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- HUMAN SECURITY IMPLICATIONS
- MINSK AGREEMENTS IMPLEMENTATION
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TABLE OF CONTENTS

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

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 2014¹. 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.

¹ 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 plan².

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



***duration of the economic/
sectoral measures against
Russia shall be linked to
the complete implementation
of the Minsk agreements.***

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 crisis³.

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 agreements⁴, 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

² European Council 26/27 June 2014 Conclusions. http://www.consilium.europa.eu/uedocs/cms_Data/docs/press-data/en/ec/143478.pdf

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

⁴ 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

Minsk Agreements' signed on 12 February 2015 by the Trilateral Contact Group representatives (Ukraine, Russia and OSCE) and the leaders of the separatists⁵. 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 package⁶.

Assessment of Minsk agreements implementation

Below is the analysis of implementation of each particular clause of the Minsk agreements:⁷

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 2015.⁸

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.

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

⁶ 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>

⁷ 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>

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

Already in November 2015, shelling of the Ukrainian positions intensified.⁹ 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 SMM¹⁰ and National Security and Defence Council of Ukraine.¹¹ Since recently, the OSCE SMM started to publish the daily reports on the cease-fire violations noticed by their teams.¹²

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.¹³

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

⁹ 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>

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

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

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

¹³ 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.¹⁴ According to the Ukrainian security sources as well as volunteer group "Information resistance"¹⁵, '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

¹⁴ 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>

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

daily reports issued by the Mission.¹⁶ 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”.¹⁷

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.¹⁸ 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”.¹⁹


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

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

¹⁶ 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>

¹⁷ 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>

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

¹⁹ 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".²⁰ 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-

²⁰ 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”²¹ 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.²²

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 2014.²³

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,²⁴ 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.²⁵ 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 1977.²⁶ 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.

²¹ 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>

²² 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>

²³ 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 17.03.2015

²⁴ “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>

²⁵ 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

²⁶ 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.²⁷

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.²⁸ As a result, there are two lists: one is officially agreed (around 140 remaining in captivity by February 2016²⁹) and those who named as 'missing' (around 800 people). Among those there are not only military, but also volunteers and journalists.

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

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

²⁹ 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,³⁰ 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.³¹ 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.^{32 33}

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.³⁴

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

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

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

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

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


³⁴ 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,³⁵ meaning it was just ignoring the fact of the weapons and fighters flow and supporting such activity.

« 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

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,³⁶ 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' presence³⁷, capturing of some of them by the Ukrainian forces and open courts happening now are the direct proof.

³⁵ 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

³⁶ 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-obshe-shhodo-prodovzhennya-mandat-u-misiji-spofterigachiv-obshe-na-dvoh-rosijsykih-punktah-propusku-gukovo-i-donecyk>

³⁷ 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".³⁸ 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".³⁹

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.⁴⁰ 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.⁴¹ 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.⁴² 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 2015.⁴³ 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.

³⁸ 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/

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

⁴⁰ 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>


⁴¹ 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-reorhanizatsii-12-komanduvannia-rezervu-pivdennoho-viiskovoho-okruhu-u-tsentri-terytorialnykh-viisk.html>

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

⁴³ 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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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.⁴⁴

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

⁴⁴ "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 Agreements⁴⁵. 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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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.

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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