<sup>139</sup>. Obviously the Russian authorities in occupied Crimea did not wait any problems from these ethnic groups, being under the real threat of total disappearance; probably Russian authorities expected to use their status as a propagandistic counterweight in conditions of gradual restriction of the Crimean Tatars’ rights in the occupied Crimea. However, the Russian Government did not adopt its final official decision on the legal statute of Karays and Krymchaks in RF yet.

At the same time, exactly this pro-activism of Russian authorities in Crimea stimulated the registration of the Draft of the Decision On the Declaration of Verkhovna Rada of Ukraine about the Preservation of the Identity and Cultural Heritage of Crimean Karays and Krymchaks № 2680 by in Ukrainian Parliament on April 20, 2015. This Draft remained by its structure and content the abovementioned Parliamentary Declaration on Crimean Tatar People № 1140-VII on March 20, 2014. This draft contained the recognition of “Crimean Karaites (Karays) and Krymchaks as Indigenous Non-Numerous Peoples of Ukraine, whose historical Motherland is Crimean peninsula” mentioning the relevant standards of UN DRIP<sup>140</sup>.

The non-adoption of this Decision by the Parliament at June 17, 2015 was caused by the low presence of MPs in Parliament that day; this delay led to the campaign for support that legal draft, arranged by FRSIPC and some Karay NGOs registered on Ukrainian mainland. Due to this campaign, a group of MPs have registered the very analogical draft of the Decision of Verkhovna Rada of Ukraine № 4827 on June 16, 2016; this draft received the support of the profile Parliamentarian Committee on the Issues of Culture and Spirituality<sup>141</sup>.

Also the official celebration of the World Day of Indigenous Peoples of 9 August 2016 in Kyiv should be marked; it was arranged by Ministry of Informational Policy of Ukraine together with the representatives of UN FPPII, MCTP, Crimean Tatar and Karay non-governmental organizations and experts. During celebration the informational campaign “Three Peoples – One Root” and Round Table “Indigenous Peoples of Ukraine: History, Present and Perspectives”<sup>142</sup> were held in Kyiv, Ukraine.

The special attention needs to be required for taking into account some attempts of the Ukrainian legal enforcement bodies to execute the international standards of the Indigenous Peoples’ rights in particular at the context of the legal evaluation of the Soviet deportation of Crimean Tatar People. Even before the occupation of AR of Crimea in 2014 the Investigation Department of the Security Service of Ukraine in AR of Crimea a certain period carried out “the criminal verification of facts of the forced displacement of the Crimean Tatars and other peoples in 1944”<sup>143</sup>. This criminal procedure had been stopped at 2012, and after the occupation of Crimea by Russia those materials were not brought out of Crimea by Ukrainian officers. They seem to stay under the control of special state services of the Russian Federation, but in 2016 Russian authorities in Crimea claimed that they preserve no materials on this issue in Crimea allegedly.

By the Decision of the Parliament of Ukraine № 792-VIII on November 12, 2015 the criminal act of the Soviet deportation of Crimean Tatar People from Crimea was qualified as the genocide. Afterwards the Investigation Department of the Prosecutor’s Office of AR of Crimea (placed in Kyiv)

<sup>137</sup> [https://www.izbirkom.org.ua/publications/Zaschita-grajdanskikh-prav-12/2017/Pitannya-statusu-natsionalnoi-avtonomii-ta-korinnih-narodiv-ne-mae-buti-predmetom-politichnih-spekulyatsiy\\_---odeskiy-profesor-5957](https://www.izbirkom.org.ua/publications/Zaschita-grajdanskikh-prav-12/2017/Pitannya-statusu-natsionalnoi-avtonomii-ta-korinnih-narodiv-ne-mae-buti-predmetom-politichnih-spekulyatsiy_---odeskiy-profesor-5957)

<sup>138</sup> [https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv\\_-Brehnya\\_-vidverta-brehnya-ta-politika-11126](https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv_-Brehnya_-vidverta-brehnya-ta-politika-11126)

<sup>139</sup> <http://crimea.gov.ru/act/12315>

<sup>140</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?id=&pf3516=2680&skl=9](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=2680&skl=9)

<sup>141</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59430](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59430)

<sup>142</sup> <http://mip.gov.ua/news/1373.html>

<sup>143</sup> [http://eppd13.cz/wp-content/uploads/2016/2016-3-3/eppd\\_2016\\_3\\_3.pdf](http://eppd13.cz/wp-content/uploads/2016/2016-3-3/eppd_2016_3_3.pdf)

started the pre-trial investigation on the criminal proceeding on the crime of genocide of Crimean Tatar People arranged by the way of the organization of its forcible displacement and holding out of the historical Motherland; this proceeding was included Unified Register of pre-trial investigations December 9, 2015 № 2201500000000401.

At the frame of this investigation the Prosecutor's Office of AR of Crimea closely collaborated with Crimean Tatar Resource Center due to what the judicial interrogations of representatives of the Indigenous People directly deported in 1944 were organized in Ukrainian local courts on the mainland of Ukraine.

In addition to investigating of the deportation of the Crimean Tatar People, Ukrainian legal enforcement agencies, such as the Prosecutor's office of AR of Crimea (Kyiv) and Main Directorate of the National Police in AR of Crimea and Sevastopol (Odessa) since 2015 are conducting the number of the criminal investigations of the murders, kidnappings, unjust convictions and unlawful detentions, discrimination of the representatives of the Crimean Tatar People in the illegally occupied and annexed Crimea.

Simultaneously with these events, on February 15, 2016 Russian "Prosecutor's Office of Republic of Crimea" acting in the annexed Crimea made a "Declaration on Ban the activities of the Civil Organization in Order and on Principles Provided with Article 9 of Federal Law "On Counteraction against the Extremist Activity" № 114-ФЗ on July 25, 2002/ this act covered the MCTP and was transferred to the Russian "Supreme Court of Republic of Crimea" (Simferopol). In objections to such "administrative claim" banning the MCTP, MCTP's defense referred to the norms of the articles 1, 2, 4, 5 of the ILO Convention № 169, 1989 and to the articles 5, 18, 20, part 2 of article 33, part 1 of article 37 of UN DRIP. Defense of the MCTP pointed that those provisions contain the guarantees of the MCTP's activities as a representative body of an Indigenous People based on the personal membership and elected by Crimean Tatar People through Kurultay (National Congress) of Crimean Tatar People but not elected by the members of MCTP themselves as it may be in civil organization (association) in the understanding of the legislation of the Russian Federation<sup>144</sup>.

Also the MCTP's defense presented the fact of voting in UN by officials of RF for support of UN GA Resolution 69/2, 2014 (as a form of recognizing the UN DRIP demands). MCTP's defense pointed on the international character of the activity of MCTP. Also the MCTP's defense pointed on the Decision of Verkhovna Rada of the AR of Crimea № 1728-6/14 on March 11, 2014 confirmed in conditions of occupation, under war control of RF. This act established that approving the "new Constitution of the Republic of Crimea" will be in the frame of "guarantees of the restoration of the rights of the Crimean Tatar People and its integration into the Crimean community" and of "recognition of the bodies of National Self-Government – Kurultay (National Congress) of Crimean Tatar People and bodies formed by him" i.e. of recognition by "new authorities" the MCTP.

Afterwards by the Decision of the Russian "Supreme Court of Republic of Crimea" on April 26, 2016 the MCTP was recognized as the "extremist organization" and its activity was banned. The arguments of the MCTP's defense even were not considered by this "court". Together with MCTP this ban was factually spread over the activity of Kurultay of Crimean Tatar People, of its Revising Commission and of its Central Electoral Commission, of the regional and local Mejlises of Crimean Tatars. The Defense of MCTP appealed against the decision of this Russian "court" in Crimea to the Supreme Court of RF. Russian state bodies in occupied Crimea send the objections against the position of the MCTP's defense to the Supreme Court of RF (the positions of "State Committee on Issues of Inter-Ethnic Relations and Deported Citizens of Republic of Crimea" and "Prosecutor's Office of Republic of Crimea") but without real arguments against position of MCTP's Defense.

In particular those documents presented to the Supreme Court by "Prosecutor's Office" and "State Committee" did not contain objections against the fact relevance of the Crimean Tatar People to the statute of Indigenous People in the international legal sense and to coherent rights recognized by the international community. Objections of the "State Committee" stated that in 2016 more than 30 civil organizations (associations) acted in the "Republic of Crimea" in defense of the rights and interests of the Crimean Tatar People, "which has a *constructive position of the collaboration* with the state bodies" By that way the "State Committee" admitted factually the real reason of the MCTP banning, that was its

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<sup>144</sup> <http://15minut.org/article/dokumenty-na-osnovanii-kotoryh-vlasti-rf-zapreshhayut-deyatelnost-medzhilisa-foto-2016-02-15-19-18-31>

“unconstructive” position in relations with the power bodies of RF in illegally occupied and annexed Crimea<sup>145</sup>.

In this context it is necessary to present the experts opinion, that UN DRIP, “independently of what position Russia had in the moment of UN GA voting, become the collection of generally recognized principles of the International Law and so DRIP, in full compliance with Russian Constitution is being the part of its legal system; it may be said that UN DRIP is one of the legal acts of RF”. For it the fact of the official voting support the Resolution of UN GA 69/2, 2014 by RF was determined as extremely important one, as this UN GA voting approved of the Outcome Document of the World Conference on Indigenous Peoples; this key act among other things contains the clear confirmation of the support the UN DRIP by voting States<sup>146</sup>.

The Supreme Court of RF at September 29, 2016 rejected the objections of MCTP’s defense appellation, factually ignoring the majority of the defense arguments and supporting the ban of MCTP. However, in this case the Supreme Court issuing the own Appellate determination on September 29, 2016, analyzed the norms of UN DRIP as the unconditionally applicable act. In particular, The Supreme Court of RF analyzed (rather tendentiously) the articles 18, 19, 46 of UN DRIP and even referred to the certain points of the Reports of the UN Special Rapporteur on the Rights of Indigenous Peoples A/HKC/12/34, 2009 and A/66/228, 2011.

This ban of the MCTP caused the number of lawsuits to European Court on Human Rights concerning the banning of MCTP. Those applications were given as from MCTP itself so from its several members and from some local and regional Mejlises, from some their members, also as from the functionaries of Revising Commission and of the Central Electoral Commission of Kurultay of Crimean Tatar People.

## Conclusions

The representatives of the Indigenous Peoples of Ukraine took an active part at UN mechanisms for the elaboration the universal standards for the Indigenous Peoples’ Rights as minimum since 1994. The agreement of the Government of Ukraine for the participation of MCTP at the UN Working Group on the Draft of the Declaration of the Rights of Indigenous Peoples in a capacity of the organization of the Indigenous People, presented to UN at 1995 means the de-facto recognition at that period both by Ukraine and by UN bodies the Crimean Tatars as the Indigenous People. The agreement of UN for the participation of the representatives (organizations) of Karay (Karaites) and Krymchak Peoples at the UN mechanisms on the issues of Indigenous Peoples means the recognition of these peoples as Indigenous Peoples by UN bodies de-facto, too.

The de-jure recognition of Crimean Tatar People as the Indigenous People was made by Ukraine as State in 2014 simultaneously with the recognition of UN DRIP after the beginning of Russian aggression and occupation of Crimea. The intensive attention of UN agencies, OSCE, Council of Europe and European Union to the Human Rights violations in occupied Crimea during the modern Ukrainian-Russian interstate conflict led to the multiple mentioning of Crimean Tatar’s problematic in the international documents. At the same time, the recognition of Crimean Tatars as the Indigenous People at these international documents is rather inconsistently; they do not watch separately the observation of the collective and individual Indigenous Peoples’ rights of in accordance with the demands of UN DRIP by the parties of the conflict.

The legislation of Ukraine avoided of the regulation the status of Indigenous Peoples until 2014, despite the introduction of this term by Constitution in 1996. The constructive analyses of the international standards of the Indigenous Peoples’ Rights was absent at the Ukrainian national legal doctrine – as before the adoption of UN DRIP so afterwards. The recognition of Crimean Tatar People as an Indigenous People by Ukraine and confirmation the legal significance of UN DRIP by Ukraine in 2014 did not lead to the adaptation of the appropriate legislation and to the implementation of the norms of UN DRIP till the July, 2017. The corresponding lawmaking remains unsystematic and inconsistent, the drafts of legal act in common are elaborated without consecution to the principle of prior, informed

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<sup>145</sup> <http://15minut.org/article/dokumenty-na-osnovanii-kotoryh-vlasti-rf-zapreshhayut-deyatelnost-medzhlisa-foto-2016-02-15-19-18-31>

<sup>146</sup> <http://goloskrimanew.ru/nadir-bekirov-deklaratsiya-oon-o-pravah-korennyih-narodov-poleznyiy-instrument-v-reshenii-problem-kryimskih-tatar.html>

and free consent. Ukraine did not finalize the procedure of the official recognition of the Crimean Karays (Karaites) and Krymchaks as Indigenous Peoples de-jure. Since 2015, legal enforcement agencies of Ukraine investigate the crime of genocide (deportation) of Crimean Tatar People in Soviet period and the number of other crimes against Crimean Tatars in occupied Crimea.

The ban of MCTP as “the extremist civil association” by the Russian authorities started the number of lawsuits from Crimean Tatars to various international instances in 2016 and caused the mentioning of the Crimean Tatar’s problematic at the ICJ Order of Interim Measures (Ukraine v. Russian Federation) in April, 2017. At the same time in that process the Supreme Court of RF de-facto recognized Crimean Tatars as an Indigenous People in international legal meaning and spread the UN DRIP and other UN standards over Crimean Tatars.