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- HUMAN SECURITY IMPLICATIONS
- MINSK AGREEMENTS IMPLEMENTATION
- CRIMEAN TATARS, AND ETC



## Human Security

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# TABLE OF CONTENTS

<b>WE SHOULD SPEAK ABOUT THE LIBERATION OF THE CRIMEA</b> .....	<b>3</b>
<i>Interview with Member of Parliament of Ukraine Mustafa Dzhemilev for UA: Ukraine Analytica</i>	
<b>MINSK AGREEMENTS IMPLEMENTATION: ART OF IMPOSSIBLE</b> .....	<b>7</b>
<i>Hanna Shelest and Dmytro Shulga</i>	
<b>HUMANITARIAN CRISIS IN UKRAINE AS A FACTOR DESTABILIZING DOMESTIC AND FOREIGN POLICY OF THE STATE</b> .....	<b>23</b>
<i>Iuliia Tsyrfa</i>	
<b>GUIDELINES FOR MANAGING THE CONFLICT IN DONBAS</b> .....	<b>30</b>
<i>Mykola Kapitonenko</i>	
<b>THE ENVIRONMENTAL IMPACT OF MILITARY ACTIONS IN EASTERN UKRAINE AND THE ANNEXATION OF THE CRIMEA</b> .....	<b>38</b>
<i>Svitlana Andrushchenko</i>	
<b>CRIMEA TODAY: TRENDS AND DEVELOPMENTS</b> .....	<b>47</b>
<i>Natalya Belitser</i>	
<b>HUMAN RIGHTS MONITORING IN CRIMEA: MISSION IMPOSSIBLE?</b> .....	<b>56</b>
<i>Kira Spyrydonova</i>	
<b>ELECTORAL SECURITY AS AN ELEMENT OF PEACE-BUILDING AND SUSTAINABLE DEVELOPMENT</b> .....	<b>64</b>
<i>Iuliia Serbina</i>	
<b>DO VISA LIBERALISATION REFORMS HELP MODERNIZING UKRAINE?</b> .....	<b>71</b>
<i>Maryana Kuzio and Iryna Sushko</i>	

# WE SHOULD SPEAK ABOUT THE LIBERATION OF THE CRIMEA

*Interview with Member of Parliament of Ukraine  
Mustafa Dzhemilev for UA: Ukraine Analytica*

## **What, in your opinion, brought about the occupation of the Crimea and allowed Russia to receive support from a part of local population?**


Russia was preparing for that for a long time. Stating that it has no territorial claims to Ukraine and denying any aggressive intentions towards the Crimea as provocative, Moscow, nevertheless, has continuously supported pro-Russian forces in the Crimea during all years of the Ukrainian independence. Crimean Tatars and their representative institution – the Mejlis – have been a primary target of the Russian propaganda. They were pictured as a threat for the territorial integrity of Ukraine, as extremists and radicals, capable of creating “Ukrainian Chechnya” or “Ukrainian Kosovo”. The leadership of the Crimean autonomy, mainly comprised of pro-Russians and even agents of Russian special services, shared the approach. Even some officials in Kyiv still possess the same views on Crimean Tatars. Anyhow, there has never been a systemic Crimean policy in Kyiv, as there has never been a full understanding of a threat approaching. None of our warnings and worries were taken seriously by Kyiv. Under the rule of President Yanukovych, Kyiv attitude towards Crimean Tatars and the Mejlis was roughly the same as Moscow one.

I remember one “analytical report” from the Crimean office of the Security Services of Ukraine to its headquarters in Kyiv, dated Autumn 2011. It said that the Mejlis demands the denunciation of the Black Sea Fleet Treaty and aims at spoiling “fraternal

ties” between Russia and Ukraine by stating Russian aggressive intentions towards the Crimea.

Pro-Russian stance among a considerable part of the Crimean population has been quite evident and understandable – about 60% of the population are ethnic Russians. Most of them are post-World War 2 immigrants from Russia and their descendants, who initially settled in the

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 ***there has never been a systemic Crimean policy in Kyiv, as there has never been a full understanding of a threat approaching***

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houses and lands of the deported Crimean Tatars. That is why most of them bought easily the Russian propaganda tales of the Crimean Tatars returning to their homeland to take back their houses and lands and willing to separate from Ukraine or to join Turkey – a country with the same religion.

Locals have also been terrified by mythical banderovites and ultranationalists, who were supposed to arrive from Western Ukraine to dispatch with Russians. However, it was the totally corrupted government of the autonomous republic that was terrified the most. They were afraid to be held responsible for sending trains (at local budget cost) with local bandits to fight those, who fought against the regime of Yanukovych in Kyiv.

About 23-25% of the local population were ethnic Ukrainians, but those Ukrainians who, to a considerable extent, have lost their national identity, culture, and native language, i.e. almost completely Russified. Officials in Kyiv took no steps to support or revive Ukrainian identity of those people. For example, among about 950 secondary schools in the Crimea, there were only seven with Ukrainian as a teaching language, i.e. less than 1%.

However, one cannot firmly state that the overwhelming majority of the Crimean population supported the occupation and the annexation of the peninsula. We know from very reliable sources that not even close to 83% of population participated in the so-called "referendum" of March 16, 2014. The level of participation was only at 32.4%, while the Crimean Tatars almost totally boycotted it.

### **Is it possible to reintegrate the Crimea? Or will it be necessary to look for its new status?**

In my opinion, we should not speak so much about its integration or reintegration, but about its liberation from occupation. Later, certainly, it will be necessary to take all measures to correct the mistakes of the past. I suggest that after the liberation, the composition of the Crimean population will be different from what it is now. Active separatists, collaborationists, officials responsible for the violation of rights of our citizens, thousands of FSB officers and dozens of thousands of their aides will leave the Crimea. 7-8 thousand of Russian troops will be withdrawn. Several dozens of thousands of people, who were brought to the Crimea after the occupation, will have to leave without chances to get Ukrainian citizenship. Instead, thousands of people who were forced to leave the Crimea after the occupation will come back. In short, the climate in the Crimea will become

much better and more favourable for rapid economic development, especially via the restoration of tourism.

Certainly, economic ties with Ukraine's mainland will be quickly restored. Sanctions will be lifted and considerable investment expected, which will bring about a sharp increase in living standards.

The Crimean status will be defined in accordance with international norms regarding the rights of the indigenous people for self-determination. I am sure that Ukrainian society is mature enough for a smooth restoration of national-territorial autonomy in the Crimea.

### **What could be achieved through introducing national autonomy for the Crimean Tatars in the Crimea into Ukrainian Constitution?**

Essentially, we are talking about restoring, however, in a more democratic form of a national-territorial autonomy, which existed in the Crimea before the deportation of the Crimean Tatars and other ethnic groups by Bolsheviks during the Second World War. We do not even insist that this autonomy be called "Crimean Tatar". What is most important is not the title, but the essence of the autonomy. The Constitution of the autonomy should contain articles protecting basic rights of indigenous people. It should also guarantee the functioning of the native language as an official one over the territory of the Crimea, as well as provide mechanisms for adequate representation of the nation in all institutions of executive and representative power.

We are talking only about ways to protect rights of indigenous people on its soil, not about its dictate over others. There is absolutely no reason for occasional talks over somebody being first- or second-class in the autonomy.

**The non-recognition of the Crimean annexation and sanctions against Russia are much talked about internationally. What is the international community reaction to violations of Crimean Tatars' rights? What is being done about that?**


Violations of human rights in the Crimea, especially against the Crimean Tatars, have recently become more frequent and more intense. Together with attempts to declare the Mejlis of the Crimean Tatars – a representative body directly elected by indigenous people – “an extremist organization” by the new Crimean authorities, it has significantly urged the issue of liberation of the Crimea. For instance, the vast majority of 24 representatives speaking at the UN Security Council meeting in New York on March 18 this year expressed their disturbance with actions of the occupants and stressed the necessity to take measures to liberate the Crimea. Ukrainian diplomacy and the President are recently taking significant efforts to push forward the issue.

Certainly, there are those in the West who favour weakening or even lifting the sanctions against Russia. These voices are especially strong among those who conduct business in Russia. Fortunately, they are not decisive so far.

Huge informational efforts are necessary in many Asian and African states. Among 82 countries, which abstained or even were absent on purpose during a vote in the UN General Assembly on March 27, 2014, over resolution about the non-recognition of the Crimean “referendum” and requesting to liberate the occupied territory, the huge majority were Asian and African. Some followed the rule “it is better not to touch the gangster, lest he attack you”, others took into account their economic, rather than legal or moral, considerations.

Moreover, there are many countries influenced by the Russian propaganda, saying that the “Crimean people” were very much willing to join Russia and that there was a danger that Ukrainian nationalists would start ethnic cleansing of the Russians in the Crimea, hence Russia had no other choice but to take that step (the

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 ***Violations of human rights in the Crimea, especially against the Crimean Tatars, have recently become more frequent and more intense.***

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annexation). If one has a look at what is published in those countries about Ukraine and the Crimea, it will be evident, that those are repeated clichés of the Russian propaganda. One of our steps in that direction is the participation in different international forums, including Summit of 55 Muslim states in Ankara on 14-15 April, 2016.

**What does the establishment of a World Congress of the Crimean Tatars mean?**

We summoned World Congress of the Crimean Tatars for the first time in May 2009 in Simferopol, and it hosted more than 160 Crimean Tatar organizations from 12 countries. The main task was, of course, in consolidating the efforts of diasporas in solving problems of the people on its historical motherland, strengthening ties with compatriots, helping diasporas to preserve their national identity in their countries of residence.

The second Congress took place last summer in Ankara. It hosted 430 delegates from about 200 organizations from 14 countries. Occupation authorities in the Crimea took measures to not let several members of

the Mejlis and the veterans of the National Movement to get to Ankara. However, about 30 delegates from the Crimea managed to take part in the Congress. Its key issue was, of course, the occupation of the Crimea and further actions of the diasporas given the current situation. The Head of the Mejlis, R. Chubarov, was elected the President of the Congress. That was necessary because of the need to coordinate the activities of the World Congress and the Mejlis, especially given the fact that Mejlis activities had already been significantly damaged by occupiers.

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**Mustafa Dzhemilev** has been a Member of the Parliament of Ukraine since 1998 and a former Chairman of the Mejlis of the Crimean Tatar People. He is the recognized leader of the Crimean Tatar National Movement and a former Soviet dissident. In October 1998, the United Nations High Commissioner for Refugees awarded Dzhemilev the Nansen Medal for his outstanding efforts and "his commitment to the right of return of the Crimean Tatars". In 2014 Dzhemilev was awarded the Order of the Republic by Turkish President Abdullah Gül and the Solidarity Prize by the Republic of Poland (being thus its first recipient).

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# MINSK AGREEMENTS IMPLEMENTATION: ART OF IMPOSSIBLE

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***The analysis of the Minsk agreements implementation (a common name for a package of documents adopted in September 2014 and February 2015 aiming to resolve a current crisis in the Eastern region of Ukraine) demonstrates that despite a few steps forward, the systematic violation of certain clauses as well as serious manipulation of the others by the so-called 'Donetsk People Republic'/'Luhansk People Republic' ('DPR'/'LPR') combatants and the Russian Federation has been observed and confirmed by the international community. Lifting international sanctions seems the only incentive for Russia to comply with the Minsk agreements. Its current tactic involves partial implementation, which would help to apply for easing sanctions and thus to decrease the cost of its waging war against Ukraine. At the same time, Russia preserves the possibility to re-escalate the currently low-intensity-conflict at any convenient moment.***

## Introduction

Following the military occupation and illegal annexation of the Crimea in February–March 2014, Russia continued to destabilise Ukraine. The armed conflict in Donbas, a region in the Eastern Ukraine in immediate vicinity to the Russian border, was triggered by the Russian security service officers in spring 2014<sup>1</sup>. Since then the conflict was continued with steady inflows of fighters and weapons from the territory of the Russian Federation and eventually with a direct aggression by the Russian regular armed forces on Ukrainian soil, which was the only way to save Russia's proxies. At present, as a result of this, 1/3 of Donbas region (part of Luhansk and Donetsk regions) or less than 3% of

the Ukrainian territory is controlled by the so called 'Donetsk People's Republic' ('DPR') and 'Luhansk People's Republic' ('LPR') combatants, not by the Ukrainian government.


The first Western sanctions after the annexation of the Crimea in March 2014 appeared to be weak and sent a misleading message to the Kremlin. Then, however, the evidences of the Russian interference in the Ukrainian internal affairs, the violation of its territorial integrity and support of the separatist movements were too vivid to ignore and not to take respectful actions to confirm the EU's own adherence to the democratic values and principles of the international law.

<sup>1</sup> Interview with I.Girkin (Strelkov), commander of the group which started the hostilities in and around the town of Slov'yansk: <http://svpressa.ru/war21/article/103643/>

On 27 June 2014, the European Council presented a set of requirements that could postpone the introduction of the economic sanctions against Russia. Among these requirements there were an agreement on a verification mechanism for the cease-fire and for the effective control of the border, monitored by the OSCE; a returned control of three state-border checkpoints (Izvarino, Dolzhanskiy, Krasnopartizansk) under the Ukrainian authorities; a release of hostages including all of the OSCE observers (captured by combatants at that time); a launch of substantial negotiations on the implementation of the President Poroshenko's peace plan<sup>2</sup>.

Given that Russia failed to respond to these demands of the European Council (except of the OSCE monitors' release), on 31 July 2014 the Council of the EU introduced a package of economic sanctions (restrictive measures targeting sectoral cooperation and exchanges with the Russian

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***duration of the economic/  
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of the Minsk agreements.***

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Federation) with a view to increasing the costs of Russia's actions to undermine Ukraine's territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis<sup>3</sup>.

In February 2015, the leaders of Ukraine,

Russia, France and Germany negotiated a package of measures to alleviate the ongoing war in the Donbas region of Ukraine (implementation of the Minsk protocol dealt in September 2014). In March 2015, the European Council agreed that the duration of the economic/sectoral measures against Russia shall be linked to the complete implementation of the Minsk agreements<sup>4</sup>, which still remain the principle reference documents for the peaceful settlement of the conflict in the Eastern Ukraine. They were supported by the US, the EU and the UN Security Council. Thus, the connection of the EU sanctions with Minsk agreements implementation looks quite logical.

'Minsk agreements' is a common name for a package of documents adopted in September 2014 and February 2015. 'Minsk-1' refers to September 2014 agreements – Protocol on the results of consultations of the Trilateral Contact Group (Ukraine, Russia, OSCE with participation of the separatist leaders) dated 5 September 2014 and a subsequent Memorandum dated 19 September 2014. These documents contained provisions on establishing a cease-fire, the withdrawal of the heavy weapons, the withdrawal of the illegal combatants, a prohibition for drones except those owned by the OSCE etc. The ceasefire of September 2014 was heavily violated by separatists' forces, leading to a significant increase of the area not controlled by the Ukrainian government by February 2015.

'Minsk-2' commonly refers to the 'Package of measures for the implementation of

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<sup>2</sup> European Council 26/27 June 2014 Conclusions. [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/press-data/en/ec/143478.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/press-data/en/ec/143478.pdf)

<sup>3</sup> Council Regulation (EU) No 833/2014 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0833&from=EN>

<sup>4</sup> European Council meeting (19 and 20 March 2015) – Conclusions [http://www.consilium.europa.eu/en/meetings/european-council/2015/03/european-council-conclusions-march-2015-en\\_pdf](http://www.consilium.europa.eu/en/meetings/european-council/2015/03/european-council-conclusions-march-2015-en_pdf)

Minsk Agreements' signed on 12 February 2015 by the Trilateral Contact Group representatives (Ukraine, Russia and OSCE) and the leaders of the separatists<sup>5</sup>. The content of Minsk-2 was negotiated at 16 hours long 'Normandy format' summit in Minsk between the Presidents of Ukraine, Russia, France, and Chancellor of Germany, who issued a declaration in support of the package<sup>6</sup>.

### **Assessment of Minsk agreements implementation**

Below is the analysis of implementation of each particular clause of the Minsk agreements:<sup>7</sup>

*1. An immediate and comprehensive ceasefire in certain areas of Ukraine's Donetsk and Luhansk regions and its strict implementation starting at 00:00 (Kiev time) on 15 February 2015.*

The signing of the Minsk II agreement was happening at the time of the intense fighting near Debaltseve, started due to the 'DPR' and Russian forces attack. This attack was significantly changing the separation line agreed in September 2014 by the conflict sides. During the Minsk negotiations (11–12 February 2015), Russia tried to postpone a date for ceasefire initiating, to get the final results of the battle. However, even with the date of the ceasefire agreed as 15 February, actual intensive fighting continued till 20 February 2015. Since then, the situation

remained tense with regular escalations. Among the most intensive one was 'DPR's failed attack on the Ukrainian village of Maryinka in June 2015. As a result of such escalations, for example, 430 Ukrainian servicemen were killed during March – October 2015.<sup>8</sup>

In general, during the period of 15 February – 4 December 2015 there were only 47 days (15%) without wounded and killed from the Ukrainian side. Multi-days cease-fire without losses from the Ukrainian side (except of the mine detonations casualties) happened only 20–23 September, 10–19 October, 1–8 November 2015, so only these periods can be considered as a formal cease-fire.

The intensity of fighting decreased in September 2015 after the Trilateral Contact Group once again confirmed the ceasefire starting on 26 August 2015. A crucial factor was that in September 2015 Russia started preparations for its military operation in Syria and temporarily refocused its attention from Ukraine. If Ukraine had been the initiator of the fighting, it would have been logical to expect an increase of military offences in September–October 2015, using the moment of other Russia's military priorities. With Russia's attention shifted to Syria, almost full ceasefire lasted in Donbas from September until mid-November 2015, with Ukrainian losses caused mostly by mines.

<sup>5</sup> Комплекс мер по выполнению Минских соглашений / ОБСЕ. 12.02.2015 <http://www.osce.org/ru/cio/140221?download=true>

<sup>6</sup> Декларация Президента Российской Федерации, Президента Украины, Президента Французской Республики и Канцлера Федеративной Республики Германия в поддержку Комплекса мер по выполнению Минских соглашений, принятого 12 февраля 2015 года / Official website of the President of Ukraine. <http://www.president.gov.ua/ru/news/deklaraciya-prezidenta-rosijskoyi-federaciyi-prezidenta-ukra-34695>

<sup>7</sup> The text of the Minsk-2 clauses is given according to the unofficial translation: <http://www.ibtimes.com/minsk-ceasefire-deal-full-text-agreement-between-russia-ukraine-germany-france-1814468>

<sup>8</sup> According to the unofficial 'Memory Book' data: <http://memorybook.org.ua/indexfile/statistic.htm>

Already in November 2015, shelling of the Ukrainian positions intensified.<sup>9</sup> Usually, the new wave of shelling coincides with important dates, such as Independence Day, the anniversary of Euromaidan beginning or a new round of the negotiations of the Trilateral Contact Group. The new escalation started in January-February 2016, noted both by the OSCE SMM<sup>10</sup> and National Security and Defence Council of Ukraine.<sup>11</sup> Since recently, the OSCE SMM started to publish the daily reports on the cease-fire violations noticed by their teams.<sup>12</sup>

*2. Withdrawal of all heavy weapons by both sides at equal distances in order to create a security zone to be at least 50-km-wide from each other for 100mm or bigger calibre artillery systems, a 70-km-wide security zone for MLRS, and a 140-km-wide security zone for Tornado-S, Uragan and Smerch MLRS and Tochka-U tactical missile systems.... The withdrawal of the abovementioned heavy weapons shall begin no later than on the second day after the ceasefire and shall end within 14 days...*

A specific document on the withdrawal of the weapons 'Control plan for coordination and implementation of a package of measures to implement the Minsk agreements', was signed on 20-22 February 2015 by representatives of the military commanders of Ukraine, Russia, 'DPR' and 'LPR'. The document was agreed at the Joint centre for control and coordination of issues regarding ceasefire and gradual stabilization of the contact line (this centre was created along with the start of the Minsk process

in September 2014 and has been a point of communication between the military of Russia and Ukraine in Donbas).

Although the sides have declared the completion of the withdrawal of heavy weapons at the appointed time, the OSCE SMM has regularly reported violations – heavy weapons were recorded in the prohibited area, changing of weapons occurred in places of permanent deployment, and until recently, "DPR" and "LPR" did not provide identification numbers of their weapons to be controlled. The reason was a constant movement of weapons of "DPR" and "LPR" to the territory of the Russian Federation (for repair and recycling) and back (new and refurbished samples).

One of the confirmations of movement of the arms from the Russian territory can be mentioning in the text of the Minsk agreement of the multiple launch rocket systems (MLRS) "Tornado-S", which was added to the Russian armoury only in 2012. There are more and more evidences of the new weapons modifications present only in Russia (not delivered for export). For example, a heavy multiple launch thermobaric rocket system (TOS-1 Buratino, 220mm), which is produced only in Russia, never supplied to Ukraine, was spotted by the OSCE SMM observers at the training area in LPR.<sup>13</sup>

After the shift of the Russian attention to Syria, it was possible to sign an additional document – "Agreement on the withdrawal of weapons calibre up to 100 mm and tanks from the line of contact" (beyond the

<sup>9</sup> Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 18 November 2015 / OSCE/ <http://www.osce.org/ukraine-smm/201701>

<sup>10</sup> Status Report as of 10 February 2016 / OSCE/ <http://www.osce.org/ukraine-smm/221641>

<sup>11</sup> According to the daily briefings of the Administration of the President of Ukraine, presented at <http://uacrisis.org/>

<sup>12</sup> OSCE Special Monitoring Mission in Ukraine: Table of ceasefire violations as of 19:30hrs, 3 February 2016 <http://www.osce.org/ukraine-smm/220571>

<sup>13</sup> SMM OSCE report on 27 September – <http://www.osce.org/ukraine-smm/186276>

requirements of the Minsk agreements), which was issued as a supplement to the Minsk agreements on 29-30 September in Minsk by members of the Trilateral Contact Group and the next day by the leaders of "DPR" and "LPR". It envisaged the withdrawal of tanks and artillery up to 100 mm for 15 km. The withdrawal process was formally completed on 12 November 2015.

It should be considered that 'DPR'/'LPR' militants often prohibit OSCE SMM observers to visit some areas under their occupation, what is regularly reported by



**'DPR'/'LPR' militants often prohibit OSCE SMM observers to visit some areas under their occupation.**

the Special Monitoring Mission in their daily report.<sup>14</sup> According to the Ukrainian security sources as well as volunteer group "Information resistance"<sup>15</sup>, 'DPR'/'LPR' avoid withdrawing of essential quantities of heavy weapons. Militants use industrial areas, especially closed plants and coalmines to hide MLRS, heavy artillery and tanks in close proximity to a contact line, especially in Donetsk, Horlivka and Luhansk

*3. Ensure effective monitoring and verification of the ceasefire regime and the withdrawal of heavy weapons by the OSCE from the first day of the withdrawal, with the use of all necessary technical means, including satellites, unmanned aerial vehicles, radar systems and so on.*

At the time of signing the Minsk agreements, a Special Monitoring Mission (SMM) of

the OSCE had been already operating in Ukraine, launched in March 2014. The Mission started monitoring the situation in the conflict area immediately after the signing of Minsk agreements. From the very beginning, Ukraine's position on the SMM has been to strengthen its mandate and increase in personnel numbers. This corresponds to the position of Ukraine to deploy a wide international mission in the conflict area, perhaps under the auspices of the UN or the EU, to facilitate a comprehensive conflict resolution.

On 2 October 2015, the "Normandy format" summit in Paris agreed on the expansion of the mission and widening its responsibilities to demining. As of 10 February 2016, mission members' number has reached 1053 people, including 684 monitors, 540 of which are located in the east of Ukraine in the conflict area. On the 22th OSCE ministerial conference in Belgrade on 3-4 December 2015, it was decided to extend the mission's mandate for another year, to advance its technical equipment and increase the personnel number.

A major question, however, continues to be the restriction of access for SMM monitors. Both 'DPR'/'LPR' representatives and the Russian officials prevent the OSCE mission to have full access for monitoring purposes. If some areas are not monitored due to the security reasons (mine field, shelling), so others are impossible to monitor due to the deliberate restrictions. For example, "LPR" members continue to prevent the SMM from monitoring many areas close to the border with the Russian Federation in parts of Luhansk region not controlled by the Government" - as stated in one of the

<sup>14</sup> Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 3 February 2016 <http://www.osce.org/ukraine-smm/220581>

<sup>15</sup> Information Resistance <http://sprotvyn.info/en>

daily reports issued by the Mission.<sup>16</sup> Such restrictions are applied not only by the separatist combatants, but the Russian side itself. Since the very beginning, Russian side prevents observers of OSCE SMM to monitor Russian – Ukrainian border in “the certain areas of Donetsk and Luhansk regions”.<sup>17</sup>

Also, numerous cases of violent attitude towards the observers were reported. For example, in August 2015, the SMM reported about an apparent arson attack on its cars in militant-controlled Donetsk.<sup>18</sup> Direct violence committed against OSCE monitors was also being noticed, and named by the Deputy Chief of the Mission Hug as “deliberate, hostile interference with the work of the OSCE SMM that amounts to censorship”.<sup>19</sup>

*4. On the first day following the withdrawal, to start the dialogue on the modalities of holding local elections in accordance with Ukrainian legislation and Ukraine’s law “On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions” as well as on a future regime of these districts on the basis of this law. Immediately, no later than in 30 days since the date of the signing of the given*


*document, to adopt a Verkhovna Rada resolution to specify the territory to which the special regime applies in accordance with the law of Ukraine.*

And in addition to it,

*12. Issues related to local elections shall be discussed and agreed with representatives of certain districts of Donetsk and Luhansk regions within the framework of the Trilateral Contact Group on the basis of the Ukrainian law “On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions”. Elections shall be held in compliance with the relevant OSCE standards and monitored by the OSCE ODIHR.*

The dialogue on modalities for local elections began in the framework of the Trilateral Contact Group after the formal announcement of the withdrawal of heavy weapons. The positions of Russia and Ukraine are fundamentally different. The Russian leadership believes, and this view is broadcast through the leaders of “DPR” and “LPR”, that such negotiations should take place at the political level between Kyiv, Donetsk and Luhansk. Russia’s goal is to have the leaders of “DPR” and “LPR”, appointed in Moscow, legalized within Ukrainian political and legal field, to influence through them the political life of Ukraine. This interpretation of the Minsk agreement is excessively arbitrary and contrary to its text. Clause 4 of the Minsk-2 Agreement does not specify how exactly the dialogue on the modalities of the elections should be conducted. From a Ukrainian

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 **Proper conditions for organisation of local elections are another point of fundamental difference between the parties.**

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<sup>16</sup> Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 3 February 2016 <http://www.osce.org/ukraine-smm/220581>

<sup>17</sup> SMM OSCE report on 1 December, see “Restrictions to SMM’s freedom of movement or other impediments to the fulfillment of its mandate” – <http://www.osce.org/ukraine-smm/205451>

<sup>18</sup> Read more on UNIAN: <http://www.unian.info/war/1109501-four-osce-smm-cars-destroyed-in-arson-attack-in-donetsk-overnight.html>

<sup>19</sup> Direct violence committed against OSCE monitors, one monitor hospitalized / Ukraine Crisis Media Center. 30.07.2015 <http://uacrisis.org/30171-obsye-12>

point of view, the format of the Trilateral Contact Group is quite adequate and clearly defined by Clause 12 of the Minsk-2.

Proper conditions for organisation of local elections are another point of fundamental difference between the parties. Discussions intensified on the eve of the Ukrainian local elections in October 2015 when the leaders of the separatists unilaterally announced organisation of their own local elections on 18 October 2015 in 'DPR' and 1 November 2015 in 'LPR' respectfully without any correspondence to the Ukrainian legislation. Only after 'Normandy format' summit in Paris on 2 October 2015, the sides managed to persuade unrecognized 'republics' to postpone their elections till 2016 and move to a substantive discussion of the conditions for elections organisation.

The Ukrainian position is based on the text of the Agreements where it is mentioned that these elections should be held 'in accordance with Ukrainian legislation' and 'in compliance with the relevant OSCE standards'. Thus, it means free access of media and international observers; free participation of the Ukrainian political parties; and the top authority of the national Central Election Committee. The organization of the elections is also challenged by the current security situation, as it is impossible to organize free elections under the guns, without ceasefire and disarmament clauses of the Minsk agreements fulfilled. Also, one should consider more than 1, 5 million IDPs in Ukraine from the Eastern regions, who will not have a possibility to vote under the current conditions. So, logically, these issues should be addressed first as the proper conditions for having free and fair elections. The position presented by

'DPR' / 'LPR' leaders, is that the admission of Ukrainian political parties, Ukrainian media and internally displaced persons to the elections is unacceptable.

In addition, the latest demand of the separatist combatants is to have a momental total amnesty for all 'participants of the events in the Donetsk and Luhansk regions' as a precondition for holding elections. This would allow participation in elections to all participants to the conflict from the 'DPR'/'LPR' sides, regardless of the type and scale of crimes committed during the conflict.

On 16 September 2014, Parliament of Ukraine adopted the Law "On the special procedure of local self-governance in some districts of Donetsk and Luhansk regions".<sup>20</sup> According to this legislation, a special status has been established for 3 years, when the Ukrainian legislation can be limited only by this law provisions. Among others, this law guaranteed use of the Russian language, exemption from the prosecution for participation in the events in Donetsk and Luhansk regions, special procedures for appointment of prosecutors and judges (with the participation of local authorities), a special regime for investment and economic activities, development of the transborder cooperation with the Russian Federation regions, creation of the special militia units to keep public order, controlled only by the local authorities. However, it was stressed that this law should be implemented only after the elections take place according to the Ukrainian legislation, with international observers and media involved. On 17 March 2015, the Parliament of Ukraine adopted corresponding amendments to the Law "On the special procedure of local self-

<sup>20</sup> Закон України Про особливий порядок місцевого самоврядування в окремих районах Донецької та Луганської областей / Верховна Рада України. 16.09.2014 <http://zakon5.rada.gov.ua/laws/show/1680-18>

governance in some districts of Donetsk and Luhansk regions”<sup>21</sup> as well as adopted a resolution on the determination of individual regions, cities, towns and villages of Donetsk and Luhansk regions where the special procedure for the local self-government is introduced.<sup>22</sup>

Despite fulfilment of its obligations under the Minsk agreements, leader of “DPR” Zakharchenko immediately expressed his dissatisfaction, insisting that they would like to have control over all localities where unrecognized illegal referendum took place in 2014.<sup>23</sup>

*5. Ensure pardon and amnesty by putting into force a law that would ban persecution and punishment of individuals in connection with the events that took place in some areas of the Donetsk and Luhansk regions of Ukraine.*

The Law ‘On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions’, which provides a general condition on amnesty in Art.3 “The state guarantees according to this law, to compound of offence, criminal and administrative prosecution,

and punishment of people – participants of the events on the territory of Donetsk and Luhansk regions,<sup>24</sup> and the Law ‘On prevention of prosecution and punishment of persons – participants of the events in the Donetsk and Luhansk regions’. The only restrictions for amnesty envisaged were terroristic acts and murder, rape and plunder.<sup>25</sup> This latter law is not yet in force, however, due to the chronic failure of ‘DPR’/‘LPR’ to comply with the conditions of the Minsk agreements.

In general, Ukrainian position is that the amnesty cannot be full, as some of the cases should be considered as acts against humanity due to their extreme violence and intention.

The position of Ukraine is in line with international practice and the provisions of Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of Non-International Armed Conflicts of 1977.<sup>26</sup> The requirement for amnesty means that certain crimes were committed but persons who committed them should be subjects to the maximum possible exemption from punishment.

<sup>21</sup> Закон України Про внесення зміни до статті 10 Закону України “Про особливий порядок місцевого самоврядування в окремих районах Донецької та Луганської областей” / Верховна Рада України. 17.03.2015 <http://zakon2.rada.gov.ua/laws/show/256-19/paran2#n2>

<sup>22</sup> Постанова Верховної Ради України Про визначення окремих районів, міст, селищ і сіл Донецької та Луганської областей, в яких запроваджується особливий порядок місцевого самоврядування / Верховна Рада України. 17.03.2015 <http://zakon2.rada.gov.ua/laws/show/252-19>

<sup>23</sup> Захарченко незадоволений законопроектом про особливий статус Донбасу: хоче більше територій / iPress.ua. [http://ipress.ua/news/zaharchenko\\_nezadovolennyu\\_zakonoproektom\\_pro\\_osoblyvyvy\\_status\\_donbasu\\_hoche\\_bilshe\\_terytoriy\\_115222.html](http://ipress.ua/news/zaharchenko_nezadovolennyu_zakonoproektom_pro_osoblyvyvy_status_donbasu_hoche_bilshe_terytoriy_115222.html) 17.03.2015

<sup>24</sup> “The State guarantees, in accordance with the law, prevention of criminal prosecution, criminal and administrative liability and punishment of persons – participants of the events in the Donetsk and Luhansk regions. The authorities and their officials, enterprises, institutions, organisations of all forms of ownership are prohibited from discriminating, prosecuting and punishment of persons in relation to events that took place in Donetsk and Luhansk regions.’ – <http://zakon2.rada.gov.ua/laws/show/1680-18>

<sup>25</sup> Проект Закону України Про недопущення переслідування та покарання осіб – учасників подій на території Донецької та Луганської областей / Верховна Рада України. 16.09.2014 [w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52183&pf35401=313104](http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52183&pf35401=313104)

<sup>26</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. <https://www.icrc.org/ihl.nsf/INTRO/475?OpenDocument>



Moreover, if the conflict is considered as an internal one, as Russia claims, then the amnesty cannot be extended to foreign citizens, i.e. citizens of Russia who took part in the events in the Donetsk and Luhansk regions. In the international law, there is a clear division between the rules of war and norms adopted concerning civilians and combatants in the non-international conflicts. In case it is a recognized international conflict Geneva Convention on Prisoners of War 1949 will be applied, as well as the Protocol mentioned above. Therefore, the status of the prisoners of war can be applied only to the arrested soldiers and officers of the Russian Federation. In this case, Ukraine can use these norms against, for example, Russian officers Yerofeev and Aleksandrov captured on the territory of Ukraine in May 2015. Thus, considering that the Russian Federation, despite the words of the officers, were trying to insist on their retirement and voluntarily actions in Luhansk region, the Ukrainian state had a right to prosecute them either for spying or terrorism.

So, in case of the Ukrainian citizens, fighting under the "DPR"/"LPR" flags, they cannot be considered as prisoners of war, and should be treated according to the international humanitarian law, which limits their rights as prisoners of war, but widens their rights as citizens of the state. So only this category has a right to amnesty. As Russian citizens only have a right for release and repatriation (Art. 118 Geneva Convention 1949).

At the same time, a DPR representative announced in October 2015, that their side has started the preparation of their own

variant of legislation to be presented at the Trilateral Contact Group meeting, as they definitely would like to exclude terroristic acts from the list of exceptions.<sup>27</sup>

*6. Ensure the release and exchange of all the hostages and illegally held individuals on the basis of the "all for all" principle. This process should be completed no later than on the fifth day after the withdrawal.*

The implementation of this clause of Minsk-2 is bound in time to the implementation of the clause 2 on withdrawal of heavy weapons. If withdrawal had been assessed as completed on 8 March 2015, as it was envisaged and declared by the sides, so by the end of April, the hostages should be released. However, the withdrawal has not been yet announced as completed, so the release of hostages is taking place on the basis of bilateral arrangements.

In fact, negotiations on the exchange of hostages and illegally detained persons have been constant since the conflict began in the spring of 2014. According to the official Ukrainian estimations, at the time of signing Minsk-2 on 12 February 2015, the Russian authorities, 'DPR' and 'LPR' held more than 2000 Ukrainian citizens. In the opinion of the Ukrainian representative in the humanitarian working group of the Trilateral Contact Group Iryna Gerashchenko, the 'DPR'/'LPR' representatives are understating the list of hostages taken.<sup>28</sup> As a result, there are two lists: one is officially agreed (around 140 remaining in captivity by February 2016<sup>29</sup>) and those who named as 'missing' (around 800 people). Among those there are not only military, but also volunteers and journalists.

<sup>27</sup> Боевики «ДНР» хотят обсудить в Минске закон об амнистии и восстановление мостов / Glavcom. 20.10.2015 <http://glavcom.ua/news/333940.html>

<sup>28</sup> Герашченко: Боевики занижают количество находящихся у них в плену украинских заложников / Mignews. 22.10.2015 <http://m.mignews.com.ua/ukraine/7432385.html>

<sup>29</sup> Some 140 people still held prisoner by militants - Ukrainian president / Interfax. 1/02/1026 <http://en.interfax.com.ua/news/general/321485.html>

In addition, while discussing the hostages list, those who are under political prosecution in the Russian courts (such as Sentsov and Savchenko) are not taken into account by the Russian Federation. Currently there are 10 Ukrainian political hostages in the Russian Federation, trials of whom are held with violations of the law and are also falsified. The statements of the high-level representatives of different states, as well as international organizations are happening regularly urging to release political prisoners,<sup>30</sup> however, without any response from the Russian side.

Ukraine has repeatedly shown readiness for the exchange as quickly as possible on the “all for all” principle. However, Russia, ‘DPR’ and ‘LPR’ inhibit this process by insisting on additional preconditions – first of all, the adoption by Ukraine of the law on a momental and total amnesty for all participants to the conflict.<sup>31</sup> This is contrary to the text of Minsk-2, as it does not set any preconditions for “all for all” exchange except for the heavy weapons withdrawal. Moreover, in January-February the amount of illegally “arrested” people increased including volunteers.<sup>32 33</sup>

#### *7. Ensure safe access, delivery, storage and distribution of humanitarian aid among those who need it on the basis of an international mechanism.*

The situation with the humanitarian aid to the occupied territories is not stable. The first problem is that not all humanitarian

organisations can receive accreditation from the separatist ‘republics’ for delivering humanitarian aid to the area. Usually access is given to either Russian organisations or those from private foundations who had past connections in the region (e.g. Rinat Akhmetov’s foundation). The scandal happened, when Red Cross reported of their blocking while delivering aid, and that many of their representatives lost their accreditation. In addition, they expressed their opinion that ‘DPR’ authorities started a mass campaign to discredit representatives of the humanitarian organisations.<sup>34</sup>

The situation is deteriorating. If before the negative attitude was mostly witnessed against the international/foreign humanitarian organizations, so since recently the local organizations have been also appearing under attack. The recent biggest case is illegal unexplained arrest of Marina Cherenkova, a well-known volunteer, head of the organization “Responsible Citizens”, who has worked in Donbas since the first days. Marina is a local, former Deputy Governor of Donetsk region at the times of President Yanukovich. “Responsible citizens” was a completely neutral group, never associated with the Ukrainian government of pro-Maidan forces, so they managed to work until the last days at the hottest and most dangerous places of Donetsk region, providing food and medical assistance. In few days not only Cherenkova was arrested, but also other members of the group interrogated by the

<sup>30</sup> Ukrainian Pilot Defiant In Moscow Court As Detention Extended / Radio Free Europe. 10.02.2015 <http://www.rferl.org/content/savchenko/26839247.html>

<sup>31</sup> “ДНР” занялась подготовкой собственного проекта амнистии, поскольку украинский считают неподходящим / Mignews. 20.11.2015 <http://m.mignews.com.ua/politics/8210461.html>

<sup>32</sup> В «ДНР» схватили известного историка. Жена рассказала подробности / TV Rain. 31.01.2016 <https://tvrain.ru/articles/zhena-402745>

<sup>33</sup> Угрупування «ДНР» має звільнити затриманих Козловського та Черенкову – ОБСЄ / Radio Free. 04.02.2016 <http://www.radiosvoboda.org/content/news/27532534.html>


<sup>34</sup> Кто і чому не хоче міжнародну гуманітарну допомогу в “ЛНР” / Deutsche Welle. 26.09.2015 <http://dw.com/p/1Gdv2>

“DPR” security forces and yet three activists expelled from the territory of “DPR”.

*8. Definition of the modalities of a complete restoration of socio-economic ties, including social transfers, such as pension payments or other payments (receipts and income, paying the utility bills on time and renewing taxation within the framework of Ukraine’s legal field). To meet these objectives, Ukraine will restore control over the segment of its banking system in the areas affected by the conflict, and an international mechanism to facilitate these transfers may be set up.*

Not all socio-economic ties can be quickly restored due to the security situation. Numerous cases of attacks to the banks’ cars made them to stop money delivery to the uncontrolled territories. At present, ‘DPR’/‘LPR’ allow the flow of all possible currencies – Russian rubles, Ukrainian hryvnias and US dollars, with prices in supermarkets mostly presented in rubles. The uncontrolled territories are not paying their utility bills and taxes.

According to the Fourth Geneva Convention of 1949, there is a responsibility of the occupying side to provide services to the civil population in the conflict zone. One may debate whether separatists can

 ***Ukraine does take obligations towards all Ukrainian citizens, including those living under occupation, among others paying pensions and other social benefits to the people registered at the uncontrolled territories but doing this on the territory controlled by the Ukrainian government***

be considered as occupying side while Russia, despite its military involvement, is not taking responsibility as a side to the

conflict. Anyway, Ukraine as a side, which does not control this territory, cannot be responsible for meeting the needs and demands of the local population. Ukraine can bear responsibility only for those territories returned under its control where it can guarantee the security of the social-economic infrastructure.

Nevertheless, Ukraine does take obligations towards all Ukrainian citizens, including those living under occupation, among others paying pensions and other social benefits to the people registered at the uncontrolled territories but doing this on the territory controlled by the Ukrainian government, so people need to travel there. For simplification, special logistical centres were created near the contact line with ‘DPR’/‘LPR’ to provide banking services and goods trade for citizens. There are numerous cases when separatists themselves or their close relatives have regularly received Ukrainian pensions.

*9. Restoration of full control over the state border in the whole zone of the conflict on the part of the Ukrainian government, which should begin on the first day after local elections and finish after an all-inclusive political settlement (local elections in certain districts of Donetsk and Luhansk regions on the basis of Ukraine’s law, and constitutional reform) by the end of 2015, providing the implementation of clause 11 – in consultations and with the agreement of representatives of certain districts of Donetsk and Luhansk regions within the framework of the Trilateral Contact Group.*

This clause is one of the most important for the realization of the Minsk agreement and political designation of roles for the parties involved in the crisis. The border is always a bilateral thing, so as soon as Ukrainian government is not controlling the border due to the uncontrolled territories, another side responsible is the Russian Federation. As the inflow of the

illegal weapons and military personnel is regularly reported by the OSCE, journalists and others, in addition to the Russian soldiers caught at the Ukrainian territory, one can say that the Russian Federation is either directly supporting the separatists in Donbas or is not able to control its own border. However, Russian Federation provided assurance that it was controlling its borders,<sup>35</sup> meaning it was just ignoring the fact of the weapons and fighters flow and supporting such activity.

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**« Allowing a free flow of fighters and weapons should be regarded as taking a side to the conflict and supplying separatists with fighters, ammunition, finance, and even regular troops, and thus be regarded as a role of an aggressor state**

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Allowing a free flow of fighters and weapons should be regarded as taking a side to the conflict and supplying separatists with fighters, ammunition, finance, and even regular troops, and thus be regarded as a role of an aggressor state, according to the UN General Assembly Resolution 3314.

The Russian Federation has already expressed one of its conditions that it could close the Russian-Ukrainian border along Donetsk and Luhansk regions only after all other clauses of the Minsk agreements were implemented. Such statements are quite illogical since if other clauses are implemented it means the conflict is more or less solved. Implementation of

provisions of the Minsk agreements on local elections, delivery of humanitarian aid, the restoration of the economic infrastructure, the withdrawal of foreign armed groups etc. logically demand the restoration of Ukraine's control over the border, possibly with the mediation and presence of missions of international organisations like OSCE.

In January 2016, Russian delegation blocked an OSCE decision to expand the mandate of the OSCE Observer Mission at the Russian checkpoints "Gukovo" and "Donetsk" to all sections of the border that is temporarily not under control of the Ukrainian authorities,<sup>36</sup> thus not even allowing the international mission to observe the border situation.

*10. Withdrawal of all foreign armed formations, military hardware and mercenaries from Ukrainian territory under the OSCE's supervision. Disarmament of all illegal groups.*

There is no sign of essential decrease of the Russian military contingent in Eastern Ukraine. Ukrainian and foreign military experts say that there are still at least 8 thousand regular Russian troops in "the certain areas of Donetsk and Luhansk regions". Despite the regular denial of this fact by the Russian authorities, the OSCE Special Monitoring Mission reported on numerous occasions the facts of the Russian soldiers' presence<sup>37</sup>, capturing of some of them by the Ukrainian forces and open courts happening now are the direct proof.

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<sup>35</sup> Россия отказалась закрывать границу с Донбассом и выводить войска/ Зеркало недели. 11.12.2014 [http://zn.ua/POLITICS/rossiya-otkazalas-zakryvat-granicu-s-donbassom-i-vyvodit-voyska-161550\\_.html](http://zn.ua/POLITICS/rossiya-otkazalas-zakryvat-granicu-s-donbassom-i-vyvodit-voyska-161550_.html)

<sup>36</sup> Statement of the Ukrainian Delegation at 1086th Meeting of the OSCE Permanent Council in Connection with the Decision on Extension of Deployment of OSCE Observers to Two Russian Checkpoints on the Russian-Ukrainian Border. OSCE Permanent Council Nr 1086. Vienna, 21 January 2016. <http://mfa.gov.ua/en/press-center/comments/4915-komentar-mzs-ukrajini-u-zvjazku-z-rishennyam-postijnoji-radi-obse-shhodo-prodovzhennya-mandatu-misiji-sposterigachiv-obse-na-dvoh-rosijsykih-punktah-propusku-gukovo-i-donecyk>

<sup>37</sup> OSCE reports Russian soldiers near Donetsk / World Bulletin. 4.06.2015 <http://www.worldbulletin.net/haber/160205/osce-reports-russian-soldiers-near-donetsk>

The EU in its personal sanctions acknowledged the Russian military senior staff involvement, e.g. Deputy Minister of Defence Anatoliy Antonov appeared in the EU sanction list with the wording: "in that capacity, involved in supporting the deployment of Russian troops in Ukraine".<sup>38</sup> NATO Secretary General Stoltenberg also confirmed this information in December 2015: "We have stated again and again that Russia is present with military personnel in Eastern Ukraine and that is based on our own intelligence sources".<sup>39</sup>

It is necessary to mention that the so-called "people militia" of DPR and LPR form a 36 thousand strong military structure, which possesses hundreds battle tanks, MLRS and field artillery.<sup>40</sup> There are evidences that the main forces of the self-proclaimed DPR and LPR, are not only armed and supplied by Russia, but integrated in the Russia army structure.<sup>41</sup> They are under the direct command of the Centre of the Territorial Forces, established on the basis of the 12th Reserve Command, Southern Military District of the Russia Federation. Before autumn 2014, the mosaic of the forces involved had been complicated and manifold, as comprised of different groups, including uncontrolled and criminal, who used the conflict as a possibility. During autumn 2014 – summer 2015, the Russian special services dismantled uncontrolled separatist armed groups using arrests and assassinations of

their leaders.<sup>42</sup> Ordinary militants from such groups were forced to join "official units" or give up weapons. Some insight presented in the interview of the Russian Major Vladimir Starkov for Euronews in August 2015.<sup>43</sup> His trucks with ammunition for separatists "accidently" came to the Ukraine military position, where he was arrested.

At the same time, Russia considers Ukrainian former volunteer battalions as illegal, insisting on their disbandment. However, Ukrainian volunteer battalions, which appeared in spring of 2014, starting from autumn 2014 have been fully incorporated in the Military Forces of Ukraine, National Police and the National Guard. So insisting on disbanding the so-called volunteer battalions, the Russian Federation is trying to prohibit an integral part of the Ukrainian armed forces, which are fully bound by Ukrainian state legislation.

*11. Realization of constitutional reform in Ukraine, with the new constitution to enter into force by the end of 2015, and assuming as a key element the decentralization (taking into account the peculiarities of certain districts of Donetsk and Luhansk regions, as agreed with representatives of these districts), and the enactment of permanent legislation on the special status of certain districts of Donetsk and Luhansk regions in accordance with the measures specified in the footnotes, until the end of 2015.*

<sup>38</sup> List of persons and entities under EU restrictive measures over the territorial integrity of Ukraine. Council of the European Union. 15.09.2015 [http://www.consilium.europa.eu/en/press/press-releases/2015/09/pdf/150915-sanctions-table---Persons-and-entities\\_pdf/](http://www.consilium.europa.eu/en/press/press-releases/2015/09/pdf/150915-sanctions-table---Persons-and-entities_pdf/)

<sup>39</sup> Putin denies Russian troops are in Ukraine / Yahoo news. 17.12.2015 <http://news.yahoo.com/putin-denies-regular-russian-troops-ukraine-170221107.html>

<sup>40</sup> Russia's military aggression against Ukraine. Defence Intelligence of Ukraine Public Affairs Service. <http://gur.mil.gov.ua/en/content/russia-armed-aggression-against-ukraine.html>

<sup>41</sup> About reorganization of the 12th Reserve Command, Southern Military District into the Center of the Territorial Forces. Defence Intelligence of Ukraine Public Affairs Service <http://gur.mil.gov.ua/en/content/shchodo-reorganizatsii-12-komanduvannia-rezervu-pivdennoho-viiskovoho-okruhu-u-tsentri-terytorialnykh-viisk.html>


<sup>42</sup> Meet the Cossack 'Wolves' Doing Russia's Dirty Work in Ukraine / Time. 12.05.2014 <http://time.com/95898/wolves-hundred-ukraine-russia-cossack/>

<sup>43</sup> Caught red-handed: the Russian Major fighting in Ukraine / Euronews. 13.08.2015 <http://www.euronews.com/2015/08/12/caught-red-handed-the-russian-major-fighting-in-ukraine/>

It is clear that Russia does not want to annex Donbas in the same way as the Crimea. Instead, Moscow wants Donbas to remain a part of Ukraine to be used as a leverage on Kyiv. The Kremlin would like to see 'federalisation'/'Bosnianisation' of Ukraine as a result of the constitutional process, i.e. turning it into a dysfunctional divided state. In such a scenario, Moscow would remain in full de facto control over legitimised autonomous separatist 'republics' with their own 'people's militia', i.e. de facto military, and local executive and judicial authorities. Moreover, Ukraine (and probably the West) would pay for the reconstruction of the destroyed Donbas economy and infrastructure. What is more important, these separatist enclaves could gain the veto power over major national political decisions in Ukraine. Russian pressure for a special constitutional status for Donbas heavily complicated the constitutional process of the general decentralisation reform in Ukraine.

Still, on 31 August 2015 the Parliament of Ukraine adopted in the first reading the draft of constitutional amendments on decentralisation for Ukraine together with a provisional article on the special procedure

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 ***The Kremlin would like to see 'federalisation'/'Bosnianisation' of Ukraine as a result of the constitutional process, i.e. turning it into a dysfunctional divided state***

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of local self-governance in certain districts of Donetsk and Luhansk regions. Actually, the decentralisation of Ukraine is generally supported by the public and has been a priority of the Ukraine-EU Association

Agenda. However, the 'special status' for the occupied areas has provoked a serious political divide. Still, these changes were approved under the risk of losing Western support (US Assistant Secretary of State Victoria Nuland's presence in the Rada during the vote was seen by Ukrainians as open pressure).

In the eyes of many Ukrainians, Western pressure on Kyiv to implement clause 11 on constitutional changes ahead of implementing ceasefire and other urgent clauses of Minsk-2 looks like "appeasing" Russia for aggression and assisting it to achieve its goals of 'Bosnianisation' of Ukraine. It is widely seen that Kyiv can have a meaningful dialogue on the future constitutional devolution of powers only with legitimately democratically elected representatives of the Donbas region, i.e. it can be possible after the proper implementation of the clauses 4 and 12 of Minsk-2 (see above).

At the same time, "DPR" representatives stated their propositions on the constitutional reform of Ukraine, which go far beyond the Minsk Agreements and standards of the international law and practice on decentralization. For example, in addition to the request to have quota for their members in the Parliament of Ukraine, to use Russian language and have close economic ties with Russia, they insist on granting the right to coordinate all adopted laws as well as the right to veto decisions in foreign policy and granting the right to form their own police, security services, judiciary, prosecution, border guard service, and other agencies without an approval by the Kyiv authorities.<sup>44</sup>

*13. Intensification of the activities of the Trilateral Contact Group, including by means of establishing working groups to fulfil the*

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<sup>44</sup> "DPR" offers special view of amendments to Ukrainian Constitution / Cencor. 27.01.2016 <http://en.cencor.net.ua/n371293>

*respective aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.*

The Trilateral Contact Group on Ukraine was set up following the first Normandy format meeting in June 2014 to facilitate the dialogue between the governments of Ukraine and the Russian Federation to find diplomatic resolution to the war in Donbas. The Group originally was composed of high representatives from Ukraine, the Russian Federation, and the OSCE. Representatives of separatists ('Donetsk People's Republic' and 'Luhansk People's Republic') take part in the discussions of the Group. Currently, the Group is supported by four thematic working groups: on security issues; on political issues; on humanitarian issues; on socio-economic issues.

The work of the Trilateral Contact Group should not be underestimated, and it is the stable platform for a constant communication between the parties to conflict, which is important to find solutions for daily issues and more general management of the conflict. Taking into consideration the high level of the representatives involved, including heads of the working groups, it is possible to conclude the level of attention and amount of influence these people have to make decisions but not just to have talks about talks.

Recently, a special representative of the Russian President B. Gryzlov stated, that in his opinion, Russia is not a part to the Minsk Agreements<sup>45</sup>. Moreover, he insists that any decisions, including Constitutional changes should be negotiated with the representatives of "DPR" and "LPR". However, it is worth mentioning, that the Minsk talks in February 2015 took place almost without the absence of the

separatists' regions representatives, agreed by four leaders of Germany, France, Ukraine and Russia, and only later presented to the leaders of "DPR" and "LPR", that was quite a vivid confirmation of the decisive role of the Russian Federation in the decision-making process and negotiations.

## Conclusions

The analysis of the Minsk agreements implementation demonstrates that despite few steps forward, the trend of a systematic violation of the certain clauses as well as serious manipulation of the others by the so-called 'Donetsk People Republic'/'Luhansk People Republic' ('DPR'/'LPR') combatants and Russia can be observed.

For the time being, the main violations and non-conformity lay in the security domain, which should be considered as a basic prerequisite for the political settlement. Without full implementation of the cease-fire, and withdrawal of the agreed weapons, as well as permission of the full-access to all

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**« For the time being, the main violations and non-conformity lay in the security domain, which should be considered as a basic prerequisite for the political settlement**

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territories for the OSCE, it is difficult to start negotiations or practical implementation of the clauses regarding reconstruction of the destroyed territories or local elections – in case these elections are expected to meet the international standards.

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45 «Мы можем серьезно продвинуться в реализации Минских соглашений» / Kommersant.ru. 17.01.2016  
<http://www.kommersant.ru/doc/2895197>

Minsk agreements implementation has been taking place with different speed for different clauses. From the very beginning, it was a problem due to the lack of defined deadlines for all the clauses implementation as well as a sequence for implementation of the individual clauses in the list, resulting in serious disputes between the parties. While Ukraine insists on the simultaneous start of implementation of all clauses, the Russian Federation manipulates with few clauses, for example insisting that full control of the Ukrainian border by the Ukrainian authorities can be restored only after local elections and Constitutional changes.

At the same time, there must be certain logic in implementation of the agreed actions. Free and democratic elections as well as reconstruction of the destroyed towns are not possible while security situation remains fragile. However, provision of a secure environment demands not only a steady ceasefire but also effective control over the Ukraine-Russia state border and stop of the illegal inflow of weapons and military to the uncontrolled territory. If other clauses can be presented as a responsibility of the self-proclaimed 'Donetsk' and 'Luhansk' 'People's Republics', the effective border

control is a clear single responsibility of the Russian Federation. Continuing prevention of the OSCE's monitors to observe the situation at the uncontrolled territory reveals both the attitude towards the international obligations and desire to hide non-conformity to them.

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# HUMANITARIAN CRISIS IN UKRAINE AS A FACTOR DESTABILIZING DOMESTIC AND FOREIGN POLICY OF THE STATE

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***Since 2014, the Ukrainian state has been suffering from the economic, political and social crisis, which has deepened due to constant warfare conducted by the pro-Russian terrorist groups in the Eastern Ukraine and the Kremlin annexation of the Crimean peninsula. These factors permanently influence the internal political stability of the state and personal security of its population. The latter cannot be fully guaranteed by official authorities, as a significant number of people are subjected to pressure of purely humanitarian nature. Today, the humanitarian crisis is amplified by the fact that many people from the East of Ukraine still reside in the military operations area or struggle for their lives having acquired the status of internally displaced persons. This situation leads both to a significant imbalance in implementation of the internal policy and brings humanitarian issues to the foreign policy domain. Thus, this article aims to explore a grade of impact and a role of the humanitarian factor in the implementation of domestic policy of Ukraine, as well as in the realization of its diplomatic activities in the world political arena.***

Military and political crisis that erupted in Ukraine two years ago and continues now, is assuming new shapes today and is rapidly expanding the range of aspects in public life to have the overwhelming influence thereon. For the first time in the modern history, three key processes started developing simultaneously and influencing the formation and further development of the Ukrainian state and became the primary driving force for a beginning of the crisis. Firstly, leading actors of the global political scene intensified their activities in order to renew the world order and validate their roles in a new and well-formed system of international relations. Secondly, the

Russian Federation, harbouring plans to restore its former power, ideologized an idea of political revenge and began to realize the foreign strategy of 'gathering lands', which had always been considered as a direct Russian 'zone of influence'. Thirdly, the Ukrainian society and its political elite went through the transformational processes, which consequently forced the formation of the Ukrainian nation. However, the possibility of existence of a unified national community, being able to make its conscious choice in favour of domestic and foreign policy courses of its state, triggered provoked the Russian Federation.

## Russian Policy and Humanitarian Complex Emergency

Initially, manipulating the issues of cultural affiliation of the population in the Southern and Eastern regions of Ukraine, as well as the idea of 'historical necessity' to unite the Slavic peoples, the Russian authorities managed to quickly shake all the vital mechanisms maintaining the existence of the Ukrainian state. The internal disruption

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of social and economic stability of the state a priori leads to its depravation from within: in this case, the military intervention was a mere tool for achieving this goal. As a result, regressive processes in the Ukrainian society are intensifying daily and reaching new dimensions. They do not take place only in the areas of domestic policy, social and economic public administration. They also cause a kind of hysteria in the society as a whole, starting from the soldiers' post-war syndrome and ending with problems of civilians remaining in the conflict zone.

This strategy of attrition cannot be considered unreasonable, even more, so as Russia understands military and

political activities as a specific sphere to be separated from humanitarian issues. The Russian politicians actually consider 'protection of the population' as a slogan to cover aggressive military actions<sup>1</sup>. Therefore, a permanent threat to health and life, deprivation of material benefits, restriction of rights, personal restraint, and manipulation of consciousness make only a short list of challenges faced by the residents in Donbas and the Crimea.

Among other things, international humanitarian law obliges Russia, as the occupying power, to maintain law and order, respect human rights and provide food and medical care to the population under its control<sup>2</sup>. It also obliges Russia to facilitate assistance by relief agencies should it be unable to provide for the population itself. However, the Russian actions prove adverse: by worsening the critical situation, Moscow received another 'card' that can be played an unlimited number of times destabilizing domestic and foreign policy of Ukraine.

Therefore, the humanitarian crisis, which seized the Ukrainian state two years ago has transformed into a disaster of the other scale, i.e. into the post-Bipolar complex emergency. This phenomenon of the post-Cold War era is known as a man-made crisis where a situation of violence causes human fatalities, forced displacement, epidemics and famine.<sup>3</sup> However, in Ukraine it is combined with the weakening of economic and political structures, the reduction of social unity and a considerable deformation of public morality. From the academic standpoint, complex emergencies differ from crises as they are more prolonged, political

<sup>1</sup> Военная доктрина Российской Федерации: Указ Президента РФ № Пр-2976 от 25 декабря 2014 г. <http://archive.mid.ru/bdomp/ns-osndoc.nsf/osndd/2a959a74cd7ed01f432569fb004872a3>

<sup>2</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtectionOfCivilianPersons.aspx>

<sup>3</sup> Humanitarian Emergencies and Humanitarian Action, Alert 2010, p. 111 <http://escolapau.uab.cat/img/programas/alerta/alerta/10/cap04i.pdf>

at root and have a significant destructive and de-structuralizing impact on all spheres of life.<sup>4</sup> As a result, the response to these crises usually involves a large number of players, as well as those exclusively involved in humanitarian work, including peacekeeping missions, political and diplomatic figures.


Despite the changes in Government leadership, the political and economic reorientation, and the emergence of a vibrant civil society dedicated to the implementation of the changes, Ukraine remains far from achieving political and economic stability and internal security sought by supporters of the Euromaidan. In fact, 2016 has already proven to be a very unsettling time for the Government as frustration have mounted over the slow pace of political reforms, economic progress and international negotiations on conflict resolution.

The conflict continues affecting resident population; internally displaced persons face shortages in food, health services, basic household items and shelter, and suffer from psychological distress after more than two years of warfare. According to the European Commission's Humanitarian Aid and Civil Protection Department, the conflict has affected over 3.7 million people, out of which 3.1 million are estimated to be in need of humanitarian assistance.<sup>5</sup>

However, during all the years of its independence Ukraine remained uncertain about universally significant values that could unite the Ukrainian society (including humanism, patriotism, freedom, spirituality, respect for human rights, and the state's responsibility to society). Just now, the

consistent humanitarian policy becomes an important factor influencing both formation and preservation of the state's sovereignty. Thus, by stirring humanitarian disaster, the Russian Federation affected considerable the internal situation in the country and Ukraine's position in the international arena as well.

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***Within the frameworks of internal policy, humanitarian problems are not only the primary cause of social instability, but also a litmus test to determine the unity of elites***

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### **Humanitarian Impact on Internal Stability**

Within the frameworks of internal policy, humanitarian problems are not only the primary cause of social instability, but also a litmus test to determine the unity of elites. An increase in tensions between the state authorities has proved a lack of their internal legitimacy. The regional elites are gradually maximizing their importance in the country, and could require more extensive rights to funding and self-government of the regions in future. The lack of social support, overweight of political and economic mistakes, and absence of reforms, multiplied by the changed political balance, turned the humanitarian crisis and all the opportunities to overcome it into a bargaining chip in the internal political game of various subjects and parties. This increases the conflict intensity within the political system itself; its players are completely deprived of public support, and

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<sup>4</sup> Humanitarian Emergencies and Humanitarian Action, Alert 2010, p. 111 <http://escolapau.uab.cat/img/programas/alerta/alerta/10/cap04i.pdf>

<sup>5</sup> European Commission: Humanitarian Aid and Civil Protection: ECHO Factsheet – Ukraine, March 2016, p. 2 [http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine_en.pdf)

social confidence in their acts is constantly decreasing. Taking into consideration that quite consistent information and cultural policy of the Russian Federation led to the reformation of consciousness among a considerable number of citizens, to take a back seat to humanitarian issues means to split the Ukrainian society.

The delivery of humanitarian aid convoys to the so-called 'DPR' and 'LPR' allows Russia to create the illusion of supporting Ukrainian citizens that becomes quite real in crisis. In addition, the settlement of humanitarian crisis is increasingly affected by various pro-Russian national and regional actors, which often handle extremely painful political issues. The church may be positioned as the primary one. The Russian occupation of some Ukrainian territories has established a strict line of demarcation between the religious communities in Ukraine using a criterion of their attitude to the processes of national state-building. The Catholic community, following edifications of the Pope Francis, tends towards the international legal settlement of the conflict and the fastest resolution of the humanitarian crisis in the territory of Ukraine<sup>6</sup>. Alternatively, the faithful of the Ukrainian Orthodox Church – the Moscow Patriarchate express their opposing political viewpoints as they openly support the Russian invaders. Making allowance for the fact that 50% of the Orthodox centres in Ukraine stay under the Moscow Patriarchate's jurisdiction, one can argue that the religious factor can be determined as a powerful leverage to make the Ukrainian state dependent on Russia. The Orthodox canons may easily shape public opinions of the majority,

as the core objective of the Orthodoxy consists in protecting humanistic ideals and human persons and condemning any encroachments on their welfare. By manipulating the humanitarian factor, the Church is able to form the worldview of Ukrainians and, therefore, provide support to certain political positions. The rubber stamp UOC – MP has become an important instrument of ideological and spiritual intervention, since it is permanently destabilizing the political situation in Ukraine and supporting its territorial fragmentation. For its part, the Russian Orthodox Church MP disseminates its slogans and judgments at the international level: this discredits the Ukrainian Orthodox community and, consequently, undermines the prestige of official Kyiv in the eyes of the faithful worldwide.

The Ukrainian representatives in the Trilateral Contact Group, which is responsible for negotiations to settle the conflict in Donbas, increasingly promote an idea that the humanitarian crisis should influence the elimination of this conflict.<sup>7</sup> This essentially contradicts those basic European values, which have been determined by Ukrainians as major ones. Humanism has a universal positional nature; it is possible from some reflexive perspectives. Not all but just a few countries are able to reach such perspectives, as their leaders often conceive modern life in terms of social, political, economic or cultural ideologies. As a result, the trite disregard of social needs divides the population into two opposition camps, which are no longer able to defend the national identity of the state to be really necessary for the protection of its sovereignty. Under these conditions, the society loses its moral and ethical principles.

<sup>6</sup> Pope Francis meets with the President of Ukraine, 20 November 2015 [http://en.radiovaticana.va/news/2015/11/20/pope\\_franis\\_meets\\_with\\_the\\_president\\_of\\_ukraine/1188323](http://en.radiovaticana.va/news/2015/11/20/pope_franis_meets_with_the_president_of_ukraine/1188323)

<sup>7</sup> Герашенко: Слід спростити пересування через кордон із сепаратистами. – 16 січня 2016 р. <http://novynar-nia.com/2016/01/16/gerashhenko-slid-sprostiti-peresuvannya-cherez-kordon-iz-separatistami/>

Their integration into the segmental society does not make any sense – neither social nor political. Morality dies. Conventional wisdom maintains that most of the population is deprived of their daily benefits by persons who primarily require supporting their lives. In fact, an internal social conflict between the Ukrainians who are originally from different regions of the state arises.

According to the Office of the United Nations High Commissioner for Human Rights, there are about 1.6 million internally displaced persons, who have fled their homes due to the conflict in Ukraine. Between 800 thousand and 1 million IDPs are living in territories controlled by the Government, where some continue to face discrimination in accessing public services. OHCHR has observed that some IDPs are returning to their homes, while others are unable to do so due to the destruction or military use of their property.<sup>8</sup> According to the UN and Russian official sources, over 1 million Ukrainians are seeking asylum or protection abroad, with the majority going to Russia and Belarus<sup>9</sup>.

Such conditions advance the further transfer of issues regarding the internal humanitarian crisis in Ukraine to the international level. Whereas Ukrainian authorities consider this situation as an opportunity to implement a coordinated humanitarian policy, other actors of the international relations strive using it to review their commitments to Russia, including not only political, but also legal, financial, and energy ones.

The Ukrainian state generally receives humanitarian assistance in the course of activities carried out by the international governmental and non-governmental organizations. Despite that, the effective control of this process is placed at the end of the agenda of international negotiations on the Ukrainian issue.

### **Diplomatic Consideration of the Ukrainian Crisis**

Nowadays, the system of international relations is critically overloaded with local conflicts of various intensity and activities of different quasi-states resulting from palliative, temporary and incomplete solutions to these conflicts. Key actors of the international arena strive maintaining the fragile status quo when the international system does not undergo radical transformations and cannot become uncontrollable. Today, changes in the status of its actors are not allowable either to the United States or to the European Union. However, Russia tries acting at cross-purposes. Responding to criticism regarding the inactivity while implementing an international mechanism for humanitarian assistance to be envisaged in the Package of Measures for the Implementation of the Minsk Agreements, Moscow considers the establishment of the common economic and humanitarian space from the Atlantic to the Pacific Ocean, which could be implemented through the convergence of the European and Eurasian integration processes.<sup>10</sup>

<sup>8</sup> Office of the United Nations High Commissioner for Human Rights: Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, p. 7 [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>9</sup> Office of the United Nations High Commissioner for Human Rights: Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, p. 7 [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>10</sup> Выступление Постоянного представителя Российской Федерации при ОБСЕ А. К. Лукашевича на совместном заседании Постоянного совета ОБСЕ и Форума по сотрудничеству в области безопасности. – Вена. – 9 марта 2016 г. [http://www.mid.ru/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/2134250](http://www.mid.ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2134250)

Regrettably, the Russian approach to negotiations makes sense. The movement in the wake of foreign policy of its partners causes specific risks for the national interests in Ukraine. The main one is an increasingly clear desire of Ukrainian partners to negotiate the normalization of relations with Russia with no regard to Ukraine's position or even at its account. To determine an actual position of the Western countries on the Ukrainian issue is much more difficult: sanctions against Russia have already become burdensome for them, and the current immigration crisis sidelines even an opportunity to resolve the issue on the Ukrainian IDPs. The Kremlin quite successfully uses the humanitarian factor while playing its foreign policy game. Suffering from social and economic problems, the Ukrainian authorities are simply unable to realize all the transformations required within the implementation of the Minsk Agreements in time. The pressure on the Ukrainian officials is growing, but the humanitarian crisis is making a sharp comeback.

The primary reason for such a situation is one of the main drawbacks of the Minsk negotiations caused by the placement of fundamental issues of the internal policy of Ukraine on the agenda of these talks. Up until this weakness is not fixed, the negotiation process will be ineffective and arrangements to be reached will not be legitimate. However, the status of the Eastern regions of Ukraine is a top priority not only for Russia, but also for the West. The Russian diplomacy managed to turn its own goal into the purpose of most Western partners. The main objective of the 'hybrid' return of the Donbas to the jurisdiction of the Ukrainian authorities is maintenance of the so-called 'grey zone' of instability in the East of Ukraine. This formal 'return' may guarantee Russia the removal of economic sanctions imposed by the West and the ability to manipulate

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***International discussions on the internal structure of the Ukrainian state do not only undermine its sovereignty, but also significantly harm the effectiveness of diplomatic interaction.***

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the population of the Eastern regions undermining the unity and power of the Ukrainian state. Moscow could continue building up its military presence near Ukrainian borders and in the Crimea. In return, the issue on de-occupation of the Crimean Peninsula would be put beyond the diplomatic negotiations with foreign partners: the official Moscow would continue persuading the world to recognize its illegal annexation and neutralize all the attempts of the Ukrainian side to shift the issue on return of this territory in its favour.

International discussions on the internal structure of the Ukrainian state do not only undermine its sovereignty, but also significantly harm the effectiveness of diplomatic interaction. Diplomacy is particularly forceful in a sphere of foreign and international policy, but its effectiveness is much lower in the field of domestic policy. Internally, Ukrainians need a moral consensus between authorities and citizens regarding the key issues of the foreign policy, especially when they relate to the national sovereignty and the territorial integrity of the state. State leaders should receive a considerable vote of confidence from the public, which, in turn, should know that the authorities defend its security. Such relationships allow ensuring the existence of a stable political system and a monolithic social platform, which altogether form the basis of foreign policy. At the international level, narrowing the scope of negotiations

and their focus on foreign policy, security and humanitarian aspects may become a logical step made in the nearest future. The consideration of humanitarian issues could significantly strengthen the authority of the Government inside of the country and, consequently, improve the credibility of the state in the international arena.

## Conclusions

Ukraine has managed to have the political support of the US and the EU regarding the pressure put on Russia in order for the Minsk Agreements to be implemented. Nevertheless, it failed to put forward new political initiatives to accelerate their realization and to create new mechanisms for monitoring its compliance with the commitments. In contrast to the Ukrainian tactics, the Kremlin is quite successfully forming its 'flexible alliances' with the EU and NATO members influencing some opponents with energy and information factors. The establishment of the status quo in the Donbas region, rather than the social and humanitarian aspects of its further development, remains the underlying issue. The United States stands up for the norms and principles of international law and tries to preserve the established world order. Thus, Germany and France strive preventing harmful effects of the Ukrainian crisis on the political, economic and humanitarian relations between Europe and the Russian Federation. The relationships of the vast

majority of the EU countries with Ukraine are still considered through the prism of their ties with Russia. The preservation of the European security system and the respective positions of the EU leaders therein is their primary task while solving the Ukrainian-Russian conflict.

The humanitarian crisis in Ukraine has become a problem to be exclusively tackled by the national authorities. Its solution is the path to political, economic and social reconstruction of the country. However, the narrow agenda of the international negotiations to settle the conflict, as well as the Russian reluctance to lose a key leverage influencing the political situation in Ukraine, brings the importance of these issues at the world political level almost to nought. In fact, the resolution of the humanitarian crisis in Ukraine is dissonant with the objectives of the foreign policy of the leading actors of international relations.

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# GUIDELINES FOR MANAGING THE CONFLICT IN DONBAS

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*The article focuses on the on-going conflict in the East of Ukraine. Two years after its beginning, it has become a challenge for both national and regional security. By now, it carries the features of the so-called “frozen” conflicts, typical for post-Soviet political space. Managing these conflicts is specifically difficult due to strong impact of the Russian policy, to which these conflicts are instruments for strengthening control over immediate neighbourhood. On the other hand, the conflict resembles other militarized internal disputes (MIDs) of the post-bipolar world. They encompass numerous issues, including identities, resources, symbols, and narratives. They also often result from structural factors, triggered by weakness of states. Most of these conflicts are hard to manage and/or resolve. So far, there is no defined strategy for Ukraine to apply for settling the conflict. We argue that theoretical guidelines for internal conflict management combined with the critical analysis of similar conflicts’ trajectories could help elaborate a more precise approach.*

Managing a full-fledge internal conflict with a strong external intervention in the Eastern Ukraine is an extraordinarily hard task for the Ukrainian leadership. Together with the annexation of the Crimea, the Donbas conflict is the most significant security challenge ever for the country. Its negative impact covers both hard and soft security areas. As a result of the annexation of the Crimea by Russia and an on-going armed conflict in the East of the country, Ukraine has lost control over approximately 7% of its territory. Its real GDP fell about 19% in recent two years<sup>1</sup>. The country suffered over 9,000 casualties and more than 20,000 injured since April 2014, according to UN Office of the High Commissioner for Human Rights<sup>2</sup>.

Moreover, as long as there is an ongoing war on its territory, Ukraine continues to be an unstable state, not only undermining its own chances for a successful European integration, but also generating far-reaching risks for regional security already undermined by revisionist Russian policies.

Addressing the conflict’s immediate consequences has been on top of Ukraine’s political agenda for about two years. At the same time, there is a clear lack of vision of ways and strategies of resolving the conflict. Considering the experience of other regional conflicts, involving high stakes from Russia and secessionist

<sup>1</sup> The World Bank Ukraine Economic Update, October, 5, 2015 // <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/10/34131444107623273/UA-MacroeconUpdate-Oct-2015-en.pdf>, Retrieved Jan., 8, 2016.

<sup>2</sup> Ukraine Conflict Has Left More than 9,000 Dead, Says UN, The Guardian, December 9, 2015.



movements supported by Moscow, chances are high for freezing the conflict in Ukraine and keeping its development under control, Russian control by all means. We will examine whether other options are possible and how “transnistrianization” of the Donbas conflict will affect broader security agenda.

### **Theory: Managing Internal Conflicts**


Most internal conflicts result from clash of interests within a state, which for several reasons cannot be addressed properly. All states experience internal conflicts, but while some are handling them peacefully and effectively, others are falling victims to a large-scale violence, uncontrolled escalation, and war.

There are several factors determining the probabilities of internal conflict initiation and escalation. They could be divided into structural and discriminative. The latter are about social groups within states, which can be – and, in fact, are – extremely different in terms of national identity, religion, ideology, gender, age, and alike. There is no state free of societal differences, although in some rare cases they can be significantly reduced. For instance, in Norway or Japan ethnic minorities constitute less than 5% of total population. In the former Soviet Union, like in most planned socialist economies, diversity in income has been minimized. In these rare cases, differences become less evident, but nevertheless present. The level of discrimination, concentration of differences, history, and sometimes geography determine the scope and strength of potential internal conflicts.

On the other hand, there are conditions under which imagined lines among various society groups are turning into frontlines. The ability of a state to manage differences and create a favourable environment for preventing violent conflicts is reflected by

structural factors. They are, in short, about state’s efficiency, i.e. ability to generate and distribute social goods: security, justice, prosperity, high level of income, and so on. If a state is functioning properly, there are usually enough ways, institutions, and procedures for solving disputes within society. On the contrary, if a state

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 ***an ineffective state becomes vulnerable to a structural security dilemma. Like in international politics, this dilemma is about the uncertainty over intentions and lack of any security guarantees in relations among several actors***

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is corrupted, ineffective, and lacking well-defined mechanisms for keeping social harmony, division lines among different groups start to accumulate distrust, fear, and hatred.


When that happens, an ineffective state becomes vulnerable to a structural security dilemma. Like in international politics, this dilemma is about the uncertainty over intentions and lack of any security guarantees in relations among several actors. A normally functioning state can exercise its sovereignty to provide security for all subjects, while a weak state can no longer do that. Thus, relations among religious, national, ideological or other groups in such a state turn into hostility, first in a way they perceive each other and then in a way they act. Pressed by the absence of security guarantees, due to the weakness of the state, they are taking preventive measures in an environment, which looks so much like anarchy in the international system.

The conflict in Ukraine carries features common for all internal conflicts in weak states, but at the same time it is different

from most of them because of a strong impact produced by participation of a neighbouring great power. It could be argued that the weakness of the Ukrainian state triggered structural mechanisms of internal conflict; however, discriminative factors have been weak or absent. Russia had to introduce them artificially.

According to 2001 census, Russians have been the biggest ethnic minority in Ukraine, of about 17% of total population and decreasing.<sup>3</sup> At the same time, only in one of Ukrainian regions – the Autonomous Republic of Crimea – they were the majority. After the annexation of the Crimea by Russia in March 2014, Ukrainians present ethnic majority in every region of the country. There are neither ways of discriminating inhabitants of Donbas, nor differences in identity between them and the rest of Ukrainians.

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***The “Russian World” mythology has been applied in Ukraine to manipulate identities and provide an alternative for the European values***

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Thus, artificial dividing lines have been drawn through speculations over language, history, and national identity. Wrapped under “Russian World” title, a mix of historical interpretations, Orthodox religious policy, and rhetoric of the Russian-speaking minorities in the neighbouring countries has been labelled Russian “soft power” and applied with the view to enhance Moscow’s control over the near abroad. Contrary to Kremlin’s emphasis of “softness”, this was a subordinated element of Russia’s unusually hard policy.

The “Russian World” mythology has been applied in Ukraine to manipulate identities and provide an alternative for the European values. But it is Russia that had to meet the reality it used to speak about so much when criticizing American foreign policy: any coercion or violence is extremely unfavourable for soft power politics.

This is how the conflict in Donbas is different from almost all other internal conflicts. While in most cases, there are differences at heart, in Donbas there is Russian policy. It is formally internal, however managing it requires not harmonizing the relations among the groups within the society, but handling the Russian factor first of all. At the same time, one cannot completely discard Russia’s manipulations with identity. The dynamics of violent conflict transforms identity. Not only identity differences can lead to a conflict, the opposite is also possible. Ukrainians in Donbas may find their identities splitting apart, and that would eventually become an important dimension of the conflict.

In theory, managing internal conflicts requires several key steps. First, the environment of the conflict should be modified. There are always third parties as well as specific conditions - political, economic, and geographical – which impact the conflict. By improving the environment, one could enhance the chances for settlement. The Ukrainian crisis is a part of a broader geopolitical competition, a solution, which may alone bring the conflict to an end. Secondly, values, resources, and power, altogether constituting the issue at stake, should be broadened as much as possible. No matter how warring parties’ positions may seem,

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<sup>3</sup> State Statistics Committee of Ukraine, The All-Ukrainian Population Census // <http://2001.ukrcensus.gov.ua/eng/> accessed: March 20, 2016.

there are always interests behind them. Assessing interests rather than sticking to positions is the key to broadening the conflict issue. Thirdly, structural changes should be introduced: if there is something in how groups coexist – be it asymmetry of interests or power, structural violence or anything alike – that generates tension and conflict, it should be changed.

Internal conflicts are notoriously difficult to manage. There are always two strategic alternatives: either to eliminate differences or to manage them. The former is usually done through the separation of a state, while the latter is most often carried out through democratization. Both strategies have numerous setbacks and weaknesses, as well as both have an impressive record of failures in recent 25 years. Nevertheless, there are no viable alternatives. At some point, Ukrainian leadership will have to take a decision over which way to follow. So far, mixed rhetoric over elections in the Donbas and prospects of implementing the Minsk agreements indicates the lack of both a clear strategy and the understanding of making an inevitable choice ahead.

Preserving the territorial integrity of Ukraine (excluding the Crimea) will require political efforts aimed at managing artificially constructed differences, which are so actively manipulated by the Kremlin. The task will be even harder given that the differences have been created not for reconciling, but for exerting political pressure on Kyiv. In short, unlike other internal conflicts, the most challenging problem in managing Ukrainian crisis will be finding a political compromise not between Kyiv and Donetsk/Luhansk, but between Kyiv and Moscow.

### **Conflict Management Strategy for Ukraine**

In 2015-2016, conditions for “freezing” the conflict in the East of Ukraine were

firmly set. The process was marked by a long-lasting confrontation, establishment or strengthening of the state institutions, responsible for dealing with the conflict, and the presence of problems related to the conflict at the very top of the country’s political agenda. These are markers of the so-called institutionalization of a conflict, turning it into an important element of everyday life in the society. At this stage, conflicts may exist for an indefinitely long time, which poses the second most important challenge for Ukraine next to the violation of its territorial integrity.


For Russia, another frozen conflict in its neighbourhood would be by far the best possible outcome. Kremlin knows how to operate these conflicts, avoid responsibility, and manipulate parties. Although a conflict in Ukraine would probably demand more investment, leadership, and overall effort than any other, it will suit Moscow more than any other alternative.

The international context of the conflict is still favourable for Ukraine, although tends to become less so in future. Russia’s revisionist policy challenges the existing world order and has already significantly damaged the system of regional security in Europe. Thus, both the annexation of the Crimea and the crisis in Donbas have become a part of a broader issue, which strongly demands reaction from the world’s major stakeholders in security area. So far, this reaction has been painful for the Kremlin and it is most likely to remain so in the near future.

It has been conventional wisdom within Ukrainian political discussion that time is playing on our side; however, that is an open question. Ukraine is certainly paying the heaviest price for an on-going conflict in its territory, both in absolute and relative terms, and thus is getting weaker and more dependent on external support over time.

It should be noted, that such a high price is being paid for just preserving the current status quo. Any move away from it will presumably cost even more. At the same time, Russia is also getting considerably weaker. Given Moscow's broader foreign policy agenda and the asymmetry of goals with Kyiv over the conflict, it could be assumed that Russia may find obtaining its goals in Ukraine increasingly more difficult, risky, and costly. There is a certain ambiguity over which side the time is on, which certainly makes strategic planning much more difficult.

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 ***there is still a probability of re-escalation, it is getting smaller due to rising costs and the lack of political issues, which could be resolved by the direct application of force***

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The conflict is asymmetric in almost every sense, as well as notoriously "hybrid". While the latter is often described as superior tactics, implied by Russia<sup>4</sup>, the former provides Ukraine with good options for further conflict management. The impacts of asymmetry and "hybridness" of the conflict are mixed; they together reduce the probability of a large-scale war and make a frozen conflict scenario most probable. The accurate management of asymmetry in relations with Russia may help Ukraine reduce its vulnerability and prevent Russia from making use of its advantages.

Although there is still a probability of re-escalation, it is getting smaller due to rising costs and the lack of political issues, which could be resolved by the direct application of force. At the same time, de-

escalation seems equally unlikely so far due to the lack of political background. Currently the conflict seems to remain at the equilibrium point and preserving its current features and structure seems to be the most likely mid-term scenario. Both Ukraine and Russia are heavily paying for its continuation, but both are afraid of losing even more in case it ends contrary to their expectations. After injecting a large portion of realpolitik into European security environment, Russia is now paying the price for that itself, being locked within a classic security dilemma. As before, the parties' zones of possible agreement are not intersecting, and that makes freezing the conflict even more probable.

In an ideal world, Ukraine would certainly like to see the conflict ended, its territorial integrity restored, and independence from Russia regained. While having this set of goals in mind is always helpful, most probably, they will not be achieved simultaneously in either short or mid-term perspective. If this is the case, there is a clear need to specify the priorities and start approaching the crisis with building a hierarchy of interests.

Given those circumstances, Ukraine should build its strategy, preferably a long-term one, since the conflict is unlikely to end soon. Like in other cases of the post-Soviet frozen conflicts, there most likely will be the lack of leverage against Russia's manipulation with secessionist territories. On the other hand, Ukraine should build upon that experience as well, learning from mistakes and taking a closer look at what had been achieved.

Foreseeing the future is close to impossible, but one could follow the trajectory of

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<sup>4</sup> Michael Kofman, Matthew Rijansky, "A Closer Look at Russia's "Hybrid War", Kennan Cable, No.7, April, 2015 // <https://www.wilsoncenter.org/sites/default/files/7-KENNAN%20CABLE-ROJANSKY%20KOFMAN.pdf> accessed March, 21, 2016.

conflicts similar to the one we are having in the East of Ukraine. The Transnistrian conflict is certainly one of them. It is a protracted, institutionalized, asymmetric internal conflict, to which Russia is both a mediator and a supporting side. The conflict has been running for a quarter of a century after being “frozen” in 1992 with the view to permanently impact Moldova’s foreign policy choices and internal agenda. For Moscow, it is not as important to win the conflict as to keep it going. Chances are high that events in Donbas will follow a reinforced and more violent version of that scenario, counting that Kremlin’s bet in Ukraine is much higher.

Another experience could be taken from wars in the former Yugoslavia, in particular the Croatian War of Independence. That was a relatively short intensive asymmetric conflict, featuring elements of a hybrid war and active engagement of third parties. The latter brought about de-escalation and conflict settlement with Croatia’s territorial integrity restored. This scenario would be the best possible scenario for Ukraine and yet the least probable. It will require major changes in the environment of the conflict, including radical transformation of the Russian attitude.

Finally, one should not discard cases like Indo-Pakistani war – an asymmetric interstate conflict lasting for several decades. It is marked by occasional escalation, significant military expenditures in both countries, and the securitization of a broad range of issues in bilateral relations. The rivalry has got geopolitical, normative, and religious dimensions and shapes the stance of a regional security system. This is a description, which would possibly resemble bilateral Russian-Ukrainian relations for years to come.

Along with setting goals and attempts to foresee the future, managing the conflict

would require innovative approaches, broadening the issues at stake, and improving the environment. Given the current interests and positions of the parties, the last two would be especially difficult to achieve.


Politically the conflict is not as it would seem from a formally legal point. It carries the features of a militarized internal dispute and may seem to be about autonomization, self-government, or secession of certain territories in the East of Ukraine. However, the conflict itself is an instrument for Russia to exert pressure over Ukraine and keep its sovereignty limited. Thus, the main issue at stake is de facto the independence of Ukraine, including the right to determine its foreign policy. On the other hand, there are Russian interests in keeping Ukraine within its sphere of influence, since it is perceived in the Kremlin as the most important element of a more general task of reinstalling Russia’s “greatness” and hegemony over most of the post-Soviet space. The issue gets more complicated due to the high importance Moscow attaches to its influence over Ukraine and to a high level of threat it feels in case of losing it. In the end, there are two existential non-divisible interests of Ukraine and Russia in the conflict. Reconciling them, including through broadening the issue, seems to be close to impossible.

Besides, there are certainly other issues, mostly concerning the future of the regional security arrangements, undermined by Russian revisionism, but also touching upon a more specific and more internal Ukrainian topic of the so-called “decentralization”. These are areas where a compromise could be found a little bit easier, although since they are linked to both parties’ primary interests, this “little bit” will be insignificant. Along with Ukrainian and Russian ones, there are other bets in the

conflict. It challenges European security architecture, generating numerous risks for neighbouring countries and the EU as a whole. Thus, Europeans are willing to put an end to the conflict and, as fully as possible, to restore Ukrainian territorial integrity, at least over Donbas. The US is driven by similar considerations, added with global security management, which requires the restoration of basic principles of the world order and, preferably, of the status quo ante bellum. It should be kept in mind that even if positions of Ukraine and the West are almost similar in what concerns the former's territorial integrity, there is quite an asymmetry of interests behind them. That discrepancy will make the coordination of efforts more difficult over time.

Ukrainian strategy should proceed from the assumption, that changing the environment is crucial for solving the conflict. In turn, changing the Russian policy is of utmost importance for transforming the context. At the same time, due to the asymmetry of the conflict, Ukraine should avoid the linkage of issues, i.e. of the Donbas and the Crimean problems. Any interconnection like that will enable a stronger state to use its power advantage more effectively. Even if Moscow wants to exchange Donbas issue for an official recognition of its sovereignty

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***Ukraine has to take care of its sovereignty. In particular, it should avoid any erosion of sovereignty as a result of reinforced decentralization through granting particular regions a right to veto important foreign policy or security decisions***

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over the Crimea, in the end, chances for that should be kept as minimal as possible.

Ukraine has to take care of its sovereignty. In particular, it should avoid any erosion of sovereignty as a result of reinforced decentralization through granting particular regions a right to veto important foreign policy or security decisions. Conflict's asymmetry makes it more favourable for Ukraine to engage as many international mediators as possible. Reference to international law should also become the everyday practice of Ukrainian diplomacy. Hybrid wars require hybrid responses. Ukraine should get used to effectively imply multi-track diplomacy and rely on non-governmental institutions.

Dealing with Russia will in any case be the most important and difficult challenge. Generally, Moscow should be persuaded that the conflict in Donbas is a problem rather than a solution for the Russia's security puzzle. To do this, Kyiv has to take extra measures to specify the interests that drive Kremlin's decision-making, to go beyond simple demonization of Putin's intentions, and try to see more fundamental issues than temporal madness or gambling. That would hopefully open some space for political compromise.

At the same time, any measures worsening Kremlins BATNA (Best alternative to a negotiated agreement) should be taken. This is exactly where Ukraine should rely on allies, international organizations, and informational policy. Only after the Russia's position is significantly modified it will be possible to create and exploit a zone of possible agreement thus moving into conflict settlement and post-conflict reconstruction stages.

## Conclusion

There are no simple or easy solutions for the conflict in Ukraine. Most likely, it will deescalate after a long path of mutual concessions and compromises, which so far looks distant and unclear. It is also very much likely that compromises will be often broken, while the level of mutual trust among the parties will remain low. Modifying Russia's position will be the key, while post-conflict settlement will require considerable efforts in introducing power sharing, democratization, and economic efficiency.

There will also be other obstacles for managing the conflict. Economic downfall will make repetition of internal conflict more likely. There are and will certainly be social groups benefiting from the conflict. There are strong signs of external intervention, which should be added to potential spoilers in conflict management. Overcoming all that would take time and

considerable effort. It should be also kept in mind that following the end of the Cold War only about a quarter of all internal conflicts ended up with formal peace agreements. In many cases, it is even hard to say whether they actually "ended".

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# THE ENVIRONMENTAL IMPACT OF MILITARY ACTIONS IN EASTERN UKRAINE AND THE ANNEXATION OF THE CRIMEA

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***The Ukrainian crisis demonstrated that lack of trust between major regional security players like NATO and Russia overshadows most regional disputes and conflicts. The article's main argument is that problems in the two parties' relations stem from NATO's and Russia's existential search for a new role after the end of the Cold War, when their roles and sets of strategies used to be clearly defined. The clash between NATO's liberal logic and Russia's realist logic shows that the two players are acting in different systems of coordinates and the minimal common denominator is still to be found.***

The contemporary concept of human security consists of a combination of social, economic and environmental dimensions of a human being. Issues such as access to water, food security through access to arable lands, clear air and spread of infectious diseases in combination may create conditions that call into question the basic fabric of communities and nations, and challenge their security in a very tangible way. Environmental insecurity as a result of armed conflicts threatens the livelihood, wellbeing and integrity of entire societies, prolonging the period of instability.

This article is aimed at the analyses of the existing environmental impact of the conflict in Eastern Ukraine and the annexation of the Crimea for the environmental security not only in conflict areas but also in Ukraine and Europe as a whole.

This issue of environmental security is multifaceted with several aspects, some of them are as following:

1. the necessity for Ukraine to incorporate the existing and possible environmental consequences of armed conflict in Eastern Ukraine and the annexation of the Crimea into the state environmental concept on the basis of its commitments according to the Ukraine's Intended National Determined Contributions (INDCs) to Paris Agreement on Climate Change 2015;
2. the issue of responsibility for environmental impact as a result of military actions and damages on the territories out of Ukrainian control;
3. constant access to environmental monitoring with the participation of international community and development of response strategies for possible environmental disasters influencing the whole territory of Ukraine;
4. environmental peace-making on the basis of 'society-to-society' models.




Prior to the armed conflict in Eastern Ukraine, in May 2014, the environmental situation within this region was in a difficult condition, due to the intensive air pollution by approximately 5300 enterprises in coal industry, ferrous metallurgy, chemical industry and power stations. In particular, the most methane emissions were registered in places with coal extraction enterprises location that is equal to 70% of total amount of emissions.<sup>1</sup> This situation was multiplied with the total low level of attention to the ecological situation all over Ukraine: the lack of comprehensive approach to the environmental degradation in Eastern Ukraine, low level of environmental consciousness, unsatisfying level of waste cleaning, overpollution of surface and underground waters, lands and air.

With the beginning of the active military actions in this part of Ukraine, the situation degraded dramatically. The main problem is the lack of proper environmental monitoring. The analysis was generally made on the basis of the NGO "Ecology – Law – Person"<sup>2</sup>, Eastern Ukrainian Environmental Institute<sup>3</sup> and Ecological network Zoi<sup>4</sup> research. The work of the Ukrainian State ecological inspections in Donetsk and Luhansk regions is paralyzed, out of 39 posts in the department of water resources in Donetsk region and out of 24 - in Luhansk region only 20 and 6 respectively are acting. Out of 25 only 11 in Donbas and 4 out of 11 in Luhansk stations of air pollution measuring operate at present. As

a result, volunteers remain the main source of data regarding the pollution level in the region of military conflict.

One of the important results of this is the impossibility to make a reliable estimation of the trans-border transfer of toxic substances in case of emergency disaster. Thus, it can lead to international claims for Ukraine and restrict actions on localization of accidents. The same concerns the environmental accidents on the territory of the annexed Crimea, and Ukraine bears responsibility for environmental degradation here in case of transborder air or sea pollution.

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***Armed conflicts result in some negative impacts on land and landscapes, plants, surface and underground waters. Military actions directly lead to risks of accidents at industrial enterprises and infrastructure.***

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The experts from the organization "Environment – Law – Person" propose to renew and to develop the system of environmental monitoring, including the Earth satellite distance probes with the participation of influential international partners. The task for Ukrainian government in cooperation with international organizations is to find ways of coordinating efforts for regular collection of environmental data.<sup>5</sup> Moreover, such com-

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<sup>1</sup> Кравченко О., Василюк О., Войцховська А., Норенко К. Дослідження впливу військових дій на довкілля на Сході України // Схід. - 2015. - № 2. - С. 118-123. - [http://nbuv.gov.ua/UJRN/Skhid\\_2015\\_2\\_23](http://nbuv.gov.ua/UJRN/Skhid_2015_2_23)

<sup>2</sup> Воєнні дії на Сході України: цивілізаційні виклики людству // Львів: ЕПЛ, 2015. — 136 с.

<sup>3</sup> Аверін Д., Денісов М. Війна на Сході України: бойові дії та екологічні наслідки // <http://euaeco.com/?environmental-consequences-fighting/ua>

<sup>4</sup> Denisov T., Simonett O., Weir D., Averin D., Ukraine war leaves a long shadow of pollution, ill-health and ravaged industries // <http://www.climateinfo.org.ua/content/viina-v-ukrajni-zalishae-dovgii-slid-zabrudnen-khvorob-ta-zruinovanaj-promislovosti>

<sup>5</sup> Аверін Д., Денісов М. Війна на Сході України: бойові дії та екологічні наслідки // <http://euaeco.com/?environmental-consequences-fighting/ua>

mon implementation of international programs may facilitate to estimate the levels of damage and harm to infrastructure and nature of Donbas with a view on defining reparations. At the same time, this proposal is hard to realize considering the restricted possibilities for access on the ATO territories. Nowadays the probes by volunteers mainly are the biggest source of information about the scale of the environmental impact.

### Industrial Disasters

Armed conflicts result in some negative impacts on land and landscapes, plants, surface and underground waters. Military actions directly lead to risks of accidents at industrial enterprises and infrastructure. Usually the main reason for pollution is not fighting itself but the damage of industrial infrastructure (oil, gas and ammonium pipelines, water supply systems) and disorganization of daily economic activity as a result of fighting. Environment pollution caused by the emergency stop of big enterprises, the lack of raw materials and energy resources for their uninterrupted activity is a dangerous consequence of fighting in Donbas. In some cases, it leads to the emergency releases of toxic substances, in some cases the consequence is prolonged negative effect on environment through the lack of adequate filtering or use of low-quality raw materials.

Among numerous damages of big enterprises there are Yasynivskiy, Avdiivskiy, Yenakiyevskiy coke plants, Yenakievskiy ferrous metallurgy plant, Lisichanskyy oil refinery, Donetskyy chemical plant, and power stations in

Slaviansk, Luhansk and Kurakhiv, Azot plant in Severodonetsk and Stiroil plant in Horlivka. For example, according to the report produced by the Zoï environmental network, we can follow the impact of the use of heavy weaponry in close proximity to industrial facilities, often directly against them.<sup>6</sup>

Since the conflict began in the region, electrical supply has been temperamental, systematically cut-off by the heavy bombardment of key infrastructure. This results in the intermittent collapse of ventilation systems and water pumps in the hundreds of coalmines in the region. When the electricity stops and ventilators shut down, harmful gases accumulate and are released when systems restart. In March 2015, a release and explosion of methane in the Zaysadko mine in Donetsk killed 33 of the 200 miners underground at the time. While it is not the first accident to occur at the mine, the chair of the mine's board attributed that incident to the heavy shelling nearby Donetsk airport. Similarly, flooding in mines damage installations and waterlogs in adjacent areas, causing groundwater to be polluted.<sup>7</sup>

### Air Pollution

Air quality has also declined because of the conflict. According to the study made by Eastern Ukrainian Ecological Institute, supply chains to coal power stations have been disrupted, and thus power stations have been forced to use lower-grade coal, which is much more polluting. The data from the only operating air monitoring station, located in the town of Shchastya

<sup>6</sup> The Ukraine Conflict's Legacy Of Environmental Damage And Pollutants / Sustainable Security. 21.04.2015 <http://sustainablesecurity.org/2015/04/21/the-ukraine-conflicts-legacy-of-environmental-damage-and-pollutants-2> Воєнні дії на Сході України: цивілізаційні виклики людству // Львів: ЕПЛ, 2015. — 136 с.

<sup>7</sup> Denisov T., Simonett O., Weir D., Averin D., Ukraine war leaves a long shadow of pollution, ill-health and ravaged industries // <http://www.climateinfo.org.ua/content/viina-v-ukrajni-zalishae-dovgii-slid-zabrudnen-khvorob-ta-zruinovanoj-promislovosti>

in the Luhansk oblast shows a marked increase in pollutants since the conflict began. However, peak concentrations of pollutants in the air do not correlate with periods of heavy combat, but rather with the reduction in supply of high-grade coal for the Luhansk power plant. After a key bridge in Nova Kindrashivka was destroyed, the railroad supply of coal to the power plant stopped, and destroyed electric power lines isolated Luhansk power plant from Ukraine's electric power system. As a result, the electric power station that supplies about 90% of regional energy consumers was forced to increase production while turning to lower-grade coal, resulting in a clear deterioration of the air quality.<sup>8</sup> In May 2015, as a result of shelling, Avdiivskiy plant was on fire, and this resulted in a leak of coke gas with a high content of benzol, toluene, naphthalene, hydrogen sulphide, ammonium and methane<sup>9</sup>.

At the moment, relatively little is known about the direct chemical impact of the war on the environment and people. Limited sampling by the NGO Environment-People-Law confirmed the expected range of some 'war chemicals' from the use of conventional weapons in impact zones. Similarly, large quantities of damaged military equipment and potentially hazardous construction waste will require disposal. The Ukrainian Ministry of Defence also raised concerns that depleted uranium weapons may have been used in the fighting around Donetsk airport, and proposed to determine whether this

was the case when conditions allowed.<sup>10</sup> However, this statement needs more detailed studies and regular measuring, which is complicated at present. Air pollution monitoring station in Shchasttya (Luhansk region) fixed on-line data with a high growth of toxic chemical substances (explosives remittances – sulphur dioxide, nitrogen etc.) at the periods of intensive shelling up to 5-8 times from maximum allowable level.



***Land degradation is another important impact of fighting in the Eastern Ukraine conflict. One aspect is the pollution of arable lands by heavy metals and nitrates after shells explosions, flooding of land by mine waters, spill and burning of fuels and lubricants.***

#### **Land and Natural Landscape Degradation**

Land degradation is another important impact of fighting in the Eastern Ukraine conflict. One aspect is the pollution of arable lands by heavy metals and nitrates after shells explosions, flooding of land by mine waters, spill and burning of fuels and lubricants. In case of areas of military actions in Donetsk and Luhansk regions, the concentration of titanium exceeded 150 times permitted levels and contained vanadium (free in normal state). It should be noted that the alloys of titanium and

<sup>8</sup> Аверін Д., Денісов М. Війна на Сході України: бойові дії та екологічні наслідки // <http://euaeo.com/?environmental-consequences-fighting/ua>

<sup>9</sup> Denisov T., Simonett O., Weir D., Averin D., Ukraine war leaves a long shadow of pollution, ill-health and ravaged industries // <http://www.climateinfo.org.ua/content/viina-v-ukrajni-zalishae-dovgii-slid-zabrudnen-khvorob-ta-zruinovanoy-promislovosti>

<sup>10</sup> Український Донбас став полігоном для випробування Збройними силами Російської Федерації новітнього озброєння та заборонених боєприпасів // <http://www.mil.gov.ua/news/2014/10/05/ukrainskij-donbas-stav-poligonom-dlya-viprobuvannya-zbrojnimi-silami-rosijskoi-federacii-novitnogo-ozbroennya-ta-zaboroneni-boepripasiv/>

vanadium are usually used in aviation and rocket industry.<sup>11</sup> The result is that arable lands in Donetsk region (about 64% of total lands in the region) cannot be used for agricultural purposes for a long period of time and it may lead to a dramatic decline in agricultural production.

Military actions on the territories of Donetsk and Luhansk regions led to the breach of landscapes of natural reserves parks. Multiple Donbas' natural reserves parks, such as Ukrainian state steppe natural reserve park "Khomutovskyi steppe", National natural reserves "Meotyda" and "Sviati hory", regional landscape parks and reserves "Donetskyi kriazh", "Zuievskyi", "Kleban-Byk", "Provalskyi steppe", "Triohizbenskyi steppe", "Stanychno-Luhanske" suffered as a result of building fortifications, deforestation, steppe and forest fires.<sup>12</sup>

Uncontrolled fires are yet another dangerous factor for the natural environment. According to the study of the influence of fire on natural landscapes on ATO territories (according to the NASA satellites data), in the second half of 2014, more than 3000 fires happened in forests, steppes and arable lands (three times more compared to the same period of 2013) and destroyed about 14% of total ATO territory, namely 18% of forests areas, 23,19% of steppes, 14% of arable lands within ATO territory.<sup>13</sup> The main reason for the rapid growth of fired areas is the restricted activity of forest protection bodies. The exact esteem of the areas damaged by fires directly as a result of fighting is complicated by the impossibility to check satellite data by means of full-scale

field studies. Such a task could be solved by using precision sensing data, which requires substantial financial resources that the Ukrainian state lacks at the moment.

Moreover, within ATO area there is expanded open extraction of natural resources, mainly coal. According to the experts of the National Environment Centre of Ukraine, the area of illegal extraction of coal under the presidency of Viktor Yanukovich (2010-2014) grew at triple, and equalled to the 57 sq.km with the main orientation for it illegal export to Russia.<sup>14</sup> Nowadays, with the absence of controlling bodies, this open coal extraction takes about two thirds of natural reserves lands.

The cultivation of arable lands and agricultural production is also complicated by new mine fields and unexploded ordnance. Combined with the lack of irrigational waters, these factors lead to the impediments in agriculture and may deepen food and humanitarian security problems within ATO territories.

### **Water Security**

The issue of water security in conflict areas of Eastern Ukraine is another important issue. The highest risks among different emergencies and damage of water supply systems in combination with long periods of cut-offs in water supply, led to the poor quality of water for local population. High mineralization level of local waters, caused by pollution of local rivers should be taken into account. Emergencies on plants and pump stations with usage of active chlorine resulted in poor level of drinking water and

<sup>11</sup> Кравченко О., Василюк О., Войціховська А., Норенко К. Дослідження впливу військових дій на довкілля на Сході України // Схід. - 2015. - № 2. - С. 118-123. - [http://nbuv.gov.ua/UJRN/Skhid\\_2015\\_2\\_23](http://nbuv.gov.ua/UJRN/Skhid_2015_2_23)

<sup>12</sup> Pro dolu zapovidnykiv v zoni ATO // <http://pryroda.in.ua/blog/pro-dolyu-zapovidnykiv-u-zoni-ato>

<sup>13</sup> Кравченко О., Василюк О., Войціховська А., Норенко К. Дослідження впливу військових дій на довкілля на Сході України // Схід. - 2015. - № 2. - С. 118-123. - [http://nbuv.gov.ua/UJRN/Skhid\\_2015\\_2\\_23](http://nbuv.gov.ua/UJRN/Skhid_2015_2_23)

<sup>14</sup> Pro dolu zapovidnykiv v zoni ATO // <http://pryroda.in.ua/blog/pro-dolyu-zapovidnykiv-u-zoni-ato>



## **Surface waters of the Eastern Ukrainian region suffer from the threat of emergencies at enterprises and flooded mines.**

use of surface waters. This is the basis for the spread of intestinal infections, especially in spring-summer periods. For example, Siverskyi Donets – Donbas channel's pump stations that supplied most of Donetsk region with water were damaged and it led to the supply of unrefined technical water for population<sup>15</sup>.

Surface waters of the Eastern Ukrainian region suffer from the threat of emergencies at enterprises and flooded mines. Possible damage of dams on cesspools of industrial enterprises because of shelling or any other military activity threatens to create an environmental disaster not only for the territory of the ATO area. The highest level of environmental threat belongs to the Azovstal plant, which is situated on the territory under the control of Ukraine, with some branches on the coast of the Azov Sea and within the ATO zone. In case of dam damage, which separates the Azov Sea from slag and ash collectors of the power station, as well as from slag heap of martin and convector production, an environmental disaster is inescapable.<sup>16</sup>

Some experts also point out a problem of flooded mines in Donbas. The waters from flooded mines in combination with mine gases present danger first of all for ground waters.<sup>17</sup> At present 35 mines are flooded, and one nuclear charge in Yunyi Comunar mine in Yenakiyvo is at the high level of risk. Poisoned and sometimes radioactive waters can get into the waters of Siverskyi Donets River and the Azov Sea and further strontium isotopes get into the Black Sea. Obviously, such radioactive pollution is dangerous not only for the territories of Donbas region but also for the neighbouring territories of Ukraine and Russia, not mentioning trans-border sea pollution in the Azov and the Black Seas.<sup>18</sup> The pumping of flooded waters from mines is an urgent issue for preventing the mix of these toxic ones with ground waters. This is dangerous for drinking water and irrigation.

### **Chemical Weapon Issues**

The conflict in Eastern Ukraine is known for debates over the issue of using these territories as probe grounds for chemical weapons. At first, this information appeared in connection with the massive shelling near Donetsk airport in summer 2014 and was mentioned by the Ministry of Defence of Ukraine as well as in the OCSE report in September 2014<sup>19</sup>. As it was noted above, this information needs field

<sup>15</sup> Dombas na porozi ekologichnoi katastrofy // <http://www.climateinfo.org.ua/content/donbas-na-porozi-ekologich-noj-katastrofi>

<sup>16</sup> Аверін Д., Денисов М. Війна на Сході України: бойові дії та екологічні наслідки // <http://euaeco.com/?environmental-consequences-fighting/ua>

<sup>17</sup> Denisov T., Simonett O., Weir D., Averin D., Ukraine war leaves a long shadow of pollution, ill-health and ravaged industries // <http://www.climateinfo.org.ua/content/viina-v-ukrajni-zalishae-dovgii-slid-zabrudnen-khvorob-ta-zruinovanoj-promislovosti>

<sup>18</sup> Снегірьов Д. Прорив води на Єнакіївській шахті загрожує Причорномор'ю // <https://psb-news.org/pro-ryv-vody-na-yenakiyivskij-shahti-zag>

<sup>19</sup> Kyiv verifying reports that militants used chemical weapons at Donetsk airport // <http://www.kyivpost.com/article/content/ukraine/kyiv-verifying-reports-that-militants-used-chemical-weapons-at-donetsk-airport-378241.html>


Goltsmith J. Were Chemical Weapons Used in Donetsk Airport's Last Stand? // <https://www.bellingcat.com/news/uk-and-europe/2015/01/23/were-chemical-weapons-used-in-donetsk-airports-last-stand>

probes of land and air as soon as possible because of rapid volatility of gases.

In September 2015, in Western press information appeared regarding Russian intentions to use Eastern Ukraine as a testing ground for the newly developed chemical weapons. The matter is in so-called “non-lethal toxic compounds” for subversive and terrorist activities. Though, “non-lethality” of such substances is open to question. Since the corresponding tests were not carried out, so, the nature of influence of these substances to humans and further effects of such influence are not explored.<sup>20</sup> This information appeared in connection with Russia’s renewed activities in the Scientific Research Institute of Chemical Troops at Saratov and beginning the construction near the Ukrainian border (in the city of Pochepna in the Bryansk region on the territory of one military base) the Centre for restoring chemical weapon models.<sup>21</sup> The demonstrative fact is that the new development and opening of testing ranges occur against suspending all programs of chemical weapon recycling by the Russian Ministry of Defence.

According to the experts’ estimations, currently some tests of fighting poisoning

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***The basic danger of carrying out chemical weapon testing is that consequences will be extremely unpredictable for environment and human beings. It is also necessary to consider that it is happening on densely populated territories practically in the centre of Europe.***

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gases of G Group (GV - sarin, GD - soman) and VX Group (extremely toxic substances) are being carried out in those scientific centres. Also, the development of substances with code-named “beginners” that were synthesized in 1980th in the Soviet Union is carried out and chemical properties of this substance are still authentically unknown. These programs must be finished till the end of 2015 according to Convention on Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons dated 1993 signed by Russia. The term is prolonged till 2020. Thus, we can suppose that in the conditions of the changed international situation, Russia is not ready to refuse from the chemical weapon development. Moreover, the participation in the military conflict in Ukraine provides Russia with ample opportunity to carry out tests of the newest chemical weapons in fighting conditions.<sup>22</sup>

The basic danger of carrying out chemical weapon testing is that consequences will be extremely unpredictable for environment and human beings. It is also necessary to consider that it is happening on densely populated territories practically in the centre of Europe. Therefore, such secret chemical weapon testing in Eastern Ukraine can cause one of the greatest anthropogenic, humanitarian and ecological accidents from which not only Ukraine, but also Russia and Europe, will suffer.<sup>23</sup> According to the Chemical Weapons Convention of 1993, any cases of chemical weapon use in conflict in Ukraine demands the most steadfast attention and careful investigation at the highest international level especially in circumstances of the lack of access to the ATO areas.

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<sup>20</sup> Eastern Ukraine as testing area of Russian chemical weapons // <http://ireport.cnn.com/docs/DOC-1268960>

<sup>21,22</sup> Eastern Ukraine as testing area of Russian chemical weapons // <http://ireport.cnn.com/docs/DOC-1268960>

<sup>23</sup> Eastern Ukraine as testing area of Russian chemical weapons // <http://ireport.cnn.com/docs/DOC-1268960>

Another pressing issue for Ukraine is the issue of responsibility for the environmental impact of activities of industrial and agricultural enterprises on the territory of the annexed Crimea with a view of Ukraine's INDCs to Paris Agreement on Climate Change 2015. This is unclear how to estimate damage in case of natural and industrial disasters. Moreover, Russian Federation's plans of militarization and nuclearization of the Crimean peninsula and the Black Sea Fleet as well as any other military bases<sup>24</sup> threaten the environmental security not only in Ukraine without any hopes for compensations and reparations but for all Black Sea states and should be addressed at the international level.

## Conclusions

Any contemporary military conflict has to take into account the environmental impact as a result of fighting and shelling. Specifics for Eastern Ukraine environment include a rather unsatisfying level of environment in Eastern Ukraine prior to the conflict caused by highly industrialized character of the region with outdated systems of environmental protection.

The main environmental impact of military actions in Eastern Ukraine are damages of industrial enterprises in chemical production, metallurgy, coal mining, coke industry, power stations and industrial infrastructure (gas, oil, ammonium pipelines), accompanied with extraction of toxic substances into air; land and water pollution, as well as damages of natural reserves parks. These dangers are intensified with the possibility of use of some chemical or other types

of weapons yet to test on the territories of the ATO. High levels of pollution in combination with minefields may lead to shortages in agricultural production and food crisis within the conflict area. The lack of access to the area for urgent on site probes in order to adequately analyse the data requires immediate international cooperation, including satellite data collection.

There is an urgent necessity to analyse the impact of the military conflict in Eastern Ukraine for the environment of the rest of the Ukrainian territory in order to develop short- and long term strategies of minimizing air, water and land pollution and its consequences for the whole Ukrainian population.

The issue of reparations for environmental damages in Eastern Ukraine and Crimea is outdated at present because of the non-recognition of any illegal actions by the Russian Federation as well as search for international assistance for industrial rebuilding and ecological modernization of Eastern Ukraine. The urgent issue is energy efficiency and environmental strategy for the whole of Ukraine with an accent on conflict-bordering areas.

The environmental impact of military conflict in Eastern Ukraine and the annexation of the Crimea are not only the issue of environmental security for Ukraine, it has a wider context of environmental security in Europe and the Black Sea area that stipulates the necessity for regional cooperation formats.

More than two years have passed since the occupation of the Autonomous Republic of

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<sup>24</sup> Мілітаризація Криму: чим відповідатимуть країни Причорномор'я на виклик Росії?// <http://ua.krymr.com/content/article/26920825.html>

Мілітаризація Криму загрожує ще й Північній Африці та Близькому Сходу – Єльченко // <http://www.ukrin-form.ua/rubric-politics/1966090-militarizacia-krimu-zagrozuje-se-j-pivnicnij-afriци-ta-blizkomu-shodu-elcenko.html>

Crimea (ARC) by the Russian Federation (RF) that was immediately followed by the illegal annexation of this part of Ukraine's territory by its neighbour. These events – unprecedented in the history of post-WWII Europe – signalled not only a brutal violation and breach of international law, but also a dramatic change in the whole architecture of the European and global security system.

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# CRIMEA TODAY: TRENDS AND DEVELOPMENTS

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*The paper analyses some aspects of the situation in and around the Crimea after the two years of its occupation and illegal annexation by the Russian Federation. The first part addresses the situation regarding human rights, especially those of the most vulnerable Crimean Tatar indigenous people and ethnic Ukrainians. It also covers some other negative trends resulting from changing the status of the territory. The second part provides the analysis of the most important responses of the international community, whereas the third one deals with the national context of the Crimea-related issues.*

While the bloody Donbas war (disguised under the name of the 'Anti-Terror Operation', or 'ATO') for some time averted national and international attention from the occupied peninsula, the current situation in the Crimea and its perception, accompanied by heated debates in mainland Ukraine and abroad, have become more topical over the last few months, especially after the beginning of the 'civic blockade' of the Crimea and other developments that refocused the attention of the national and international media to the Crimea<sup>1</sup>.

## Crimea: current situation

Many international and national human rights (HR) organisations are alarmed by the sharply deteriorating HR situation in the peninsula. The access of monitoring bodies is generally hindered by the de facto authorities in the Crimea.

Since the beginning of the occupation and up to date, only 'unofficial' Turkish delegation attended the Crimea in April 2015;<sup>2</sup> there were also two visits by


<sup>1</sup> Protesting Tatars Block Roads to Ukraine from Crimea, "Transitions Online", 21 September 2015, [[http://www.tol.org/client/article/24998-protesting-tatars-block-roads-to-ukraine-from-crimea.html?utm\\_source=TOL+mailing+list&utm\\_campaign=4ceb2b299c-TOL\\_newsletter\\_21\\_11\\_2014&utm\\_medium=email&utm\\_term=0\\_35d0a711b5-4ceb2b299c-298180421](http://www.tol.org/client/article/24998-protesting-tatars-block-roads-to-ukraine-from-crimea.html?utm_source=TOL+mailing+list&utm_campaign=4ceb2b299c-TOL_newsletter_21_11_2014&utm_medium=email&utm_term=0_35d0a711b5-4ceb2b299c-298180421) access: 22 September 2015]; Food Products Blockade Of Crimea: Belated Action Or A Challenge To The Grand Designs Of The Kremlin's Foreign Policy? "Democratic Initiatives Foundation", 21 September 2015, [[http://dif.org.ua/en/publications/focus\\_on\\_ukraine/prodovolcha-bl-zadumam-kremlja\\_.htm](http://dif.org.ua/en/publications/focus_on_ukraine/prodovolcha-bl-zadumam-kremlja_.htm) access: 25 September 2015]; P.Goble, Crimean Tatar Blockade of Russian-Occupied Homeland 'Doomed to Fail', Shekhovtsov Says, "Window on Eurasia", 15 October 2015, [<http://windowoneurasia2.blogspot.com/2015/10/crimean-tatar-blockade-of-russian.html> access: 20 October 2015]; M. Kovalenko, Month of Crimea blockade, "UNIAN", 28 October.2015, [<http://www.unian.info/economics/1166244-month-of-crimea-blockade.html> access: 30 October 2015].

<sup>2</sup> "The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation". Report prepared on the basis of information obtained during interviews conducted by an Unofficial Turkish Delegation in Crimea on 27-30 April 2015, 5 June 2015, [[http://www.aa.com.tr/documents/AA/haber/crimea\\_report.pdf](http://www.aa.com.tr/documents/AA/haber/crimea_report.pdf) access: 10 June 2015].

the Council of Europe representatives.<sup>3</sup> Regular monitoring by international organisations is not yet possible, whereas activities of the Crimea Field Mission on HR consisting of Ukrainian and Russian human rights groups were stopped in June 2015 after this NGO had been included by the Russian Federation into the so-called 'patriotic stop-list'.<sup>4</sup> Nevertheless, reports based on the information collected from different sources clearly reveal brutal violations of all kind of human rights, targeting pro-Ukraine-minded people, and particularly, members of the two most vulnerable ethnic groups – Crimean Tatars and ethnic Ukrainians: "Ethnic Ukrainians and Crimean Tatars who espouse pro-Ukrainian views on the status of the Crimea or manifest a will to uphold their identity, especially their religious, cultural or linguistic rights, appear increasingly vulnerable, and are in urgent need of protection – an obligation borne first and foremost by the authorities exercising de facto control in the Crimea".<sup>5</sup>

The recorded cases include forced disappearances, murders, arrests, unlawful searches, interrogations, seizures of property, intimidation, and entry bans for political leaders and civic activists, in addition to brutally enforced Russian citizenship. The situation of the Crimean Tatars is further exacerbated by the intention to ban the Mejlis of the Crimean

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Tatar people (the main self-governing body of Crimean Tatars democratically elected by the delegates of Kurultay, the National Assembly) on charges of being an 'extremist organisation'.<sup>6</sup> This move may lead to a new wave of repressions targeting over two thousands members and persons affiliated with the network of local Mejlises. There are also grave concerns over the newly perpetrated detentions and arrests of Crimean Muslims on suspicion of belonging to the Hizb ut-Tahrir – an international organisation recognised as 'terrorist' and banned in Russia but not in Ukraine.

Regarding the general dynamics on the occupied peninsula, it should be noted that the absence of reliable sociological data and the problems with ensuring free flows and exchange of information in both directions make an objective and unbiased analysis an extremely difficult task. Mixed and often conflicting signals are coming via social networks and e-mail communications, and

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<sup>3</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe Following His Mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014. Strasbourg, 27 October 2014, [<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2624575&SecMode=1&DocId=2197556&Usage=2> access: 20 February 2016]. The second mission, led by Swiss diplomat Ambassador Gérard Stoudmann, visited Crimea on 25-31 January 2016 to assess the human rights and rule of law situation. They had over 50 meetings in the peninsula, including with imprisoned Vice Chairman of the Mejlis Ahtem Chiygoz, as well as meetings in mainland Ukraine; the report is not yet published.

<sup>4</sup> Крымская полевая миссия по правам человека из-за угроз меняет формат деятельности (Crimea human rights mission changes format of its activity because of the threats), "Ru.Crimea", 09 September 2015, [<http://ru.krymr.com/content/news/27235360.html> access 20 September 2015].

<sup>5</sup> Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015). "OSCE Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities", 17 September 2015, p. 7-8; see also first monthly and then quarterly reports published by the Office of the UN High Commissioner for Human Rights (OHCHR), [<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UAReports.aspx> access: 02 March 2016].

a more or less comprehensive 'portrait' remains elusive.

On one hand, it is evident that growing prices on food and other products, corrupt and incompetent management by the de facto authorities, inefficient medical services etc. have resulted in the evaporation of earlier illusions and high expectations of those who hoped for much better life under Russia's jurisdiction than under Ukraine's. On the other hand, the paternalistic Soviet-type mentality typical for many local residents directs their dissatisfaction and irritation at either local or Ukrainian authorities. These people invest their hopes into attracting attention of almighty President Putin by sending him individual or collective letters requesting intervention to solve all of their problems (along the lines of 'good Tsar, bad nobles').

The demographic situation on the peninsula is also a matter of concern because numerous data shows a process of replacement of its inhabitants by the newcomers from the mainland Russia – something similar to what was already done once after the WW II and Crimean Tatars deportation by the Soviet authorities. This trend, if continued, will lead to the changes in the ethnic composition of the population, quite unfavourable for realising any plans of its reintegration.<sup>7</sup>

Last but not least, is the problem of further militarisation of the Crimea accompanied by Russia's threats to deploy nuclear weapons

on the territory of the peninsula. This process, having a distinct negative impact on economic and social life and on the fragile ecology of the Crimea, constitutes also a significant threat to regional, European and global security.<sup>8</sup>

### **Crimea and international community**

Although the decision to prolong sanctions imposed on Russia in 2014 after the illegal annexation of the Crimea was reached in 2015-2016 without serious debates or objections, the position of the international community on the Crimean issues is still far from unanimous. To some extent, the leading politicians of the European and Euro-Atlantic space bear a certain degree of responsibility for the Crimean 'Anschluss' that obviously breaches the 'Budapest Memorandum' of 1994 signed by the US and Great Britain which guaranteed Ukrainian security and territorial integrity in exchange to its nuclear status rejection. Also, it could be recalled that at the very beginning of the occupation, President Obama, as well as heads of a number of the EU member states, sent messages to Kyiv recommending to avoid military confrontation with Moscow. Although the lessons drawn from the Russia-Georgia war of 2008 may partly justify such advice, the hopes to temper in such a way the Russian aggression have vanished in a course of further developments.<sup>9</sup>

Moreover, the presence of the members of both European far right and extreme left

<sup>6</sup> Pashayev, «Это nonsense – преследование целого народа за экстремизм» – правозащитница (It's a nonsense, to persecute the whole people for extremism), "Ru.Crimea", 04 March 2016, [http://ru.krymr.com/content/article/27589168.html access: 05 March 2016].

<sup>7</sup> E. Dostim, Перепись населения в Крыму: почему русских стало больше, а украинцев – меньше (Census in Crimea: why there become more Russians and less Ukrainians), "Ru.Crimea", 23 March 2015, [http://ru.krymr.com/content/article/26916490.html access: 25 March 2015].

<sup>8</sup> I. Kabanenko, The Crimean Knot: Untying or Cutting? Presentation at the International conference "Militarisation of the Occupied Crimea as an International Security Threat", 14 March 2016, Kyiv.

<sup>9</sup> J. Rogin, E. Lake, U.S. Told Ukraine to Stand Down as Putin Invaded, "Bloomberg", 21 August 2015, [http://www.bloombergview.com/articles/2015-08-21/u-s-told-ukraine-to-stand-down-as-putin-invaded access: 22 August 2015].

parties and organisations as 'observers' during the illegal 'referendum' in the Crimea of 16 March 2014 demonstrated the splits existing between the pro-Putin lobbyists in the West and the mainstream politics. Leaving aside numerous evidence of further infringements by individuals and companies from different countries of the embargo rules and Ukraine's legislation concerning the occupied territory, it seems reasonable to pay more attention to the less overt disagreement between the major geopolitical actors and stakeholders – namely, international intergovernmental organisations – surfaced due to the Crimean crisis.

The UN reacted to the Russian invasion of the Crimea and the official recognition of the Autonomous Republic of Crimea (ARC) and the city of Sevastopol as subjects of the RF by adopting on 27 March 2015 UNGA resolution 68/262). This non-binding document appeared after seven sessions of the UN Security Council (UNSC) convened to discuss the situation in Ukraine, and an eighth meeting when Russia, one of the UNSC permanent members, blocked action by voting against a draft resolution that would have urged countries not to recognize the results of the referendum in the Crimea.

Although there were 100 votes in favour versus 11 against, there were a remarkable number of abstentions – 58 out of the 193-member of the UN. The resolution called on all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the

basis of the 16 March referendum “and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.”<sup>10</sup>

All subsequent reports by the UN, the Council of Europe and the OSCE contain references to this important document. However, little attention has been paid to its wording, which never uses the terms 'occupation' or 'illegal annexation' and does not name Russia as an aggressor state directly responsible for all of those breaches of international law. Instead, the resolution “Urges all parties to pursue immediately the peaceful resolution of the situation with respect to Ukraine through direct political dialogue, to exercise restraint, to refrain from unilateral actions and inflammatory rhetoric that may increase tensions, and to engage fully with international mediation efforts.”<sup>11</sup>

Moreover, in the last report on human rights violations in Ukraine prepared by the Office of the UN High Commissioner on Human Rights (OHCHR)<sup>12</sup> the section on the Crimea contains some entries that could be perceived as an implicit recognition of Russia's de facto authority over the Crimea. For example: “e) Ensure due process and fair trial rights for Crimean Tatars detained in relation to the February 2014 demonstration” or “g) Ensure respect for freedom of religion or belief and ensure that all procedures for registration are accessible, inclusive and not unduly burdensome” (thus encouraging religious organisations on the peninsula to seek registration according to the legislation of the occupant state).

<sup>10</sup> Backing Ukraine's territorial integrity, UN Assembly declares Crimea referendum invalid, 27 March 2014, [<http://www.un.org/apps/news/story.asp?NewsID=47443&Cr=ukraine&Cr1=#.Vt2FEH2LTMx> access: 7 January 2016].

<sup>11</sup> Resolution adopted by the General Assembly on 27 March A/RES/2014 68/262 “Territorial Integrity of Ukraine”. [[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/262](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262) access: 03 March 2016].

<sup>12</sup> Report on the human rights situation in Ukraine 16 November 2015 to 15 February 2016, “Office of the United Nations High Commissioner for Human Rights”, [[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) access: 10 March 2016].

At the same time, the document severely criticises the ‘civic blockade action’ without any analysis of the underlying reasons or possible consequences – particularly, in terms of the de-occupation. It also

**Regrettably, the OHCHR report does not emphasise any specific (collective) rights of the indigenous Crimean Tatar people, focusing on individual rights only.**

recommends to the Government of Ukraine to “(n) Investigate all claims of human rights abuses committed during the ‘civic blockade’ on the administrative boundary line between mainland Ukraine and the Crimea, and arrest perpetrators” (while never referring to the 4th Geneva convention of 1949 and its Art.55 which clearly states that: “...the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”).<sup>13</sup>

Regrettably, the OHCHR report does not emphasise any specific (collective) rights of the indigenous Crimean Tatar people, focusing on individual rights only.

In contrast to this trend, the EU formulates its documents in a much more decisive way. In this context, the resolution of the European Parliament of 4 February deserves special attention. It does not only

reiterate the EU’s strong commitment to the sovereignty and territorial integrity of Ukraine within its internationally recognised borders, but also: “1. ...recalls its severe condemnation of the illegal annexation by Russia of the Crimean peninsula and the commitment of the EU, its Member States and the international community to implement fully the policy of non-recognition of the illegal annexation of the Crimea; highlights also that the restoration of Ukrainian control over the peninsula is one of the prerequisites for re-establishing cooperative relations with the Russian Federation, including the suspension of related sanctions”.<sup>14</sup>

Apart of this very important point and welcoming the Ukraine’s initiative to establish international negotiation mechanism on the Crimea in the ‘Geneva plus’ format, the resolution unequivocally emphasises (three times) that Crimean Tatars are the indigenous people of the Crimea whose rights should be strongly protected.<sup>15</sup> Its p. 3 also “...calls for respect for the Mejlis as the legitimate representation of the Crimean Tatar community, and for avoidance of any harassment and systematic persecution of its members,” whereas p. 11 “Deplores the actions of the de facto administration to hinder the functioning of the Mejlis of the Crimean Tatar People, the highest executive and representative body of the Crimean Tatars, through the closure of its headquarters and seizure of some of its properties and through other acts of intimidation.” These points have become increasingly relevant with regard to the

<sup>13</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, [https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpnDocument access: 14 August 2015].

<sup>14</sup> European Parliament resolution of 4 February 2016 on the human rights situation in Crimea, in particular of the Crimean Tatars (2016/2556(RSP)), Strasburg, 4 February 2016, [http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0043&language=EN&ring=P8-RC-2016-0173 access: 21 February 2016].

<sup>15</sup> O. Looe, A Window to Europe for Crimean Tatars, “Minority Rights Group International”, 11 February 2016, [http://minorityrights.org/2016/02/11/a-window-to-europe-for-crimean-tatars/ access: 12 February 2016].

attempts of the occupying power to ban the Mejlis as an 'extremist organisation'.

Concerning the economic blockade of the Crimea, although not mentioning directly the actions undertaken either by civic activists or Ukraine's government, p. 5 of the resolution "Recalls that the Russian Federation as an occupying power has the responsibility to ensure the safety of the whole population [of the Crimea]".

As seen from this brief comparative analysis, there is a serious discrepancy between the wording used, on one hand, by the UN, and on the other – by the EU. This difference may actually reflect a deeper controversy regarding the future of the Crimea, and further steps to be taken – or not taken – for the termination of the illegal annexation of the peninsula and returning it back to Ukraine.


### Crimea and the mainland Ukraine

The occupation and immediate illegal annexation of the Crimea in 2014 caught Ukraine's interim government and society at large (as well as the international community) completely unprepared for such drastic turns. The worst anticipations of that time

related to Crimea's declaring 'independence' from Ukraine and becoming a 'grey zone' or another unrecognised self-proclaimed pseudo-state like those emerging in the areas of 'frozen conflicts'. Initial shock and the alarmingly vulnerable situation of Ukraine prevented timely elaboration of any coherent strategy in dealing with the occupied territory and its own citizens remaining there. That was followed – too soon – by the bloody war in the east of Ukraine distracting national and international attention from the issues of the Crimea. The only decisive step taken by the Verkhovna Rada (VR, Parliament of Ukraine) was the adoption on 20 March 2014 of the Decree that recognised, eventually, the Crimean Tatars as the indigenous people of Ukraine and the Mejlis and Kurultay as their main organs of self-government. This document also stressed Ukraine's joining the UN Declaration on the Rights of Indigenous Peoples.<sup>16</sup>

In general, the state policies of Ukraine towards the Crimea remain rather inconsistent, often confusing and stirring up severe criticisms and acute responses of civil society. A few state agencies responsible for the Crimean issues are usually understaffed and underfunded; legislation activities are also unimpressive. In particular, the first bill defining the rights and freedoms of persons on the occupied territory adopted on 15 April 2014 could be recalled: its initial version was so weak, full of different kind of shortages and non-compliances with the international standards that over the time passed, it was subjected to consecutive amendments as many as seven times.<sup>17</sup>

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 ***the state policies of Ukraine towards the Crimea remain rather inconsistent, often confusing and stirring up severe criticisms and acute responses of civil society***

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<sup>16</sup> Постанова № 4475 "Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави" (Decree # 4475 "About the Statement of the Verkhovna Rada of Ukraine on guaranteeing the rights of the Crimean Tatar people within Ukrainian State), 20 March 2014, [<http://portal.rada.gov.ua/print/89891.html> access: 25 March 2014].

<sup>17</sup> Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України (On securing the rights and freedoms of citizens on the temporarily occupied territory of Ukraine), Verkhovna Rada of Ukraine, Law № 1207-VII, 15 April 2014, [<http://zakon4.rada.gov.ua/laws/show/1207-18/paran81#n81> access: 10 June 2014].

The most telling example of the inadequate Ukrainian policy is a story of the law on Free Economic Zone 'Crimea'<sup>18</sup>. This bill, adopted with much difficulties and irregularities, was met with strong resistance of the human rights and other civic activists who claimed that it actually recognises the Russia's jurisdiction over the Crimea, creates comfortable conditions for big businesses continuing trade relations with subjects located on the occupied territory, and is very unfavourable for the internally displaced persons (IDPs) from the Crimea – in particular, designating them as 'non-residents' that resulted in many negative consequences.<sup>19</sup> Despite the promises of the several MPs and President Poroshenko to cancel or amend it fundamentally, this law is still formally in force.

The societal outrage was also caused by the contract on energy supplies from the mainland Ukraine to the occupied Crimea concluded between Ukraine and Russia and signed on 29 December 2014; according to it, presumably, the peninsula was officially recognised as the Russian territory.<sup>20</sup> The turmoil, following the launch on 12 October 2015 of the 'energy

blockade' by civic activists, lasted until the end of 2015 when the term of the contract expired. Many national and international HR activists and politicians then accused Ukraine of violations of the international humanitarian law and bringing suffering to the population of the Crimea. After the contract for 2016 was not resumed because of the Ukraine's proposal to define in its text the Crimea as Ukraine's territory (unacceptable for the RF), those charges calmed down. Remarkably, a decision to reject the renewal of the electricity supplies was taken by Kremlin after a rush 'sociological poll' conducted among Crimean residents on December 31, 2015. According to its data published already on the next day, the overwhelming majority of the respondents expressed their willingness to sustain the respective inconveniences until energy supplies from Russia and own sources would be available.<sup>21</sup>

Recently, Crimean issues firmly returned to the national political agenda. A number of new initiatives were put forward, including the idea of establishing a 'Geneva +' format mentioned above, also compiling the 'Chygoz list' (after the name of the arrested Deputy Chair of the Mejlis) analogous to

<sup>16</sup> Постанова № 4475 "Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави" (Decree # 4475 "About the Statement of the Verkhovna Rada of Ukraine on guaranteeing the rights of the Crimean Tatar people within Ukrainian State), 20 March 2014, [http://portal.rada.gov.ua/print/89891.html access: 25 March 2014].

<sup>17</sup> Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України (On securing the rights and freedoms of citizens on the temporarily occupied territory of Ukraine), Verkhovna Rada of Ukraine, Law № 1207-VII, 15 April 2014, [http://zakon4.rada.gov.ua/laws/show/1207-18/paran81#n81 access: 10 June 2014].

<sup>18</sup> Law of Ukraine № 1636-VII of 12.08.2014, [http://zakon4.rada.gov.ua/laws/show/1636-18 access: 03 March 2016].

<sup>19</sup> For more details, see H. Coynash, Legislative Stab in the Back for Crimeans, "Human rights in Ukraine", 03 October 2014, [http://www.khpg.org/ru/index.php?id=1412082838 access: 15 October 2014].

<sup>20</sup> Депутаты Логвинский и Джемилев требуют разорвать контракт на поставку электроэнергии в оккупированный Крым (MPs Logvinskyj and Djemilev demand to cancel the contract on electricity supply to the occupied Crimea). "Sensor.net", 19 November 2015, [http://sensor.net.ua/news/361470/deputyat\_logvinskiyi\_i\_djemilev\_trebuyut\_razorvat\_kontrakt\_na\_postavku\_elektroenergii\_v\_okkupirovannyyi access: 20 November 2015].

<sup>21</sup> For more details, see K. Vepritsky, Крымская «химия» с украинским электричеством (Crimean 'chemistry' with Ukrainian electricity), "Ru.Crimea", 01 January 2016, [http://ru.krymr.com/content/article/27461731.html access: 12 January 2016]. See also: Poroshenko Says No More Power For Crimea Until Rejoins Ukraine, "Radio Liberty", 15 January 2016, [http://www.rferl.org/content/poroshenko-says-no-more-power-for-crimea-until-rejoins-ukraine/27488931.html access: 16 January 2016].

that of 'Savchenko list' and using as an example 'Magnitsky list' approbated in the US. In 2016 – in contrast to the previous one – the second anniversary of the occupation (defined by the VR as started on 20 February 2014) was marked by numerous events at all levels – from the governmental and parliamentary events to informal street actions and flesh mobs; 26 February is now officially recognised as the Day of Crimean Resistance (to the occupation).

## Conclusions

The Crimean peninsula is rapidly becoming a territory of lawlessness where human rights of all pro-Ukraine minded persons and members of ethnic and religious minorities are brutally violated. The indigenous Crimean Tatars are subjected to especially hard pressure threatening to 'squeeze' them out of the peninsula and assimilate any remaining loyalists.



***In view of a new wave of repressions in the Crimea targeting primarily Crimean Tatars and Muslims of Crimea, Ukraine should insist on not only continuing Crimea-related sanctions against the RF and representatives of the Crimean occupational 'authorities' but on their intensification as well***

Taking into account everything said above, as well as the deteriorating atmosphere of fear, frustration, mutual distrust and suspicions spreading on the peninsula, all formats of international negotiations/meetings on Ukraine should address not only the major problem of terminating the Donbas war ('ATO') but also issues relating to the de-occupation of the Crimea. The Mejlis of the Crimean Tatar people, as a main self-government body of the indigenous people, should be engaged in all

and any format as a full-fledged participant; as a subject not an object.

The 'Geneva+' format, proposed by the Ukrainian President Poroshenko and supported by the resolution of the European Parliament of 4 February 2016, has a chance to be established and make progress only if the Russian federation is somehow forced or persuaded to participate. Therefore, additional leverage might be identified and used (like a prospect of sanctions intensified instead of abolished).

In view of a new wave of repressions in the Crimea targeting primarily Crimean Tatars and Muslims of Crimea, Ukraine should insist on not only continuing Crimea-related sanctions against the RF and representatives of the Crimean occupational 'authorities' but on their intensification as well. Arguments focusing on the rights of Crimean Tatars as the indigenous people of the Crimea – in particular on the right to self-determination in their homeland – should be used more assertively. For this to occur, the support of the UN Permanent Forum on Indigenous Issues must be ensured.

The issue of further militarisation of the occupied Crimea has become increasingly topical. This process converts the peninsula into the military base threatening regional, European and global security, instead of a tourist destination with another kind of 'peaceful' infrastructure. Unambiguous warning signals have to be sent to responsible international organisations and leaders of the democratic countries.

Ukraine's own policy towards the occupied Crimea and the occupying state still lacks a strategic vision and practical steps for implementing previously adopted decisions; this weakens Ukraine's position in the international arena and inflates demands and calls addressed to the outside world.



By developing a coherent strategy of the de-occupation of the Crimea, Ukraine should demonstrate a political will not only aimed at 'punishing' the perpetrators but also to act on behalf of its citizens remaining on the occupied territory.

Efforts should also be undertaken to harmonise and bring closer together views and approaches of the main actors – the UN, the EU, the US, Council of Europe and the OSCE. A more clear-cut and unified vision, including recognising the fact of occupation and annexation as such, will facilitate the application of the specific articles of the 4th

Geneva Convention of 1949 relating to the situation in the Crimea (primarily the most relevant Articles 49, 51, 55, and 70).

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# HUMAN RIGHTS MONITORING IN CRIMEA: MISSION IMPOSSIBLE?

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***Human rights situation in Crimea has deteriorated dramatically during the two years of peninsula's illegal annexation by the Russian Federation. Numerous cases of grave violations of fundamental rights and freedoms of ethnic Ukrainians, Crimean Tatars and civil society activists attract the attention of the international community that looks for a way of ensuring respect for human rights in the region. More active engagement of international organizations with both Ukraine and Russia's participation and the establishment of permanent monitoring of the situation could become a key to this problem.***

Two years after the illegal annexation of the Autonomous Republic of Crimea (ARC) the most dangerous situation on the peninsula is developing around one of the core security dimensions – human rights. The impossibility of permanent and qualitative monitoring of the situation in this area leads to massive violations of human rights and fundamental freedoms of the local population. Such conditions cannot but attract the attention of the international community: it represents a direct security threat to Europe as it bears irreversible consequences due to close interlinking of all security dimensions – politico-military, economic, ecological, and human. In this regard, the negative situation in one dimension leads to the appearance of new threats in others. Systematic human rights violations may cause political instability and internal conflicts that threaten neighbouring countries and regional security in general.

Crimea is gradually becoming a “grey zone” that with time may turn into the source of instability on the continent and the cause of a potential military escalation of the conflict between Ukraine and Russia. At the same time, the human rights situation, especially in relation to representatives of national minorities – namely Crimean Tatars and ethnic Ukrainians, – becomes a precedent, widely used by the Russian Federation for claiming the primacy of the principle of non-interference in its internal affairs<sup>1</sup>. From the other side, even not taking into account non-recognized Russia's sovereignty over Crimea by the world, such references to non-interference reflect Russian difficulties with ensuring respect to international norms and standards, where human dignity and wellbeing are of the utmost importance.

Ethnic Ukrainians, civil society activists, and Crimean Tatars are targets for disappearance and abduction by the current

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<sup>1</sup> Address by chief Russian delegate, Director of the Foreign Ministry Department for Humanitarian Cooperation and Human Rights Anatoly Viktorov at the opening session of the OSCE Human Dimension Implementation Meeting, Warsaw, September 21, 2015 [[http://www.mid.ru/en/web/guest/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/1760315](http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/1760315), access: 23 March 2016].

Russian authorities. Crimean Tatars' leaders are banned to enter the peninsula<sup>2</sup>. Crimea "prosecution" institutions have started the process of prohibiting the Mejlis activity, which has been the main organ representing the interests of the Crimean Tatars in the country since 1991. All these are awful symptoms of the unhealthy situation in the ARC.

Since March 2014, a number of international organizations has been trying to get access to the territory of the Crimea in order to acquaint themselves with the situation on the ground and create an objective vision of the environment. The most prominent ones among them are the Council of Europe (CoE), the Organization for Security and Co-operation in Europe (OSCE) and the United Nations (UN) represented by the Office of the High Commissioner for Human Rights (OHCHR). All these organizations take into consideration both Russia's and Ukraine's participation and thus appeal to both parties' commitments and obligations undertaken within organizations and under international law.

### **OSCE's engagement**

The OSCE was the first to assess at that time the future negative effects for human rights situation in the peninsula just while the formalization of the annexation of Crimea by the Russian Federation was taking place. In March-April 2014, the Human Rights Assessment Mission (HRAM), consisting of experts from the Office for Democratic Institutions and Human Rights (ODIHR)

and the office of the High Commissioner on National Minorities (HCNM), was operating in the ARC upon the invitation of Ukraine. HRAM's report, released in May 2014, presents a clear picture regarding the root causes of human rights violations and their perpetrators<sup>3</sup>. It mentions such gross human rights violations, as murder and physical assaults, as well as cases of intimidation and enforced disappearances (first of all, from the side of the so-called "authorities" of the Crimea that exercise de-facto control). The victims of these were primarily pro-Maidan activists and journalists, Ukrainian military personnel still present on the peninsula and members of the Crimean Tatar community.

The HCNM in that report made a prognosis that the new focus of concern in Crimea would be put on national minorities – the Crimean Tatars and Ukrainians. Hasty decisions on sensitive issues, such as language and other matters of direct concern to national minorities, without consulting the latter (that is yet to be realized by the Russian occupation authorities), were creating an atmosphere in which intercommunity relations and trust in the authorities would be strained and tensions would be heightened<sup>4</sup>.

In one year – in July 2015 – the OSCE made another attempt to evaluate the human rights situation by sending the second HRAM – this time without direct access to the Crimea as Russian authorities did not react to OSCE's intention to visit the peninsula<sup>5</sup>. While numerous meetings and

<sup>2</sup> Crimean Tatar leader banned from entering Crimea, Kyiv Post, 22 April 2014 [<http://www.kyivpost.com/article/content/ukraine/tatar-leader-banned-from-entering-crimea-344577.html> access: 23 March 2016].

<sup>3</sup> Human Rights Assessment Mission in Ukraine. Human Rights and Minority Rights Situation, OSCE: The Hague / Warsaw 2014, 132 p.

<sup>4</sup> Human Rights Assessment Mission in Ukraine. Human Rights and Minority Rights Situation, OSCE: The Hague / Warsaw 2014, 132 p.

<sup>5</sup> Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), OSCE: The Hague / Warsaw, 17 September 2015, p. 4.



***While Ukraine does not exercise effective control over the territory, considering numerous human rights violations documented in the report, it is important that it is the ODIHR that monitors the implementation of recommendations by the Russian Federation in order to ensure respect for human rights and fundamental freedoms on the peninsula.***

interviews on the territory of mainland Ukraine with civil society actors, Ukrainian authorities (as the Russian ones did not respond to HRAM's requests), IDPs from Crimea and average travellers, Mission received a lot of "credible, consistent and compelling accounts of human rights violations and legal irregularities in the Crimea"<sup>6</sup>. In general, such "post-annexation period" was characterized by the OSCE as a period with the essential restriction of human rights under the conditions of "a steady consolidation of control by the de facto authorities"<sup>7</sup>. In the sphere of civil and political rights, those restrictions violate mainly such vital and fundamental human rights and freedoms as freedom of assembly and independence of media. In the sphere of minorities' rights, the OSCE particularly mentions the vulnerable position of the possibility of education in the native language and repressions towards the Crimean Tatars and ethnic Ukrainians who openly supported the territorial integrity of Ukraine.

The key feature of the OSCE institutions' methodology in this regard is providing recommendations to three target

audiences: to the Russian Federation, the de facto authorities in the Crimea and the Ukrainian authorities. While Ukraine does not exercise effective control over the territory, considering numerous human rights violations documented in the report, it is important that it is the ODIHR that monitors the implementation of recommendations by the Russian Federation in order to ensure respect for human rights and fundamental freedoms on the peninsula. However, OSCE efforts in this direction have not only been ignored by Russian politicians but also were blamed as prejudiced and biased.

As for the HRAM activities up to now, they do not have a real effect on changing the situation on the ground. The Ukrainian side continues to insist on the engagement of other possible mechanisms within the Organization. These could be a direct visit to the peninsula of the High Commissioner for Human Rights Astrid Thors or representatives of the OSCE field operation operating in the country, whose mandate covers the territory of Ukraine (according to the Ukrainian point of view) – the OSCE Special Monitoring Mission. At the same time, it appears to be almost impossible due to security reasons and the necessity to obtain permission from the authorities, which de facto exercise control over the peninsula.

### **Council of Europe efforts**

CoE in practice appears the only international organization to find more or less viable solutions to gain at least a possibility to monitor the respect of human rights in the Autonomous Republic of Crimea.

<sup>6</sup> Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), OSCE: The Hague / Warsaw, 17 September 2015, p. 5.

<sup>7</sup> Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), OSCE: The Hague / Warsaw, 17 September 2015, p. 40.

From the formal point of view, in line with the official status of the CoE (compared to the abovementioned OSCE that still does not possess legal personality and which commitments' implementation depend on the political will of the state) and its legal obligations, the advantage of the engagement of this international organization is that the population of the Crimea is covered by the European Convention on Human Rights and should be able to benefit from it.

It was CoE Commissioner for Human Rights Nils Muiznieks, who was first granted with the access to the ARC in September 2014 by the Russian Federation. His visit was not quite successful in the sense of further improvement of the human rights situation on the peninsula, however, it brought important attention to numerous cases of violations. In his report, Mr. Muiznieks reiterated findings of the OSCE HRAM regarding the facts of enforced disappearances in the Crimea, the illegal activity of the "self-defence" forces, the vulnerable position of the Crimean Tatars and Ukrainians in the context of preserving the multiculturalism and multilingualism of the region, media restrictions etc.<sup>8</sup>

The latest successful (again, mostly in terms of obtaining the Russian permission to visit Crimea) initiative was suggested by the CoE Secretary General Thorbjorn Jagland, when he put on the table the proposal to send a Special Representative for Human Rights to the Crimea (later also welcomed by one of the resolutions of the European Parliament). Such visit was conducted in the form of Human Rights

Mission to Crimea in January 2016 headed by Ambassador Gérard Stoudmann, ex-Director of the OSCE ODIHR, Jagland's Special Representative for Organizational Development and Reform of the CoE.

It is not surprising that the whole stay of the CoE mission in the Crimea – from 25 to 31 of January 2016 – was regulated by the Russian authorities. From the other side, despite the plan dictated by the Kremlin and multiple Potemkin villages shown by the occupying power, Mr. Stoudmann could not only meet selected people, but also political prisoners, in particular Akhtem Chygoz, other representatives of the Mejlis of the Crimean Tatar People and pro-Ukrainian activists (at the same time, another evidence of the Russian control of the visit is the fact that the meeting of the mission with Mr. Chygoz was facilitated by the interpreter provided by the Russian side and not by the mission itself<sup>9</sup> – thus, there is no guarantee of an accurate translation of the conversation).

Under those circumstances, the main objective of Mr. Stoudmann's visit was to guarantee that the relevant human rights bodies of the CoE can carry out their monitoring activities unimpeded on the peninsula. At the same time, this ad hoc mission cannot substitute regular activities of the CoE's Commissioner for Human Rights and other relevant human rights bodies in the Crimea (that have a clear and agreed mandate of all CoE member states, thus being much more recognizable on the international stage), but only to coordinate and complete them.

<sup>8</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014, Council of Europe, Strasbourg, 27 October 2014, [<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2624575&SecMode=1&DocId=2197556&Usage=2> access: 10 March 2016].

<sup>9</sup> Council of Europe mission visits Akhtem Chygoz, Human Rights Information Center, 29 January 2016 [[https://humanrights.org.ua/en/material/misija\\_radi\\_jevropi\\_vidvala\\_ahtema\\_chiigoza?cl=en](https://humanrights.org.ua/en/material/misija_radi_jevropi_vidvala_ahtema_chiigoza?cl=en) access: 23 March 2016].

In this sense, the report being prepared by Mr. Stoudmann<sup>10</sup>, regardless of its content, cannot be considered as a comprehensive document evidencing human rights situation in the occupied Crimea. At the same time, the simple fact of Mission's deployment and even one-off presence on the ground may serve for further steps taken in this direction. With regards to the fact that any CoE activities in the Crimea must comply with all decisions of the CoE Committee of Ministers regarding the situation in Ukraine, it will be the Committee that will determine the future development of the CoE's engagement in the situation in the Crimea.


These examples of efforts aimed to create an image of control over the state policy in the field of human rights exercised in the occupied territory, if there is political will of at least two confronting neighbours, can convert into establishing a more permanent institution to be present on the ground. While the deployment of a long-term field operation in the Crimea (such as OSCE or CoE office) is impossible without clearly defining the party to exercise the sovereignty over the region, the introduction of a position of a Special Representative in the Crimea, whose mandate will be strictly accorded by all sides and the Council of Europe as a whole, seems a more or less achievable goal within the Organization. As Ukraine has no opportunity, while simultaneously confronting Russian armed aggression in Donetsk and Luhansk regions, to help the local population in the Crimea, the only thing that our authorities can realize (and they realize it indeed) is to facilitate the access to the Crimea for human rights defenders and organizations with special "human mandate" – such as CoE Commissioner for Human Rights.

The presence of such structures in the peninsula will quickly reveal the real situation in the region and consolidate the international society with the opinion that all events that took place in the Crimea after its annexation are absolutely illegal and ensure Crimean citizens that they are not forgotten.

### **UN assessment**

The UN, which theoretically should be the most prominent and active body involved into resolving crisis situations (including in the field of human rights), as they represent a threat to international peace and security, stays aside the direct participation in the peninsula's life. The

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 ***The absence of physical access to the region makes the first-hand acquaintance with the situation impossible.***

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absence of physical access to the region makes the first-hand acquaintance with the situation impossible. Thus, the Office of the High Commissioner for Human Rights (OHCHR) represented by the Human Rights Monitoring Mission in Ukraine (HRMMU) limits itself with documenting facts upon interviews and obtaining information from verified and trustful sources.

The HRMMU, sent to Ukraine in March 2014 upon the request of the Ukrainian side, is tasked to monitor and report to the UN and its bodies on the human rights situation in Ukraine. In line with the UNGA 68/262 resolution "Territorial integrity of Ukraine" Mission's mandate covers not only the mainland part of the country but the territory

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<sup>10</sup> Still not presented for the moment of writing of the article.

of the Crimea as well. Up to now, the OHCHR presented thirteen HRMMU reports that include special parts devoted to the human rights situation in the Crimea. In these reports we observe the continuing trends of documenting violations of abovementioned human rights and freedoms – such as the freedom of opinion and expression, the freedom of religion and belief, enforced disappearances of civil society activists, discrimination towards ethnic Ukrainians and the Crimean Tatars etc.<sup>11</sup> They also contain chapters with recommendations to Ukrainian authorities, the de facto authorities of the Crimea and to the Russian Federation, which are more detailed than the OSCE's recommendations. However, the main demand remains the same – to “permit OHCHR and other international organizations to access Crimea in order to ensure the effective fulfilment of its mandate”<sup>12</sup>.

Therefore, UN efforts appear to be not as effective as the endeavours of other regional organizations. On one hand, denied access to the Crimea to different UN institutions is a sign of perceiving this universal organization as a more endangering one compared to regional ones by the Russian Federation. On the other hand, it is another evidence of the UN's ineffectiveness in situations where one of the P5 members (permanent members of the UN Security Council that possess the veto right) is a party in the conflict. It brings us to the conclusion that practical use of the UN in crisis situations where there is no peacekeeping activity (even if it is not needed or is impossible due to the veto right) is very limited and has to be strengthened.

## Other initiatives

International governmental organizations (IGOs) are not the only remedy for conducting human rights monitoring in the country. While the international society does not accept Crimea's adherence to Russia (and in this way does not recognize the right of the Russian and “local” ombudspersons to protect and represent rights of the Crimean population), there is still hope for normal functioning of the civil society in the region.

In fact, it is done through the engagement of non-governmental organizations (NGOs) and their first-hand familiarity with the situation. Among such NGOs' activity, international ones represent the most trustful and impartial vision of the situation. Within the last two years, international attention was brought mainly to reports of Human Rights Watch (HRW) and Amnesty International.

Human Rights Watch in both its World Reports 2015 and 2016 evidenced the unlawful transfer of sovereignty to Russia, its status of an occupying power in the Crimea under international law, and the repressive human rights climate in the Crimea under the Russian occupation<sup>13</sup>. Moreover, based on the field research in the Crimea, HRW in November 2014 presented the report Rights in retreat: Abuses in Crimea, which in details describes the human rights consequences of the extension of the Russian law and policy to the peninsula since the annexation. HRW states that Russia

<sup>11</sup> Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, Office of the United Nations High Commissioner for Human Rights, March 2016 [[http://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine_13th_HRMMU_Report_3March2016.pdf) access: 10 March 2016].

<sup>12</sup> Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, Office of the United Nations High Commissioner for Human Rights, March 2016 [[http://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine_13th_HRMMU_Report_3March2016.pdf) access: 10 March 2016]. p. 53.

<sup>13</sup> World Report 2015: Ukraine. Events of 2014, Human Rights Watch [<https://www.hrw.org/world-report/2015/country-chapters/ukraine> access: 23 March 2016]; World Report 2016: Ukraine. Events of 2015, Human Rights Watch [<https://www.hrw.org/world-report/2016/country-chapters/ukraine-0> access: 23 March 2016].

has violated multiple obligations it has as an occupying power under international humanitarian law – in particular in relation to the protection of civilians’ rights<sup>14</sup>. While containing recommendations analogous to those presented in IGOs’ reports, recommendations of the HRW stay even now unaddressed by the Russian Federation and IGOs themselves. The Ukrainian side, by the way, in Crimean HRW report was proposed to recognize the jurisdiction of the International Criminal Court that was later realized in 2015 by the Government of Ukraine<sup>15</sup>.

Amnesty International prepared a comprehensive report for the “anniversary” of the Crimean annexation. Besides documented facts of human rights violations in the peninsula, the strongest appeal in the report goes to the international community. The NGO encourages everyone to “monitor and report all cases of human rights violations and key human rights developments in the Crimea, report all findings, and raise these in discussions with the Russian authorities at any bilateral and multilateral forums”<sup>16</sup>.

Another evidence of the grave situation in the field of human rights in the Crimea was presented after the visit of the unofficial Turkish delegation in April 2015 to the ARC (when relations between Turkey and Russia were still not so problematic and Turkey had not yet imposed sanctions against the Kremlin). Its main task consisted in evaluating the situation of the Crimean Tatars since the invasion and the annexation of the Crimea by the Russian Federation.

The delegation concentrated on the rights of this national minority and indicated the incidents of suppressing and violating rights to life and bodily integrity, rights to privacy of information and communication, the freedom of expression and religion, etc. In the meetings and interviews carried out with the members of the Mejlis, activists, and community members, the delegation concluded that these crucial problems were mainly related to transition to a new legal system, foreign to the local population, and the repressive policy of the authorities de facto exercising control over the Crimea<sup>17</sup>.

Hereby we see that the international society tries to use all possible mechanisms to draw attention, first of all, that of the Russian Federation itself that either organizes repressions with the population of the occupied peninsula or turns a blind eye, to what is happening on the ground. NGOs’ and other unofficial involvement in monitoring the situation testifies that ordinary people do not stay indifferent to the grave human rights situation in the Crimea, which should be addressed as soon as possible.

## Conclusion

Present-day human rights situation in the Crimea leaves much to be desired. Enforced disappearances, kidnappings, tortures, injustice, repressions towards political undesirables, censorship, erosion of Ukrainian and indigenous Crimean Tatars’ identity and culture are evidence of establishing an authoritarian political regime on the occupied territory of the

<sup>14</sup> Rights in retreat: Abuses in Crimea. Human Rights Watch 2014, p.3.

<sup>15</sup> Issue of the ratification of the Rome Statute is still on the table in the Parliament of Ukraine. However, since the formal notification in September 2015 Ukraine recognizes the jurisdiction of the ICC for crimes against humanity and war crimes committed since the beginning of the Russian aggression.

<sup>16</sup> One year on: Violations of the rights to freedom of expression, assembly and association in Crimea. Amnesty International Publications. International Secretariat, London 2015, p.24.

<sup>17</sup> Crimea Report: The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation. Report of the Unofficial Turkish Delegation to Crimea, 5 June 2015.



Crimea where international standards are far from being respected and implemented. Systematic and large-scale violations of fundamental freedoms and human rights attract attention of the international society, which attempts to reach out to the Russian Federation at least with recommendations regarding the improvement of the situation on the ground.

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« ***Enforced disappearances, kidnappings, tortures, injustice, repressions towards political undesirables, censorship, erosion of Ukrainian and indigenous Crimean Tatars' identity and culture are evidence of establishing an authoritarian political regime on the occupied territory of the Crimea***

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Under current circumstances, when Ukraine cannot but appeal for respecting human rights, not having other leverage over the situation, the constant presence of international organizations, where both Ukraine and Russia are full-fledged members – such as OSCE, Council of Europe and the UN – is necessary to ensure the minimum level of permanent monitoring of the situation.

Ad hoc visits of different international missions to the annexed Crimea, allowed by the Russian Federation, as shows practice, semi-annually (abovementioned visits of CoE Commissioner for Human Rights N. Muiznieks in September 2014, unofficial Turkish delegation in April 2015 and CoE Human Rights Mission to Crimea headed

by Amb. Stoudmann in January 2016), do not create a broad picture of the situation as they are controlled by the Russian occupation authorities, at the same time being limited in time and scope of access.

For the sake of the general attention and liquidation of the “grey zone” on the European continent, the question of access to the region should not be politicized. While the OSCE and the UN institutions remain being useless in this regard, the Council of Europe appears to have a possibility to engage more actively in the peninsula's life: both official missions that succeeded in reaching the Crimea were sent under the auspices of the CoE.

Permanent international presence in the region may become a soft power instrument that with time can lead to formation of a new climate of respect and cooperation in the local society between different ethnic communities and national minorities and preserve multiculturalism and uniqueness of the Crimea, being eroded by the Russian Federation up to now. Unfortunately, whether this mission is impossible or not is up to political readiness and willingness of one state to fulfil its obligations. Ensuring proper respect for human rights and freedoms would have contributed to strengthening regional peace and security.

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# ELECTORAL SECURITY AS AN ELEMENT OF PEACE-BUILDING AND SUSTAINABLE DEVELOPMENT

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*The concept of electoral security as one of the prerequisites of post-conflict transformations is becoming widespread in operational documents of international organizations (UN) and some national agencies (USAID), expressing the responsibility to promote peace-building activities in a fragile political environment. In the context of human rights based approach, this concept assumes a special meaning for democratic transformations and reforms. It is strongly connected with such concepts as electoral conflict, electoral justice, electoral integrity, and transitional justice. The broad international experience of electoral security implementation enables the search of strategies for a consistent electoral reform in Ukraine and capacity building for elections at the uncontrolled districts of Donetsk and Luhansk regions after the end of the conflict.*

## **Electoral security in the light of human rights based approach: main concepts and definitions**

The concept of electoral security is one of the main dimensions of human security related to civil and political rights. While human security does not only mean the absence of a conflict or direct danger, but also the protection of people and their fundamental rights and freedoms, in a broad sense, it is both a prerequisite and a consequence of conflict reconciliation, peace building and peacekeeping.

Meantime, contemporary understanding of human security and ensuring sustainable development needs to bear in mind the human rights based approach as one of the leading paradigms. While the majority of scholars consider such a "young" term as

electoral security with regard to electoral management bodies, law enforcement, military and other security entities, peace building initiatives, women, community leaders, and robust formal and alternative dispute resolution mechanisms are not factored into plans".<sup>1</sup> Meantime, the human rights based approach enables a focus on environment where all citizens can exercise their fundamental right to vote or be elected. In this regard, we may agree with the position of the analysts, who insist that HRBA to election-related issues "can help inform the type and scope of security planning undertaken. It helps crystallize exactly what must be protected, which in turn can shape how this protection should be provided. This approach demands that when we look at the integrity of elections we consider the ability of people to exercise their rights to ensure that "the will of the

<sup>1</sup> Best Practices in Electoral Security. A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 [https://www.usaid.gov/sites/default/files/documents/2496/Electoral\\_Security\\_Best\\_Practices\\_USAID.pdf](https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf)

people shall be the basis of the authority of government," as stated in the UDHR".<sup>2</sup>

Broad understanding of electoral security comes from such milestone human rights documents as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD) and other UN/ international instruments such as Security Council Resolution 1325, and Helsinki Final Act on Security and Cooperation in Europe. These core stone human rights documents include articles guaranteeing all people the right to security of person (Article 3); the right to periodic and genuine elections, by universal and equal suffrage, and through secret vote (Article 21); and the right to assemble and associate peacefully (Article 20).<sup>3</sup>


In a narrower sense, electoral security is a part of the international framework of standards that govern elections. While types of electoral insecurity may change, the final result is usually the same: disenfranchised voters, loss of trust in the electoral process, and lack of electoral integrity. Electoral insecurity also represents a failure to protect the rights of citizens to take part in the electoral process.<sup>4</sup>

Depending on each political system, the necessity of conflict prevention and/or reconciliation process, the cycle of conflict, electoral security is often represented through electoral justice measures,

electoral integrity tools and electoral conflicts mitigation. Such understanding of electoral security is based on a statement that elections might serve either as an additional conflict trigger or as a tool of post-conflict reconciliation.

Regardless the type of political systems, electoral security is closely related to an electoral conflict, which is an intermediate

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issue between electoral integrity approach and conflict prevention and mitigation. International agencies (UN, USAID) operate with these terms for conflict prevention and path to sustainable development. This subject matter can be introduced through a trio of fundamental definitions:

1) electoral security; 2) electoral conflict; and 3) electoral justice. Electoral security is the end-state; electoral conflict is the development challenge; and electoral justice is one of the key mitigating factors. These three concepts are closely related because they collectively embody electoral conflict dynamics.<sup>5</sup>

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<sup>2</sup> Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

<sup>3</sup> Universal Declaration on human rights // [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>4</sup> Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

<sup>5</sup> Vasu Mohan, A Rights-Based Approach to Electoral Security / The International Foundation for Electoral Systems, 24 Apr 2014, <http://www.ifes.org/news/rights-based-approach-electoral-security>

As a rule, electoral conflicts can be caused by numerous reasons of systemic and occasional character. The main factors influencing electoral conflicts can be as follows:

- The absence of public trust in elections as a process and political institutions;
- The conflicts of political parties/candidates' nomination and ability to perform passive electoral rights, especially stipulated by the law on elections;
- Challenges to election results (significance of electoral disputes resolution, timelines of election-related complaints lodging);
- Challenges related to campaign financing, which need precise attention and detailed monitoring during all phases of electoral cycle while the irregularities pose the serious reason for political corruption;
- Election related criminal offences and their implication for ensuring electoral integrity;
- The sociocultural context itself may pose the ground for electoral conflicts;
- The absence of capacities for sufficient civic raising awareness on election-related issues.

According to the "Best Practices in Electoral Security Guide for Democracy, Human Rights and Governance Programming" report produced by the International Foundation for Electoral Systems, electoral security can be defined as "...the process of protecting electoral stakeholders such as voters, candidates, poll workers, media, and observers; electoral information such as vote results,

registration data, and campaign material; electoral facilities such as polling stations and counting centres; and electoral events such as campaign rallies against death, damage, or disruption".<sup>6</sup>

Electoral justice can be described as follows, "...the adjudication of civil challenges to the electoral process which can be filed by voters and political contestants. These civil challenges could concern eligibility, disenfranchisement, campaign practices, irregularities, and disputed outcomes among others."

Electoral integrity is a tool for shaping the sustainable development of political institutions, strengthening of democratic institutions, engagement of citizens in political participation (including vulnerable groups).<sup>7</sup>

The choice of measures for electoral security components implementation depends on the context, but the necessity of citizen's full protection is without doubt.

The role of international community in electoral security acknowledgement

Like in many other issues concerning human security, the role of international community in electoral security implementation is significant. The responsibility to protect and assist may vary as follows:

- Electoral supervision (Namibia and Bosnia and Herzegovina). Through a UN resolution or peace agreement, the international community is requested to supervise elections or referendum;
- Electoral Administration (Cambodia, East Timor, Kosovo);

<sup>6</sup> Best Practices in Electoral Security . A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 [https://www.usaid.gov/sites/default/files/documents/2496/Electoral\\_Security\\_Best\\_Practices\\_USAID.pdf](https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf)

<sup>7</sup> Best Practices in Electoral Security . A Guide for Democracy, Human rights and Governance Programming / USAID, 2013 [https://www.usaid.gov/sites/default/files/documents/2496/Electoral\\_Security\\_Best\\_Practices\\_USAID.pdf](https://www.usaid.gov/sites/default/files/documents/2496/Electoral_Security_Best_Practices_USAID.pdf)

- Electoral Verification (Nicaragua, Angola, El Salvador);
- Electoral Certification (East Timor, Côte d'Ivoire). Through a UN resolution, peace agreement, or invitation by the host country, the UN evaluates each stage of the electoral process and assesses its compliance to international good practices;
- Electoral Assistance (the cases of Bosnia, Macedonia) is a feature for new democracies. Through an invitation from a domestic electoral stakeholder, the international community can be requested to assist sovereign domestic institutions with the conduct of elections or referendum or the adjudication of the results;
- Electoral Monitoring. The purposeful gathering of information about an electoral process and public assessment of that process against universal standards for democratic elections by responsible foreign or international organizations committed to neutrality and to the democratic process for the purpose of building public and international confidence about the election's integrity or documenting and exposing the ways in which the process falls short;
- Electoral Mediation (Nicaragua, Kenya) - a form of electoral engagement whereby an impartial third party employs non-official election dispute.<sup>8</sup>

The most influential international organization providing the full-scale volume of electoral security measures is the UN, which has played an instrumental role in electoral security since 1989. In the last several years, the UN has moved toward more integrated missions

that directly link security and conflict management, human rights, humanitarian development and democratization efforts into a common country-level plan. Electoral security is provided through the UN Electoral Assistance Division (UNEAD), UN Department of Peace-Keeping Operations (UN DPKO) that includes both international military and civilian police to provide election security and overall mission management; UN Development Program (UNDP) that provides project funding and may manage multi-country trust funds common to find the following entities of the UN in the context of elections.

### **Electoral security for Ukraine: dimensions of constitutional reform and strengthening electoral institutions**

Strengthening electoral institutions, implementing good practices in election-related issues, and a comprehensive constitutional reform may serve as a tool for conflict prevention and transformation of existing potential tensions especially in transitional countries. Leaving behind

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the discussions towards the type and nature of Ukrainian democracy (either it is electoral democracy or it is on the

<sup>8</sup> Electoral Justice: The International IDEA Handbook // IDEA, 2010 [http://www.idea.int/publications/electoral\\_justice/upload/electoral\\_justice\\_chapter\\_2.pdf](http://www.idea.int/publications/electoral_justice/upload/electoral_justice_chapter_2.pdf)

way to participatory democracy), it is obvious that sustainable development of political institutions needs reforms and harmonization. In this regard, the electoral reform, which has been broadly discussed for almost a decade in Ukraine, can be a part of conflict prevention and conflict resolution measures.

Meantime, military conflict in uncontrolled districts of Donetsk and Luhansk regions, the annexation of the Crimea by the Russian Federation have their implications for other regions of Ukraine, which, in their turn, need special approaches to promote electoral security. Some elements of international assistance as a tool for electoral security implementation are practiced in Ukraine. Among them, there are electoral monitoring and electoral assistance.

In the light of existing electoral conflicts, the most essential risks for electoral security inherited by each electoral cycle in Ukraine are as following:

- Specifics of “institutional memory”. Electoral system of Ukraine functions in the context of “institutional heritage” and institutional memory where the order of performing certain functions is replaced by personal, regional, inter-groups relations.
- Electoral legislation in Ukraine remains non-harmonized. Elections to the bodies of different levels and different institutions are conducted under different laws. Each new law, in spite of permanent recommendations of international organizations and recommendations of the Code of Good Electoral Practice (Venice Commission Code) is always adopted in less than one year before elections take place.
- Constituency delimitation changes each electoral cycle. Very often borders and the number of voters are the matter of the

compromise between leading political forces drafting a law. This increases the lack of trust in elections transparency and leads to public disappointment in transparency of elections.

- While the majority of Ukrainian media belongs to the leaders of financial groups, they represent mainly the positions of their owners in electoral process. It is very often that public outreach campaigns for Ukrainian journalists, provided by domestic civil society organizations and international donors, are focused on technical aspects of newly adopted electoral legislation and its’ implementation. Meantime, the broader perception of elections as one of the core civil and political rights is left behind.
- Campaign and political parties financing for a long time remain in a shadow that creates a large field for money laundering. It should be noted that the Law of Ukraine on Fighting against Political Corruption (State financing of Political Parties) adopted in 2015, creates certain conditions for combating political corruption and, in its turn, strengthening electoral security. Meantime, the continuing process of the National Anti-corruption mechanisms creation is a serious obstacle for the comprehensive implementation of this measure.
- The ambiguous system of electoral disputes resolution, which allows implementing bodies (election management bodies, courts of different levels) to adopt completely different decisions in similar cases of electoral irregularities. This issue creates concerns for elections to the bodies of different levels and is inherited in each new law on national or local elections.
- Avoidance of responsibility for electoral law violations, which, on one hand, is caused by the level of electoral culture,

but, on the other hand, leads to the growth of mistrust in elections as a tool of elites' rotation.

These challenges, without sufficient attention and consistent tackling through formal and informal rules, create the threat of "soft" electoral security in a transforming society breaking its trajectory on the path of reforms. Meantime, obvious obstacles for "hard" electoral security may exist in conflict-affected areas.

**Elections as a tool for peace-building activities: is electoral security possible on the uncontrolled territories of Ukraine?**

With a start of the Minsk negotiation process, the issues of local elections and participation of representatives of the uncontrolled districts of Donetsk and Luhansk regions in the government at the central level have been one of the points. While Minsk Agreements signed on 15 February 2015, consider elections as a part of peace-building tools, modalities of such

***It is obvious that direct threats to physical security of all participants of this process disable compliance with the international standards and conducting of true elections.***

elections are discussed at each new round of Minsk negotiations. Meantime, there is no clear vision of such modalities, it is unclear either these elections should be

held under acting Ukrainian Law on local elections or the new special law should be elaborated and adopted. Furthermore, the necessity of amendments to the Constitution of Ukraine concerning the special status of Donetsk and Luhansk regions provokes conflicts in Ukrainian society and creates ground for human insecurity.

What challenges for electoral security may such elections bring? Leaving behind the legal basis of the credible electoral process, it should be noted that electoral security is guaranteed entirely only through free and competitive elections without intimidation. Is it the proper context in the occupied regions to act in line with the principles stipulated by the Helsinki Final Act, International Covenant on Civil and Political Rights and other principal human rights documents?

It is obvious that direct threats to physical security of all participants of this process disable compliance with the international standards and conducting of true elections. The primary concerns are resumption of border control by the Ukrainian government, demining the bordering territories, consistent resumption of safe environment. Violations of basic human rights, confirmed by the international organizations monitoring, do not leave the space for performing civil and political rights.<sup>9</sup> Particularly, an effective electoral campaign is impossible without competitive outreach campaigns of Ukrainian political parties, free presence of Ukrainian and international media, administration provided by trained

<sup>9</sup> United Nations Human Rights Council (2014) Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Twenty-seventh session, A/HRC/27/75 // [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-75\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-75_en.pdf); Report on the human rights situation in Ukraine (16 August to 15 November 2015) // <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

election management bodies, monitoring by domestic and international observers, and effective electoral disputes resolution. While these minimal conditions are not maintained at the occupied territories, electoral security remains a rather theoretical issue, which must be followed by the basic human rights guarantees.

As European (Bosnia and Herzegovina, Kosovo) and world (East Timor) experience of electoral justice shows, it is more essential to create a safe environment for elections to prevent security inconveniences. Only restoration of control over Donetsk and Luhansk regions' territories, followed by transitional justice measures, under the international community assistance or supervision could be prerequisites for free and democratic elections.

We may agree with those scholars who insist that "in a fragile or divided political environment, it may be politically desirable to start with local elections and build over time to provincial and national elections as the infrastructure and political situation allow - as has been proposed in Sudan. If such a strategy is chosen, it is important that the system is both designed to meet political requirements of the local elections and feasible to organize given the timetable".<sup>10</sup>

## Conclusions

Though, elections remain one of the tools of conflict reconciliation and further peace-building, the promotion of electoral security as a prerequisite of electoral integrity and legitimacy needs consistent implementation and inclusion both in a general political agenda and conflict negotiations, and reconciliation process. Disregarding the general context, human rights based approach and effective strategies of electoral security promotion should be the core of electoral process. The choice of the strategy, which guarantees electoral integrity, the level and type of international agencies' involvement in electoral reforms vary and depend on state capacities to promote electoral security. In the worst scenarios, the risks of electoral insecurity, which may lead to further human rights violations and conflict escalation is highly credible.

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<sup>10</sup> IDEA's Handbook on Electoral System Design / IDEA 2004, <https://www.hks.harvard.edu/fs/pnorris/Acrobat/stm103%20articles/IDEAs%20Handbook%20of%20Electoral%20System%20Design.pdf>



# DO VISA LIBERALISATION REFORMS HELP MODERNIZING UKRAINE?

Maryana Kuzio and Iryna Sushko  
Europe without Barriers

*Though Ukraine has never been so close to getting a visa-free regime with the EU, till recently the process could still be delayed or even disrupted. The EU has been taking the final decision not only based on technical criteria envisaged by the Visa Liberalization Action Plan (VLAP)<sup>1</sup> but also taking into account the factors of security and migration risks, raised from the latest refugee crisis in the European Union and due to the conflict in the east of Ukraine.*

*The VLAP appeared to be one of the most effective stimuli for Ukraine to advance reforms in the sphere of fight against corruption, security of documents and migration management. The result of an independent survey, conducted by the Civic Organization “Europe without Barriers” (EWB) revealed that the three abovementioned issues appeared to be in the focus of the EU policy makers and NGOs with regard to the abolition of the visa regime with Ukraine. Overall, interviewees saw corruption as the key problem, acknowledging that it is much harder to fight corruption than to introduce new laws or passports. Corruption is seen as the factor undermining success in many different parts of the VLAP: “The best border control does not help if the guards are not earning enough money or view their service as something they can sell.”<sup>2</sup> The armed conflict in the east of Ukraine brought into the focus the issue of document security. EU countries express their concern regarding the entry of terrorist and armed radical groups to the territories of EU with Ukrainian passports<sup>3</sup>. The visa liberalization mechanism gives the opportunity to enhance documents’ security by introducing biometric data for the travel and identification documents.*

*As found during EWB external survey<sup>4</sup>, some migration stereotypes about Ukraine circulating in the European Union’s Member States could come up as a threat to the political support of visa liberalisation to Ukraine. It is thought that this would lead to more poverty and an increasing number of internally displaced persons (IDPs) in Ukraine, motivating more Ukrainians to try to get to the European Union. Also, the high number of approximately 1.6 million IDPs may lead to the conclusion that they will not be able to return to their homes anytime soon, making emigration an interesting option for them.*

*In this context, Ukraine’s progress in reforms within the visa liberalization process appeared to be under the close look of the EU. Ukraine needs to demonstrate real steps towards fighting corruption as well as regulating the security situation and migration flows.*

## How has Ukraine benefited from the implementation of VLAP so far?

The vast majority of decision makers in the EU member states believe that if Ukraine implements all the benchmarks, the positive decision towards visa abolition will be taken.<sup>5</sup> The most relevant area where measurable progress is expected is the fight against corruption.


The visa liberalization process has created an ideal policy environment where the public visibility of the reward produced significant pressure on Ukraine's decision-makers to implement a series of difficult reforms. The government has succeeded in introducing major legislative changes and setting up key institutional mechanisms to tackle corruption. Their practical implementation is the next challenge that requires careful monitoring from civil society, media, and international community. Having finally introduced a proper system for issuing passports and other ID documents, Ukraine now has to ensure its smooth operation on a nationwide scale. Finally, the government has shown a good grip on the IDP crisis, though movements between the occupied territories and the rest of the country remain a weak spot.

### Anti-corruption activities

Ukraine's implementation of key anti-corruption activities has intensified since the Revolution of Dignity in February 2014. Considerable progress has been

achieved in establishing the anti-corruption legislative and institutional frame. At the same time, Ukraine settled for rather modest advances in ensuring the full operability of institutions, responsible for the implementation of anti-corruption legislation. The Ukrainian parliament

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 ***The VLAP appeared to be one of the most effective stimuli for Ukraine to advance reforms in the sphere of fight against corruption, security of documents and migration management***

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approved the State Program on Anti-Corruption Strategy Implementation for 2015-2017, which is the guiding document for government efforts in this area, and a set of critical anti-corruption legislation, such as the laws on the access to public information, financing political parties, and the establishment of an asset recovery and management office. On December 18, 2015, the European Commission's Final Report on Ukraine's progress in VLAP implementation classified this legislation as being in line with EU standards and requirements.<sup>6</sup>

On October 2014, the Verkhovna Rada of Ukraine adopted Law «On the National Anti-corruption Bureau of Ukraine». The law determines status and goals of the National Anti-corruption Bureau (NABU), the rights and duties of its employees and other issues concerning its operation.

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<sup>1</sup> On 22 November 2010, Ukraine received from the European Union an Action Plan on visa Liberalization (VLAP). The document is divided into the "legislative" and "implementation" phases.

<sup>2</sup> Results of EWB's in-depth interviews in 11th European Union's Member States (EU MS).

<sup>3</sup> Results of EWB's in-depth interviews in 11th European Union's Member States (EU MS).

<sup>4</sup> Results of EWB's in-depth interviews in 11th European Union's Member States (EU MS).

<sup>5</sup> Results of EWB's in-depth interviews in 11th European Union's Member States (EU MS).

<sup>6</sup> The Report is available at the web: <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-905-EN-F1-1.PDF>

After a competitive selection process, on April 16, 2015 the President of Ukraine appointed Artem Sytnyk<sup>7</sup> as Director of the National Anti-Corruption Bureau (NABU). Since June 2015, NABU has been carrying out an open competition to fill vacancies for detectives and administrative staff. It is planned to hire 506 employees for the Bureau's central office, 242 out of which shall be detectives.

Selection process has been conducted with the participation of the Civil Control Council, approved by the Presidential Decree<sup>8</sup>. The Council aims at carrying out civic control over the activities of the Bureau, facilitating its interaction with civic organizations, participating in the formation of the competition commission for selecting candidates to fill vacant positions in the Bureau. The first group of 70 detectives was selected - on September 15, 25 detectives started their work. There is a separate budget line set for the NABU activities in the State Budget 2016.

The National Agency for Prevention of Corruption (NAPC) was created according to a Directive of the Cabinet of Ministers of Ukraine dated March 18, 2015. Five members of the NAPC have been selected. The selection process took longer due to a conflict regarding forming the selection committee. The problem was solved thanks to the Ministry of Justice efforts. The Cabinet of Ministers approved the Selection Committee on September 2, 2015 and the Committee started selection process of the NAPC members, which has been finished by now. There is a separate budget line for the NAPC in the State Budget 2016.

The Specialized Anti-Corruption Prosecutor's Office (SAP) was established in December 2015, the General Prosecutor appointed the SAP Head and its two deputies<sup>9</sup>. The recently hired anti-corruption prosecutors have started their activities in cases initiated by the NABU. On November 11, 2015 the Parliament adopted a package of draft laws on creating a special Agency for Assets Recovery and introducing necessary changes into Civil, Criminal and Criminal Procedure Codes regarding seizure, confiscation and management of stolen assets. This legislative package will make it possible to return disclosed and confiscated illicit assets back to Ukraine.

### **Document security improvements**

The visa liberalization process prodded much needed reforms in Ukraine's system of document identification. In the past, passports issued by Ukraine did not meet the international industry requirements set out by the International Civil Aviation Organization (ICAO) as they were not suitable for the most common systems of electronic reading and did not provide protection against counterfeit and fraudulent use. The system of document identification was not transparent and well integrated into other national databases.

The situation changed for the better after Euromaidan. Ukraine started the issuance of a new type of biometric passport. Both types of passports in Ukraine: ID card and biometric passport are being currently issued. The e-passport contains a contactless chip that stores the photo, two fingerprints and the signature of the

<sup>7</sup> See his bio at the web: <http://nabu.gov.ua/en/kerivnyctvo/artem-sytnyk>

<sup>8</sup> The Decree of the President of Ukraine from May, 2015, #272. The Civil Council

<sup>9</sup> <http://www.gp.gov.ua/#> (but web is under construction, there are just links )

holder. According to the technical analysis conducted by the French border police laboratory<sup>10</sup>, the security features of this new model of passport comply with the ICAO recommendations. At the date of 16 February 2015, 610 working stations for the collection of the applications were deployed in 25 territorial directorates of the State Migration Service (SMS), which correspond to regional level (oblast), and in 209 territorial units of the SMS corresponding to district level. Also, the necessary equipment in order to conduct the checks at the borders have been deployed and the border police staff trained. Hence, Ukraine fulfilled the VLAP document security requirements by introducing biometric foreign passports in May 2015 and national ID cards in January 2016. Experts believe the new ID documents are well protected and prevent the abuse of personal data.<sup>11</sup>

### **Migration Management**

Ukraine has made progress towards reorganizing its migration management authorities. The State Migration Service streamlined its human resources by reducing the overall staff by 600 persons and establishing a unit for combating irregular migration. In pursuance of p.11 of the Action Plan to implement the EU recommendations contained in the fifth report of the EC on Ukraine's progress in VLAP implementation approved by the Prime Minister of Ukraine on 16.05.2015, the State Migration Service of Ukraine established Contact information and analytical centre to monitor migration. The work of the mentioned Centre is based on the intergovernmental cooperation

between State Migration Service, State Border Guard Service, Ministry of Social Policy and Ministry of Interior and Ministry of Foreign Affairs of Ukraine in organizing analytical and prognostic maintenance of migration processes in Ukraine.

On 5 November 2015, the parliament adopted a new law on labour migration that stipulates the legal and organizational principles of state regulation of labour migration and social protection of Ukrainian citizens abroad (migrant workers) and their families. The recently voted legislation on refugees and individuals who need temporary or additional protection is a step in the right direction as it improves the process of issuing documents to such persons. However, a lot of work is still ahead as the parliament needs to bring additional laws and regulations<sup>12</sup> into compliance with the newly adopted legislation.

Despite the catastrophic economic situation, Crimea's annexation, and Russian hybrid warfare in the east, over the last two years the government has been successful in keeping the situation around internally displaced persons (IDPs) under control. This is no small feat. According to the Ministry of Social Policy of Ukraine, more than 1.6 million people are considered to be IDPs as of late January 2016. Their registration is managed by local authorities and coordinated by the Ministry of Social Policy of Ukraine. The Interagency Coordination Office on IDPs, created by the Cabinet of Ministries, deals with documentation and social security for Ukrainian citizens who were forced to move from the Crimea and the occupied territories in Donetsk and Luhansk regions.

<sup>10</sup> Visa liberalisation dialogue Ukraine closed Expert Report on document security (Block 1, on document security).

<sup>11</sup> Interview with experts is available at the web: [http://24tv.ua/biometrichni\\_pasporti\\_chi\\_mozhna\\_yih\\_zlamati\\_n604352](http://24tv.ua/biometrichni_pasporti_chi_mozhna_yih_zlamati_n604352)

<sup>12</sup> This list includes the labor and tax codes, laws on social insurance, disability benefits, and pensions.

Technical assistance programs supported by the United Nations and other foreign donors have helped the government address IDPs' re-settlement and livelihood. Although the parliament adopted the Law on the Legal Regime on the Temporarily Occupied Territory of Ukraine in April 2014, the entry and exit procedures on the line of conflict between the Ukrainian government and pro-Russian separatists are far from being well established. In particular, the Government introduced a Temporary Order requiring that all individuals, vehicles and cargo travelling into and out the conflict area within the Donbas must hold a special permit.

Many features of the permit system, including complicated and cumbersome application requirements, difficulties in obtaining necessary documentation in conflict areas where state administrations and services are no longer present, inconsistent application, and the impossibility of travelling to permit issuing authorities have significantly impaired the ability of civilians to leave the Donbas. These limitations have further prevented essential aid and services to be provided to those communities most in need.

Fears in the EU that the conflict in the east would produce a large wave of Ukrainian refugees to the Union have proven entirely unfounded. Given the high scale of internal displacement, the number of Ukrainians who applied for an asylum in the EU remains very low. At 22,055 people in 2015, it accounted only for 1.7 percent of all asylum seekers in the EU (1.32 million). Only 4,570 Ukrainians applied for the asylum status in Germany, which accounts for 1 percent of all applications (441,800)<sup>13</sup>.

## Conclusions

Since last summer, the European Union has been facing the unprecedented influx of refugees from the Middle East. In addition, the number of refugees from the Western Balkans, in particular Kosovo, has increased substantially.

This situation negatively affects the prospects of visa liberalization with Ukraine. First, as EWB's survey shows, the European Union society and decision makers as well, see the high number of asylum seekers from the Western Balkans as a direct consequence of visa liberalization. This creates the general public perception that "the boat is full" with more voices demanding "new fences" rather than liberal visa policies.

It is also seen as risky that Ukraine currently does not control large parts of its border with Russia. At the same time, some high-level European Unions' officials noted that the eastern border does not matter if the western border is under control. EWB's survey also indicated that the vast majority of EU decision-makers believe that if Ukraine implements all the benchmarks within the visa liberalization process, it would obtain a positive decision. The most relevant area where they expect measurable progress is the fight against corruption.

The Visa Liberalization Action Plan (VLAP) for Ukraine proved to be a key mechanism for implementing further structural reforms in the area of migration management, fight against corruption and document security. However, there are few outstanding issues for the completion

<sup>13</sup> The data is available at the web: <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/data-base>.

of all the benchmarks within the VLAP. The full operation of the Anti-Corruption Bureau and the Agency for Prevention of Corruption shall be ensured in 2016.

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« ***the support of the EU member states for granting a visa free regime is very important for the Ukrainian society. It will encourage the citizens of Ukraine to demand from its government a continued implementation of the reform agenda***

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Hence, the decision regarding the introduction of the visa free regime for Ukraine depends, on the one hand, on Ukrainian authorities to stick to their obligations taken in the framework of the VLAP and, on the other hand, on the political willingness of the EU Council to vote in favour of visa free regime once the legislative proposal is introduced by the European Commission to the EU Council.

At the same time, the support of the EU member states for granting a visa free regime is very important for the Ukrainian society. It will encourage the citizens of Ukraine to demand from its government a continued implementation of the reform agenda as this leads the country closer to European standards.

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## NOTES

UA: UKRAINE  
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