

# SECURITY ASPECTS OF POLITICAL DECENTRALISATION IN UKRAINE: VISIONS, REALITIES, AND POSSIBLE IMPLICATIONS

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# **Security Aspects of Political Decentralisation in Ukraine: Visions, Realities, and Possible Implications**

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# Foreword

**Dr Philipp Fluri**  
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This study seeks to offer an analysis of security aspects of two approaches to the definition of “Decentralisation” currently existing in Ukraine. One is stipulated by the Minsk agreement, particularly Article 11 of A List of Measures to Fulfill the Minsk Agreement, 12.02.2015, and refers to the ‘particular districts of Donetsk and Lugansk oblasts’. The other is stipulated by a number of amended laws of Ukraine on decentralisation (see: <http://decentralization.gov.ua/en>).

The latter type of decentralisation is already in the process of initial implementation on the territory of Ukraine (except for the ‘particular districts of Donetsk and Lugansk oblasts’ not under control of the national government).

The former is still waiting for the establishment of an appropriate political and security environment in the region of military conflict. However, even if, or when, the appropriate conditions are in place, uncertainties still exist about the implications of this form of ‘decentralisation’ which under the Minsk agreement calls for ‘participation of local self-government in the appointment of the heads of prosecutors’ offices and courts; cross-border cooperation of particular districts of Donetsk and Luhansk oblasts with regions of the Russian Federation; and the freedom to create people’s militia units by decision of local councils’.

Based on the analysis of legal documents, declared intentions of the key players, and current trends in the situation on the ground this study is aimed at clarifying the security aspects of the two existing approaches to ‘decentralisation’ in Ukraine – lessons already learned and possible implications for regional and international security.

*Geneva, October 2017*

# Foreword

**Dr Valentyn Badrack**  
**Director,**  
**Center for Army, Conversion**  
**and Disarmament Studies**

Today, decentralization reform in Ukraine is one of the most progressive and successful transformation projects of the state functioning system aimed at increasing the efficiency of local self-government and the creation of a full-fledged civil society. Decentralization in Ukraine is realized taking into account the best European practices in this area, and it is a key basis for Kyiv's straightforward commitment to the pro-European course of the state.

During the period of 2014-2017, all necessary measures for voluntary association of communities were adopted, the basic legislation was implemented, intergovernmental fiscal reform was implemented as well, and decentralization was assured in the sphere of providing administrative services. The legislation on state regional policy and financing of regional development were formed not on the basis of lobbying and loyalty to the ruling party, but on the basis of the formula and approaches corresponding to the best practices of the European Union.

At the same time, this reform is carried out in times of an armed conflict, initiated by the Russian Federation, which has occupied and annexed Crimea. After the crash in implementing the Moscow's plan for the total destruction of Ukraine through the creation of the so-called «Novorossiia», Russia occupied part of Donbass. Besides, in accordance with the «Minsk agreements» agreed upon under pressure from Moscow in «separate districts of Donetsk and Lugansk oblasts of Ukraine», a very different approach to decentralization is foreseen in these «separate districts», rather than determined by the legislation of Ukraine.

In presenting the study of two approaches to decentralization, prepared by experts from the Center for Army, Conversion and Disarmament Studies, I would particularly like to emphasize the high level of partnership with the Geneva Centre for the Democratic Control of Armed Forces. Trust and responsibility in implementing projects have already become a real characteristic feature of our fruitful cooperation.

*Kyiv, October 2017*

# Introduction

Following the advent of the new, pro-European government in 2014 in the aftermath of the Revolution of Dignity, Ukraine had initiated one of the fundamental strategic projects for state reformation: a reform of local self-government and territorial reorganization of the government on the principles of decentralisation.

The concept of this reform, among other things, envisages creating brand new security aspects at the basic level of the community [hromada], as well as a new and effective model for monitoring and supervising the legality of actions of the new local self-government bodies. Analysing the implementation of these initiatives is particularly relevant right now, due to the unique historic circumstances for this reform's implementation in Ukraine: namely, decentralisation against the backdrop of Russia's "hybrid" aggression.

Because at the very same moment, within the temporarily occupied territories of Donetsk and Lugansk oblasts, Russia is using the term "decentralisation" as a cover for the different governance system it is trying to create. That system would be de jure inside Ukraine, while de facto being a military dictatorship of the Kremlin's puppet governments. It is in that shape that Russia is attempting to force these territories back into the body of the Ukrainian state as part of the Minsk process, not dissimilarly to its 2002-2003 attempts to do the same vis-a-vis the unrecognized Pridnestrovian Moldavian Republic (PMR) within Moldova through the so-called Kozak Memorandum.

Against this backdrop, Ukraine is building a full-fledged system of local government, by creating conditions to facilitate regional

development where the community-building process takes into due consideration each region's historical, natural, cultural and other specifics. Addressing the issues of local self-government had truly become one of the key challenges for the new Ukrainian government. Reform of Ukraine's territorial-administrative system has been long overdue, because in its state as of early 2014 it was still de facto inherited from the Soviet Union and did not meet the modern-day requirements of a progressive European state. Even though the principles of local self-government were developed and formalized in the legislation between 1996 and 2014, Ukraine's decentralisation reform had been kept in a state of suspended animation, as a number of initiatives remained unimplemented.

Today, Ukraine's decentralisation is one of its most pro-Eu-

ropean reforms. It does not entail a reform within a separate sector, but rather, a comprehensive transformation of the state mechanism, aiming to increase the efficiency of local self-government and create a true civic society.

Under the Ukrainian style of decentralisation, the majority of powers in the socio-economic sphere would be transferred from the centre to the regions, with the appropriate redistribution of financial resources. The European Charter of Local Self-Government refers to this as the subsidiary principle. This principle postulates that all socio-economic and security services must be in maximum proximity to their final consumer, the citizen or the community. Practical decentralisation experience in a number of European countries shows that this principle also remains relevant for a number of national security aspects.<sup>1</sup> The main performance criterion of the trans-

formation is the effectiveness of the resulting system. In this situation, the centre's functions revolve around monitoring and oversight: preventing abuse, corruption, violation of the Constitution and laws of Ukraine, etc.

The beginning of Ukraine's decentralisation reform coincided with the surge of Russia's armed aggression against Ukraine, during a period where a large portion of the civic society was involved in repelling the aggressor (through volunteer action in both military and civilian fields). On one hand, the government's move towards decentralisation in wartime conditions may appear illogical, given the increased centrifugal processes in the state. On the other, decentralisation today may be the only one of Ukraine's reforms that has a clear platform and a proven record of accomplishment over the past three years. Meanwhile, successful imple-

mentation of all planned stages of the reform is understood as improvement of national resilience.

Due to the occupation of Crimea and certain districts of the Donetsk and Lugansk oblasts (CDDL) by the Russian Federation, the state-wide decentralisation reform does not apply to the aforementioned temporarily occupied territories. Ukraine is forced to implement the reform in parallel with a different "decentralisation" format that relates to crisis resolution in the zone of the Russian-Ukrainian conflict.<sup>2</sup> Thus, the external aggression factor is one of the main hindrances to the state-wide decentralisation reform, including in the context of its ultimate recognition in the Constitution. Experts of the CACDS, with support from the Geneva Centre for Democratic Control of Armed Forces, have carried out a comparison of the two decentralisation options.

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1 This refers primarily to the practices of France and Poland, whose modern-day experience of state development has been taken into consideration by the Ukrainian reform concept.

2 For an in-depth analysis of the problems surrounding "decentralisation" under the Minsk Agreements, see Section 2 of this paper.



# Part 1.

## Decentralisation as the Fundamental Reform for Ukraine's Ongoing Transformation

### 1.1 Legislative Basis for the Decentralisation Reform

Ukraine's decentralisation reform is often informally referred to as the "government reform," because its primary driver was the Cabinet of Ministers. By approving the "Concept of the Reform of Local Self-Government and Territorial Organization of Government in Ukraine" on April 2014, it had launched a reform that aimed to transform community theory into local self-government practice in Ukraine, and to resolve a number of

problems that have plagued Ukrainian local self-government ever since the declaration of Ukraine's independence. At the same time, even at the start of the reform it had become obvious that its success in Ukraine hinges on unified and coordinated effort of all state authorities, bodies of local self-government, and civic society institutions, with support from international organizations and drawing on the global best practices in this field.

The reformation processes are carried out with support of the Council of Europe, the EU, and the UN; and draw on the practical experience of local self-government and decen-

tralisation reforms in Ukraine's partner states, including the USA, Switzerland, Poland, Canada, France, Germany, Sweden, Norway, and others.<sup>3</sup>

As of late 2017, Ukraine had created a fundamental legislative framework for the decentralisation reform. Its main components can be classified based on the reform entity (from the legislative initiative point of view), and the "functional" principle.

From the legislative initiative standpoint, the main entities of the decentralisation reform are the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, and the Ministry for Regional Development.<sup>4</sup> In terms of the "func-

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3 Vladyslav Fedorenko. Local Self-Government Reform in Independent Ukraine: Concepts, Priorities, Prospects / The Ukrainian Chronicle of Constitutional Law, <http://www.constjournal.com/2016-1/reforma-mistsevogo-samovryaduvannya-v-nezalezhnij-ukrayini-ponyattya-priorytety-perspektyvy>

4 The Ministry of Regional Development, Building and Housing of Ukraine (hereinafter referred to as "Ministry of Regional Development") is the relevant Ukrainian ministry pertaining to the state-wide decentralisation reform.

tional" classification of the legislation, there are three distinct thematic groups: "Community Consolidation," "Financial Decentralisation," and "Community Cooperation."<sup>5</sup>

The fundamental provisions of the government's "Concept of the Reform of Local Self-Government and Territorial Organization of Government in Ukraine" (hereinafter referred to as "Concept") are in clear correlation with the European Charter of Local Self-Government. Thus, according to Article 9 of the European Charter of Local Self-Government, "...local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers."<sup>6</sup> In Ukraine's Concept, the subsidiary principle provides that, "The state grants authority to the bodies of local self-government, which act at the level of the administrative-territorial system where exercising such authority is both possible and feasible, from the standpoints of staffing, financial and infra-

structural potentials, as well as of resources required to exercise said authority at that level."<sup>7</sup>

According to the Concept, Ukraine's decentralisation would not entail a formal transfer of power and resources to local self-government bodies (e.g. village and city councils), but rather a creation of "capable" territorial communities that would be able to effectively exercise the authority granted to them. The Concept, among other things, became the first fundamental document to clearly recognize that local self-government system existing as of early 2014 was untenable. First of all, the document recognizes the ineffectiveness of providing continuous financial support to small territorial communities from district budgets through the equalization grant system. The latter, on one hand, burdens the State Budget, and on the other, hampers development of small cities and townships. Thus, the Concept had laid down the foundations for "financial decentralisation" as part of the general reform.

It was the implementation of this Concept that had initiated the reform of local self-government rooted in the principles of decentralisation and subsidiarity. On June 17, 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Cooperation of Territorial Communities," which determines the organizational and legal principles, forms, and mechanisms for cooperation among local communities, as well as the principles, forms and mechanisms for incentivizing, financing, and supervising such cooperation.<sup>8</sup> Essentially, this Law legitimized the entire toolbox for cooperation among territorial communities and stimulated their further consolidation.

The year 2015 in Ukrainian politics was a landmark year for the decentralisation reform. It saw the adoption of legislative acts crucial for the reform's implementation, as well as consolidated effort towards the reform by the government's legislative and executive branches. Essentially, the decentralisation reform

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5 Decentralisation of Power. Legislation, <http://decentralisation.gov.ua/legislationn>

6 European Charter of Local Self-Government, Strasbourg, October 15, 1985. Official translation to Ukrainian [http://zakon3.rada.gov.ua/laws/show/en/994\\_036](http://zakon3.rada.gov.ua/laws/show/en/994_036)

7 On Approval of the Concept of the Reform of Local Self-Government and Territorial Organization of Government in Ukraine: Decree of the Cabinet of Ministers of Ukraine of April 1, 2014. N 333-rp, <http://zakon3.rada.gov.ua/laws/show/333-2014-%D1%80>

8 On Cooperation of Territorial Communities: Law of Ukraine of June 17, 2014 N 1508-VII, <http://zakon2.rada.gov.ua/laws/show/ru/1508-18>

rose above political infighting: a situation rather unique for the recent history of Ukrainian statehood, and for 2015 in particular, as tensions ran very high that year (due to the significant escalation at the front line). The only exception to this was the upheaval surrounding the Draft Law "On Amending the Constitution of Ukraine as to Decentralisation of Power." Both the Kremlin and Ukraine's Western partners had pressed for unifying the state-wide reform with the conflict resolution process in the combat zone and within Ukrainian territories temporarily occupied by the Russian Federation – namely, to combine the decentralisation reform with the Minsk process, which includes a separate decentralisation angle.<sup>9</sup>

The decentralisation reform was the top priority both for the two governments of Arseniy Yatsenyuk (27.02.2014 – 14.04.2016) and for that of Volodymyr Groysman (since 14.04.2016; the latter had become the Prime Minister after serving as the Head of the Constitutional Commission for the Decentralisation Reform). Despite the mixed assessments of Yatsenyuk's stint as Prime Min-

ister, not even his opponents doubt his achievements in terms of the decentralisation reform. Hennadiy Zubko, Deputy Prime Minister for Regional Development, Construction and Housing of Ukraine was head of the relevant ministry for the decentralisation reform in Yatsenyuk's government and retained his position in Groysman's new cabinet. That is a clear example of succession and consistency within the implementation of this critically important reform, and evidence that the decentralisation issue has been taken outside any political bargaining and speculation.

The key objective of the Law of Ukraine "On Voluntary Consolidation of Territorial Communities" was to establish a procedure for the consolidation of the territorial communities of villages, townships and cities, and for the granting of state support to the consolidated territorial communities; as well as to create legal foundations and opportunities for:

- agglomeration through voluntary consolidation of territorial communities, with an increased role of such agglomeration in resolving local issues;

- creating capable territorial communities whose main task is to better serve the needs of the public, provide the public with quick and high-quality social and administrative services, improve the conditions for sustainable development of relevant territories, and use budget funds and other resources with greater efficiency;
- creating the prerequisites to improve the system of local self-government bodies in appropriate territories.<sup>10</sup>

The period between 2014-2017 saw the completion of such tasks as: adopting of all fundamental legislation necessary for voluntary consolidation of communities; reform of inter-budgetary relations; decentralisation in the sphere of construction control and administrative services; and creation of legislation that would regulate Ukraine's regional policy and regional development financing based on the formulas and approaches that correspond to the best EU practices, not on lobbying and any given region's loyalty towards the ruling party.

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9 The Draft Law "On Amending the Constitution of Ukraine as to Decentralisation of Power" is reviewed separately in further sections of this paper. For an in-depth analysis of the problems surrounding "decentralisation" under the Minsk Agreements, see Part 2 of this paper.

10 Ibid.

## 1.2 The Status of the Decentralisation Reform: Current Achievements, Problems, and Open Questions

Of all the reforms currently underway in Ukraine, decentralisation is objectively considered among the most successful ones. It has borne concrete results and a number of success stories, primarily in the sphere of financial decentralisation and the transformation of local self-government bodies into associations of territorial communities (ATC).

First: Ukraine is creating a territorial basis for local self-government bodies and executive authorities. Upon the reform's completion, the new three-tier administrative-territorial system would include 27 regions (within the existing 24 oblasts, the Autonomous Republic of Crimea, and Kyiv and Sevastopol as cities with special status), 120-150 districts, and approximately 1,500 communities. As of late May 2017, 413 ATCs have already been created. Despite a certain slowdown in the cre-

ation of ATCs in 2017, the rate of voluntary agglomeration of basic local self-government entities can be cautiously assessed as positive.

By the end of 2017, each oblast has its Prospective Plan for the Formation of Community Territories, an expert document drafted by oblast-level and district-level working groups together with experts, heads of city councils and other contributors. This document serves to answer the main question: how to create "capable" communities that would provide for their own needs with maximum regard for the interests of their public. The expert document is subject to approval, among others, by a session of the oblast council (in most oblasts that was done in 2015). Simultaneously with the drafting, approval and implementation of the expert document, voluntary consolidation into ATCs continues. All communities are consolidating voluntarily. However, in order to receive financial preferences and additional financing, ATCs must be created according to each oblast's approved Prospective Plan. This eliminates the risk of chaotic creation of ATCs and creates a supervision system that works even at

the early stages of community agglomeration. In 2017, the procedure for amending prospective plans became stricter, due to an increasing number of very small communities being created (some 2,000-3,000 people). Objectively, it would be very difficult for small communities to effectively develop or even survive. According to the estimates of Ukrainian and European experts, a more-or-less capable community must include at least 8,000-10,000 members, while European experts actually lean towards 20,000-30,000 as a preferred number.<sup>11</sup> Because of this, Ukraine takes a very thorough approach to any amendment of the prospective plans.

Second: a division of authority is underway between different levels of local self-government bodies. The most vital powers (including certain powers in the sphere of defense, where a brand new civil defence/protection system is being created) are handed over to the government level that is closest to the public. Going forward, the power must be divided between the self-government and the executive branch, where the latter retain the functions of control, supervi-

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11 Diana Barynova, Director of the Kharkiv Center for Development of Local Self-Government, on *Viddzerkalennya* [Reflection], ATN TV channel, May 25, 2017. – Accessed at: <https://www.youtube.com/watch?v=LM0Ya1eE6Z4>

sion, and coordination. After appropriate amendments are made to the Constitution, the central government representative will be called a "Prefect",<sup>12</sup> and they will have the authority to stop any illegal action of local self-government bodies, coordinate the work of the law enforcement, and control the implementation of state-wide programs (following the principle of "oversee, not direct"). At the same time, the implementation of local and regional programs will fully depend on the local government. Thus, decentralisation does not only grant the latter increased power, but also expands their scope of responsibility.

Third: to this end, the reform envisages an update of the budget system. In other words, bodies of local self-government will be forming their budgets on their own, and will be able to join efforts and finances. Thus, they will gain access to resources required to develop and resolve

their problems. Appropriate changes have been made to the Budget and Tax Code of Ukraine to this end.<sup>13</sup> Namely, financial decentralisation provides that a certain number of local taxes be levied at the local, community level. In addition to that, targeted medical and educational subsidies are granted directly to the local level, without an oblast-level intermediary. In education, the project is already underway to ensure that flagship schools within ATCs are well-equipped. In the sphere of medicine, local reforms are slowed down by the delayed start of the national medical reform. Today, the most that communities can do on their level is to purchase equipment and carry out repairs at hospitals and first-aid/obstetric offices. However, even in these conditions, those who are willing to succeed can succeed. For example, the Bashtanka ATC (Mykolaiv oblast) has placed the emphasis on improving

the quality of medical services. The community now employs their own emergency physician, radiologist, and paediatrician, and is funding the education of three more medical specialists.<sup>14</sup>

Thus, the effectiveness of ATC creation and operation is measured by the results of budget decentralisation that allowed to more than double local budget revenues of consolidated territorial communities in 2016. In May 2016, the Ministry for Regional Development, with assistance from the Swiss-Ukrainian project "Decentralisation Support of Ukraine" (DESPRO) and the Swedish-Ukrainian project "Support to Decentralisation in Ukraine," had conducted an overview of the financial capability of consolidated territorial communities,<sup>15</sup> for those ATCs that held their first local elections on October 25, 2015 and had direct inter-budgetary relations with the state budget in 2016. According to the over-

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12 The term "prefect" and the respective amendments to the Constitution are further explained in Section 1.3 of this paper: Security Aspects of the Decentralisation: Achievements and the Challenges and Risks to Overcome During Reform Implementation.

13 On Amending the Budget Code of Ukraine as to the Reform of Inter-Budgetary Relations: Law of Ukraine of December 28, 2014 N 79-VIII – Accessed at: <http://zakon2.rada.gov.ua/laws/show/79-19>; On Amending the Tax Code of Ukraine and Several Legislative Act of Ukraine as to the Tax Reform: Law of Ukraine of December 28, 2014N 71-VIII – Accessed at: <http://zakon3.rada.gov.ua/laws/show/71-19>

14 "Bashtanka ATC focuses on village development and improved medical service (Mykolayiv oblast)," Decentralisation of Power. Success Stories – Accessed at: <http://decentralisation.gov.ua/success/item/id/1199>

15 Decentralisation. Local Budgets of 159 Consolidated Territorial Communities. 2015 — 2016 (forecast), Ministry of Regional Development – Accessed at: <http://www.minregion.gov.ua/decentralisation/presentation/finansova-detsentralizatsiya-v-diyi/>

view, the total approved general fund revenue of the local budgets of Ukrainian ATCs in 2016, including transfers from the state budget, was UAH 4,553 million [USD 173 million], which was almost 5 times the combined adjusted total of local budgets (that were included in ATCs) for 2015. Thanks to the amendments to the tax and budget legislation in the decentralisation context, revenues of the local budgets of consolidated communities had almost doubled compared to 2015 (a difference of UAH 1,046 million [USD 40 million]: from UAH 827 million [USD 31.5 million] to UAH 1,873 million [USD 71.5 million]).

Kharkiv oblast presents an interesting example of decentralisation practices. According to the oblast's prospective plan, 57 consolidated territorial communities are to be formed in the region, with an emphasis on creating powerful ATCs with strict adherence to the "capability" factor. The process has not been perfectly smooth, and only 6 ATCs have been created in Kharkiv oblast as of mid-2017. However, even though the newly-created communities had only

switched to direct relations with the state budget starting January 1, 2017, and had only operated for one year, a look at their financial indicators shows that their own financial revenues had doubled or even tripled, while their total budgets had increased five- to seven-fold due to educational and medical subsidies. Thus, financial decentralisation speaks for itself. According to Diana Barynova, Director of the Kharkiv Center for Development of Local Self-Government, "...decentralisation is Ukrainian rural community's only chance to overhaul itself, a chance that will not come again. We can see how true this is, when we visit the consolidated territorial communities, those that had already functioned for a year. ..The positive change dynamic is tangible for every citizen because most of the funds remain at the local level. ... The main thing about this reform is that all important decisions are made closer to the people."<sup>16</sup>

Infrastructural subsidies are an important budget innovation for consolidated communities. Because of them, we see construction of roads and renovation of schools, hospi-

tals and kindergartens within community territories – for the first time in the 26 years of Ukrainian independence. Hennadiy Zubko, one of the initiators of the local self-government in Ukraine and the Deputy Prime Minister for Regional Development, Construction and Housing, says that, "this is real decentralisation in action, which cannot be denied or ignored."<sup>17</sup>

As of September 2017, only the first stage of the local self-government reform is underway within the general decentralisation reform: namely, creating ATCs, the fundamental level of local self-government. The existing administrative district boundaries are preserved at this time, but consolidation of districts is to follow as the second stage of the reform. The need for agglomeration of districts will, indeed, arise with time, because if the population of all administrative-territorial units of a certain district joins into communities, all powers would be transferred to the level of these newly-created ATCs, leaving essentially nothing at the district level. As a result, there is no sense in maintaining a district council, because the issue

16 Viddzerkalennya [Reflection], ATN TV channel, May 25, 2017, <https://www.youtube.com/watch?v=LM0Ya1eE6Z4>

17 Hennadiy Zubko. The Reform in Numbers and Actions, Livyi Bereg, [http://blogs.lb.ua/gennadiy\\_zubko/341309\\_reforma\\_tsifrah\\_i\\_diyah\\_.html](http://blogs.lb.ua/gennadiy_zubko/341309_reforma_tsifrah_i_diyah_.html)

of shared joint property is also eliminated. Relevant legislation (involving amendments to a number of laws) is currently being drafted to regulate the relations that arise in this case and to determine the format of district agglomeration. This second stage of the reform will directly rely on the effective implementation/completion of the crucial community creation stage in accordance with the Prospective Plans.

Next to the successes and achievements described above, the process also has a number of objective problems and hindrances caused by such factors as: 1) lack of statutory deadlines for ATC creation; 2) slowdown of the reform by heads of village/township councils under the old administrative-territorial format (largely due to their unwillingness to be responsible to their citizens); 3) staffing issues; 4) difficulties with carrying out successful financial decentralisation in the presence of factor (1).

The experts are unanimous in their opinion that the main hindrance for ATC creation lies with the current heads of the existing districts, villages and townships, who fear losing their influence. Local business figures also introduce a degree of chaos into the process as they try to "cut up" the territo-

ries to suit their own interests (often, in cooperation with village/township heads), which does not correspond to the Prospective Plan and the "capability" requirements. These people do their share of fear mongering among the public, spreading myths like "they'll take your land," "they'll close hospitals and schools," etc. For another example of how the human factor presents a problem: heads of village councils keep arguing among themselves, as to who would be the head of the new ATC, and who will have to settle for being "just" a local foreman [starosta]. Personal ambitions take front and centre, combined with a lack of understanding for the reform's actual paradigm.

There are reasons to believe that these problems will be resolved through evolution. Examples of real improvements of the quality of life in the newly-created ATCs, appropriate efforts by the media and the civic society, quality work of former heads of village and township councils in their positions of ATC heads and foremen – all these factors will have an appropriate impact, including dispelling the myths and old stereotypes.

It also merits pointing out that at a certain stage, Ukraine

will have to resort to consolidating "from the top down" in order to accelerate the reform. Sooner or later, different parts of Ukraine will be living under different sets of local self-government principles, which is unacceptable from the financial point of view, among other reasons. The local government reform may become suspended in an uncertain state. Therefore, it would be reasonable to expect the Cabinet of Ministers to pass resolutions with relevant decisions, and the Parliament to amend certain laws and legislative acts that would provide for the option of directive-based consolidation of communities under certain conditions. Experts believe that consolidation of communities "from the top down" can be expected as early as in 2018. Hennadiy Zubko, the relevant minister, is more conservative in his estimates: "Starting from 2019, Ukraine will delegate authority to the communities on an administrative basis. ... The year of 2018 will be crucial in the community consolidation process. Next year, we will determine the administrative centres, and a year later, make administrative decisions. We are approaching mandatory delegation of authority to the communities."<sup>18</sup>

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18 Ibid.

It must be understood that if most communities were to consolidate (indicating a certain degree of the reform's success), then the district council and the district administration would not be retained for the sake of the one or two village councils that refused consolidation. At the same time, a small village council covering 600-1000 persons will not be able to exercise the necessary authority to govern education, medicine, culture, municipal services, etc.

Thus, Ukraine is currently following a progressive and civilized path towards creating the conditions for the decentralisation reform, and the subsequent "top-down" consolidation of communities in the future will be viewed as the call of the time.

Overall, according to the expert estimates of the Center for Army, Conversion and Disarmament Studies (CACDS), where the decentralisation reform is in the focus of regional studies as part of the "Security Sector of Ukraine" project, it can be stated that the reform itself and the practical experience of the ATCs constitute a positive achievement. Furthermore, ATC residents view other reforms in a more positive light as well (particularly those in the spheres

of education and medicine). Another indication of the reform's degree of success is the high level of confidence towards local self-government, which sometimes exceeds 50% and is among the highest levels of confidence found in Ukraine, exceeded only by those of the army and the church. Among the positive changes noted, changes in the fields of infrastructure, municipal services, and transport are the most frequently pointed out. These spheres are the primary recipients of finances within the newly-created ATCs. They are followed by elementary, secondary and alternative education facilities, cultural institutions, the medical system, and others.

At the same time, in addition to its purely economic aspects, decentralisation positively affects civil society development. For example, experts note that newly-elected ATC heads are attempting to be more open with their constituents. Officials of some ATCs strive to make their work as transparent as possible, publicizing their agenda and decisions on their respective websites.

Therefore, a well-developed and properly implemented decentralisation reform will not only improve the quality of our public's life outside of large cities, but

will also result in a more active political process, democratization of the society through public involvement in decision-making, and increased public trust towards the government authorities.

### 1.3 Security Aspects of the Decentralisation: Achievements and the Challenges and Risks to Overcome During the Reform Implementation

Reform fundamentals aimed at strengthening the security sector

Before assessing the security aspects of Ukraine's decentralisation, one must clearly identify the reform stages and their implementation status, namely:

- "financial decentralisation" – essentially implemented;
- creation of ATCs, with the formation of security centres "from the bottom up" at the level of local self-government bodies (LSGB);
- transformation of the executive power vertical / creation of a new system for supervision and control over the new LSGB – currently at



the stage of constitutional recognition).

The decentralisation format described above creates foundations for a number of positive moves towards improving the national security sector. First of all, this means creating municipal and civic organizations that would assist the state authorities in the patriotic education of the public (especially the youth), providing disaster relief, issues of civil defence, teaching first aid skills to the public, etc. "Bottom-up" initiatives are meant to notably improve public safety against armed attacks, as well as natural and man-made disasters. In addition, which is particularly important at the current point in history, they are meant to create sustainable safeguards against separatist trends and the influence of the Russian agent network aimed at destabilization from within.

In terms of the security sector, the decentralisation process in Ukraine has the following characteristics:

1) According to the best European practices, the Ukrainian style of decentralisation entails handing over a significant amount of power to the local community level – in this case, the level of city, village or

township. There is no increase in authority at the oblast level, thus precluding trends towards regionalization/federalization. The central government retains and, in some cases, increases its key role in the sphere of national security, primarily in the entire range of defense issues, foreign policy, supremacy of law, and protection of human rights and freedoms. In fact, from the security point of view, implementation of the prefect institution will facilitate "financial decentralisation" and completion of the ATC creation process. (Prefects, appointed by the President, will monitor adherence to the laws and the Constitution of Ukraine at the oblast level. If necessary, they will be authorized to suspend decisions of local councils, and the President may dissolve local councils by prefect's suggestion.)<sup>19</sup>

2) Ukraine's experience in carrying out a decentralisation reform is unique because its implementation coincides in time with the Kremlin's external "hybrid" aggression. The occupation of Crimea and of certain districts of Donetsk and Lugansk oblasts did not put a stop to the state-wide decentralisation processes, which are crucial for building a

truly democratic state following the best European examples (and drawing on the most progressive European practices). On one hand, the reform has already created economic incentives for the new voluntarily created communities to develop new production facilities, and provided natural deterrents to corruption by eliminating artificial barriers to business, such as excessive permits and undue control. On the other hand, given the constant threat of escalation at the front, the reform is creating a new environment in which the national defence sector can be strengthened "from the bottom up," in combination with the reformation and strengthening of the Armed Forces of Ukraine, the National Guard of Ukraine, and other power agencies.

3) The reform stimulates comprehensive development of communities, as it treats every citizen of Ukraine as a full-fledged master of their own land. This lays the foundation for "de-oligarchizing" the Ukrainian economy and other spheres of public life, by creating a situation in which communities put pressure on local deputies, demanding professional and transparent work.

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19 The issues related to "prefects" are discussed in Section 1.4 of this paper: The Prefect Institution as a Safeguard against the Weakening of Central Power in the Security Sector.

In the future, these aspects of the reform will become the key factor for Ukraine's victory in the so-called "war of different social worlds" – a progressive European world with emphasis on the welfare and protection of each citizen, vs. Kremlin-imposed puppet dictatorship held together exclusively by Russia's weapons. That is what must ensure successful resolution of Kyiv's crucial security issue: to have the territories currently occupied by Russia peacefully returned, and to prevent the conflict from being frozen, similarly to the scenarios played out by the Kremlin puppet masters in Transnistria, and in Abkhazia and South Ossetia.<sup>20</sup>

4) One must also bear in mind an important foreign policy aspect of the reform, whereby by pursuing decentralisation (in both legislation and practice), Kyiv shows consistent and strict observance of Ukraine's pro-European course, and fulfilment of its relevant obligations despite the objective difficulty in this turbulent period resulting from external aggression. Thus, Ukraine has grounds to demand from its Western partners similar consistency, deep understanding of the ongoing

processes, and a recognition of Kyiv's agency, both in terms of the decentralisation process and in reference to Ukraine's demands and disposition in its fight for territorial integrity.

In adapting the national security system during the decentralisation reform, Ukraine is placing emphasis on ensuring comprehensive and synergistic effort: by each citizen, the civil society, and the state government. The best tool in creating a comprehensive system for national defence lies in each citizen's realization of their responsibility to ensure the safety of their village, township, city, region, and country. If every Ukrainian village or city resident clearly understands the steps to follow in any emergency situation (an armed attack, or a natural or manmade disaster), disaster mitigation and relief will be highly effective, and the consequences for the public and the infrastructure, minimal.

Instead of a security and defence model based on the "top-down" government vertical, a comprehensive approach is more effective in a decentralized environment, where the civic society within the newly-created territorial communities is widely involved in as-

sisting local law enforcement bodies, creating volunteer fire-fighting brigades, providing disaster relief (supervised by the State Emergency Service of Ukraine /SES/), increasing the effectiveness of the centralized territorial defence system, and other tasks. This, one might say, network strategy for local departments will help in filling the law enforcement and emergency rescue vacuum during the decentralisation process, and facilitate the use of new regional configurations as territorial communities are being created.

Implementing a comprehensive approach to the security system: strengthening security at the level of new local self-government bodies

At this stage of the decentralisation reform, it bears merit to identify the following directions for strengthening the security sector at the level of new LSGB:

- placing the civil defence/protection system under control of local communities, by adopting and implementing the "Reform Strategy of the State Emergency Service";
- implementing pilot projects of modern fire departments in the newly-created

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20 For an analysis of the risk of Kremlin's Transnistrian/Abkhazian-South-Ossetian scenario for Ukraine, see Part 2 of this paper.

- ATCs, following the above;
- implementing in practice a comprehensive approach to the creation of public safety centres within communities;
- developing the concept of the municipal guard as a local authority charged with ensuring civil order within the community and strengthening the territorial defence system.

An important aspect here is the fact that the decentralisation process involves reforming both the civil protection system (as part of the community consolidation process) and as the State Emergency Service overall, as per the needs of the reform. The resolution of the Cabinet of Ministers of Ukraine of January 25, 2017 approved the "Reform Strategy of the State Emergency Service,"<sup>21</sup> according to which the entire civil protection system – from fire department equipment to protective structures – will be subordinated to the communities. Therefore, consolidated territorial communities must ensure effective operation of the civil protection system, even during the early stages of their creation and operation.

Strong cooperation of ATCs with SES representatives will be a crucial factor for the effectiveness of this branch of the reform. This process is already underway. Namely, the SES, together with the Institute of Public Administration in the Sphere of Civil Protection, has developed the Practical Guide on implementing the main civil protection efforts during the reform of local government and territorial organization of government in Ukraine.<sup>22</sup> This document, which has been distributed among the newly-created ATCs, includes samples of typical documents, action plans, and decision options for local councils and executive bodies in relation to the main civil protection tasks of ATCs. This is a pilot project that entails organizing civil protection for the population of the capable ATCs within the mentioned Concept of the reform of local self-government and territorial organization of government in Ukraine, in order to assist bodies of local self-government in organizing and operating the civil protection system within each ATC. Work on this project entails:

- identifying and explaining ATCs' powers in the sphere of civil protection;
- organizing and operating a civil protection unit (appointing an official to that effect);
- creating system for threat and emergency alerts and civil protection information;
- organizing public evacuation;
- sheltering the public in protective structures in case of an emergency;
- creating and operating local fire departments;
- providing for operation of volunteer fire brigades;
- financial support for the costs incurred in relation to the exercise of authority by bodies of local self-government in the sphere of civil protection.

The implementation of civil protection measures in a consolidated territorial community must be organized by a civil protection unit (department, administration, division, subdivision, sector) with an appropriate official. Such a unit is created (and a relevant official appointed) as part of the ATC executive committee, with

21 On Adopting the Reform Strategy of the State Emergency Service, Resolution of the CMU N 61-r of January 25, 2017, <http://zakon3.rada.gov.ua/laws/show/61-2017-%D1%80>

22 Practical Guidance on implementing the main civil protection efforts during the reform of local government and territorial organization of government in Ukraine, [http://decentralisation.gov.ua/pics/attachments/Poradnik\\_MPK\\_\(1\)\\_1\).pdf](http://decentralisation.gov.ua/pics/attachments/Poradnik_MPK_(1)_1).pdf)

due consideration to the man-made burden of the ATC territory. Operation of the of civil protection unit would meet the need for timely implementation of civil protection measures, as envisaged by Article 19 of the Civil Protection Code of Ukraine

The governance structure of the ATC civil protection unit would include the local fire and rescue department as well as volunteer fire brigades (attached to companies and citizen groups), both types reporting to the ATC civil protection unit. Authority and obligations would be divided in such a way that coordination of the civil protection unit would be carried out by the Deputy Head of Council, who would also be the head of the council's executive committee.

In this process, the primary tasks of the SES are: providing instruction and guidance to citizens for organizing local volunteer fire brigades; determining optimal staff count for the civil protection service to be created at the level of each ATC, with consideration to their man-made burden; and organizing training sessions to educate the public on proper behaviour when faced with an emergency. To this end, Education and Instruction Cen-

tres for Civil Protection, Health and Safety are opening up in the oblasts, together with the respective Centres for Development of Local Self-Government.

One of the main tasks for Ukraine's civil protection system is to reform the fire safety system in view of the creation of consolidated communities, where special emphasis is placed on volunteer fire departments. In 2016, the SES developed the Guidelines for Local Self-Government Bodies on Organizing and Ensuring Fire Safety within the Territories of Consolidated Territorial Communities.

This branch of cooperation between the SES and the newly-created ATCs is already bearing fruit. The first steps have been made towards creating local volunteer brigades, albeit with limited functions. Since the beginning of 2017, formation process of volunteer fire brigades within the SES started. Aside from actual firefighting, these brigades would carry out civil protection in crisis situations (such as natural or man-made disasters). As of this time, 32 territorial communities have been created in Zhytomyr oblast, and they are forming their own volunteer fire brigades, with the aim of

eventually covering the entire oblast with a network of permanent units.<sup>23</sup>

Similar projects are being implemented in the Poltava, Vinnitsa, and other oblasts of Ukraine. An important requirement to volunteer fire brigades is the ability to arrive at the disaster site within 10-20 minutes, thus ensuring high effectiveness in firefighting as well as in other civil protection functions.

Illustrative example can be found in the implementation of the pilot projects for modern fire departments in the Shyshaky and Bila Tserkva ATCs (Poltava oblast), which intend to provide a proper level of fire safety as well as new work places for the residents of the consolidated communities. Work is underway to conduct an in-depth analysis of the natural and man-made threats to the daily life of the ATC residents, and subsequently draft risk passports, which would describe each community's level of risk in terms of various natural and man-made disasters. Design and estimate documents have been commissioned in order to construct the Centre for Civil Protection and renovate parts of the existing fire depots in the two population

23 Mykhailo Samus. A Safe Decentralisation. CACDS, <http://cacds.org.ua/ru/safe/theme/1103>

centres included in the above ATCs. Both communities have approved the provisions and structures of the local units of the Unified State Civil Protection System; as well as formed and staffed commissions in the issues of technogenic and environmental safety and emergencies. The Main Department of the SES in Poltava oblast organized training sessions for civil protection specialists of consolidated territorial communities, and prepared guidelines on organizing the work of local fire departments. Modern fire engines are being purchased, with support from the State Fund for Regional Development. The project also entails equipping local departments with modern respiratory protection devices for use in environments unsuitable for breathing. These development investment macroprojects had garnered the support of the German Society for International Cooperation (GIZ), while adjacent communities are already discussing the mechanisms for further inter-municipal cooperation with the newly-created European-standard fire departments.<sup>24</sup>

At this time, work is underway to finalize the legislation concerning the legal status of volunteer firefighters, their rights and obligations on assignments, social security, and other aspects.

Creating a system of civil protection at the ATC level will lay the foundation for creating Public Safety Centres. The comprehensive approach to their creation was presented in April 2017. Public Safety Centres represent a brand new level of service provided by the SES at the level of the newly-created ATCs. Each such Centre would include a fire depot, district police officer's office, and a first-aid/obstetric office if necessary. This was the approach suggested by the SES to the heads of oblast state administrations. Tentative financial calculations have been done as well: the cost of a basic Safety Centre is UAH 2.3 million [USD 88 thousand]; an optimal one, UAH 3 million [USD 114 thousand].<sup>25</sup>

Simultaneously, the decentralisation reform is also implementing the concept of the municipal guard as a local authority charged with ensuring civil order within the com-

munity and strengthening the territorial defence system.

In 2015, the Draft Law "On Municipal Guard" was adopted as a basis in the first reading. The purpose of the draft law is to improve the system for the protection of life, health, rights and freedoms of members of territorial communities, as well as the property, environment, and interests of local communities, against unlawful encroachment. The draft law determines the legal and organizational principles for operation of the municipal guard, its main tasks and functions, and its governance structure. The draft law suggests granting local councils the right to create their municipal guard, which would be financed from the respective local budget or from the other sources not prohibited by the legislation. The municipal guard would be subordinated to local communities, and work to ensure the rule of law and order within the territory of the respective administrative-territorial unit.<sup>26</sup>

The draft law defines municipal guard as a body within the local self-government system, tasked with protect-

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24 Decentralisation of Power. News. Pilot projects of modern fire stations implemented in the Shyshaky and Bila Tserkva ATCs, <http://decentralisation.gov.ua/news/item/id/3786>

25 Decentralisation of Power. News. Presentation of the Comprehensive Approach to Creating Public Safety Centres in Communities (+slideshow), <http://decentralisation.gov.ua/news/item/id/5352>

26 Draft Law of Ukraine "On Municipal Guard," [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55192](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55192)

ing public order, rule of law, and the rights, freedoms and lawful interests of the public within the territory that lies in the respective council's jurisdiction.

The municipal guard (MG) would operate in oblast centres and within ATC territories (and districts, after the administrative reform is complete). In terms of its structure, MG staff numbers would be approved by the local council, while the head of the MG would be appointed by the head of the community executive council. MG units would not be part of the Ministry of Internal Affairs.

The main tasks of the MG are:

- protecting public order;
- patrolling territories;
- crime prevention;
- supporting the government's power ministries;
- protecting municipal property;
- providing power support for decisions made by bodies of local self-government;
- providing legal assistance to the public.

As part of its cooperation with the Ministry of Internal Affairs, the MG carries out joint protection of public order; joint patrolling; information exchange; joint staff training; and the use of state information registries.

Financing for the MG is provided from the local budget and

other sources not prohibited by the legislation. It is important to note that the MG is subordinated to the territorial community, the local council, the local head, and the territorial internal affairs body of Ukraine.

We must emphasize that creation of MG units and completion of the respective Draft Law are carried out in concert with the MIA system reform. In the decentralisation context, the key aspects of that reform are:

- creating a new service of district police officers (including staffing, training, and supply of equipment);
- creating KORD (Operative-Sudden Action Corps) units in oblasts; these are special police units tasked with fighting terrorism and gangs, and carrying out major police operations;
- creating a public service system for the rural regions (a number of oblasts already uses the brand new "cluster" organization system for police and rapid reaction missions).

It should also be noted that these MG initiatives at the level of newly-created ATCs, along with the overall MIA reform process, aim to achieve synergy in the creation of an effective territorial defence (TrD) system that can stand up to the new "hybrid" threats on the part of the Kremlin. At this time, the issue of Ukraine's

new TrD system is being handled at the legislative level.

On one hand, heads of oblast state administrations (OSA) only nominally command the TrD units at this time, while the latter are de facto under state control through a network of military commissariats. However, the experience of Crimea and Donbas had demonstrated that not all service members connected to military enlistment offices remained loyal to their oath instead of defecting to the enemy's side. Thus, establishing strict central control over TrO units by the General Staff of Ukraine and the Ground Forces Command is critically important in the context of the decentralisation reform. While decentralizing politically, we would have a centralized military component by increasing the control of the General Staff of Ukraine over TrO units; if necessary, even by restricting the powers of local state authorities (such as oblast state administrations, district state administrations, and military enlistment offices). An option is also being considered to subordinate TrO units to regular brigades of the Armed Forces of Ukraine or the National Guard, staffed according to the extraterritorial principle.

Thus, strengthening national security is a hard priority for security projects at the level of new LSGB, just as it is for

political and economic decentralisation overall. Each decentralisation initiative is viewed through the prism of security, and discarded if it has a negative impact on the state of Ukraine's security and defence at the national level.

It is expected that the efforts of the new local authorities to ensure public order in their communities (for example, with the help of the "municipal guard" explained above) will strengthen national security "from the bottom up," by increasing the overall effectiveness of the Ministry of Internal Affairs and strengthening the centralized system of territorial defence (subordination of TrO units to regional or local authorities, instead of central ones, is out of the question). At the same time, these units will be actually owned by people, unlike the "people's militia" of the so-called DNR/LNR [Donetsk/Lugansk People's Republic]. The latter formations are created and controlled by Russian special services and used to cover the presence of Russian military servicemen and mercenaries in Donbas as part of occupation troops under operational control of higher military headquarters of the Russian Armed Forces

in Rostov oblast (Novocherkassk).

## 1.4 The Prefect Institution as a Safeguard against the Weakening of Central Power in the Security Sector in the Presence of Russia's "Hybrid" Aggression

An ongoing decentralisation reform in a country that is de facto subjected to external aggression naturally gives rise to discussions whether the possible weakening of the central power will become the main threat to Ukraine's national security. These discussions range from constructive criticism to political speculation. In this context, it bears merit to mention that the reform entails transformation of the executive power vertical, in which the prefect institution plays a crucial role.

Within the decentralisation reform, the prefect institution will be created after decentralisation-related amendments to the Constitution take effect and, accordingly, after local state ad-

ministrations are eliminated.<sup>27</sup> The concept of a "prefect," together with other key aspects of decentralisation are included in the Draft Law "On Amending the Constitution of Ukraine as to Decentralisation of Power" (reg. N2217a). It would also replace prosecutorial supervision of local oblast administrations (eliminated during the latest reform of the prosecutor's office).

Prefects (see Box 1), being a representatives of the central government, will be granted the authority to stop unlawful actions, coordinate the work of the law enforcement, and control the implementation of state-wide programs. Their work following the principle of "oversee, not direct."

It is worth noting that while developing the respective legislative base, Ukraine has analysed and taken into consideration the experience of European countries with similar institutions of the executive vertical within the local government control system. In this respect, the following traits are specific to the Ukrainian prefect institution:

1) Maximum incorporation of Polish and French experience (which operate voivodeship and prefect institutions, respectively). It appears that Kyiv's

27 According to the Draft Law "On Prefects", <http://www.minregion.gov.ua/wp-content/uploads/2016/01/prefek-ti-16.11..pdf>

**Box 1. Aspects of the prefect institution as a key component for the transformation of the executive branch of local government as part of the decentralisation process.**

**Purpose:** to ensure effective oversight over the compliance of local self-government bodies with the Constitution and laws of Ukraine in all their decisions.

**Summary:** a prefect is a local body of executive power and a civil servant; prefects do not belong to any political party or office; they are not replaced upon the change of President or the Government; they are independent of local political elites.

**Scope of authority as relates to local self-government bodies (LSGB):**

- to oversee the decisions of LSGB to ensure they remain legal and constitutional;
- to suspend the effect of any unlawful LSGB acts and escalate them to the court (the prefect does not make a final decision on whether any LSGB act is lawful; that power lies exclusively with the court);
- to advise the local council on bringing their decisions into compliance with the Constitution and laws of Ukraine.

**Place of work:** prefects operate in each district and oblast (the cities Kyiv and Sevastopol have their own prefect); prefect secretariats are created to support the prefect's work.

**Staff selection process:** prefects are selected through an open competition. **Appointment format:** prefects are appointed and dismissed by the President upon recommendation by the Government (the procedure is identical to the appointment procedure for the current heads of state administration).

**Reporting and subordination:** prefects are responsible to the President, subordinated to the Government, and provide annual reports to both.

**Term of office:** no more than 3 years in the same oblast or district (followed by rotation).

selection is a middle ground between the Polish voivodes and French prefects. In Poland, a voivode can independently cancel acts of local self-government bodies without involving the Constitutional Court (if the local self-government bodies disagree with the voivode's decision, they can address the court on their own). In France, a prefect addresses the court, which issues an appropriate resolution to suspend the effect of a LSGB decision. The Ukrainian option provides that

the prefect can suspend the effect of a LSGB decision only if they address the court at the same time, which then decides to either uphold the prefect's decision, or abolish it.

2) A prefect with his own secretariat (headquarters), being the state's local representative, is a key figure for preventing and rooting out federalism and separatism. This decentralisation process is certainly not about granting LSGB full autonomy over local activity and financial flows. The prefect has

the authority to analyse all acts adopted by local self-government bodies. In specific cases, when any such acts threaten the territorial integrity, state sovereignty or national security of Ukraine, or if they do not comply with the Constitution, the prefect has the right to directly inform the President who, in turn, addresses the Constitutional Court or otherwise responds within the scope of authority. This is, essentially, a system of safeguards with regard to the challenges and risks



posed to Ukraine's sovereignty and integrity by the Kremlin's active attempts to destabilize the situation. It also follows the rule that "fast response translates to lack of separatism."

3) Introducing the prefect institution is not about simply changing labels within the executive branch of power as part of the decentralisation reform. As the governance and financial powers of LSGB expand, the prefecture is created to prevent violations at the local level and to ensure a link between the government and local processes.

4) An emphasis on the prefect as an apolitical civil servant: assignment as a prefect means, among other things, departure from all political parties. Competitive selection with subsequent training is meant to ensure that all prefects are professionally fit for their position. The Draft Law "On Prefect" specifies that a prefect is a career official that undergoes a complex nomination procedure, and provides for prefects' discipline, political neutrality, rotation, and other safeguards against political and corrupt influences.

Thus, on one hand, decentralisation of power in Ukraine is one of the components for creating an effective administrative-territorial system with "capable" administrative-territorial units. At the same time, the Ukrainian decentralisation reform certainly does not entail "decentralisation

of the executive branch." The latter, rather, is subject to "de-concentration," in order to create more flexible oversight and control systems, which would facilitate provision of appropriate responses to the challenges and risks faced by Ukraine's national security in the presence of Russia's "hybrid" aggression.

In this context, the prefect institution solidifies the key requirement of decentralisation: clear division of executive power and local self-government. The pending amendments to the Constitution determine which of the prefect's acts can be voided by the head of the state and which, by the government: acts related to control over LSGBs lie within the President's prerogative, while those concerning territorial executive power bodies, within that of the Prime Minister. The prefect institution is the suggested implementation vehicle for the feedback principle that is inherent to effective governance systems: the prefect does not direct, but coordinates, by harmonizing the actions of the territorial branches of ministries and departments, while also overseeing the legality of their acts.

Introducing the prefect institution is an imperative of the time. Without it, the decentralisation would be incomplete, considering the radically new challenges that Ukraine faces. Ukraine's experience back in 1993-1994 showed that intro-

ducing regional self-government without effective state control results in the creation of the so-called "local princedoms," with de facto uncontrollable oblast councils. In 1996, the Constitution of Ukraine provided for an oversight system, but failed to clearly identify the entity responsible for such oversight. Under the old legislation, this function fell to the prosecutor's office. Today, the latter no longer has this function, having undergone a reform. This is exactly why the prefect institution is meant to ensure oversight over the adherence of local self-government bodies to the laws and Constitution of Ukraine. Until the appropriate constitutional amendments been passed, the current challenges and risks arising in the course of the reform are tackled through comprehensive efforts by respective power ministries.

## 1.5 Current Challenges and Risks of the Decentralisation Process, and Ways of Their Prevention

In the context of security, the key issue of the decentralisation reform is oversight over the legality of decisions made by the new local self-government bodies.

The problems and threats that arise in the security sector in the course of the reform can be grouped into the following two interconnected categories:

- ambiguity of the control over LSGB activity due to the constitutional conflict around the prefect institution, which creates pre-conditions for separatist trends;
- emergence of consolidated territorial communities controlled by representatives of local large businesses (local elites) and de facto not subordinated to the centre.

CACDS experts believe that the key security challenge for Ukraine in the course of the state-wide reform is the prefect institution's uncertain implementation timeframe. This, in turn, is related to the uncertain adoption timeframe of the Draft Law "On Amending the Constitution of Ukraine as to Decentralisation of Power" (reg. N2217a).<sup>28</sup> This draft law requires a constitutional majority (and a separate voting procedure) in the Parliament in order to come into effect and,

importantly, contains a controversial provision in Section I – Clause 18: "Specifics of Local Self-Government in certain districts of Donetsk and Lugansk oblasts are determined by a separate law."<sup>29</sup> On one hand, this draft law, by amending the Constitution, consolidates and establishes all key aspects of the overall decentralisation process, including financial aspects, community creation, security issues (primarily via "de-concentration" of local executive power by introduction the prefect institution). On the other hand, including the above Clause 18 into the Constitution under external pressure (both on the part of the aggressor and of Ukraine's Western partners) essentially postpones proper constitutional recognition of the decentralisation reform, for an indefinite time.

Without the prefect institution and in the presence of Russia's "hybrid" aggression, the ambiguity of this issue is a direct threat to Ukraine's national security. In 2016, Ukraine has already undergone a turbulent period when seven oblast councils adopt-

ed resolutions that blatantly exceeded their scope of authority and envisaged establishing "agreement-based division of power" between the state and the regions, which on paper translated into "federalization" and in reality, into breakdown of the Ukrainian state at the current moment in history.<sup>30</sup> It is true that these resolutions had been void and populist since the very moment of their adoption. It should also be noted that they provoked adequate response from the SBU [Security Service of Ukraine], which took appropriate operational effort. Evidence was made public that proved Russian special services had financed "artificial initiatives to federalize Ukraine," the creation of so-called special economic zones, appointment by election of governors and heads of regional law enforcement bodies, restoration of economic links with Ukraine, granting of special status to the Russian language, and so on. The Kremlin's agent network pursues these goals along the two main courses: at the level of individual re-

28 Draft Law of Ukraine "On Amending the Constitution of Ukraine as to Decentralisation of Power," 2217a of July 1, 2015, [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55812](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812)

29 For an in-depth analysis of the problems surrounding "decentralisation" under the Minsk Agreements, see Part 2 of this paper.

30 On Decentralisation, Success, Risks, and the Role of the Parliament, Dzerkalo Tyzhnia, January 13, 2017, <https://dt.ua/internal/pro-decentralizaciyu-uspihi-riziki-i-rol-parlamentu-.html>

gions (through people's deputies in oblast, city, and district councils) and at the national level (through the Verkhovna Rada). A number of journalistic investigations established that the aforementioned initiatives by oblast councils had been backed by significant amounts of Russian money. Each oblast council was allotted USD 250 thousand in exchange for adopting an address to the President, in which they would claim it was necessary to establish agreement-based relations with the centre and to appoint governors by election. Reports about this, with practically identical content, have been subsequently published by dozens of Internet media outlets.<sup>31</sup>

In order to neutralize the risk of LSGB (especially at the regional level) adopting resolutions that are unlawful and sometimes actually dangerous to survival of Ukraine, it is necessary to promptly implement Article 144, part 2 of the Constitution of Ukraine, which establishes a procedure for suspending decisions of LSGB in case such decisions are in conflict with the Constitution or laws of Ukraine.

According to Article 119 of the Constitution of Ukraine, which regulates the operation of state administrations:<sup>32</sup> "Local state administrations in their respective territory shall ensure: 1) the execution of the Constitution and laws of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and other executive power bodies; 2) legality and legal order; the observance of rights and freedoms of citizens." Thus, the Constitution of Ukraine clearly shows that general oversight of the legality of local acts falls specifically to state administrations. As of this time, the Ministry for Regional Development had prepared a draft law that would enable district- and oblast state administrations to monitor the legality of acts adopted by local self-government bodies. (This interim solution received very positive reaction from the Council of Europe.) Adoption of this draft law hinges on the political will of the Cabinet of Ministers and members of the Parliament.

There is another potential consequence of the lack of a statutory timeframe for ATC creation according the pro-

spective plans, combined with the continued lack of the prefect institution. Namely, the emergence of consolidated territorial communities controlled by representatives of local large businesses (local business elites) and de facto not subordinated to the centre. Isolated instances of this trend are already taking place in south-eastern regions of Ukraine. This process is characterized by:

- close affiliation of the ATC heads and most council deputies to a particular powerful local businessperson who sways the decisions of oblast councils in their interests;
- influence of the local businessperson on educational and cultural institutions that are financially dependent on them;
- the risk that after switching to direct budgetary relations, such communities will transform into full-fledged "feudal" units, where the major businessperson's total control over the government bodies and financial flows is supported by their own "army," legalized in the form of a private security com-

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31 Ihor Levchenko. Year Three of Decentralisation: Progress or Destabilization? CACDS, June 1, 2017, <http://cacds.org.ua/ru/comments/1107>

32 The Constitution of Ukraine. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

pany or (more frequently) a hunting ranch.<sup>33</sup>

This trend is exacerbated by a number of aspects of the land reform, which is being implemented simultaneously. In April 2016, the Verkhovna Rada adopted in the first reading draft law N4355. Final adoption of this law would transfer state-owned land outside of population centres into municipal ownership of territorial communities (making the land a foundation of their income). Thus, even today, we can see that local businesspeople who own large portions of land create “custom-made” ATCs. As a result, despite the approved prospective plans, we see ATCs that consolidate lands controlled by a specific businessperson. At the ATC election, this “landlord” gains control over the local council, and the consequences of this are described above.<sup>34</sup> Thus, on

one hand, local business elites who control village/township and district councils can hamper the creation of ATCs, being unwilling to lose their leverage. On the other, if they cannot stand in the way of ATC creation, they strive to change the process into a kind of “regionalization,” thus securing their power and the “semi-feudal” state of the regions under their control.

The draft law 6636 “On the Procedure for Creation and Elimination of Districts, and Change of Their Borders” aims to neutralize this factor.<sup>35</sup> This draft law aims to transform administrative-territorial division at the district level, resulting in larger districts and considerably smaller staff of district state administrations.

Thus, in the context of national security, overseeing the legality of decisions made by the new local self-govern-

ment bodies remains a strategically critical issue within the decentralisation reform. The prefect institution is meant to serve as the foundation of the new system for oversight and control within the decentralisation reform, but its constitutional recognition is delayed by the fact that the Draft Law “On Amending the Constitution of Ukraine as to Decentralisation of Power,” contains a provision meant to regulate the local self-government system in certain districts of Donetsk and Lugansk regions, currently occupied by Russia. This provision appeared as a result of complex processes surrounding the efforts to resolve the conflict in eastern Ukraine, the so-called Minsk Agreements, which maintain the status quo at the front and contain their own flavour of “decentralisation.”

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33 Example: Khrestivka ATC (Kherson oblast). Oleksiy Kopytko. “DIY Princedom: the Everyday of Decentralisation.” Information Resistance group, March 17, 2017, <http://sprotyv.info/ru/news/kyiv/knyazhestvo-svoimi-rukami-budni-decentralizacii>

34 Oleksiy Kopytko. Land Reform: Postponed Till “After the Election?”, CACDS, <http://cacds.org.ua/ru/safe/theme/1154>

35 Draft Law “On the Procedure for Creation and Elimination of Districts, and Change of Their Borders,” N 6636 of June 22, 2017. – Accessed at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62118](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62118)

## Part 2.

# Decentralisation in the Minsk Agreements

## 2.1 “Peace Plan of the President of Ukraine”

The first reference to “decentralisation” in the context of regulating the situation in Donbas was in the Peace Plan of the President of Ukraine to Regulate the Situation in the Eastern Regions of Ukraine,<sup>36</sup> presented by the President of Ukraine Petro Poroshenko on June 20, 2014, during his first working trip to Donbas as President.

The Peace Plan, which consists of 15 specific steps aimed at ceasing combat in the conflict area and moving towards stabilization and restoration of peace in Donbas, includes the following:

“11. Decentralisation of power (through election of executive committees, protection of the Russian language; draft amendments to the Constitution).

12. Approval of governor candidates prior to elections, with representatives of Donbas (provided that agreement be reached on a candidate; in case of any disagreements, the final decision rests with the President).

13. Early local and parliamentary elections.”<sup>37</sup>

This document represented the first concentrated attempt to work out an option that would contribute to conflict stabilization and move the bulk of the conflict resolution efforts into the political field. Under

the Peace Plan, “decentralisation of power” had to become the main “bargaining chip” for Ukraine in negotiations with the other side. We could say that in exchange for granting the “regional elites of Donbas” extended rights and powers, Ukraine wanted to receive guarantees of peace and territorial integrity. Even though the Peace Plan did not clearly define “decentralisation,” subsequent events and discussions within the Ukrainian political and civic communities indicate that the process would involve, at least, the following:

- Amending the Constitution of Ukraine to allow for the creation of regions with a special status within a formally unitary state;

36 Peace Plan of the President of Ukraine to Regulate the Situation in the Eastern Regions of Ukraine, June 20, 2014, <http://www.president.gov.ua/news/petro-poroshenko-predstaviv-v-donbasi-mirnij-plan-z-vregulyu-33044>

37 Ibid.

- Amending the legislation of Ukraine to elaborate on the “special” status of Donbas regions, particularly, such processes as “election of executive committees” and “protection of the Russian language” (namely, how and from whom the Russian language would be “protected,” with regard to the existing legislation);
- Amending the legislation of Ukraine to provide for the procedure of “election of executive committees” – that is, local executive authorities in Donbas regions with special status;
- Amending the legislation of Ukraine to provide for approval of the “governor” candidates (namely, heads of oblast administrations that would be appointed by, and directly subordinated to the President of Ukraine) with the “representatives of Donbas” (legislation would also be required to define who could be considered a “representative of Donbas”);
- Holding early local and parliamentary elections throughout the entire territory of Ukraine; very likely, based on the new legislation providing for the “special status” of regions of Donbas, including the status of their representatives in the Verkhovna Rada of Ukraine.

Despite the objective and understandable desire of Ukrainian leaders to put a quick stop to the combat and begin political resolution of the conflict, the Peace Plan was received critically by Ukrainian civic and expert communities. Their assessments could be summed up as follows:

- The Peace Plan failed to mention Russia’s aggression against Ukraine and falsely implied that the conflict had largely resulted from internal problems, including insufficient authority of the local government. This approach could prove disorienting for the assessment of the situation and the negotiation process, creating an impression that Ukraine was going through a domestic conflict / civil war, rather than being subjected to external aggression.
- The Peace Plan did not mention Crimea as being occupied and annexed by Russia, thus creating an illusion that Crimea and Donbas had different statuses (open Russian aggression and annexation in Crimea vs. “a conflict involving representatives of Donbas” in Donbas). In reality and in the eyes of Ukrainian law, these two regions have essentially the same status, because both Crimea and Donbas are inalienable

parts of the Ukrainian territory, occupied by Russia.

- The Peace Plan provided for negotiations with “representatives of Donbas,” even though that made no sense in the context of Russian occupation, because the so-called “representatives of Donbas” are de facto representatives of the Russian occupation authorities. They cannot have their own stance – at least, not one that would be feasible to take into account while resolving the conflict between Ukraine and Russia.
- The Peace Plan did not hold Russia responsible for unleashing the conflict, nor did it provide for Russia’s participation in the negotiations as a party to said conflict.

## 2.2 Minsk I

As seen from the subsequent events, implementation of the Peace Plan met with resistance from the Russian Federation, who was trying to create an environment for negotiating on their own terms. After a number of successful offensive operations by the Armed Forces of Ukraine, the National Guard of Ukraine and other Ukrainian power structures, as well as tragic events in the conflict zone (such as the deaths of hundreds of Ukraini-

an military servicemen in combat with Russian troops near Ilovaisk), the leaders of the Russian Federation realized the futility of their attempts to occupy new Ukrainian territories, and consequently abandoned the “Novorossiia” project. Thus, September 5, 2014 saw the signing of the “Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin.”<sup>38</sup> The Protocol had the same aforementioned flaws as the Peace Plan: no reference to Russia as an aggressor or a party to the conflict; no formal responsibility assigned to Russia as part of the conflict resolution process; Russia’s status was essentially that of a process moderator, alongside France and Germany; the emphasis was placed on domestic problems within Ukraine; Ukraine was charged with carrying out the main conflict resolution steps; Ukraine was

forced to accept “Certain districts of Donetsk and Lugansk oblasts” (CDDL) as the other side of the conflict; Crimea was left outside of the Donbas conflict resolution process.

Instead, the Protocol noted that Ukraine had to carry out a number of measures, which, if implemented, could result in significant changes to the domestic situation in Ukraine, and would appear as meeting Russia’s demands in exchange for peace:

- “3. Carry out a decentralisation of power, including by adopting the Law of Ukraine “On Temporary Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” (the Law on Special Status)...<sup>39</sup>
- 7. Continue inclusive nationwide dialogue...<sup>40</sup>
- 9. Provide for early local elections in accordance with the Law of Ukraine “On Temporary Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” (the Law on Special Status)...<sup>41</sup>

## 2.3 The Law “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts”

As early as September 16, 2015, the Verkhovna Rada of Ukraine adopted, and the President of Ukraine signed, the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts.”<sup>42</sup> This law is a fundamental document for understanding the concept of “decentralisation” in the context of resolving the Russian-Ukrainian conflict.

On November 7, 2014, in order to clearly define the territories included in CDDL, the Cabinet of Ministers of Ukraine adopted Resolution N1085-r “On Approving the List of Population Centres in which the State Government Bodies are Temporarily Un-

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38 Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin. September 5, 2014, <http://www.osce.org/ru/home/123258?download=true>

39 Ibid.

40 Ibid.

41 Ibid.

42 Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,” September 16, 2014, <http://zakon3.rada.gov.ua/laws/show/1680-18>

ble to Exercise Their Powers (Partially or Fully).<sup>43</sup>

The Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” determines the temporary procedures for organizing local self-government and operating local self-government bodies in certain districts of Donetsk and Lugansk oblasts, in order to normalize the situation as quickly as possible, restore the rule of law, restore the constitutional rights and freedoms of the citizens, as well as the rights and legitimate interests of legal entities, create an environment allowing residents to return to their forcibly abandoned places of permanent residence and reintegrate into their communities, to restore regular daily life in population centres in Donetsk and Lugansk oblasts, and to develop their territories.<sup>44</sup>

According to the Law, the special order for local self-governance in certain districts of Donetsk and Lugansk oblasts would be established for a term of three years after the Law comes into effect (i.e. from the date of its publication, September 16, 2014).

Analysis of the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” shows that the law indirectly grants the occupied territories of Donbas within Ukraine territorial autonomy, based on:

- Special application of the Ukrainian legislation in the territory of certain districts (Article 2 of the Law).
- Special language policy (Article 4 of the Law), which entails facilitating the use of Russian and other languages, in verbal and written forms, in education and media, and creating prerequisites for the use of these languages in the work of government authorities, local self-government bodies, and the judiciary, in economic and social activities, in cultural events, and in other aspects of society. Even though this provision, as indicated by Article 4 of the Law, is based on the provisions of the Law of Ukraine “On the Principles of the State Language Policy,” it obviously represents a formal founda-

tion for legalizing the widespread use of the Russian language, with simultaneous displacement of the official, Ukrainian language (it should be noted that at this time, using the Ukrainian language in occupied territories of Donbas is de facto forbidden and actually dangerous, due to the persecution of “pro-Ukrainian” citizens by occupation authorities).

- Special status of local self-government bodies (Article 5 of the Law). Article 5 of the Law specifies that local governance in certain districts of Donetsk and Lugansk oblasts is carried out according to the Constitution and the laws of Ukraine, by appropriate territorial communities, both directly and through local self-government bodies. The Law also establishes a special appointment procedure for the heads of prosecutor’s office and judicial bodies, which requires that local self-government bodies be involved in the appointment. However, in practice, the Law essential-

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43 “On Approving the List of Population Centres in which the State Government Bodies are Temporarily Unable to Exercise Their Powers (Partially or Fully), and the List of Population Centres Located on the Contact Line,” Resolution of the Cabinet of Ministers of Ukraine, November 7, 2014, <http://zakon4.rada.gov.ua/laws/show/1085-2014-%D1%80>

44 Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts”, September 16, 2014, <http://zakon3.rada.gov.ua/laws/show/1680-18>.



ly allows for creation and operation of CDDLР government authorities, fully independent of the Centre (central authorities) and operating their own prosecutor's offices and courts.

- Special relations between the Centre and CDDLР based on special agreements (Article 6). Namely, the Law establishes that agreements on economic, social, and cultural development of certain districts be concluded between the Cabinet of Ministers of Ukraine, ministries, other Ukrainian executive authorities on one part, and appropriate local self-government bodies of CDDLР on the other. These agreements are meant to ensure coordination between local self-government bodies and central and local executive authorities, as they cooperate to develop CDDLР. The Law states that appropriate local self-government bodies would initiate these agreements on economic, social and cultural development of certain districts of the Donetsk and Lugansk oblasts.
- A different economic regime for business and investment activities, compared to the rest of Ukraine (Article 7). The Law states that in order to ensure sustainable social and

economic development of CDDLР, the Cabinet of Ministers of Ukraine shall approve a targeted state program that establishes the measures, tasks and indicators to facilitate: comprehensive and balanced territorial development; restoration of the industrial and export potential; effective utilization of resources and industrial potential; meeting the public demand in the respective territories for high-tech, competitive and environmentally friendly products and high-quality services; creating a favourable investment climate; and increasing employment rate by creating new work places. Every year, the Law on the State Budget of Ukraine must provide for expense items directed to state support of the social and economic development of CDDLР.

- Independent "foreign policy" of CDDLР regarding the Russian Federation (Article 8). The Law allows CDDLР to develop cross-border cooperation with Russia aimed at resolving shared development issues, strengthening and deepening neighbourly relations of [Ukrainian] territorial communities and local government bodies of individual districts with

administrative-territorial units of the Russian Federation. This cooperation would be carried out under cross-border cooperation agreements, concluded by Ukrainian territorial communities, local self-government bodies and local executive authorities within the competences established by law. Given Russia's powerful military and political presence in CDDLР, this would create prerequisites for Russia's economic dominance in CDDLР and the inevitable displacement of Ukrainian business. In the context of the effective Ukraine–European Union Association Agreement, CDDLР's "independent course" in its relations with Russia (the leader and driving force of the Customs Union and the Eurasian Economic Community) may create collisions during the adaptation of Ukrainian legislation to EU standards, or even block this process. In addition, such "independent foreign policy" of the CDDLР can become a significant hurdle in any of Ukraine's attempts towards further European and Euro-Atlantic integration. The "autonomous territories of CDDLР," which would remain under Russia's total military, political, and economic control,

would very likely become a “Trojan horse” playing into the hands of Moscow, who strives to prevent Ukraine from joining the EU and NATO.

- Regional power structures, independent from the central authorities (Article 9). The Law states that certain districts of Donetsk and Lugansk oblasts could adopt resolutions at the level of city, township or village councils to create “people’s militia” units, which would be charged with protecting public order in the population centres of these districts. The respective village, township or city head would coordinate these units. Volunteers, citizens of Ukraine who reside permanently in the respective population centres of Donetsk and Lugansk oblasts, would staff “People’s militia” units. While protecting public order, these units would exercise the authority granted to them by laws of Ukraine. The local head would inform the local public about

the creation and operation of people’s militia units through the mass media.

In reality, Ukrainian legislation does not contain the concept of a “people’s militia.” This means that the law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” essentially opens up a wide scope of authority for the CDDLR “government” in this field. The local government, which would not be directly subordinated to the Centre, would be able to create its own power structures, which, in practice, would operate outside the control of the central government, respective power ministries of the Cabinet of Ministers of Ukraine, or the President of Ukraine. The notion of “protecting public order” can also be interpreted rather broadly and can include a number of functions related to the work of power ministries.

However, even these rather loose boundaries were deemed insufficient by the separatists and their Russian supervisors. As a result, the “people’s militia

units” of CDDLR are currently represented by any armed formations (at this time, this includes Russian military contingents operating in CDDLR, namely, two army corps (1st AC “Donetsk,” and 2nd AC “Lugansk”), which are part of the 8th Combined Arms Army of the Russian Federation’s Armed Forces, headquartered in Novochoerkassk).<sup>45</sup> The Russian media refers to the Russian occupation troops in CDDLR exclusively as “people’s militia.” The staff of these “people’s militia corps” is made up of local residents (as envisaged by the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,” Article 9),<sup>46</sup> as well as by Russian and foreign mercenaries and units of regular Russian armed forces.

Namely, one person – Victor Ageyev, military serviceman of the Russian Federation Armed Forces – taken captive by Ukrainian servicemen in the conflict zone on June 24, 2017, had a cover story of “serviceman of the people’s militia of the LNR [Lugansk People’s Republic].”<sup>47</sup> Russian

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45 Journalist: Russia Increases Military Presence on the Border with Donbas and Kharkiv Region CENSOR.NET, March 21, 2017, [https://ua.censor.net.ua/news/432781/rosiya\\_zbilshuye\\_viyiskovu\\_sylu\\_na\\_kordoni\\_z\\_donbasom\\_i\\_harkivschynoyu\\_jurnalist](https://ua.censor.net.ua/news/432781/rosiya_zbilshuye_viyiskovu_sylu_na_kordoni_z_donbasom_i_harkivschynoyu_jurnalist)

46 Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,” September 16, 2014, <http://zakon3.rada.gov.ua/laws/show/1680-18>.

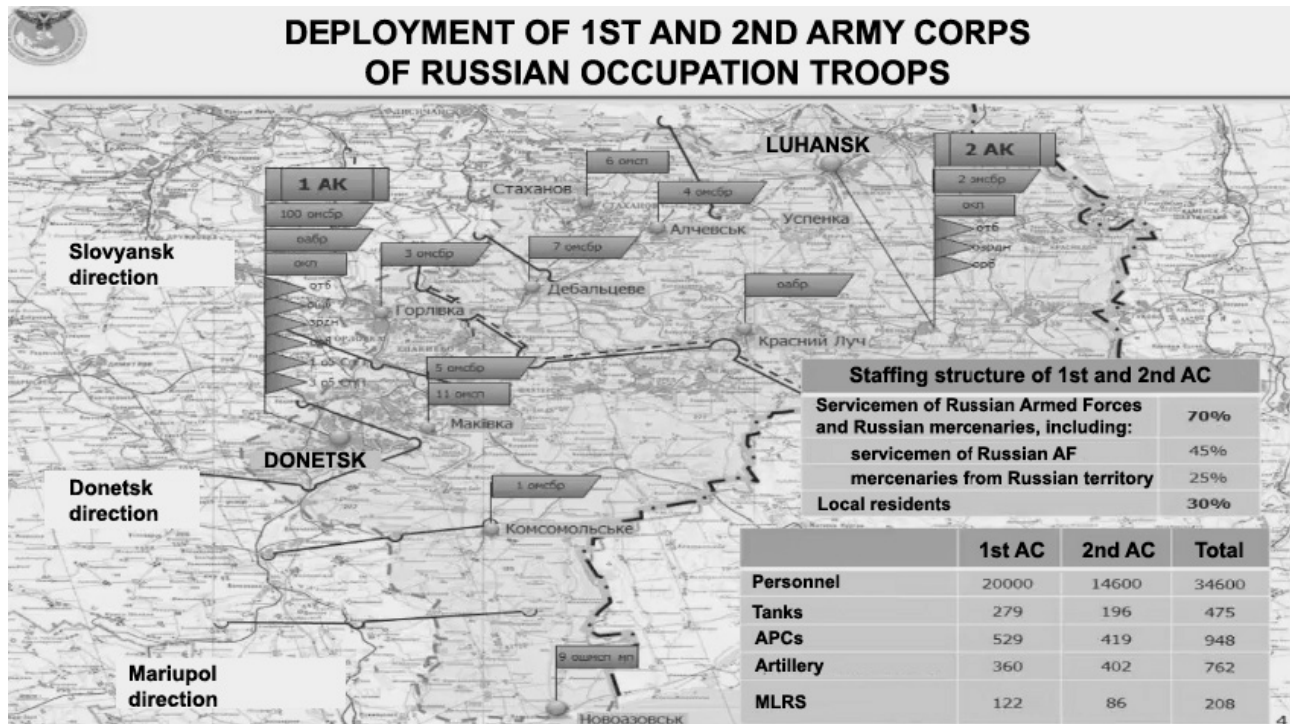
47 People’s Militia: Captive Private First Class Ageyev Was Recruited by an LNR Enlistment Office. June 28, 2017, <http://www.vesti.ru/doc.html?id=2904079>

servicemen Aleksandrov and Yerofeyev,<sup>49</sup> who were sentenced to 14 years of imprisonment for waging aggressive war against Ukraine,<sup>50</sup> had similar cover stories. With this in mind, it is entirely possible that, as part of “decentralisation” under the Minsk Agreement of September 5,

2014, the Kremlin had intended to grant the 1st and 2nd Army Corps of the Russian occupation troops the status of “CDDLР people’s militia,” thus legalizing their presence in Ukrainian territory. According to the information made public at the briefing of the General Staff of Armed For-

ces of Ukraine in August 2017, the 1st and 2nd Army Corps of the Russian Federation Armed Forces in occupied territories already include up to 680 tanks, some 1250 armed combat vehicles, approximately 1170 artillery systems, and up to 40 thousand military servicemen.<sup>51</sup>

Figure 1. The organizational structure, combat strength, and numerical strength of the 1st and 2nd Army Corps of the Russian occupation troops in Donbas (according to the Chief Directorate of Intelligence of the Ministry of Defence of Ukraine, as of April 2016)<sup>48</sup>



48 Intelligence Services Uncovered the Structure of Russian Occupation Troops in Donbas. April 27, 2016, <http://news.liga.net/ua/news/politics/10387924-rozvdka-rozkryla-strukturu-okupats-ynikh-v-ysk-rf-v-donbas.htm>

49 Anyway, the Recon are Russians. – The Search, Trial, and Defense of Captain Yerofeyev and Sergeant Aleksandrov. April 18, 2016, <https://zona.media/article/2016/18/04/erofeev-alexandrov-prigovor>

50 The Trial of Aleksandrov and Yerofeyev. The Verdict. April 18, 2017, <https://zona.media/online/2016/18/04/alexandrov-erofeev-27>

51 How Many Russian Troops in Donbas: the General Staff Infographic. August 30, 2017, <http://news.liga.net/news/politics/144811379-skolko-rossiyskikh-voysk-v-donbasse-infografika-ot-gen-shtaba.htm>

Figure 2. The increase in the armaments of Russian occupation troops in Eastern Ukraine (according to the Chief Directorate of Intelligence of the Ministry of Defence of Ukraine, as of August 2017) <sup>52</sup>



Another possible consequence of the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” of September 16, 2014, is the unregulated interaction between the CDDLR “people’s militia” and Ukraine’s power ministries. One of the possible scenarios here is that the “people’s militia” would become the only power structure to operate in the CDDLR territories and, importantly, on the

stretch of the Ukrainian-Russian border within these territories. Meanwhile, “CDDLR local governments” would exercise their authority to deny entry to these territories to the Armed Forces of Ukraine, the National Guard, the SBU, the State Border Service, the National Police and other Ukrainian power ministries and law enforcement bodies. This would mean, among other things, that the Ukrainian-Russian border within the conflict

zone, while formally handed over “into Ukrainian control,” would still be controlled by “people’s militia” – that is, remain entirely at the disposal of the Russian Federation, creating a de facto Russian enclave in Ukraine.

The final provisions of the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts” (Article 10) established that early elections of people’s deputies

52 Ibid.

for district, city, city-district, township and village councils, as well as elections of village, township and city heads in certain districts of Donetsk and Lugansk oblasts be held on December 7, 2014.<sup>53</sup> However, this requirement of the Law was not implemented, due to the constant violation by Russian occupation troops of the fundamental security aspects of the Protocol dated September 5, 2014 (Clause 1: “Ensure immediate bilateral cessation of the use of weapons;” Clause 2: “Ensure OSCE monitoring and verification of the non-use of weapons”).<sup>54</sup>

## 2.4 Minsk II

Subsequent events showed that creating a CDDLR territorial autonomy within Ukraine was Russia’s main objective in its strategy concerning Ukraine. The Ukrainian side had insisted it was necessary to recognize Russia as a party to the conflict and to make it responsible for implementing the requirements of the

September 5, 2014 Protocol (primarily in terms of ceasefire and withdrawal of its troops and armaments from the territory of Ukraine). Ukraine had thus refused to start preparation for the elections in CDDLR until the fundamental security aspects of the Protocol were implemented. The Kremlin, in turn, had unfolded a new stage of strong-arming Kyiv into creating a “Russian Trojan horse” inside Ukrainian territory. Russian combat operations against Ukraine in the winter of 2014-2015 had culminated in the battles near the Donetsk airport and Debaltseve (during the winter of 2014-2015, entire units of Russian troops were deployed to Donbas from farther regions of Russia; a large body of evidence exists to support that, including evidence published by Russian media).<sup>55</sup>

As a result, hundreds of Ukrainian military servicemen had died while mounting a heroic defence and preventing Russian troops from moving further into Ukraine. At the same time, the Russian lead-

ership created the necessary international environment for another round of the Normandy Four negotiations (Germany, France, Ukraine, and Russia) in order to prolong the diplomacy game aimed at creating a pro-Russian autonomy within Ukraine. By holding the threat of hundreds of military and civilian casualties over the heads of the President of Ukraine and European leaders, the Kremlin had continued pressing towards creating a Russia-controlled territorial unit within Ukraine.

On February 12, 2015, after 17 hours of negotiations in Minsk, the leaders of Germany, France, Ukraine, and Russia agreed on the List of Measures to Implement the Minsk Agreements,<sup>56</sup> which was meant to inject new life into the Russian-Ukrainian conflict resolution. It has to be noted that country leadership did not sign this document. Instead, the List of Measures was signed by: former President of Ukraine Leonid Kuchma, Russian ambassador to

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53 Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,” September 16, 2014, <http://zakon3.rada.gov.ua/laws/show/1680-18>

54 Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin. September 5, 2014, <http://www.osce.org/ru/home/123258?download=true>

55 We all knew what we were signing up for and what could happen. Interview with a Russian tank gunner who was deployed to fight for Debaltseve together with his battalion. March 4, 2015, <https://www.novayagazeta.ru/articles/2015/03/02/63264-171-my-vse-znali-na-cto-idem-i-cto-mozhet-byt-187>

56 The List of Measures to Implement the Minsk Agreements. February 12, 2015, <http://www.osce.org/ru/cio/140221?download=true>

Ukraine Mykhailo Zurabov, OSCE ambassador Heidi Tagliavini, and representatives of the so-called “DNR/LNR” Oleksander Zakharchenko and Igor Plotnitsky. The participation of the latter two, leaders of illegal armed formations classified as terrorist organizations in Ukraine, had provoked considerable discontent from the Ukrainian civic and political communities, and cast immediate doubts on the legitimacy of the document in question.

In essence, the List of Measures was an expanded interpretation of the earlier Protocol (September 5, 2014), with integrated provisions of the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts.”

The List of Measures includes a standard set of instruments traditionally used by the international community to resolve armed conflicts. However, the document presents their implementation procedure in a way that absolves Russia of any responsibility for the situation in the conflict zone, while simultaneously furthering its main goal of creating a pro-Russian autonomy

within Ukraine.

The List of Measures outlines the fundamental security issues: ceasefire, withdrawal of heavy armaments from the contact line, and ensuring OSCE monitoring of these efforts – none of which can actually ensure a return to the normal political, social and economic processes in occupied territories. Following that, it lists Ukraine’s obligations in the sphere of “decentralisation” (namely, granting “regional elites of Donbas” extended rights) in exchange for guarantees of peace and territorial integrity:

“...4. On the first day after the withdrawal, to begin a dialogue on the procedures for holding local elections in accordance with Ukrainian law and the Law of Ukraine “On Temporary<sup>57</sup> [sic; originally “special”<sup>58</sup>] Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,” as well as on the future regime of these areas, according to this Act. Immediately, no later than 30 days from the date of signing of this document, to adopt a resolution of the Verkhovna Rada of Ukraine with the speci-

fication of a territory subject to the special regime in accordance with the Law of Ukraine “On temporary order of local government in some regions of the Donetsk and Lugansk regions” based on the line set in a Minsk memorandum of September 19, 2014.<sup>59</sup>

...9. Restoration of full control over the state border of Ukraine by Ukraine’s government throughout the whole conflict area, which should begin on the first day after the local elections and be completed after a comprehensive political settlement (local elections in individual areas of the Donetsk and Lugansk regions on the basis of the Law of Ukraine, and a constitutional reform) by the end of 2015, on condition of implementation of paragraph 11 – with consultations and in agreement with the representatives of individual areas of the Donetsk and Lugansk regions in the framework of the Trilateral Contact Group.

10. The withdrawal of all foreign armed forces, military equipment, as well as mercenaries from the territory of Ukraine under the supervision of the OSCE. Disarmament of all illegal groups.

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57 Ibid.

58 Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts.” 16.09.2014, <http://zakon3.rada.gov.ua/laws/show/1680-18>

59 OSCE Publishes the Minsk Protocol. September 20, 2014, [https://ukr.lb.ua/news/2014/09/20/280035\\_obse\\_obnarodovala\\_minskiy\\_protokol.html](https://ukr.lb.ua/news/2014/09/20/280035_obse_obnarodovala_minskiy_protokol.html)

11. Conducting constitutional reform in Ukraine, with the new constitution coming into force by the end of 2015, providing for decentralisation as a key element (taking into account the characteristics of individual areas of the Donetsk and Lugansk regions, agreed with representatives of these areas), as well as the adoption of the permanent legislation on the special status of individual areas of the Donetsk and Lugansk regions in accordance with the measures specified in Note [1], until the end of 2015. (See Notes)<sup>60</sup>

Note [1] included a brief summary of the Law of Ukraine "On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts" of September 16, 2014, but with stricter definitions that, essentially, ruled in an autonomous status for CDDLR:

"Such measures, in accordance with the Law "On the special order of local government in individual areas of the Donetsk and Lugansk regions," include the following:

- Exemption from punishment, harassment and discrimination of persons associated with the events

that took place in individual areas of the Donetsk and Lugansk regions;

- The right to self-determination with regard to language;
- Participation of local governments in the appointment of heads of prosecutors' offices and courts in individual areas of the Donetsk and Lugansk regions;
- The possibility for the central executive authorities to conclude agreements with the relevant local authorities on economic, social and cultural development of individual areas of Donetsk and Lugansk regions;
- Assistance from the central government to cross-border cooperation between the individual areas of the Donetsk and Lugansk regions and regions of the Russian Federation;
- The creation of people's militia units [police] upon the decision of local councils in order to maintain public

order in individual areas of the Donetsk and Lugansk regions;

- The powers of local council deputies and other officials elected in snap elections, appointed by the Verkhovna Rada of Ukraine according to this law, cannot be terminated."<sup>61</sup>

From the point of view of the Ukrainian civic, political and expert communities, the most controversial part of the List of Measures is the action plan laid out in clauses 9 through 11. Representing the essence of Russia's position in the implementation of Minsk Agreements, it means that:

- Ukraine can only start resuming control over its state border after the elections in CDDLR, and complete it after a comprehensive political reconciliation, including a constitutional reform;
- At the same time, the constitutional reform in Ukraine must result in an effective constitution with a new key element: decentralisation and permanent special status of CDDLR;
- As specified in Clause 11, political reconciliation (elections and the consti-

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60 The List of Measures to Implement Minsk Agreements. February 12, 2015, <http://www.osce.org/rucio/140221?download=true>

61 Ibid.

tutional reform) must be carried out in consultation with, and with approval of, representatives of CDDLR;

- Withdrawal of foreign armed formations and military equipment from the territory of Ukraine (Clause 10) will only take place after the fulfilment of Clauses 9 and 10 (i.e. the constitutional reform).

Essentially, the action plan (“clauses 9-11 formula”) incorporated into the List of Measures under Russia’s logic creates the following situation:

- Elections are held in occupied territories – formally, under Ukrainian laws, but in reality, outside of the Ukrainian legal field, in the presence of occupation troops, under direction of the puppet governments of the so-called “DNR/LNR,” and with no possibility for Ukraine to control their preparation, implementation, and vote count;
- In the course of these “elections,” Russia, being the occupant, staffs all levels of CDDLR government with people under its control;
- Following that, an imitated transfer of control over the Ukrainian-Russian border begins, contingent on the course of the constitutional reform, which, in turn, can be blocked at any time by “representatives of CDDLR” appointed through the

above “elections,” during their consultations with the central government;

- The same approach would be applied to the withdrawal of foreign troops and armaments, which would also be manipulated by “representatives of CDDLR.”

As an imminent result of implementing the “9-11 formula:

- “CDDLR government” is legalized as a pro-Russian puppet government within Ukraine;
- control over the state border is not returned to Ukraine, and foreign troops and armaments are not withdrawn – for example, due to “CDDLR representatives” being “dissatisfied” with the course of the constitutional reform in Ukraine;
- Russia receives a fully controlled Russian enclave within Ukrainian territory.

It should also be noted that if the Ukrainian Constitution recognizes the special status of CDDLR – individual regions of Ukraine that are not controlled by the central government, with an uncontrolled section of the state border – it would violate the principle of Ukraine’s unitary status and could trigger fragmentation of the state. That is also one of the technologies of “hybrid” warfare. In other words, the “9-11

decentralisation model” would result in a “federalization” of Ukraine following a Russian scenario, which would involve “autonomization” of parts of Ukraine and collapse of the contemporary Ukrainian state. Sabotaging Ukraine from within, creating fault lines between the Centre and the regions, fostering internal hotbeds of conflict and tension, modelling a “parade of sovereignties” of Ukrainian regions – all of these methods are part of the strategy traditionally employed by Russia in the post-Soviet space, in order to multiply conflicts and assume control over former Soviet republics. Examples of that include conflicts in Transnistria, Abkhazia, and South Ossetia, and a number of Russian special forces operations in post-Soviet countries of Central Asia. Similarly, reintegration of occupied territories into Ukraine’s political, humanitarian and legal fields, while maintaining their special status as defined by the aggressor, aims at intensifying centrifugal processes in other parts of Ukraine, and creating hurdles for the Ukrainian majority to exercise their will: which is to enter the EU and NATO, and to move away from the oligarchical form of government.

It was the same principle that Russia had used, for instance, in Moldova, aiming to completely reformat the



Republic of Moldova into a federative state, which would include the pro-Russian unrecognized Pridnestrovian Moldavian Republic [Transnistria]. Russia's apparent intention was to transform Moldova into a Moscow-controlled "federation" that would renounce European and Euro-Atlantic integration, instead becoming Russia's geopolitical stronghold at NATO's borders. This was meant to be achieved through the so-called Kozak Plan,<sup>62</sup> prepared in 2003 by Dmitry Kozak, Special Representative of the President of the Russian Federation in the Republic of Moldova and the unrecognized Transnistria. Among other things, the Kozak Plan entailed:

- Resolving the Transnistrian conflict by creating a unified federative state within the borders of the Moldavian Soviet Socialist Republic as of January 1, 1990;
- The Federative Republic of Moldova be built on the principles of territorial unity, and a united defence, customs, and currency space;
- The FRM would be a neutral, demilitarized state. The armed forces of the Republic of Moldova and the unrecognized Transnistria be liquidated;
- Members of the FRM could pursue their own foreign policy, enter international organizations, sign international treaties, and open their representative offices in other countries;
- The FRM would elect a federal president and a federal parliament consisting of the Senate and the House of Representatives; executive authority would lie with the federal government (note that the Kozak Plan mentions Transnistria and Gagauzia as members of the new federation, while never referencing Moldova's status; similarly, Moldova's status is not mentioned in the formation principles of the new federal parliament, the government, or any other FRM authorities);
- The official languages of the FRM be Moldovan and Russian;
- Russian stabilizing and peacekeeping forces (up to 2,000 military servicemen) be stationed in the FRM territory (for the duration of the demilitarization period). This action plan would have turned Moldova into a state without a clear foreign policy (based on the neutrality clause) and without its own armed forces (based on the demilitarization clause), but with Russian troops in its territory instead. Constant influence of the Russian special services and active use of corruption mechanisms could easily return in the federal authorities soon under control by pro-Russian representatives of Transnistria, where Russian special services have controlled almost every aspect of life for the past 26 years. (Since the start of Russian aggression against Ukraine, Transnistria has become a constant source of agent staff for Russian special services, used to implement the Kremlin's destabilizing scenarios in Ukraine, from the occupation of Crimea, tensions in Odesa, to the creation of the so-called "DNR/LNR" in occupied Donbas territory.) As a result, Russia would achieve another geopolitical victory, replacing an independent Moldova with a Russia-controlled satellite state within the post-Soviet space.

At the eleventh hour, in the night on November 24 to November 25, 2003, the President of the Republic of Moldova Vladimir Voronin refused

62 Memorandum on the Fundamental Governance Principles of the Unified State (2003), <https://regnum.ru/news/458547.html>

to sign the Kozak Plan,<sup>63</sup> thus ruining Moscow's intentions (due to which the Russian President Vladimir Putin, who had been planning to personally take part in the signing of the "federalization plan," cancelled his visit to Chisinau). However, Russia did not cease its efforts with respect to Moldova. At this time, Igor Dodon, the pro-Russian President of the Republic of Moldova, is trying to return to the agenda laid out in the Kozak Plan. He speaks in favour of federalizing Moldova, abandoning European integration, and joining the Eurasian Economic Community, a Moscow-controlled organization.

This is exactly the result that Russia is trying to achieve in terms of Ukraine through implementation of the Minsk Agreements: federalization (disguised as "decentralisation"), legalization of a pro-Russian enclave in Ukraine, destruction of the unitary Ukrainian state, seizure of the "federal" power by representatives of the pro-Russian enclave, creation of an amorphous conglomerate of regions and territories, complete corruption of the Ukrainian political community, Rus-

sia-oriented oligarchization of the economy, blocking of the European and Euro-Atlantic course, and the resulting return of Ukraine to Russia's sphere of influence.

## 2.5 Implementation of "Decentralisation" within the Minsk Process

Given the past examples of Russia's neo-Imperial gambits in the post-Soviet space and the ongoing combat in Donbas claiming the lives of Ukrainian military and civilians every day, Ukraine was not eager to integrate the List of Measures to Implement the Minsk Agreements (February 12, 2015) into its legal field.

On March 17, 2015, the Verkhovna Rada of Ukraine adopted, and the President of Ukraine signed, the Law of Ukraine "On Amendments to Article 10 of the Law of Ukraine "On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts,"<sup>64</sup> which elaborated on how certain provisions of the Law "On Special Order for Local Self-Gov-

ernance in Certain Districts of Donetsk and Lugansk Oblasts" were to be applied, thus creating safeguards against Russia's "9-11 formula."

Namely, amendments of March 17, 2015 specified that Articles 2 through 9 of the Law "On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts" would take effect on the day when local self-government bodies in CDDLR assumed their office, following the early elections. Such elections had to: adhere to the Constitution of Ukraine and the legislation of Ukraine; follow the principles of general, equal, free and transparent voting; ensure a public and open election process as the fundamental principle of electoral law (established in the Constitution of Ukraine and international treaties of Ukraine that secure the internationally recognized human rights standards and constitute a part of the national legislation of Ukraine); as well as adhere to the OSCE standards for democratic elections. The amendments also required that elections are overseen by international impartial observers, from such organizations,

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63 Moldova today: without Transnistria, without a President, but with migrant worker money. A country out of luck. NewDayNews.Ru. RIA Novy Den, November 28, 2011, <https://newdaynews.ru/inworld/360238.html>

64 Law of Ukraine "On Amendments to Article 10 of the Law of Ukraine "On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts." March 17, 2015, <http://zakon5.rada.gov.ua/laws/show/256-viii>

as the OSCE Office for Democratic Institutions and Human Rights, the Congress of Local and Regional Authorities of the Council of Europe, other international organizations and foreign states, and other official observers.

The amendments to the Law also established the prerequisites for elections in CDDLR:

- adherence to the principles of political pluralism and the multi-party system, as well as the equality of rights and equal participation in the election process;
- freedom of pre-election campaigning and equal access to the media, which would require restoring Ukrainian TV and radio broadcasting, and the circulation of Ukrainian printed media, throughout the entire territories of Donetsk and Lugansk oblasts;
- delivering on the guarantee for free expression of will, secret vote, and voting rights of the internally displaced persons who had been forced to leave their place of residence in certain districts of the Donetsk and Lugansk oblasts;
- transparent vote count and

result declaration of the local election.

The Russian side, obviously, did not consider meeting these demands as acceptable conditions for starting conflict resolution in Ukraine. Meeting these demands would increase the chance for free and open elections in occupied territories, without pressure on the part of Russian troops. This could potentially render naught the Kremlin's entire strategy for creating a pro-Russian enclave within Ukraine. The amendment, which had displeased Russia the most, was the one requiring that prior to elections in CDDLR, all illegal armed formations, their military equipment, as well as insurgents and mercenaries be removed from the territory of Ukraine. Namely, the amendments to the Law stated that elections in CDDLR would be held contingent to a number of conditions, including, "...to ensure: ... removal of all illegal armed formations, their military equipment, insurgents and mercenaries, from the territory of Ukraine."<sup>65</sup>

This demand of Ukraine's directly contravenes the Russian vision of carrying out the List of Measures to Implement the Minsk Agreements (the "9-11 formula"): namely, to hold

the elections in the presence of occupation troops, followed by the constitutional reform, and only then, withdraw troops and armaments from CDDLR. Nevertheless, the Ukrainian side insisted on their own sequence for fulfilling the Minsk Agreements. In his annual address to the Verkhovna Rada of Ukraine, "On the Domestic and Foreign Situation of Ukraine in 2015," delivered on June 4, 2015, the President of Ukraine stated, "I would like to remind us all that the war was not our choice. My peace plan, presented a year ago, became the basis for the Minsk Agreements, which were accepted by the entire world as the sole foundation for resolving the conflict, approved by the UN General Assembly and Security Council, approved by the entire world and even, however cynical this may sound, approved by Russia as well. ... I would like to emphasize its three key components: withdrawal of Russian troops, armaments and equipment from Ukraine, restoring of Ukraine's control over the border, and conducting elections in accordance with the European and OSCE standards as well as with the Ukrainian legislation, to ensure that we

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65 Law of Ukraine "On Amendments to Article 10 of the Law of Ukraine "On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts." March 17, 2015, <http://zakon5.rada.gov.ua/laws/show/256-viii>

are dealing with actual representatives of Donbas, and not terrorist leaders.”<sup>66</sup>

In mid-2015, under Russia’s constant threat of further conflict escalation, France, Germany and the USA increased their pressure on Ukrainian leaders, insisting on constitutional changes related to decentralisation (including constitutional recognition of the “special status of CDDLRL”), despite the lack of progress in the fundamental security aspects and Russia’s continued refusal to withdraw its troops from Donbas and transfer border control to Ukraine prior to the elections in CDDLRL.

Some members of the German media looked into how the German, French and US governments had interfered in the work of the Verkhovna Rada of Ukraine while pushing for constitutional amendments in the sphere of decentralisation. For example, Frankfurter Allgemeine Zeitung published an investigative report<sup>67</sup> showing that on July 14, 2015, German Chancellor Angela Merkel and French

President Francois Hollande in the phone conversation with Volodymyr Groysman, Chairman of the Verkhovna Rada of Ukraine had allegedly insisted that the draft amendments to the Constitution of Ukraine included provisions on the special status of certain districts of Donbas. When asked by DW to comment on this statement, the public affairs office of the German government refused to either confirm or deny the allegations, but they did note that the phone conversation between Merkel and Groysman “...did also urge the Ukrainian side to further implement the Minsk Agreements... Which, among other things, contain Clause 11 that specifies that decentralisation must be included in the reformed Constitution.”<sup>68</sup> The media point out that despite the lack of direct evidence of German and French pressure on Kyiv, the following revision was made to the draft law on amendments to the Constitution on July 15, 2015, one day after the phone conversation: the passage “specifics of local

self-governance in certain districts of Donetsk and Lugansk oblasts shall be determined by a separate law” was moved from the final provisions of the draft law on amendments to the Constitution to the transitional provision of the Constitution itself.

Furthermore, people’s deputies of the Verkhovna Rada of Ukraine informed Ukrainian media that Victoria Nuland, Assistant Secretary of State for European and Eurasian Affairs at the United States Department of State, had met with the deputies to convince them to support the latest revision of the draft law on amendments to the Constitution as relates to Donbas. On July 16, 2015, people’s deputy Leonid Yemets said, “I’ve been contacted by the US Embassy, requesting to meet with Victoria Nuland. That meeting took place yesterday. We discussed today’s vote on the amendments to the Constitution. Ms. Nuland insisted that the vote should demonstrate Ukraine’s commitment to the Minsk Agreements.”<sup>69</sup> Accord-

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66 Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine: “On the Domestic and Foreign Situation of Ukraine in 2015.” June 4, 2015, <http://www.president.gov.ua/news/shorichne-poslannya-prezidenta-ukrayini-do-verhovnoyi-radi-u-35412>

67 Constitutional Reform in Ukraine: Was There Pressure from Berlin and Paris? Deutsche Welle, August 22, 2015, <http://p.dw.com/p/1GJhi>

68 Ibid.

69 Deputy: the draft constitutional amendments related to Donbas “status” was “pushed through” by Nuland. Dzerkalo Tyzhnya, July 16, 2015, <https://dt.ua/POLITICS/proekt-zmini-konstituciyi-zi-statusu-donbasu-prodavila-nuland-deputat-178985.html>

ing to Mr. Yemets, Ms. Nuland was insisting that support be given to the “updated version” of the draft law, according to which the “special procedure for self-governance” in territories outside of Ukraine’s control is recognized not in the transitional provisions of the draft law, but in those of the Constitution itself. Mr. Yemets says that Ms. Nuland believed that was necessary to “demonstrate” Ukraine’s commitment to the Minsk Agreements.

Draft Law N2217a of July 1, 2015, revised July 15, 2014,<sup>70</sup> essentially combined the Ukrainian government’s (the President of Ukraine, the Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine) approach to the decentralisation process in the context of the broad reform of the Ukrainian state following the Revolution of Dignity (see Section 1), and the “decentralisation” issues in the context of conflict resolution in the Russian-Ukrainian conflict zone.<sup>71</sup> That draft law meant to combine all achievements in the sphere of decentralisation since 2014, and reflect in the Constitution the changes that

the Ukrainian society and state had already undergone. At the same time, the provisions on specifics of self-governance in CDDLR, which singled out these districts among other regions of Ukraine, gave ground to suspicion that the government may intend to recognize CDDLR as regions with a “special” or “autonomous” status inside a unitary state. This had created powerful political tensions in Ukraine, and a large part of the Ukrainian political community, civic organizations and patriotic activists spoke strongly against including any such provisions on the “special” status of the CDDLR into the Constitution.

For instance, the nationalist Svoboda party viewed the Constitutional amendments as a “de facto surrender to the Kremlin.” Svoboda members strongly objected to Clause 18 of the draft law, which referred to the Law of Ukraine “On Special Order for Local Self-Governance in Certain Districts of Donetsk and Lugansk Oblasts.” “This government, which is currently trying to change the Constitution, is not telling us the truth about what is real-

ly going on. They keep saying that there is no “special status” for Donbas. But that is not the case, because there are the Transitional Provisions, and their Clause 18 refers to a separate law, a law that we had protested a year ago,” said the Svoboda leader Oleh Tyahnybok when speaking at a rally next to Verkhovna Rada of Ukraine on August 31, 2015.<sup>72</sup>

Meanwhile, the Samo-pomich [Self-Reliance] party believed that amendments to the Constitution of Ukraine contained several threats, which included the granting of the “special status” to occupied Donbas, sabotage of Ukrainian sovereignty, amnesty and legalization of pro-Russian insurgents, and their access to power in Ukraine. Samo-pomich members stated that, “...Russia had started a war against Ukraine specifically to force us to change our Constitution. The Kremlin is trying to achieve a special self-governance order for occupied territories, to use that to conquer us from the inside. That was why Russia had forced all our foreign partners to agree with these amendments, which are

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70 Draft Law “On Amending the Constitution of Ukraine as to Decentralisation of Power” July 1, 2017, [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55812](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812)

71 For an in-depth analysis of the Draft Law “On Amending the Constitution of Ukraine as to Decentralisation of Power,” July 1, 2017, see Section 1 of this paper.

72 Svoboda party pickets the parliament, demanding not to surrender to the Kremlin, Svoboda, August 31, 2015, <http://svoboda.org.ua/news/events/00015038/>

good for everyone except us Ukrainians. Our Western partners, while insisting that the constitutional amendments are necessary as part of the Minsk Agreements, are failing to answer two simple questions. One, why should Ukraine fulfill the Minsk Agreements unilaterally? And two, how will the West respond if Russia continues to violate the agreements?"<sup>73</sup>

The tensions had reached their peak on August 31, 2015, when the Verkhovna Rada was voting on draft law N2217a. Despite the heated debates in the parliament, the draft law was adopted on a preliminary basis.<sup>74</sup> 265 deputies voted in favor (115 from the Petro Poroshenko Bloc, 69 from the People's Front, 38 from the Opposition Bloc, 5 from the Samopomich party, 0 from the Radical Party of Oleh Lyashko, 0 from the Batkivshchyna [Fatherland] party, 11 from the Vidrozhennia [Revival] party, and 14 from the Volya Narodu

[People's Will] party); 87 voted against; 5 abstained from the vote; 11 votes withheld. The total number of deputies taking part in the session was 368.<sup>75</sup> That ruling of the parliament had opened the path to the main vote on the amendments to the Constitution, which required over 300 votes in favor in order to pass.

Meanwhile, during the August 31 vote, several political parties, including Svoboda, the Radical Party of Oleh Lyashko, Civic Platform and UKROP, organized a rally by the walls of the Verkhovna Rada, aiming to prevent a positive vote on amendments to the Constitution. After the vote, mass unrest had erupted by the parliament, and a live grenade was thrown from the crowd at members of the law enforcement detail. Four servicemen of the National Guard of Ukraine were killed as a result.<sup>76</sup> A total of 141 people were hospitalized, 131 of them – law enforcement per-

sonnel. The police detailed one Ihor Humenyuk, former member of the Sich battalion, who was accused of throwing a grenade at members of the National Guard.<sup>77</sup>

These events near the Verkhovna Rada of Ukraine became a turning point for understanding the further prospects of the Minsk Agreements within Ukraine. Both the government and the opposition fully understood that further resolution of the conflict with Russia had to continue without external pressure, and be rooted in a clear understanding of Ukraine's national interests. Acting otherwise could lead to internal destabilization, which, given the existing conflict with Russia, could have unforeseen consequences for the Ukrainian state.

The pressure from the West, aimed to force Ukraine to make unilateral concessions in the implementation of the Minsk Agreements, had become, to a large degree,

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73 7 threats behind the constitutional amendments proposed by the President, August 28, 2015, <https://samopomich.ua/uk-7-zahroz-zaproponovanyh-prezydentom-zmin-do-konstytutsiji/>

74 Resolution of the Verkhovna Rada of Ukraine "On Preliminary Adoption of the Draft Law on Amending the Constitution of Ukraine as to Decentralisation of Power," N 656-19. August 31, 2015, <http://zakon3.rada.gov.ua/laws/show/656-19>

75 Roll call vote for the Resolution to adopt on a preliminary basis the Draft Law on Amending the Constitution of Ukraine as to Decentralisation of Power (N2217a/P1). August 31, 2015, [http://w1.c1.rada.gov.ua/pls/radan\\_gs09/ns\\_golos?g\\_id=34621](http://w1.c1.rada.gov.ua/pls/radan_gs09/ns_golos?g_id=34621)

76 National Guard Members Killed Near the Verkhovna Rada: the Dossier. August 31, 2016. <https://ua.112.ua/statiji/zahybli-pid-verkhovnoiu-radoiu-biitsi-natshvardii-dosie-255516.html>

77 Avakov: the grenade was thrown by a "Svoboda" member from the Sich battalion. *Ukrainska Pravda*, August 31, 2015, <http://www.pravda.com.ua/news/2015/08/31/7079662/>

counter-productive and destabilizing. Specialists of Stratfor, a US private analytical agency, indicated that the mass unrest near the Verkhovna Rada during the vote on including the “privileged” status of CDDLR into the Constitution showed that “...the Ukrainian government is in a difficult spot, with pressure from Russia and Moscow-backed separatists on one side and demands from far-right and ultra-national elements on the other. The more Kiev concedes to one, the more it is in jeopardy of facing blowback from the other. This situation will continue to complicate not only chances of a settlement between Russia and the West over the conflict in eastern Ukraine, but also the coherence of the Ukrainian state as a whole.”<sup>78</sup>

On August 31, 2015, after the draft law N2217a was approved on a preliminary basis, it was included in the agenda for a final vote, which would require a constitutional majority in the parliament (300 votes). However, the tragedy near the Verkhovna Rada on the same

day had aggravated the stand-off between parliamentary factions and jump-started a political crisis, which resulted in the departure of the Radical Party, Samopomich, and Batkivshchyna from the coalition. Under these conditions, it was impossible to achieve a constitutional majority to back the decentralisation draft law.

Still, Ukraine’s Western partners had an erroneous view of the situation, and continued their pressure on Kyiv, trying to get the constitutional amendments adopted as soon as possible, based on their belief that it would give a decisive push to conflict resolution in Donbas. On September 12, 2015, the Berlin summit of the Normandy Four (Germany, France, Ukraine, and Russia) saw the unveiling of the so-called Morel Plan, which was meant to be adopted on October 2, 2015, at the Paris summit.<sup>79</sup>

According to Deutsche Welle, the plan, offered for consideration to the working group on political affairs of the Trilateral Contact Group by the

French diplomat Pierre Morel, was developed by Assistant US Secretary of State Victoria Nuland and Russian State Secretary and Deputy Foreign Minister Grigory Karasin.<sup>80</sup>

According to the sources of the Ukrainian publication *Dzerkalo Tyzhnya*, the plan entailed holding elections in CD-DLR under a special law, which would be significantly different from the general rules applying in the rest of Ukraine. The plan did not require that the elections be held after meeting the conditions considered necessary by the Ukrainian side, such as withdrawing the troops, disarming the insurgents, and returning control over the border to Ukraine.<sup>81</sup>

In Ukraine, considering the tragic events of August 31, 2015 near the Verkhovna Rada and the general domestic tension, the Morel Plan was received mainly negatively. The President of Ukraine Petro Poroshenko called the plan “Mr. Morel’s own idea of the elections in Donbas.”<sup>82</sup> Later, he altogether denied the existence of the plan as a finished doc-

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78 American Intelligence Agency Stratfor: Kyiv is Between a Rock and a Hard Place, UNIAN, September 2, 2015, <https://www.unian.ua/politics/1118061-amerikanska-rozvidka-stratfor-kijiv-opinivsyia-mij-dvoh-vogniv.html>

79 “Morel’s Talking Points.” S. Rakhmanin, *Dzerkalo Tyzhnya*, September 18, 2015, <https://dt.ua/internal/morelski-tezi-.html>

80 “The Morel Plan: Will Kyiv Swallow the Bitter Pill?” October 4, 2015, <http://p.dw.com/p/1GdFt>

81 “Morel’s Talking Points.” S. Rakhmanin, *Dzerkalo Tyzhnya*, September 18, 2015, <https://dt.ua/internal/morelski-tezi-.html>

82 Poroshenko commented on the Morel Plan about elections in Donbas. *Ib.ua*, September 21, 2015, [https://ukr.lb.ua/news/2015/09/21/316497\\_poroshenko\\_prokomentuvav\\_plan.html](https://ukr.lb.ua/news/2015/09/21/316497_poroshenko_prokomentuvav_plan.html)

ument, and listed three of its points that definitely could not be applied. “The first is the idea that the internally displaced persons would be deprived of their voting rights in Donbas and would vote elsewhere instead. The second is the “transformation,” or rather, the restriction for Ukrainian political parties from taking part in local elections in Donbas. That will not happen. Ukrainian political forces will take full part in the elections in Donbas. Mr. Morel himself agreed with that, and this point has been withdrawn,” said Poroshenko. “Thirdly, full-fledged operation of Ukrainian media in Donbas is a necessary prerequisite for democratic elections,” the President noted. He added that these points had been presented for discussion, were met with strong objection on the part of the Ukrainian delegation, and subsequently withdrawn.<sup>83</sup>

Russia, trying to keep tensions high in Ukraine during the constitutional amendment process, continued its information and diplomatic attacks, combined with the unceasing activity of occupation troops in Donbas. Exploiting the Western partners’ interests, Russia

would try to make them push for Ukraine’s further “decentralisation.” A typical example of that is Vladimir Putin’s interview published in the German newspaper Bild on January 11, 2016.<sup>84</sup> Answering the journalist’s questions, Putin said, “Believe me, this is now becoming somewhat of theatre of absurd, because the bulk of the responsibility for fulfilling the Minsk Agreements now rests with the government in Kyiv. You cannot demand from Moscow to do things that must be done by Kyiv. For example, the most important, pivotal issues in the [conflict] resolution process are political ones, with the constitutional reform at their core. This is Clause 11 of the Minsk Agreements. It clearly states that a constitutional reform must be carried out – and it’s not up to Moscow to make those decisions! Look, it says here clearly: Ukraine is to carry out a constitutional reform, with [the new constitution] to come into effect before the end of 2015. Clause 11. The year 2015 is now over.” When asked by the German journalist, “So the constitutional reform must be carried out after all combat activity is ceased. Is that what it says?” –

Putin responded, “No, that’s not the case. Look at this, it’s all in English, you can keep it. What does it say here? Clause 9: restoring complete control over the state border to the government of Ukraine, based on the law of Ukraine on the constitutional reform, before the end of 2015, contingent on fulfilling Clause 11, that is, the constitutional reform. So first, the constitution has to be reformed and political processes started, and only then, based on these processes, we can build confidence and complete all processes, including closing the borders.”

Thus, Putin claims that the main aspect of the stabilization process is not to stop the armed conflict, but to carry out political changes in Ukraine, namely, the constitutional reform. In other words, according to the Kremlin’s logic, should Ukraine carry out the constitutional reform and the “decentralisation” (i.e. autonomization of the occupied territories), and turn CDDL into a pro-Russian enclave with a special status, then Russia would cease aggression against Ukraine. Besides, Putin made a mistake by speaking about “closing the borders.”

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83 Poroshenko: There is and there will not be any “Morel Plan.” *Ukrainska Pravda*, October 4, 2015, <http://www.pravda.com.ua/news/2015/10/4/7083626/>

84 Interview with the German newspaper Bild. January 11, 2016, <http://kremlin.ru/events/president/news/51154>



The Minsk Agreements talk about transferring control over the border to Ukraine from “representatives of CDDLR.” To speak about “closing the borders” is to say that the borders are currently “open” on the part of Russia. Therefore, Putin had admitted that Russia is in full control of the situation, able to “close the border” at any moment, withdraw its troops and cease aggression against Ukraine. However, it is not doing that, instead choosing to blackmail Ukraine and other parties of the conflict resolution.

## 2.6 “Freezing” of Minsk Agreements. Accumulation of Ukraine’s Own Decentralisation Experience. New Model for De-Occupation and Reintegration of CDDLR

As of mid-2016, the “Ukraine-Russia-West” triangle found itself at an impasse. Ukraine would not agree to further implement the Minsk Agreements without withdrawal of Russian troops from CDDLR and the transfer of the

border control; Russia still attempted to force Ukraine into amending the Constitution and creating the prerequisites for legalizing puppet governments in occupied Donbas; while Germany, France, the USA, and the OSCE could not propose a single acceptable update to the Minsk Agreements that could revitalize the conflict resolution process. Plus, caught up in their own pre-election issues, Washington, Paris and Berlin were not interested in escalating the events between Kyiv in Moscow. Thus, while the USA and Europe were undergoing political turbulence, their stance on the Russia-Ukraine relations was to repeat the mantra: “the Minsk Agreements are the only option.” As a result, international mediators did not resolve an armed conflict, but “froze” the Minsk Agreements instead.

At the same time, Ukraine had completed a difficult journey towards self-realization of its national interests in the conflict with Russia. Its domestic processes, while slow and riddled with disputes and compromises, had gradually resulted in a national consensus on what the approach to resolving the conflict with Russia should be. Overall, the approach could be summed up as follows: the Minsk Agreements will remain the framework foundation of the peace

process, but their contents and prescribed actions are out of touch with reality and should therefore be updated; amending the Constitution and laws of Ukraine in the context of the Minsk Agreements is unfeasible and counter-productive, as that may negatively impact Ukraine’s national interests or, given certain conditions, destroy the Ukrainian state; decentralisation is an internal state transformation process and should be taken outside the Minsk Agreements, as the latter at this time actually represent an obstacle to decentralisation; the Minsk Agreements will only start working once they recognize Russia as a party to the conflict and place on it the responsibility for the aggression, as well as for taking specific conflict resolution steps (first of all, to withdraw its troops and armaments, and transfer control over the border to Ukraine); the key issue for Ukraine’s national interests is to clearly define CDDLR as occupied territories, recognize Russia as the aggressor, and bring all aspects of the Russian-Ukrainian conflict in accordance with the international law; the Crimea issue should be addressed alongside Donbas as part of the conflict resolution process, because from the points of view of international and Ukrainian law, Crimea and Donbas have the same legal status.

At this time, Ukraine is successfully promoting the decentralisation reform, which entails comprehensive transformation of the state governance system, and is based on “financial” decentralisation, creation of consolidated territorial communities with Safety Centres created “from the bottom up,” and transformation of the executive power vertical with a system for overseeing and controlling the new local self-government bodies. By using this approach and achieving the first positive results from its own approach to decentralisation, Ukraine is moving towards a new model for determining the status of the occupied Donbas territories. The latter, it appears, will be involved not so much in decentralisation, but in de-occupation and reintegration processes. The essence of this model is contained in the draft Law of Ukraine “On Specifics of State Policy to Restore Ukraine’s State Sovereignty over the Temporarily Occupied Territory of Donetsk and Lugansk Oblasts of Ukraine.” This draft law was announced in June 2017 by the Secretary

of the National Security and Defence Council Oleksandr Turchynov.<sup>85</sup> In July 2017, Mr. Turchynov reported that the draft law had been prepared by the NSDC, with contributions from the parliament, government, and experts; the draft law was introduced to the Verkhovna Rada on October 4, 2017, after the start of the new parliament session, and following consultations with the EU and the USA.<sup>86</sup>

Some of the draft law provisions include:

- Russia is recognized as an aggressor;<sup>87</sup>
- Russia is carrying out armed aggression against Ukraine using the Armed Forces of the Russian Federation (regular and irregular units, mercenaries, armed gangs, etc.) as well as the Russian occupation administration, which had usurped power in the occupied territories of Ukraine;
- In Donetsk and Lugansk oblasts, districts where the Russian Armed Forces and the Russian occupation administration have established and exercise their power are recognized as

temporarily occupied territories. They are subject to a special legal regime applying to occupied territories;

- Ukraine’s objective is to liberate the occupied territories and restore constitutional order in them. Ukraine will use all possibilities to protect the rights and freedoms of its citizens residing in the temporarily occupied territories;
- The political and diplomatic methods for restoring Ukraine’s territorial integrity;
- The President of Ukraine can declare martial law and adopt resolutions to deploy the Armed Forces of Ukraine and other military formations in Donetsk and Lugansk oblasts;
- The forces and resources operating to ensure national security and defence in Donetsk and Lugansk oblasts are commanded by the Joint Operation Headquarters of the Armed Forces of Ukraine. The entire staff of the power ministries and law enforcement bodies involved in ensuring national security and

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85 Turchynov hopes that the Rada will adopt an alternative to the ATO before the recess. *Ukrainska Pravda*, June 14, 2017, <http://www.pravda.com.ua/news/2017/06/14/7146928/>

86 See: “Draft Law of Ukraine “On Specifics of State Policy to Restore Ukraine’s State Sovereignty over the Temporarily Occupied Territory of Donetsk and Lugansk Oblasts of Ukraine.” [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62638](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62638)

87 *Ibid.*

defence in Donetsk and Lugansk oblasts are subordinated to the Head of the Joint Operation Headquarters of the Armed Forces of Ukraine.

Obviously, this draft law has been met with strong opposition from Russia, as it fully ruins Moscow's plans to create a pro-Russian enclave within Ukraine. As a result, the Russian leadership is likely to increase pressure on Germany and France, to make them, in turn, put pressure on Ukraine and prevent the adoption of the Law "On Specifics of State Policy to Restore Ukraine's State Sovereignty over the Temporarily Occupied Territory of Donetsk and Lugansk Oblasts of Ukraine."

At the same time, the international political situation favours Kyiv, as neither Berlin nor Paris can suggest anything new for the conflict resolution process, except for repeating, "The Minsk Agreements are the only option." This situation plays into the hands of Russia, which continues maintaining a high level of tension in the conflict zone in Donbas, killing Ukrainian militaries and civilians while simultaneously trying to destabilize Ukraine from the inside. Under these conditions, the Ukrainian state is defending itself de facto independently, without much assistance from its partners. Thus, Kyiv is fully within its rights to act at its own discre-

tion to protect its sovereignty and territorial integrity. Ukraine's initiative in the form of the new Law is one of the avenues for exercising these rights.

Ukraine's biggest challenge in implementing this new conflict resolution model will be convincing its Western partners that recognizing Russia as an aggressor and occupant will not result in aggravation of the conflict and collapse of the Minsk Agreements. One of the key points here is that the approach to "decentralisation" described in the List of Measures to Implement the Minsk Agreements<sup>88</sup> is provocative and counterproductive, and therefore, unrealistic.

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88 The List of Measures to Implement the Minsk Agreements, February 12, 2015, <http://www.osce.org/ru/cio/140221?download=true>

# General Conclusions

Today, Ukraine's decentralisation reform is one of the most progressive and successful state projects for transforming the state governance system, aimed to increase the effectiveness of local self-government and create a full-fledged civil society. Decentralisation in Ukraine is being implemented with consideration of the best European practices, and is the keystone of Kyiv's irrevocable commitment to Ukraine's pro-European course.

At the same time, this reform is being carried out against the background of an armed conflict, its initiator, main driver, as well as the obstacle to its resolution being the Russian Federation, which had occupied and annexed Crimea and, after failing to entirely destroy Ukraine by creating a so-called "Novorossiya," occupied a part of Donbas.

In Ukraine, Russia had attempted the same neo-Imperial gambits it had already tried out in the post-Soviet state to multiply conflict and establish control over former Soviet republics (examples: conflicts in Transnistria, Abkhazia, and South Ossetia, as well as operations by Russian special services in post-Soviet countries of Central Asia).

External aggression is currently one of the greatest hurdles to the state-wide decentralisation reform, including in the part of its constitutional recognition. This is due to the external pressure exerted to force a controversial norm on the "specifics of local self-government in entrain districts of Donetsk and Lugansk oblasts" into the Transitional Provisions of the Constitution of Ukraine. At the current stage, it is impossible for the Verkhovna Rada of Ukraine to adopt the constitutional amendments in

this form, as the Kremlin continues to block any progress in implementing the security and humanitarian aspects of the Minsk Agreements.

Despite all these challenges, the preliminary results of the decentralisation reform can be assessed as positive. Among other things, it bears merit to mention the "financial decentralisation," which entails transferring a large share of power in the socioeconomic sphere from the center to the regions, and a respective redistribution of financial resources. The progress in voluntary creation of consolidated territorial communities on the fundamental level, and their operation so far, can also be assessed as positive.

The reform entails creating a new system for overseeing and controlling the new bodies of local self government: namely, to introduce a prefect institution that would aim to

increase security, primarily by preventing separatism sentiments (and expressions of separatism) and counteracting the Russian agent network's attempts to destabilize Ukraine from the inside.

Overall, the decentralisation process has already strengthened Ukraine's security sector through a number of "low-level" projects in the newly-created local self-government bodies. This includes an improved civil protection system (with pilot projects for contemporary fire departments), creation and operation of Public Safety Centers in the communities, creation of new local authorities to protect public order in the communities, and improving the territorial defense system. These processes are tightly linked to the reformation processes in the respective power ministries (SES and MIA).

Due to Russia's aggression against Ukraine, Ukraine's state-wide decentralisation reform cannot be implemented in the currently occupied territories of Crimea and certain districts of Donetsk and Lugansk oblasts, until they are completely liberated and de-occupied. The Kremlin's attempts to force Donbas territories into Ukraine on the terms favorable for Moscow and unacceptable for Kyiv (by exerting pressure within the Minsk Agreement processes) repre-

sent the main hurdle for proper constitutional recognition of the decentralisation reform, including the constitutional recognition of the prefect institution, the new format for overseeing and controlling local self-government bodies.

As a result, a key security issue remains open within the state-wide decentralisation process, for an indefinite term: namely, controlling the newly-created bodies of local self-government. That creates such challenges and risks as a favorable environment for separatism (especially in southeastern regions of Ukraine), and regionalization of the state with local business elites at the core.

Thus, it would be entirely unacceptable to recognizing state-wide decentralisation in the Constitution while keeping to the Russian vision of the Minsk Agreements implementation, as that would create a real risk of the Transnistrian scenario in Ukraine, that is: federalization and demilitarization of the state, commitment to neutrality with no European or Euro-Atlantic integration, and a complete foreign policy and economic dictatorship of the Kremlin. All these processes are currently underway in the Republic of Moldova.

The Ukrainian state had completed a difficult journey towards fully realizing its own national interests in the con-

flict with Russia, and its complex internal processes had resulted in a national consensus about an acceptable approach for resolving the conflict with Russia, including its idea of "decentralisation by the 9-11 formula."

Overall, this approach can be summarized as follows: the Minsk Agreements will remain the framework foundation of the peace process, but their contents and prescribed actions are out of touch with reality and should therefore be updated; epy constitutional reform, including as related to decentralisation, must be taken outside of the Minsk process, and outside of the Russian-Ukrainian conflict resolution; the Minsk Agreements are blocking the constitutional reform process in Ukraine, which is unacceptable from the point of view of Ukraine's national interests; the Minsk Agreements will only start working once they recognize Russia as a party to the conflict and place on it the responsibility for the aggression, as well as for taking specific conflict resolution steps (first of all, to withdraw its troops and armaments, and transfer control over the border to Ukraine); the key issue for Ukraine's national interests is to clearly define CDDL as occupied territories, recognize Russia as the aggressor, and bring all aspects of the Russian-Ukrainian conflict in

accordance with the international law; the Crimea issue should be addressed alongside Donbas as part of the conflict resolution process, because from the points of view of international and Ukrainian law, Crimea and Donbas have the same legal status.

The new model for determining the status of the occu-

piated territories of Donbas must exclude them from the decentralisation process, but instead provide for their de-occupation and reintegration processes. In this context, it would be feasible to separate the processes of the state-wide decentralisation reform and the de-occupation of the territories temporarily occupied by Russia; while con-

flict resolution in the military conflict zone would be carried out in accordance with the draft Law of Ukraine “On Specifics of State Policy to Restore Ukraine’s State Sovereignty over the Temporarily Occupied Territory of Donetsk and Lugansk Oblasts of Ukraine” developed by the NSDC of Ukraine.<sup>89</sup>

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<sup>89</sup> As of the writing of this report, the Law was not adopted.

# Appendix.

## A List of measures to fulfil the Minsk Agreement

February 12, 2015

1. An immediate and comprehensive ceasefire in individual areas of the Donetsk and Lugansk regions of Ukraine and its strict implementation starting at 0000 (Kyiv time) February 15, 2015.

2. The withdrawal of all heavy weapons by both parties at equal distances in order to create at least a 50 kilometer security zone for 100mm or larger caliber artillery systems, a 70 kilometer security zone for Grad multiple rocket launcher systems and a 140 kilometer security zone for the Tornado-S, Uragan, and Smerch multiple rocket launcher systems and Tochka (Tochka-U) tactical missile systems:

- for the Ukrainian troops: [withdrawal] from the actual contact line;
- for the military units of individual areas of the Donetsk and Lugansk regions of Ukraine: [withdrawal] from the contact line in accordance with the Minsk memorandum of September 19, 2014. Withdrawal of aforementioned heavy weapons shall begin no later than the second day of the ceasefire and end within

14 days. The OSCE will contribute to this process with the support of the Trilateral Contact Group.

3. Starting the first day of such withdrawal, ensuring the effective monitoring and verification by the OSCE of the ceasefire and the withdrawal of heavy weapons with the use of all necessary technical means, including satellites, UAVs, radar systems, etc.

4. On the first day after the withdrawal, to begin a dialogue on the procedures for holding local elections in accordance with Ukrainian law and the Law of Ukraine "On a temporary order of local government in individual areas of the Donetsk and Lugansk regions," as well as on the future regime of these areas, according to this Act. Immediately, no later than 30 days from the date of signing of this document, to adopt a resolution of the Verkhovna Rada of Ukraine with the specification of a territory subject to the special regime in accordance with the Law of Ukraine "On temporary order of local government in some regions of the Donetsk and Lugansk regions" based on the line set in a Minsk memorandum of September 19, 2014.

5. To provide pardons and amnesties by the enactment of a law prohibiting prosecution and punishment of persons with regard to the events that took place in individual areas of the Donetsk and Lugansk regions of Ukraine.

6. To ensure the release and exchange of hostages and illegally detained persons based on the principle of "all for all". This process must be completed no later than the fifth day after the withdrawal.

7. To provide secure access, delivery, storage and distribution of humanitarian aid to the needy on the basis of an international mechanism.

8. Determination of the procedure for the full restoration of the socio-economic relations, including transactions of social payments, such as pensions and other payments (takings and income, timely payment of all utility bills, renewal of taxation within Ukraine's legal framework). To this end, Ukraine shall regain control over the segment of its banking system in conflict-affected areas, and an international mechanism to facilitate such transfers will probably be created.

9. Restoration of full control over the state border of

Ukraine by Ukraine's government throughout the whole conflict area, which should begin on the first day after the local elections and be completed after a comprehensive political settlement (local elections in individual areas of the Donetsk and Lugansk regions on the basis of the Law of Ukraine, and a constitutional reform) by the end of 2015, on condition of implementation of paragraph 11 – with consultations and in agreement with the representatives of individual areas of the Donetsk and Lugansk regions in the framework of the Trilateral Contact Group.

10. The withdrawal of all foreign armed forces, military equipment, as well as mercenaries from the territory of Ukraine under the supervision of the OSCE. Disarmament of all illegal groups.

11. Conducting constitutional reform in Ukraine, with the new constitution coming into force by the end of 2015, providing for decentralisation as a key element (taking into account the characteristics of individual areas of the Donetsk and Lugansk regions, agreed with representatives of these areas), as well as the adoption of the permanent legislation on the special status of individual areas of the Donetsk and Lugansk regions in accordance with the measures specified in Note [1], until the end of 2015. (See Notes)

12. On the basis of the Law of Ukraine "On temporary order of local government in individu-

al areas of Donetsk and Lugansk regions" the questions regarding local elections shall be discussed and agreed with the individual areas of the Donetsk and Lugansk regions in the framework of the Trilateral Contact Group. Elections will be held in compliance with the relevant standards of the OSCE with the monitoring by the OSCE ODIHR.

13. To intensify the activities of the Trilateral Contact Group, including through the establishment of working groups to implement the relevant aspects of the Minsk Agreement. They will reflect the composition of the Trilateral Contact Group.

Notes:

Such measures, in accordance with the Law "On the special order of local government in individual areas of the Donetsk and Lugansk regions," include the following:

- Exemption from punishment, harassment and discrimination of persons associated with the events that took place in individual areas of the Donetsk and Lugansk regions;
- The right to self-determination with regard to language;
- Participation of local governments in the appointment of heads of prosecutors' offices and courts in individual areas of the Donetsk and Lugansk regions;
- The possibility for the central executive authorities to conclude agreements with

the relevant local authorities on economic, social and cultural development of individual areas of Donetsk and Lugansk regions;

- The state shall support socio-economic development of individual areas of Donetsk and Lugansk regions;
- Assistance from the central government to cross-border cooperation between the individual areas of the Donetsk and Lugansk regions and regions of the Russian Federation;
- The creation of people's militia units [police] upon the decision of local councils in order to maintain public order in individual areas of the Donetsk and Lugansk regions;
- The powers of local council deputies and other officials elected in snap elections, appointed by the Verkhovna Rada of Ukraine according to this law, cannot be terminated.

The document is signed by the members of a Trilateral Contact Group:

[OSCE] Ambassador Heidi Tagliavini

Second President of Ukraine L.D. Kuchma

The Ambassador of the Russian Federation to Ukraine M.Yu. Zurabov

A.V. Zakharchenko  
I.V. Plotnitsky



PHILIPP FLURI, VALENTYN BADRACK (Eds)

**SECURITY ASPECTS OF POLITICAL  
DECENTRALISATION IN UKRAINE:  
VISIONS, REALITIES, AND POSSIBLE  
IMPLICATIONS**

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