



CONFLICT SETTLEMENT PRACTICES AROUND THE WORLD

Lessons for Ukraine

Kyiv
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I. INTRODUCTION

The “Minsk Agreements” have proven to be a tool for partial de-escalation of the conflict in Eastern Ukraine. However, they are ineffective as a tool for its settlement. Within almost a year after the signing of this document, none of the foreseen actions have been implemented. The “Minsk Agreements” do not take into account the best practices of conflict settlement and do not offer efficient algorithm for conflict resolution and, therefore, they should be revised.

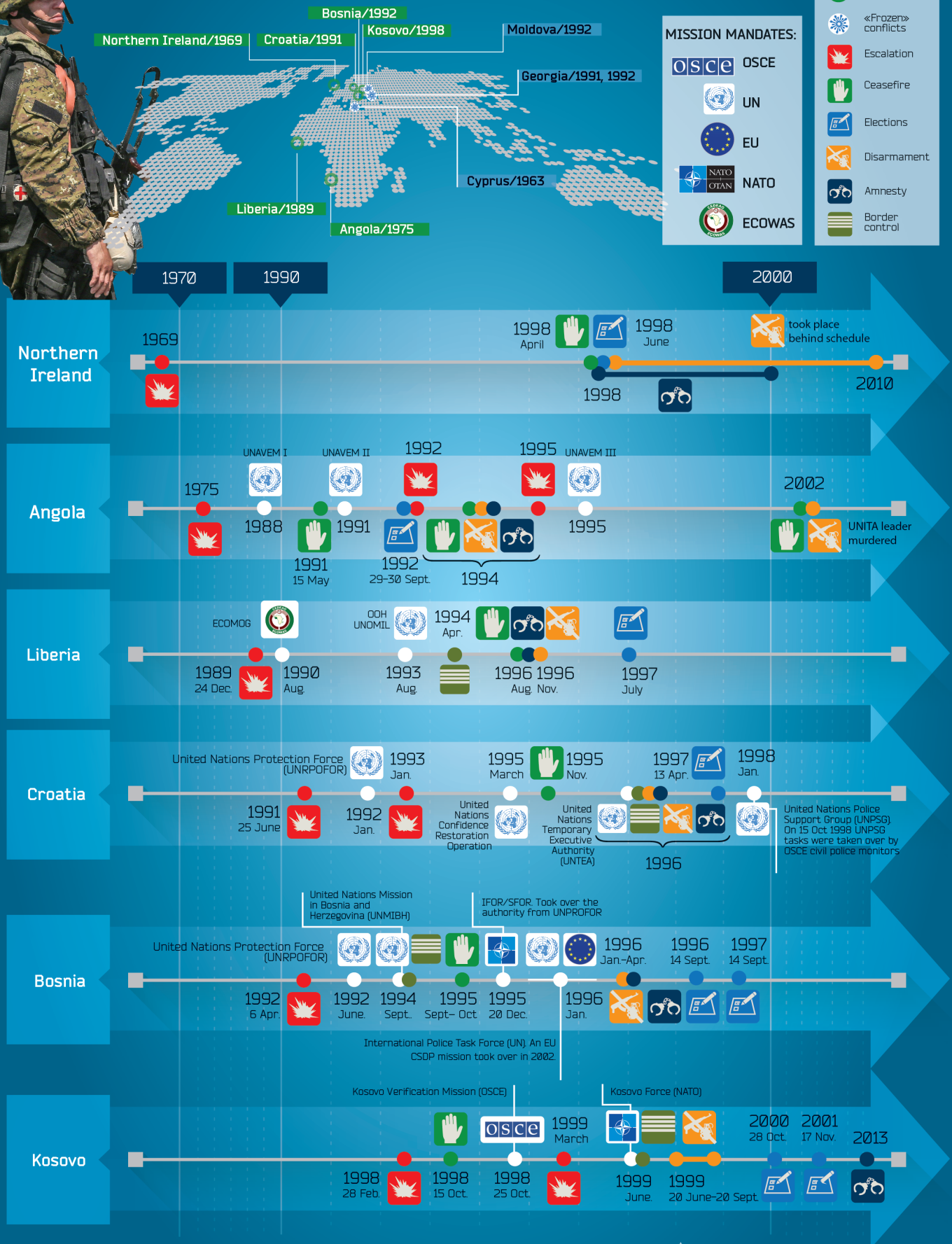
The Institute of World Policy has examined the global experience of local conflicts in order to determine the best practices and develop recommendations for Ukraine regarding security and political aspects of conflict settlement in Eastern regions. In particular, the IWP’s experts have analyzed 10 cases of conflict settlement around the world.

This research contains the best practices for implementation of the most contentious stages of conflict settlement: deployment of peacekeeping missions, disarmament and demobilization, amnesty, and elections in the post-conflict territories.

The artificial nature of the separatism in Eastern Ukraine and instigation of conflict by Russia makes this type of conflict unprecedented in global practice. Nevertheless, the existing experience with conflict settlement could suggest the effective mechanisms that can work in case of Ukraine, such as a sequence of key aspects of the settlement, the role of external actors in conflict resolution, etc.

This research is based on the open source quantitative data and comparative scholarship on various stages of conflict settlement, as well as on 10 case studies of conflicts in 9 countries: the United Kingdom, Angola, Liberia, Croatia, Bosnia, Kosovo, Moldova, Georgia, and the Republic of Cyprus.

ALGORITHMS OF CONFLICT RESOLUTION



II. THE INTERNATIONAL PEACEKEEPING MISSION TO UKRAINE: A TEST FOR COURAGE

The experience of local conflicts settlement shows that implementation of the peace agreement (the “Minsk Agreements” in case of Ukraine) requires security environment that can be ensured only by an international peace-keeping mission.

The existing Special Monitoring Mission (SMM) of the OSCE does not fully fulfill the given mandate, as it has neither enforcement capabilities, nor the ability to defend its staff. The Mission’s right of free movement and monitoring in the conflict zone is systematically violated by the separatists. Moreover, representatives of the OSCE often become targets of illegal armed formations on the territory of the particular districts of Donetsk and Luhansk regions (PDDR / PDLR)¹. Furthermore, the size of the Mission is not sufficient for the effective implementation of its mandate. Finally, Ukrainians do not have confidence in the Mission due to the presence of Russians among its staff².

Ukraine has repeatedly requested strengthening the existing OSCE SMM by an additional mission with an enforcement mandate. On March 17, 2015 the Verkhovna Rada of Ukraine has adopted an appeal to the UN Security Council and the Council of the European Union on deployment of an international peacekeeping mission to Ukraine³. In April of same year, the Minister of Foreign Affairs of Ukraine Pavlo Klimkin has claimed that Ukraine offered the EU a proposal that consisted of 15 tasks to be performed by the EU mission, including assistance with holding of local elections in Donetsk and Luhansk regions, guaranteeing security in the region, returning control over Ukrainian-Russian border, establishing of the border management system, and providing humanitarian aid⁴.

In April 2015, the President of the European Council Donald Tusk said that deployment of a peacekeeping mission in Ukraine is not yet on the agenda⁵. However, Ukrainian side will keep raising the question of the EU or the OSCE peacekeeping mission in their dialogue with Western partners.

¹ See e.g. “The OSCE: the Militants in Donbas are Challenging the Mandate of our Mission.” Liga.net. 14.01.2016. http://news.liga.net/news/politics/8391385-obse_boeviki_v_donbasse_brosili_vyzov_mandatu_nashey_missii_.htm

² The opinion poll conducted on request of the International Center for Perspective Research has shown that the OSCE, as an organization able to influence the conflict settlement in Ukraine is trusted by only 11.7% of the citizens (for comparison, the EU is trusted by 20.5%, and the UN by 16.5% of respondents). For details, see http://icps.com.ua/assets/uploads/files/odessa_2015_05_19.pdf

³ “The Verkhovna Rada Has Adopted the Appeal to the UN and the EU on Deployment of the Peacekeeping Mission.” UNIAN, 17.03.2015. <http://www.unian.ua/politics/1056597-ukrajina-zvernulasya-do-onn-ta-es-z-prohannyam-vvesti-mirotvortsiv.html>

⁴ “Kostiantyn Yeliseiev: Deployment of the EU Peacekeepers is More Realistic than Deployment of the UN Mission.” Lb.ua, 25.04.2015. http://ukr.lb.ua/news/2015/04/25/303031_igeliseiev_vidpravlennya_mirotvortsiv.html

⁵ “Donald Tusk: the EU is Not yet Planning to Deploy the Peacekeepers in Ukraine.” Lb.ua, 26.04.2015. http://ukr.lb.ua/news/2015/04/26/303085_ievrosyuz_poki_shcho_planuie_napravlyati.html

Security Missions: the International Experience

The research on the performance of security (peacekeeping) missions has shown that not all missions are equally effective. One of the most thorough inquiries into the efficiency of peacekeeping missions is the work of Michael Doyle and Nicholas Sambanis.⁶ These researchers have studied activities of the missions with four types of mandates:

1. Observer missions with a mandate to monitor the truce, withdrawal of troops, or a buffer zone. Such missions are always deployed following the consent of the conflict parties.
2. Traditional missions are also deployed by consent, yet they have an expanded mandate (policing in the buffer zone and assistance in negotiating the peace agreement).
3. Multi-dimensional missions, also called “second generation operations.” Their mandates are determined by an agreement of both parties and address the roots of the conflict, such as economic reconstruction, institutional transformation (i.e. reform of the police, army, and judiciary system, and elections).
4. Enforcement missions or the “third generation operations” do not require the consent of parties and are authorized to use force in order to ensure the implementation of operation objectives based on Sections 25, 42, and 43 of the UN Charter.

The research has shown that unarmed or lightly armed missions with limited mandates have little or no effect on peace duration. In contrast, the multi-dimensional missions or the enforcement missions are much more effective for the peace-building process. This is especially true for the missions operating in the context of ongoing conflict. Other scholars have concluded that **the limited mandate has no effect on facilitations of the peacemaking process, but can also increase the level of aggression toward the civilian population**⁷.

Georgia’s experience shows that even if the mission has a mandate of the reputable international organizations (such as the UN or the OSCE), but has no military component and the ability to protect its staff, it becomes vulnerable and dependent on the parties to conflict. In the case of Georgia, the UN mission in Abkhazia and the OSCE mission in South Ossetia relied on the “CIS Peacekeeping Forces” (that actually consisted of the Armed Forces of Russia) as the guarantor of their security, thereby legitimizing

⁶ Doyle, Michael W and Nicholas Sambanis (2006). *Making War & Building Peace: United Nations Peace Operations*. Princeton: Princeton University Press — P. 11-18. Cited by Hegre, Havard, Hultman, Lisa and Nygard, Havard Mokleid (2010). Evaluating the conflict-reducing effect of UN peace-keeping operations. Paper presented to the National Conference on Peace and Conflict Research Uppsala, September 9-11, 2010. C. 3-4.

⁷ Sarah Kreps and Geoffrey Wallace (2009). Just How Humanitarian Are Interventions? Peacekeeping and the Prevention of Civilian Killings during and after Civil Wars. In American Political Science Association Annual Meeting, Toronto, 3-6 September. Hultman, Lisa. 2010. Keeping Peace or Spurring Violence? Unintended Effects of Peace Operations on Violence against Civilians.” *Civil Wars* 12:29-46.

their presence in the conflict zone⁸. In Georgia, the CIS peacekeeping missions did not prevent the conflict escalation, having been instead the political and military tools utilized by Russia.

The experience of local conflict resolution in Croatia, Liberia, Bosnia and Herzegovina, Kosovo, and Angola confirms that in order to ensure the effective monitoring of the settlement plan implementation, the peacekeeping mission requires executive powers and enforcement component, i.e. the ability to threaten the illegal armed formations (IAFs) unwilling to cease hostilities (e.g. the UNTAES mission in Croatia, the ECOMOG mission in Liberia, the UNFICYP mission in Cyprus, and the IFOR/SFOR mission in Bosnia). Another requirement is the access to the whole territory and all infrastructure facilities in the country, including the military facilities. In all those cases the civilian monitoring mission has been working in parallel and in close cooperation with the military peacekeeping counterpart.

The classic peacekeeping mission is a mission of UN or NATO. However, both options are not feasible in the Ukrainian case: intervention of NATO would obviously escalate the confrontation between Russia and the West to the point of no return, while the UN seeks to delegate the local conflicts resolution to regional organizations. That is the reason why the Ukrainian side appeals for the EU peacekeeping mission deployment or expansion of the OSCE mission's mandate.

The OSCE: Mediation Without Settlement

Of all the European institutions and organizations in security area, only OSCE is regarded as a regional organization that constitutes the requirements of the Section 8 of the UN Charter⁹.

The Helsinki Document of 1992 establishes the competence of the OSCE missions in early warning and prevention of conflicts, crisis management by political means, and peaceful settlement of disputes. In addition, Paragraph 3 defines the mechanisms required to achieve these objectives. This document also determines the methods of conflict prevention and crisis

⁸ Kakachia, Kornely (2008). The Role of International and Regional Actors in Abkhazia, Georgia. Paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, March 26, 2008.

⁹ The CSCE Helsinki Document of 1992, Section 25. <http://www.osce.org/mc/39530?download=true>

management. The latter includes deployment of fact-finding and rapporteur missions as well as peacekeeping activities of the OSCE¹⁰.

There has not been any precedent of deployment of the OSCE mission with enforcement mandate, despite the availability of such option.

The decision-making process in the OSCE requires consensus of all member states. The obvious drawback of such mechanism is that the parties willing to block any efforts aimed at conflict resolution through traditional means (procedure) are able to achieve that goal with a single “against” vote.

In this regard, in January 1992, the Prague summit of the Ministerial Council has decided that **“in cases of clear, gross and uncorrected violation” of the OSCE commitments, decisions could be taken without the consent of the State concerned**¹¹. This is the essence of the so-called “consensus minus one” principle. In 1992, this principle has been invoked to suspend Yugoslavia’s membership in the OSCE.

Another exception to the consensus rule is the “consensus minus two” principle. According to this principle, adopted in Stockholm in 1992, the Ministerial Council can instruct two participating states that are in dispute to seek conciliation, regardless of whether or not the participating states object to the decision¹². So far, this option has not been put into practice.

¹⁰ The activities of the OSCE mission include:

1) Conflict prevention:

- Local contacts (with local activists, opinion leaders, NGOs);
- Working with the local authorities;
- Information campaigns, education and training (human rights, rule of law, democratic processes, freedom of press, functioning of police in the democratic society, civil control over the armed forces);
- Managing the economic and environmental processes;
- Monitoring of the elections;
- The ODIHR, responsible for implementing the rule of law;
- Early prevention of the conflicts;

2) Preventing escalation of aggression and conflict settlement:

- Mediation;
- Establishment of the formal state groups (contact groups);
- Monitoring of the implementation of peace agreements;
- Peacekeeping operations:
 - A) Military (has never been deployed);
 - B) Civil (control and monitoring; civil peacekeeping activities involving the civil observers, border monitors and other civil personnel experienced in such areas as rule of law, human rights, disarmament, democratization, and security sector reforming);

3) Post-conflict security settlement:

- Facilitating reconciliation (the initiative for organization of a youth summer camp in Ohrid aimed at ethnic tolerance education, implemented by the Kosovo mission);
- Democracy-building;
- Strengthening security (armaments utilization projects);
- Development of the civil society.

¹¹ OSCE Handbook: <http://www.osce.org/files/documents/b/3/22624.pdf> p.14

¹² OSCE Handbook: <http://www.osce.org/files/documents/b/3/22624.pdf> p.14

The OSCE adopted the role of the crisis manager in all conflicts in the post-Soviet region: in Nagorno-Karabakh (between Armenia and Azerbaijan), Transnistria (Moldova), as well as Abkhazia and South Ossetia (Georgia). However, the strength of the OSCE is the mediation, not peacemaking: the organization has failed to prevent either the “freezing” of those conflicts or the escalation in the Georgian case. The inclusivity of its membership is both an advantage and a drawback: Russia is less willing to view the mission as a threat to its interests, yet it also has more leverage over the mission’s activities. For instance, in 2009, Moscow has blocked the extension of the mandate of the OSCE mission in South Ossetia.

The EU: the Civilian Peacekeeper

Despite a rather wide range of possible mandates, it should be noted that usually the EU CSDP missions are aimed at post-conflict stabilization¹³. **Today, the EU has no experience of deployment of missions aimed at peace enforcement**; instead, the EU specializes in civilian missions and crisis management for sustainable development¹⁴.

The experience of the EU CSDP missions in the post-Soviet region shows that it is one of the most difficult regions for implementation of the common security and defense policy. The EU has refused to send a peacekeeping mission to Transnistria twice, in 2003 and 2006. Similarly, the EU has not sent a monitoring mission to Georgia in 2005, when the activities of the OSCE border monitoring mission were blocked by Russia¹⁵. Deployment of the CSDP mission requires consensus between all EU member states, and the position of some of them on sending the mission to Eastern Ukraine is extremely strong.

Today, there are four EU CSDP missions deployed in the post-Soviet region: the EUBAM at the Moldovan-Ukrainian border; the EUJUST THEMIS and the EUMM in Georgia; and the EUAM in Ukraine. All these missions are civilian. Even after the Russian-Georgian war in 2008, the option of deployment of the military mission has been excluded by the member states from the very beginning.

¹³ The Treaty of Lisbon defines six types of the CSDP’s tasks: humanitarian and rescue tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, joint disarmament operations, military advice and assistance tasks, and post-conflict stabilization tasks.

¹⁴ The Reform of Peacekeeping Mission in Transnistria: A Premise of Conflict Settlement. Institute of World Policy. Kyiv, 2014. <http://iwp.org.ua/img/Reformmission.pdf>

¹⁵ Popescu, Nicu (2009). EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution. European Foreign Affairs Review 14: 457–477

The experience of the EUMM monitoring mission sent to Georgia after the Russian-Georgian war in 2008 cannot be considered a successful precedent in terms of conflict settlement. The mission has no access to the occupied territories (Abkhazia and South Ossetia), and therefore is not able to fulfill its mandate. Under these conditions, the mission informally becomes a factor of the conflict freezing.

The EU also has experience in other types of missions, the civil police missions and the military operations, in other regions, including the Balkans, Middle East, and Africa.

The CSDP police missions have been sent to Bosnia and Herzegovina (the EUPM Bosnia), FYR Macedonia (the EUPOL Proxima), Palestine, and Afghanistan. However, those are not the law enforcement missions, as it may seem from their titles. The CSDP police mission are civilian missions aimed at developing law enforcement authorities of the recipient. For instance, the objective of the EUPM Bosnia mission was to establish an effective police force and assist in investigations. The EUPOL Proxima mission has performed, among other tasks, reformation of the Ministry of Internal Affairs of Macedonia and the establishment of border police.

The functions that Ukraine expects from the EU peacekeeping mission are appropriate for the CSDP military missions, such as the EUFOR Althea mission in Bosnia and Herzegovina, or Operation Concordia in FYR Macedonia. Those are the only military missions of the CSDP deployed in Europe so far. The objective of both operations was the establishment of a secure environment for the implementation of the peace agreement. Both missions took over the authority from the NATO and UN missions.

The hybrid EU Monitoring Mission (the AMM) in Aceh province of Indonesia, which combined both civilian and military components, is the most appropriate for Ukraine's needs. This mission has been deployed as a result of the signing of the Memorandum of Understanding between the separatists and the Government of Indonesia, after almost 30 years of confrontation. Among its tasks were monitoring the process of demobilization, disarmament and armaments utilization, the reintegration of former combatants, monitoring of the human rights situation, developing of amendments to legislation, resolution of controversial cases of granting amnesty, etc¹⁶. As of today, the AMM is considered one of the most successful EU CSDP missions.

¹⁶ Schulze, Kirsten (2009). AMM (Aceh, Indonesia). In: ESDP: The First Ten Years (1999-2009). Edited by Giovanni Grevi, Damien Helly and Daniel Keohane. Institute for Security Studies, Paris, France. C. 265.

Conclusions and Recommendations

The hybrid conflict in Eastern Ukraine is unprecedented, and, therefore, the regional organizations interested in maintaining peace in Europe should be ready to take steps that go beyond their usual set of tools. In fact, both the EU and the OSCE have the capacity required for deployment of a peacekeeping mission that is able to facilitate the implementation of the “Minsk Agreements.” However, this step also requires courage, political will and creativity.

It is important for Ukraine to secure the deployment of an international (Western) peacekeeping mission to Eastern regions and to prevent the independent formation of peacekeeping forces by Russia, as it was in Georgia and Moldova.

If the peacekeeping mission is to be formed on the basis of expanded mandate of the OSCE mission, the following is required to ensure the realization of the mission’s right to both monitor the security zone and all occupied territories (including the demarcation line) and access military facilities and border with Russia:

- ensure that the mission includes the military contingent and self-defense capabilities;
- create the rapid response groups within the mission under the command of the head of the OSCE mission; those groups should consist of professionally trained military personnel, equipped with heavy armament and able to respond to any violation of the ceasefire regime or any other conflict in the security zone and the occupied territories;
- provide the mission with a right to verify all the information at the request of any party (without applying the consensus mechanism); ensure the mission’s right of unimpeded access to the entire territory and all objects that could be used for military purposes¹⁷;
- in case of the Russian Federation’s disagreement regarding any of those provisions, it would be appropriate to apply the “consensus minus two” mechanism in order to exclude Ukraine and Russia from voting and thus put them in an equal position.
- rename the Special Monitoring Mission to the Special Control Mission, so that the mission’s title would correspond directly with its functions and also have a psychological effect (like the OSCE Mission in Kosovo);
- increase the size of the mission to 2000 persons¹⁸.

¹⁷ Similar monitoring and control mechanism has been detailed in the Annexes to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement).

¹⁸ As an example, we could mention Kosovo, which has virtually equal population compared to the PDDR/PRLR; in Kosovo, even 1,500 mission employees were not enough to ensure the control over the territory.

If the peacekeeping mission is formed on the basis of the EU mandate, the following mission formats should be considered:

- A “coalition of the willing” mission (based on example of the military-training operation implemented by France and the UK in Mali). Formally, this mission would go beyond the CSDP and allow avoiding the consensus rule. Such missions can be joined only by those member states that have the political will, and human and financial resources;
- A mixed CSDP mission that would combine military and civilian components (like the EU CSDP mission in Aceh).
- Ukraine should not underestimate the civilian potential of the CSDP, which could be utilized after the hot phase of conflict. The mandate of such mission may include the development of law enforcement bodies, the process of elections, the introduction of an ombudsman, supervising the media, restoration of border control.
- In order to demonstratively reduce the “political weight” of the mission, the experience of the EUBAM mission, which is administered by the European Commission and is not formally the CSDP mission, could be utilized.

III. STRATEGIES FOR DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION FOR UKRAINE

Disarmament, while one of the crucial components of the peace process and an important precondition for the election process, is not sufficient in itself for the stable, long-term development of conflict-affected societies. To ensure that the disarmed combatants will not return to violence or join criminal gangs, it is imperative to focus on strategies for their reintegration in the society. Initiation of the disarmament and demobilization process will signal the transition of the conflict from the military to political dimension as well as help build confidence in the peace process. In the end, disarmament is not only about the number of weapons surrendered, but also about the change in the mindset.

If the conflict is to be solved through peaceful means, trust is essential for the process of disarmament and demobilization. Following the signing of peace agreement between the sides of conflict, the decision of illegal armed groups to disarm has to be supported by guarantees of their safety. This can be achieved at the national level by introducing amnesty and pardon legislature, through introduction of international peacekeeping missions with the mandate for disarmament or through a comprehensive post-conflict confidence building strategies.

In analyzing the peace process for Donbas region, experts and policy practitioners focus on disarmament per se, but give little attention to what will happen to the members of illegal armed groups after the conflict is resolved. Given that the amnesty law for these combatants would be enacted by Ukraine, their future as a part of the Ukrainian society can potentially become a source of contention.

Article 10 of the Minsk agreements regulates the issue of disarmament and withdrawal of foreign troops, military equipment, and mercenaries from the territory of Ukraine. While the document designates the Organization for Security and Cooperation in Europe to be responsible for overseeing the withdrawal of foreign combatants, no actors are tied to the issue of disarmament. Moreover, Minsk agreements lack concrete time table and mechanisms for the process of disarming illegal armed groups. Finally, there is no mention of programs for rehabilitation of the ex-combatants. Best practices from the resolved conflicts around the world indicate the need for a development and implementation of a comprehensive strategy for disarming and reintegrating combatants into society.

The Disarmament, Demobilization and Reintegration (DDR) of ex-combatants into society is an essential part of the post-conflict stability and

recovery.¹⁹ Yet, in Ukrainian context it has not been thoroughly analyzed or considered. One of the reasons is that even the first provisions of the Minsk agreement, ceasefire and withdrawal of heavy weaponry, have not been fully implemented leaving little room for the question of disarmament.

DDR as defined by the United Nations is a complex process that addresses issues of former fighters in post-conflict environment.²⁰ UN Peacekeeping glossary provides the following definition of each stage:

- Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons from combatants and often from the civilian population.
- Demobilization is the formal and controlled discharge of active combatants from armed forces and groups, including a phase of “reinsertion” which provides short-term assistance to ex-combatants.
- Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. It is a political, social and economic process with an open time-frame, primarily taking place in communities at the local level.²¹

Although DDR process usually involves multiple actors at national and international levels, the extensive experience of the UN in implementing these programs since the late 1980s makes it the leading authority in the field. DDR strategies evolved in response to the complex nature of the modern peacebuilding efforts. Thus, traditional DDR interventions that address operational level of disarming and reintegrating combatants which are present in the military structures are undermined by the problems associated with the lack of political will, presence of organized crime, unregulated natural resources, etc.²² In this light, Second Generation DDR programs were designed to be more flexible through addressing community-based security, targeting specific groups of combatants and finding alternative approaches when disarmament per se is not feasible.²³ Furthermore, by

¹⁹ “Foreword,” Integrated Disarmament, Demobilization and Reintegration Standards. Accessed at <http://unddr.org/uploads/documents/IDDRS%20Foreword%20and%20Acknowledgements.pdf>

²⁰ “Introduction to the IDDRS,” Integrated Disarmament, Demobilization and Reintegration Standards, pp 1-2. Accessed at http://unddr.org/uploads/documents/IDDRS_1_10_Rev_2014.pdf

²¹ United Nations Peacekeeping. Accessed at <http://www.un.org/en/peacekeeping/issues/ddr.shtml>

²² Second Generation DDR Practices in Peace Operations. A contribution to the New Horizon Discussion on Challenges and Opportunities for UN Peacekeeping, p.4. Accessed at http://www.un.org/en/peacekeeping/documents/2GDDR_ENG_WITH_COVER.pdf

²³ Ibid, pp. 4-5.

addressing the dynamics that lead to the recurrence of hostilities, DDR can be equally considered a conflict-prevention instrument.²⁴

DDR interventions have a mixed record. Nicaragua, Sierra Leone, Bosnia and Herzegovina are generally considered as successful, while cases of Angola and Cambodia revealed the shortcomings of these programs.²⁵ Although there is no one-size-fits-all solution, certain factors can contribute to the success of the DDR strategies. These are economic incentives that are more preferable than returning to violence; functioning government institutions that provide security for ex-combatants; genuine commitments that would be sustained whether or not there is a presence of the third party; introduction of DDR after the cessation of hostilities; treatment of ex-combatants not as a homogeneous group giving priority to young soldiers and fighters with psychological issues.²⁶

DDR is prescribed primarily as a tool for post-conflict reconstruction, yet its mechanisms can be used in the cases with ongoing or low level conflict. The situation in the eastern Ukraine falls into this category. If the DDR strategies are introduced in Ukraine, they will face challenges that are similar to those in Afghanistan, Cote d'Ivoire, Liberia and Haiti. First, at the current stage of the Minsk peace process there is a lack of political will to follow up even on the fundamental provisions of the agreement, namely ceasefire and withdrawal of heavy artillery. Second, there is no link between the process of disarmament and security sector reform, which is essential for post-conflict stability. Third, organized criminal groups in the region are likely to stymie the DDR process. Fourth, weak Ukrainian economy is unlikely to provide economic incentives for ex-combatants in the process of reintegration. Finally, there is a lack of mechanisms and actors that can address the DDR efforts in Ukraine. These challenges have to be taken into account and addressed while designing strategies for Disarmament, Demobilization and Reintegration.

²⁴ Piedmont, Dean. "The Role of Disarmament, Demobilization & Reintegration in Countering Violent Extremism," Centre for Security Governance Issue 3, June 2015. Accessed at http://www.secgovcentre.org/files/www/SSR_2.0_Brief_-_3_-_Dean_Piedmont_-_June-2015_FinalVersion.pdf

²⁵ Thus, in Cambodia warring sides were stymieing the process of disarmament that in turn led to led to the resumption of hostilities and suspension of the DDR program under the auspices of the UN. The subsequent DDR attempts by the World Bank have suffered from mismanagement of resources and corruption. A similar situation was in Angola where incomplete disarmament of combatants created an atmosphere of distrust toward the peace process and led to the resumption of violence. See Banholzer, Lilli. "When Do Disarmament, Demobilisation and Reintegration Programmes Succeed?" German Development Institute, August 2014. Accessed at https://www.die-gdi.de/uploads/media/DP_8.2014.pdf

²⁶ Ibid, pp. 31-32.

Recommendations for Ukraine:

- 1** **It is imperative to involve international mediators to guarantee the efficiency of the disarmament process and ensure the withdrawal of foreign troops.** Such mediators can be peacekeeping missions of international organizations or international commissions similar to the one that oversaw the disarmament process in the Northern Ireland. A critical feature of these international missions was not only that they had the mandate for disarmament but also for using force if the peace agreement provisions were violated. The same principle applied to the issue of border control and withdrawal of foreign armed forces. In the case of Angola, the UN mission had the proper mandate that allowed the successful withdrawal of Cuban troops (yet only partial disarmament has led to the resumption of hostilities). In Kosovo, NATO-led international forces also played the decisive role in disarming the combatants and securing the control over border.
- 2** **The success of disarmament and demobilization efforts can be facilitated through the detailed elaboration of these processes in the peace agreement that leaves no room for ambiguity.** For example, Dayton Peace Agreement (for Bosnia) had 11 annexes that among other things outlined mechanisms for guaranteeing the ceasefire, withdrawal of weapons, and demilitarization. Bicesse Accords in Angola had four agreements with annexes that contained detailed timelines for disarmament, schemes for withdrawal of heavy artillery, and day-to-day plans regarding the preparation for election process.
- 3** **Not only disarmament, but also demobilization and reintegration of ex-combatants are crucial for post-conflict resolution.** Therefore, Ukraine needs to develop the Disarmament, Demobilization and Reintegration strategy for the conflict in Donbas. It is imperative to involve international actors and donors such the United Nations and World Bank since their experience and capacity would be crucial for designing and implementing DDR program in Ukraine. At the same time, national leadership should take political responsibility for the process even if the leading role in organization and implementation of the DDR belongs to international actors.²⁷ DDR program in Ukraine should be aimed at ex-combatants as well as affected communities. It is worth noting that genuine commitment of both side of conflict to peace process is essential for the success of the DDR efforts.
- 4** **Controlling the border is imperative for successful early stages of the DDR. Disarmament and demobilization can be hampered if Ukraine will not control the entirety of the border in the conflict-affected zone.**

²⁷ Stockholm Initiative on Disarmament Demobilisation Reintegration: Testing the Principles, p. 44. Accessed at <https://fbassets/96596c3f6cf04dcb8abaf771073881a4/siddr---testing-the-principles.pdf>

There is a chance that weapons will be transferred from the neighboring state, thus making the arms reduction programs difficult.

5 In Ukraine, where disarmament is not yet feasible, alternative sequencing should be considered. Reinsertion and reintegration processes could be initiated before or in parallel with disarming the illegal armed groups. Strategies that can be utilized at this stage are “weapons for development” programs similar to the one in Albania, Mali, and Sierra Leone where responsibility for disarmament were transferred to the local level and instead of monetary incentives, the primary focus was on developing and rebuilding the communities.²⁸

6 Substance should be prioritized over form. The conclusions of the Stockholm Initiative on DDR point to the political sensitivity of the DDR process.²⁹ Therefore, it is ve that the terminology would not impede the spirit of the process. Often, peace processes require the adaptation of the notions such as demobilization or reintegration to the local cultural, historical or other context. Thus, DDR strategy has to be responsive and flexible especially in case of negotiated settlement outcome.

7 Disarmament, Demobilization and Reintegration and Security Sector Reform. Reforming police services to strengthen the community security can generate confidence among combatants to surrender the weapons. Enhancing border management capacities is essential to ensure that weapons are not smuggled inside the conflict region. Successful DDR efforts relieve the strain on security sector reform and prevent the resurgence of conflict.

²⁸ Second Generation DDR Practices in Peace Operations. A contribution to the New Horizon Discussion on Challenges and Opportunities for UN Peacekeeping, pp.28-29. Accessed at http://www.un.org/en/peacekeeping/documents/2GDDR_ENG_WITH_COVER.pdf

²⁹ Stockholm Initiative on Disarmament Demobilisation Reintegration: Testing the Principles, p. 12. Accessed at <https://fba.se/contentassets/96596c3f6cf04dcb8abaf771073881a4/siddr---testing-the-principles.pdf>

IV. AMNESTY AS AN ELEMENT OF CONFLICT SETTLEMENT IN EASTERN UKRAINE

Amnesty is one of the most controversial issues of the conflict settlement process in Donbas. In public discourse, the concept of amnesty is closely related to forgiving and forgetting crimes committed during the conflict. Ukrainian media often presents amnesty as impunity for combatants, which of course causes public resentment. However, a lack of public support for the conflict settlement, especially for its most controversial element as amnesty, calls into question the success of reintegration and increases the risk of resumption of confrontation. Thus, any generalization of a complicated amnesty process, which has many details and limitations, undermines all efforts to secure the peaceful reintegration of Donbas.

Most conflict resolution practitioners believe that certain limitations on prosecution are necessary to start a peace process. Amnesty is an important prerequisite for a successful disarmament and demobilization of combatants. Demand to disarm will be accepted only if participants of illegal armed formations (IAF) feel safe and do not fear for their lives.

To turn amnesty into a tool for reconciliation and reintegration, rather than a means for war criminals to go unpunished, Ukraine should adopt a number of preventive mechanisms tested during post-conflict peacebuilding in other countries.

What is an amnesty? UN definition

In international practice, an amnesty means barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals in respect of specific criminal acts committed in the past; or nullifying legal liability previously established. An amnesty is distinct from a pardon, which refers to an official act that exempts a convicted criminal or criminals from serving his, her or their sentence(s). Amnesty is typically applied to specific conduct occurring during a specific period and/or involving a specific event or circumstances, such as an armed conflict³⁰.

The debate on amnesty as a conflict settlement policy usually revolves around contrasting “peace versus justice”. This comparison is built on two opposing poles of strategies: the forgive and forget approach and the pursuit of justice which entails trials, purges, truth commissions and

³⁰ Rule of Law Tools for Post-Conflict States. Vetting: an operational framework // Office of the United Nations High Commissioner for Human Rights. – UN, 2006. – C.6.

compensatory reparations³¹. However in practice, these two strategies are not mutually exclusive, since amnesty does not necessarily mean forgetting and impunity, and justice must not turn into revenge and instigate new conflicts.

In the past, United Nations mediators have at times encouraged parties to armed conflicts to agree to a broad amnesty in order to end the conflict. However, over the past 10-15 years this approach, which was sharply criticized by human rights defenders, lost the support of United Nations senior officers, in part because of negative experience of broad amnesties. In his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, Secretary-General Kofi Annan reaffirmed that, “carefully crafted amnesties can help in the return and reintegration and should be encouraged”, although, **“United Nations-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights”**³². He noted that “justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another”³³.

The United Nations policy on amnesties is based on several key principles: the States shall (a) prosecute those responsible for gross violations of human rights and humanitarian law, (b) ensure victims’ right to an effective remedy, including reparation; and (c) ensure that amnesties do not restrict victims’ and societies’ right to know the truth about violations. Therefore, disclosure of the truth and reparation may be additional tools, but in no way an alternative to criminal prosecution for grave offences. The United Nations is also against using amnesty for grave crimes as a tool for disarmament, demobilization and reintegration of ex-combatants³⁴.

To sum up, international law and United Nations policy are not opposed to amnesties in post-conflict peace building, but set certain limits on their permissible scope. Amnesties can play a valuable role in ending armed conflicts and reconciling communities, provided that they do not grant immunity to individuals responsible for serious crimes. In addition to political risks, peace thereby gained enhances the feeling of impunity and permissiveness, which in no way contrib-

³¹ Sango, Tonson J. (2009) Amnesty: A Yard-stick Towards the Resolution of Internal Conflict. In: 1st Women for Peace International Conference, 27 September 2009: <https://kar.kent.ac.uk/23389/>

³² Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies // Report of the Secretary-General of 23 August 2004 (S/2004/616). Access mode: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/31/PDF/N0439531.pdf?OpenElement>

³³ Ibid.

³⁴ Rule of Law Tools for Post-Conflict States. Vetting: an operational framework // Office of the United Nations High Commissioner for Human Rights. – UN, 2006. – C.35

utes to the restoration of the rule of law and democratic institutions in post-conflict societies.

So what crimes are not covered by the amnesty? These are the crimes against the general international law that are defined by the Rome Statute of the International Criminal Court and represent “*the most serious violations that lead to concerns from international community*” and “*should not remain unpunished.*” These crimes are genocide, crimes against humanity and war crimes. In the context of events that happened in Donetsk and Luhansk regions of Ukraine starting from 2014 it is worth focusing on crimes against humanity and war crimes.

1. Crimes against humanity are defined in article 7 of the Rome Statute of the International Criminal Court. These are murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³⁵

2. War crimes, also known as **serious violations of international humanitarian law**³⁶. The main sources of international law that regulate the behavior of interstate and intrastate conflicts are the Geneva Conventions of 1949 and their Additional Protocols of 1977. The modern list of war crimes in intrastate and interstates conflicts is articulated in the article 8 of the Rome Statute of the International Criminal Court. It is worth remembering that the war crimes are precisely the serious violations of international humanitarian law (laws and customs of war).

It is commonly accepted that amnesty cannot be applied to crimes against humanity and war crimes. General international law establishes that no matter the place of crime or nationality of the delinquent all countries of the world should fulfill criminal punishment or crimes against humanity or war crimes. Alternatively, they should extradite

³⁵ For more details see: Rome Statute of the International Criminal Court. http://zakon5.rada.gov.ua/laws/show/995_588

³⁶ A full list of war crimes is provided in the Rome Statute and includes: intentionally directing attacks against the civilian population; intentionally directing attacks against buildings, medical units and vehicles involved in a humanitarian assistance; intentionally directing attacks against hospitals, pillaging a town or place, committing rape, conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, humiliating and degrading treatment of prisoners, etc.

suspects to countries where they will be prosecuted for such crimes. Crimes against humanity and war crimes are subjected to non-appliability of statutory limitations.³⁷

Amnesty: legislation

World best practices of using amnesties in post-conflict settlement offer great variety of laws, starting with blanket amnesty laws to conditional amnesty laws that were developed as complementary to other justice mechanisms in post-conflict period. Each State is independent to determine the list of offenses included or excluded in an amnesty, given a local situation and amnesty objectives. The United Nations, in turn, shall ensure that the States respect their commitments on human rights, and prevent impunity for offences.

For example, the Croatian amnesty law of 1996 also provided for an amnesty from criminal prosecution and proceedings for criminal offences committed during the war. At the same time, the Croatian government at the request of international mediators disclosed a list of persons suspected of serious crimes (a list of war criminals), who then actually had an opportunity to leave the territory of Croatia. Thus, the investigation or conviction in absentia helped remove war-crimes suspects from political arena.

In the case of Republic of Macedonia, the amnesty did not include the most serious violations of humanitarian law having the characteristics of war crimes³⁸. In fact, it meant that the persons with the primary responsibility, who made decisions and gave orders, were subject to criminal prosecution. In the case of Bosnia and Herzegovina, international community put pressure on the Bosnian government to release convicted war criminals, other than persons responsible for serious violations of international humanitarian law.

In the Northern Ireland peace process where conflict lasted three decades, the British government agreed to an accelerated programme for the release of prisoners with mechanisms and timing provided in the Belfast Peace Agreement. The prisoners served some time in prison (depending on the severity of crimes) and then were early released on license³⁹ meaning that **they could be recalled to prison if suspected**

³⁷ Rule of Law Tools for Post-Conflict States. Vetting: an operational framework // Office of the United Nations High Commissioner for Human Rights. – UN, 2006. – C.15.

³⁸ GENERAL AMNESTY ACT (Official Gazette no. 80/1996). Access mode: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__General-Amnesty-Act_1996.pdf

³⁹ BBC.The Good Friday Agreement. Prisoners. Access mode: <http://www.bbc.co.uk/northernireland/schools/agreement/policing/prisoners2.shtml>

of reengaging in terrorism or if their armed groups caught violating the ceasefire⁴⁰. This meant that the released prisoners wanted a full ceasefire.

According to the Law of Ukraine On the Use of Amnesty (as amended on 6 May 2014 No. 1246-VII), amnesty is a full or partial exemption from criminal liability and punishment of individuals convicted of crimes or against whom criminal proceedings were initiated but the sentences have not entered into force. In 2014, the law was amended and the concept of amnesty was expanded to include both the amnesty for a certain category of persons as well as for a specific individual (individual amnesty). The decision to apply or not apply amnesty is taken by the court in each individual case after a thorough examination of the case records and information on the behavior of a convict while serving his or her sentence⁴¹.

Under the Ukrainian legislation, amnesty provides for a partial or full exemption from pronounced sentence and in no way calls into question the legitimacy of prosecution. This interpretation differs from the understanding of amnesty as part of post-conflict peace process, which prevents the criminal prosecution for certain offenses. Herewith, it seems challenging to apply the law of Ukraine on Amnesty to the Donbas conflict settlement, and explains the need for a separate law, which will cover all the details and terms of the release of illegal combatants from penal responsibility for certain crimes. Paragraph 5 of the Package of Measures for the Implementation of the Minsk Agreements adopted on 12 February 2015 urges to “ensure amnesty and pardon by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of Donetsk and Luhansk regions of Ukraine”⁴². The respective draft law was submitted to the Parliament by the President of Ukraine and approved by MPs on 16 September 2014⁴³. However, Chairman of the Verkhovna Rada Oleksandr Turchynov did not sign the law⁴⁴. Thus, the law has not entered into force yet.

The list of offences not covered by amnesty according to the Law of September 16, include encroachment on the life of statesmen or public figures, soldiers, border guards, police officers and judges, sabotage,

⁴⁰ Political Prisoners, Resistance and the Law in Northern Ireland: A Paper for Palestinian Activists, 2015 Access mode: <http://lawyersconflictandtransition.org/themainevent/wp-content/uploads/2015/04/POLITICAL-PRISONERS-RESISTANCE-AND-THE-LAW-ENGLISH-APRIL-2015.pdf> (ctp.16)

⁴¹ Law of Ukraine On Use of Amnesty in Ukraine. Access mode: http://search.ligazakon.ua/l_doc2.nsf/link1/Z960392.html

⁴² Full text of agreements adopted during Minsk peace negotiations. // Tyzhden Magazine. Access mode: <http://tyzhden.ua/Politics/129751>

⁴³ Draft Law On Preventing Persecution and Punishment of Participants of Events on the Territories of Donetsk and Luhansk Regions. No. 5082 of 16.09.2014. Access mode: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52183

⁴⁴ http://dt.ua/POLITICS/turchinov-ne-pidpisav-zakon-pro-amnistiyu-v-donbasi-156144_.html

murder, torture, seizure or detention of a person, trafficking, rape, robbery, smuggling, terrorist act or desecration of graves and the dead, genocide, violence to life of a foreign state representative and crimes against persons and institutions under international protection.

Given the scale of the Donbas conflict, the list seems to be too broad. In fact, any member of illegal armed formations, who was engaged in hostilities and used the weapons against the Ukrainian military, does not qualify for amnesty. The conflict settlement experience in the past few decades has indicated a common trend to announce a limited amnesty covering those “least responsible” for the commission of war crimes⁴⁵, i.e. ordinary insurgents. A limited amnesty for less serious crimes is an internationally recognized practice, provided it does not mean impunity, violations to truth seeking and reparation, and goes along with the actual, not just formal prosecution of perpetrators of grave violations of humanitarian law⁴⁶.

Recommendations

Based on the positive experience and the requirements of international law, we can make general recommendations regarding the revised law on amnesty and its implementation:

1 Amnesty must be implemented along with other investigation and lustration measures.

According to Chicago Principles on Post-Conflict Justice⁴⁷, the relationship of amnesty to other post-conflict justice modalities is presented as essential for implementing amnesty. **Ukraine’s ratification of the Rome Statute that is, accepting the jurisdiction of the International Criminal Court, will confirm Ukraine’s determination to bring to justice those who bear the primary responsibility for grave violations of human rights** and destroy any underhand dealings to grant immunity to some individuals.

⁴⁵ Amnesty for war crimes: Defining the limits of international recognition. Yasmin Naqvi. // International Committee of the Red Cross. — 2003 Access mode: https://www.icrc.org/rus/assets/files/other/10_irrc_851_naqvi_rus.pdf

⁴⁶ Supporters of amnesty refer to Article 6 (5) of Additional Protocol II to the Geneva Conventions, which notes that «at the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained».

⁴⁷ The Chicago Principles on Post-Conflict Justice (2001 - 2008) -C.35. Access: https://law.depaul.edu/about/centers-and-institutes/international-human-rights-law-institute/projects/Documents/chicago_principles.pdf

2 Law on Amnesty must specify conditions for its provision.

Besides voluntary disarmament, the law should require the willingness to give evidence, which will help reveal the truth about committed crimes, and therefore restore justice. ‘Amnesty to qualifying insurgents’ usually involves a preliminary investigation to determine individual responsibility of a person, whether a person is eligible for amnesty or not. Keep in mind that in case of a large-scale conflict (which is what we have in the Donbas) conducting such background checks may be challenging due to lack of financial and human resources as well as a high risk of abuse as no proper control can be ensured.

3 Amnesty should not conflict with national laws, international legal commitments of the state and should be adopted by a democratically elected body.

It is necessary to ensure public discussion of the amnesty scope and objectives. Raising awareness of the public about the importance of amnesty and its connection with other post-conflict justice strategies will strengthen the legitimacy of this decision.

4 Law on Amnesty must provide a clear timeframe.

The positive impact of the amnesty law will be negated if target groups expect the amnesty period to be extended. The Law on Amnesty should provide clear terms and conditions under which even an amnestied person can be prosecuted (following the example of Northern Ireland).

5 Amnesty must be granted by an independent and unbiased body.

There are two basic approaches to the implementation of amnesty: the decision to grant amnesty can be made by a court or a special commission. In either case, it is important to ensure independence and impartiality of the body, including in the opinion of the residents of the occupied territories. This body should be provided with all necessary financial resources, its members should be properly trained and decision-making should be transparent (including through public discussion, at least of some cases)⁴⁸.

⁴⁸ When analyzing trends in amnesty laws in different regions of the world, the author refers to the database that contains data on 506 amnesties in 130 countries from the end of the Second World War to January 2008. Louise Mallinder Global Comparison of Amnesty Laws. Access mode: https://www.researchgate.net/publication/228214698_Global_Comparison_of_Amnesty_Laws

These requirements can be fulfilled with the resources (financial and human) of international organizations. Given a lack of confidence in the Ukrainian justice system, the best option would be to establish a separate body in partnership with international human rights organizations to hear cases involving the use of amnesty. If the local judiciary is chosen, we should follow the experience of Croatia, where foreign experts helped local courts in proceedings. This will serve as a guarantee of independent and impartial decision-making.

V. ELECTIONS IN THE POST-CONFLICT PERIOD

The elections are a key element of the post-conflict settlement, a measure required for establishment of democracy and initiation of reintegration of the post-conflict territories. The experience of 233 conflicts around the world shows that democratic elections and establishment of a democratic regime is more conducive for the post-conflict settlement than any other political system⁴⁹.

However, the international experience of holding elections in post-conflict areas shows that **premature elections and/or inadequate preparation to them not only undermines reconciliation and reintegration, but also could trigger a resumption of hostilities**. In particular, the international practice of resolving local conflicts suggests that adherence to a clear **sequence of stages of peaceful settlement is a key factor in the successful implementation of peace agreements**.

In particular, the necessary prerequisites for elections are as follows:

- **Disarmament and demilitarization**

The analysis of the organization and conduct of elections in post-conflict areas shows that **elections can be held only in the demilitarized territory**. For instance, the experience of Angola indicates that the elections organized prior to completion of disarmament process increase the likelihood of resumption of hostilities⁵⁰, as the party that loses the elections may try to use armed force to influence the voting results. In 1992, the ruling party of Angola, the MPLA, had won the elections with a small margin of 1-2%. The opposing political force, the UNITA, did not agree with the results and decided to challenge them. The armaments that remained in possession of the UNITA as a result of a lag in the disarmament schedule have been used against the members and supporters of the MPLA party. That has led to a new civil war, which lasted until 2004 (until the death of the UNITA leader Jonas Savimbi).

The results of the report prepared by thirty leading experts at the Center for International Peace Operations (ZIF) and the Kofi Annan International Peacekeeping Training Centre (KAIPTC) and focused on conflicts all over the world demonstrate that the elections cannot take place without the sufficiently secure environment and efficient institutions. Moreover, the concern is not only about the safety of the voters, but also about safe participation of all parties and candidates⁵¹.

⁴⁹ Democracy and Deep-Rooted Conflicts: Options for Negotiators / Peter Harris, Ben Reilly, - Stockholm: IDEA, 1998 – p. 19

⁵⁰ The stages of peaceful settlement have been defined by the Bicesse Accords http://peacemaker.un.org/sites/peacemaker.un.org/files/AO_910521_PeaceAccordsforAngola%28ru%29.pdf

⁵¹ Center for International Peace Operations (ZIF), Kofi Annan International Peacekeeping Training Centre (KAIPTC). Elections in Post-Conflict Countries – Lessons Learned from Liberia, Sierra Leone, DR Congo, and Kosovo – Report of a ZIF/KAIPTC Seminar, June 12–14, 2008, Accra/Ghana - p. 9-10

The elections can be conducted only when the borders of the state are under its full control or under the supervision of international observers; otherwise, there is no guarantee of security on election day, and there is a high probability of manipulations related to the participation of foreign citizens. In successful cases of conflict settlement, particularly in Croatia, Bosnia, Kosovo, and Liberia, the elections have been conducted after the establishment of effective border control.

- **Establishment of the independent electoral commission (the institutional support of elections)**

The functioning of the Independent Electoral Commission is essential for the successful conduct of elections in the post-conflict period. Moreover, Rafael Lopez-Pintor shows that is critical that the organization of elections is held not by a temporary ad hoc committee, but by a permanent independent electoral commission. The commission's political neutrality determines the level of confidence in the election results, and therefore, the stability of the political situation. Thus, the body responsible for the preparation and conduct of elections should be transparent, independent, and also possess sufficient human and financial resources⁵². Establishment of such a body should be one of the first steps in the conflict settlement⁵³. **In order to guarantee transparency and independence of the process, the option of inclusion of representatives of international organizations, especially the OSCE, into central and local commissions should be considered.**

- **Participation of the IDPs and refugees**

Only the return of the IDPs and refugees to their home towns and villages can provide lasting peace. Otherwise, electoral manipulations can take place which will only be neutralized either during the next elections or even during the formation of the local authorities. In Bosnia, international organizations hoped that the IDPs and refugees will vote not “in absentia,” but personally at their former places of residence. However, it takes time to return, which is an additional argument in favor of postponing the elections. Ukraine is also considering distance voting, though it is quite difficult to organize and the election results could be called into question. However, if a security concerns prevails, voting “in absentia” for the sake of safety of the voters could be grounded.

- **Ensuring “neutral political environment” during the election campaign**

An important role in the establishment of such environment is played by the media. Therefore, the experience of Bosnia in creating a special body

⁵² Center for International Peace Operations (ZIF), Kofi Annan International Peacekeeping Training Centre (KAIPTC). Elections in Post-Conflict Countries – Lessons Learned from Liberia, Sierra Leone, DR Congo, and Kosovo – Report of a ZIF/KAIPTC Seminar, June 12–14, 2008, Accra/Ghana - p. 10.

⁵³ Benjamin Reilly. Timing and Sequencing in Post-Conflict Elections //Centre for Research on Peace and Development (CRPD) KU Leuven. Working Paper No. 26, 2015 – p.13

to monitor media content in terms of adherence to the professional standards of journalism is useful. At the same time, it is imperative to develop a document that would define the standards and principles of media conduct. The documentsIt should also define sanctions against both national and foreign media for the breach of these principles. This would facilitate the fair and democratic conduct of elections and prevent manipulations by the media controlled by individual parties or individuals, and as a result, strengthen the position of moderate forces.

- **Participation of international organizations in preparation and monitoring of elections as a way to ensure their legitimacy**

The role of international organizations, especially the OSCE, should not be limited to the role of an observer. The elections organized and conducted under the supervision of an international institution would be difficult to challenge. The separatist leaders would have a much narrower room for maneuver than in the case of elections organized by the state's central authorities.

International organizations could partially perform the functions of preparing and monitoring the elections, including ensuring security, providing administrative and technical expertise, monitoring the activities of political parties (to prevent pressure on the voters), providing financial resources, election administration, and establishment of a special body to review complaints from the participants of election process.

The distribution of responsibilities between international organizations and national government should be clearly defined in a broad peace agreement recognized by all parties to conflict⁵⁴.

- **Implementation of all preparatory phases for the elections and compliance with all agreements**

The predefined date of voting (determined before the actual implementation of all stages of conflict settlement) undermines the efforts to ensure fair and open election process. The recommendation "not to rush" is especially true for international mediators who actually legitimize the elections and their results. For instance, the 1992 elections in Liberia have been declared legitimate despite the lack of free access to media for all political representatives. In two years after the elections, the second civil war has begun in Liberia due to the authoritarian actions of the newly elected President Taylor. In the case of Bosnia, the OSCE had sanctioned the elections under pressure from Western governments, ignoring the absence of several preconditions for a democratic voting. As a result, after the national elections, the leading positions have been occupied by the persons having little interest in the full implementation of the peace agreement.

⁵⁴ Ibid.

- **A significant time period between the ceasefire and the elections (2 to 3 years)**

Changing the electoral law requires providing all participants of the election process (commissions, political parties, voters, etc.) with at least a year to review the new rules and establish their activities. This time is necessary not only to ensure the conditions for fair and free expression of will, but also to form the local moderate groups that are able to create a counterweight to radical forces. That, and not the elections themselves, should be the objective of a peaceful settlement as a safeguard of the irreversibility of the process.

The research on conflicts in the post-conflict period (Thomas Flores and Irfan Nooruddin 2012) shows that the untimely elections in the “unstable post-conflict society” lead to further escalation of the confrontation. Overall, the researchers have analyzed 58 cases of elections in a post-conflict environment from 1960 to 2002 and found the following interdependence: **if the elections are held in less than two years after the ceasefire in new democracies and in less than a year after the ceasefire in the case of more established democracies, this leads to a resumption of armed confrontation.** Conducting elections in three years after a ceasefire is more favorable to stabilization and peacekeeping⁵⁵.

Based on an analysis of elections in Kosovo and East Timor, Benjamin Reilly also agrees that there should be at least two to three years between the end of the war and the elections.⁵⁶ “At the same time, it is increasingly accepted in policy circles that early elections held in highly polarized environments tend to expose deep social cleavages which can make the process of post-conflict peacebuilding more difficult”. He explains that in reality even fair and competitive elections could emphasize the social differences and may lead to the conflict escalation: “Indeed, in some cases, free and fair elections can actually undermine rather than reinforce the development of the post-conflict democratic order.”⁵⁷ To avoid that, it is necessary to take into account the previous international experience, to adhere to timelines and consistency in holding elections regarding all other stages of the peaceful settlement, including ensuring security.

⁵⁵ Thomas Edward Flores, Irfan Nooruddin, The Effect of Elections on Postconflict Peace and Reconstruction // Journal of Politics, Vol. 74, №2, April 2012, pp. – 558-570.

⁵⁶ Benjamin Reilly. Post-War Elections: Uncertain Turning Points of Transition// A.K. Jarstad and T.D. Sisk (eds.), From War to Democracy: Dilemmas of Peacebuilding/ A.K. Jarstad and T.D., Cambridge: Cambridge University Press, 2008 p. 157–181.

⁵⁷ Benjamin Reilly. Timing and Sequencing in Post-Conflict Elections //Centre for Research on Peace and Development (CRPD) KU Leuven. Working Paper No. 26, 2015 – p.6, 16.

Elections as a Part of the Conflict Settlement Under the Minsk Agreements

“The Package of Measures for the Implementation of the Minsk Agreements” does not define the order of priority for elections and other elements of the conflict settlement clearly enough, except about the reinstatement of full control of the state border, which should start on the first day after the local elections, according to clause 9. At the same time, these agreements provide that the implementation of provisions that directly affect the process of establishing the secure environment in the post-conflict territory (e.g. ceasefire and withdrawal of heavy weapons) should precede the adoption of amendments to the Constitution of Ukraine and local elections.

Despite that Ukraine is under pressure from Russia and some international actors regarding the prompt completion of the constitutional reform aimed at decentralization, and organization of local elections in the occupied territories. Ukraine’s partners in the “Normandy Format” do not hide the fact that the elections are considered the cornerstone of the conflict settlement. However, the international experience shows that such approach could lead to quick, but unstable results.

These conclusions inform Ukraine’s official position that was announced by the Minister for Foreign Affairs Pavlo Klimkin: “Our logic is simple: we need a clear sequence, deadlines and safeguards ensuring that they [the representatives of the self-proclaimed republics] will keep their side of the deal. This should apply to arms control, OSCE access to areas beyond Ukrainian control, withdrawal of weapons, and OSCE border monitoring to be followed by the transfer of border control to Ukraine.”⁵⁸

Ukraine has begun the process of amending the Constitution, and the draft law has been voted in first reading by the Parliament and approved by the Constitutional Court of Ukraine. Despite the fact that the voting for this law in the second reading had been planned for 26-29 January, 2016, it was delayed due to the adoption of the amendment to the law on the Parliament’s regulations. This would allow the Parliament to amend the Constitution at the next session. The purpose of the whole procedure was to show the international community that Ukraine is ready to make concessions, while at the same time that Ukraine is not willing to implement such critical amendments to the Constitution without any security guarantees.

As for the elections, they could be held either under current law, which is unlikely, or under a new law. The new law should eliminate the drawbacks identified during the voting in autumn of 2015, that was also held in Donetsk and Luhansk regions (on the territories controlled by Ukraine). Some

⁵⁸ Mykola Siruk. On a “Technical List” // The Day, 28.01.2016. Available at: <http://www.day.kiev.ua/en/article/day-after-day/technical-list>

other factors, not included in previous legislation, like participation of IDPs in elections, should be regulated as well. To sum up, the new legislation should:

- 1) take into consideration the issue of security and participation of the IDPs in elections, including changes to the Law of Ukraine “On State Registry of Voters”;
- 2) avoid ambiguous formulations and defects of the dispute resolution mechanism, candidate registration, regulation and funding of election campaign, and election coverage in the media;
- 3) regulate the monitoring methodology aimed at prevention of the politically motivated monitoring⁵⁹.

Recommendations for Ukraine:

- 1** Ukraine should clearly state to its international partners that conducting elections prior to disarmament, demilitarization, restoration of border control, and proper legal and institutional support will not lead to the conflict resolution. Ukraine’s Western partners should clearly understand the consequences of both tensions in the society throughout Ukraine and the escalation of the conflict in the Eastern regions caused by inconsistent preparation of elections.
- 2** Ukraine should insist on clarification of the schedule for each stage of the conflict settlement (e.g. in the format of a broad peace agreement) in order to allocate at least two or three years after the complete ceasefire for preparation for the elections.
- 3** Ukraine should demand the determination of international organizations’ role in preparation and conduct of the elections. Ukraine should insist on implementation of measures aimed at ensuring the security of the preparation for elections (disarmament and demilitarization acknowledged by the OSCE as fully implemented, and border control) that should be completed before the start of the election process. Otherwise, it could cause further escalation of the conflict.
- 4** The elections in the occupied territories after completion of all other stages of the peace settlement (disarmament, demilitarization, etc.) should be conducted under a new law that would take into account the shortcomings of current legislation and meet the OSCE elections criteria⁶⁰.

⁵⁹ The Problematic Aspects of Elections in Ukraine: the Outside and Inside Perspectives // Opora, 22.12.2015. Available at <http://www.oporaua.org/novyny/41916-problemni-aspekty-vyboriv-v-ukraini-pohliad-z-zovni-ta-z-seredyny>

⁶⁰ The criteria can be found in the Election Observation Handbook Sixth edition/ OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, Poland, 2010, — p. 17. Available at: <http://www.osce.org/odihr/elections/68439?download=true>