

The Conflict in Donbas: Evolution and Consequences

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Abstract This chapter focuses on the military conflict in the Donbas area of Ukraine over the period from February 2014 to April 2019 that spans from the beginning of the conflict to the end of the Presidency of Petro Poroshenko, Ukraine's post-Euromaidan president. By process-tracing the conflict, it brings to light its hybrid nature and argues that the conflict is a result of destabilization tactics, military and political, and of failed diplomatic attempts by state and non-state actors on both sides. In other words, neither the nature nor the territory of the conflict had been preordained at its start and its current shape does not reflect pre-existing societal or identity cleavages.

Keywords Armed conflict. Conflict resolution. Ukraine. Russia. Donbas.

Summary 1 Introduction. – 2 Crimean Scenario with Donbas Peculiarities. – 3 Escalation and Minsk Negotiations. – 4 Stalemate and a Period of "Intended Ambiguity". – 5 Hardening of the Dividing Lines. – 6 Conclusions.

1 Introduction

This chapter focuses on the military conflict in the Donbas area of Ukraine over the period from February 2014 to April 2019 that spans from the beginning of the conflict to the end of the presidency of Petro Poroshenko, Ukraine's post-Euromaidan president. Over this period, more than 13,000 people are estimated to have been killed, of which around 3,300 civilians. The number of injured among the civilians is above 7,000. Serious human rights violations persist on both sides of the conflict, according to the reporting of



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the UN Human Rights Monitoring Mission in Ukraine. Mine contamination on the line of contact remains extremely high and the situation of IDPs dire (OHCHR 2019).

The on-going conflict has been object of some definitional controversy. While Ukrainian government refers to it as the Russian military occupation and to the territories of the self-proclaimed republics of Donetsk and Luhansk as “temporarily occupied territories”, Russia insists on it being a civil war, its (direct or indirect) participation in it being justified by its self-ascribed role of a protector of Russian-speaking populations. Scholarly debates about framing the conflict in Donbas are also inconclusive (Driscoll 2018; Gomza 2019; Brik 2019). Rather than trying to find a definitive answer, this chapter argues that the nature of the conflict has evolved over the five years under study. By process-tracing the conflict, it shows that it simultaneously has different elements of a number of ‘types’ of conflict, although some had been more prominent in the beginning and others became more pronounced as the conflict evolved. It also argues that the conflict’s present form is a result of a number of escalation tactics, military and political, and of failed diplomatic attempts by all sides. In other words, neither the nature nor the territory of the conflict had been preordained at its start. The chapter therefore joins other scholars in arguing that the conflict in Donbas does not reflect pre-existing societal or identity cleavages.

The conflict’s ‘hot’ phase started with the beginning of the so-called Anti-Terrorist Operation (ATO) on 14 April 2014. The fighting subsided after Minsk-II Memorandum in February 2015, although a stable cease-fire was not reached. The period that followed evolved from a kind of “intended ambiguity” phase during which the territories of the self-proclaimed republics remained relatively integrated with the rest of Ukraine through trade and people-to-people contacts (including more nefarious ties, such as smuggling networks) to a more definitive rupture and a more bellicose stance by Kyiv that culminated in officially recognizing Russia as an occupying power.

2 Crimean Scenario with Donbas Peculiarities

There is some disagreement as to when exactly the crisis in Donbas began. On February 27, 2014 the occupation of the Crimean Parliament that was led and orchestrated by the Russian special forces took place. On March 1st the Russian State Duma authorized the use of military force on Ukrainian territory. March 16 is the date of the Crimean referendum, whereas the official annexation of Crimea took place two days later. Although the annexation of Crimea is not within the scope of the present analysis, it definitely became a wa-

tershed event in the relations between Ukraine and Russia that determined the actions of both countries in the subsequent months and years. Moreover, the timing of uprisings in a number of municipalities in east and south Ukraine was not unrelated to the events in Crimea as the first wave of occupations of local authorities' buildings came shortly after the occupation of the Crimean Parliament.

Events in Donbas closely resembled those in Crimea: the presence of the so-called "little green men" (armed men in uniforms without insignia), occupation of local authorities' buildings and seizure of security/military buildings, heavy presence of 'protesters' who came from outside the province and/or the country, conduct of referenda that were held without international monitors, massive presence of regular Russian troops just across the border from the Donbas (in Crimea the Russian troops were regularly stationed on the Russian military base).¹ Although Russia had initially denied any involvement in Crimea, it later acknowledged that the events were driven by its special forces and the military (Kremlin 2014).

Officially the armed phase of the conflict in Donbas started with the so-called Anti-terrorist Operation (ATO) that was announced by the interim president Turchynov on April 14, 2014. Prior to that, a number of significant events took place throughout the east and south of Ukraine that all pointed to the complexity of the political crisis provoked by the actions of the fugitive President Yanukovich as well as by the annexation of Crimea that reverberated throughout Ukraine. As President Yanukovich fled the country, conflicting opinions about his departure emerged in areas that made up his electoral base. On the one hand, there were those who shared the disappointment with the ex-President for having betrayed the European integration cause. On the other, there were those who felt that they lacked political representation in Kyiv and were distrustful of the opposition politicians that made up the interim government.

While around 90% of residents of west and center thought that the referendum in Crimea was a threat to Ukraine's independence, in east and south residents who shared this opinion formed around 40% against a similar percentage of those who believed that it was a legitimate right of the residents of Crimea to express their opinion about the future of Crimea. Similarly, only one third of respondents in the south thought the events in Crimea were about "invasion and occupation", whereas a similar number thought it was about "protection of Russian-speaking citizens" (in the east these percentages are 30% and 22% respectively) (IRI 2014). At the same time, the majority of citizens in all macro regions thought that Russia and Ukraine

¹ See for example, BBC, *Ukraine Crisis: President Vows to Fight Pro-russia Forces*, 14 April 2014, URL <https://www.bbc.com/news/world-europe-27011605> (2019-10-15).

had to remain two independent and friendly states. Yet, those in favor of integration with Russia were as many as 41% in Crimea, 33% in Donetsk, 24% in Luhansk and Odesa, and only 15% in Kharkiv (KIIIS 2014). The picture that emerged was not so much of a country divided in half but rather of greater internal diversity within the macro regions of the east and south.

As the early presidential election was set for May 25, the polling in east and south revealed a sobering picture. When polled in mid-March, residents of the south gave no candidate more than 10% support, while a staggering 44% said they would not vote. In the east, the support for registered candidates looked similar. Although those who decided not to vote were only 13%, the undecideds were as many as 22%. This attitude combined with the overall disillusionment, as between 72 and 77% in the south and east said things were going in the wrong direction. Half of the residents of the east and south did not support the Euromaidan protests, with 30% in the east and 19% in the south saying it was “a mess and chaos” and roughly one third in both macro regions saying it was a “coup d’état”; between 53% and 43% thought the changes it brought about were going to make things worse (IRI 2015).

As the government changed in Kyiv, local elites from regions who had been allied with Yanukovich were renegotiating financial and political preferences, using popular protests as a bargaining chip against the newly appointed government. At the same time, major Ukrainian political-economic clans saw the Euromaidan as a way to limit the influence of the Donbas elites that had become disproportionate during Yanukovich’ rule (Malyarenko 2015). In other oblasts the situation was less clear. For example, in Kharkiv, whose governor Mykhailo Dobkin fled to Russia in February, the city mayor Hennadiy Kernes who had been a staunch opponent of Euromaidan came out, after a period of silence, with an anti-separatist pro-united Ukraine position. It is not clear whether his attempted assassination on April 28 was directly linked to this but if successful, it would have certainly created a power vacuum and destabilized the city. In this bargaining game that was not unusual for Ukrainian politics, both sides underestimated just how much the situation could get out of control and how much Russia was interested in implementing some type of Crimea scenario in the rest of Ukraine.

In many cities in east and south both pro- and anti-Maidan protests continued after February 21. In early March, local administration buildings were occupied by pro-Russian demonstrators in 11 cities in the east and south of Ukraine, including Kharkiv, Donetsk, and Luhansk. According to numerous reports, many pro-Russian protesters were bussed in from across the border with Russia. The phenomenon that Ukraine’s police and border guards tried to counter by denying entry to Russian men (more than 8,200 Russians between March

4 and 25, according to some reports).² Clashes between pro- and anti-Maidan protesters turned violent on a number of occasions (in Luhansk on March 9, in Donetsk on March 13, in Kharkov on March 14). According to OSCE reports, on these occasions police was inactive and sometimes supportive of the anti-Maidan protesters. These reports also corroborate the evidence that many anti-Maidan and pro-Russia protesters were bussed in from the outside and paid for their activities. By mid-March the authorities retook the buildings. Allegedly, pro-Maidan protesters stopped public gatherings as they feared more violence (OSCE 2014).

In mid-April the occupations of local administration buildings as well as of several security service headquarters resumed but were only limited to Donetsk oblast (including Kramatorsk, Sloviansk, Druzhkivka, Horlivka, Mariupol, and Yenakieve). This time the seizures resembled more closely the Crimean scenario, they were more clearly spearheaded by armed men, a number of whom were identified as those who took part in the Crimean events, most notably the former Russian military intelligence officer Igor Girkin/Strelkov, who went on the record confirming that he was leading a paramilitary insurgency.³ The seizures, although often supported by the local population, no longer resembled spontaneous protest action, and were rather part of a coordinated paramilitary operation. Paramilitaries from outside the Donbas acted together with several local figures with strong separatist views, who however, had not been well known or enjoyed broad support before the events. Ukrainian authorities were quick point to the Russian support, as Ukraine's Interim Foreign Minister Andrei Deshchytisia urged Moscow to end 'provocative' actions by its agents.⁴

In response to the armed insurgency acting president Turchynov announced the so-called Anti-Terrorist Operation (President of Ukraine 2014c). Drawing on the existing anti-terrorist legislation, the decree essentially gave the Security Bureau of Ukraine (SBU) the mandate to coordinate military operations on certain territories

2 "SBU Detains Russian Provocateur", *Kyiv Post*, March 31, 2014. URL <https://www.kyivpost.com/article/content/ukraine-politics/sbu-detains-russian-provocateur-believed-to-have-planned-raid-on-ukrainian-parliament-cabinet-341555.html> (2019-10-15).

3 "Komandujuščij samooboronoj Slavjanska Igor Strelkov: Zaderžannye nabljudately - kadrovye razvedčiki", *Komsomolskaya Pravda*, April 26, 2014. URL <https://www.kp.ru/daily/26225.7/3107725/> (2019-10-15).

4 "Ukraine Gunmen Seize Buildings in Sloviansk", BBC, 12 April 2014. URL <https://www.bbc.com/news/world-europe-27000700> (2019-10-15); "Ukraine Says Russia Stoking Unrest as Gunmen Seize More Buildings", *Reuters*, April 12, 2014. URL <https://www.reuters.com/article/us-ukraine-crisis-police/ukraine-says-russia-stoking-unrest-as-gunmen-seize-more-buildings-idUSBREA3B04020140412> (2019-10-15).

without the need to introduce the martial law and therefore, without the need to postpone the early presidential election that was called for after the departure of President Yanukovich. Kyiv's plan to conduct a military operation in parts of Donbas was strongly criticized by Moscow that called for an urgent UN Security Council meeting in order to condemn these actions. Although no resolution came out of that meeting, on April 18 representatives from Ukraine, Russia, the United States, and the European Union met in Geneva to discuss the situation and agreed on a series of steps to de-escalate tensions in Ukraine under the supervision of the OSCE Special Monitoring Mission. The proposed steps included an amnesty to all protesters who disarmed voluntarily, excluding those guilty of capital crimes, and nationwide consultations on the changes to the constitution of Ukraine.⁵ Unfortunately, the Geneva statement failed to change the situation on the ground as it was not accepted by the self-proclaimed leaders of Donetsk and Luhansk. Nonetheless, it helped establish the ground for further diplomatic efforts to regulate the conflict.

3 Escalation and Minsk Negotiations

During the rest of the year, the map of the conflict changed rapidly and remained patchy and fluid. While in Kramatorsk pro-Russian militants seized six Ukrainian armored vehicles with the help of local population,⁶ in other areas the insurgency inspired the formation of pro-Kyiv volunteer 'self-defense' forces that started setting up checkpoints, for example, in Izyum on the border between Kharkiv and Donetsk oblasts. In Luhansk, the state security service building was under the separatists' control while the office of the district administration under the control of a "Civic Defense" group, who claimed to protect the office from forces opposed to the Kyiv government (OSCE Special Monitoring Mission 2014a). On April 28 in Donetsk city itself a large pro-Kyiv government rally marched in protest against the violence in Donetsk Oblast, and the attempted assassination of Kharkiv mayor Hennadiy Kernes. The rally was violently dispersed by the self-proclaimed city authorities.⁷ The proliferation of paramil-

⁵ Full Geneva statement available here: URL <https://geneva.usmission.gov/2014/04/18/text-of-the-geneva-statement-on-ukraine-released-by-the-us-eu-ukraine-and-russia/> (2019-10-15).

⁶ "Ukraine Crisis: Military Column 'Seized' in Kramatorsk", BBC, April 16, 2016. URL <https://www.bbc.com/news/world-europe-27053500> (2019-10-15).

⁷ "14 People Wounded in Clashes in Donetsk", *Kyiv Post*, April 28, 2014. URL <https://www.kyivpost.com/article/content/ukraine-politics/14-people-wounded-in-clashes-in-donetsk-345491.html> (2019-10-15); "One City Falls to Pro-Russian Militants; In Another the Mayor is Shot", *New York Times*, April 28, 2014. URL <https://>

itary units on both sides of the conflict posed difficult dilemmas for Kyiv as it tried to disarm the 'separatist' units, while bringing under its control pro-Kyiv volunteer battalions (Puglisi 2015).

People's Republics of Donetsk and Luhansk were proclaimed on April 7 and 27, respectively. On May 11, 2014 independence referendums were held in Donetsk and Luhansk. The self-proclaimed authorities reported almost 90% support for the independence on a turnout of nearly 75%. No international observers were present.⁸ The reported numbers were in stark contradiction with polling results from just a month before quoted above. At the same time, despite some initial setbacks, the ATO moved at a quick pace re-establishing the government control over a number of key municipalities. Overall, the fighting intensified significantly; in addition to small arms used in the early clashes of April 2014 there were tanks, heavy artillery and multiple rocket systems, aircraft, and anti-aircraft defense systems. In a significant battle on May 26 government forces, using aircraft and helicopters, took Donetsk airport.

After newly elected President Poroshenko took office, a Trilateral Contact Group (between Russia, Ukraine, and OSCE) was set up to facilitate the diplomatic resolution of the conflict. President Poroshenko advanced a fifteen-point peace plan that in line with the Geneva agreements, included demobilization and disarmament measures, administrative and political measures as well as a reconstruction program (President of Ukraine 2014b). However, there was no serious buy-in or even discussion of the peace plan within the self-proclaimed republics. If anything, they looked set to regain the lost territory and there were reports of additional military equipment arriving from Russia to boost their capabilities and morale.

As the territory of the self-proclaimed republics shrank, President Poroshenko proposed a unilateral ceasefire at the end of June. The ceasefire did not hold, with a number of violations, most notably the shooting down of Ukrainian helicopter that killed nine personnel on board.⁹ The situation grew ambiguous: Kyiv was neither victorious enough to regain full control of its territory nor effective at reaching out to different factions within the D/LNR in order to find a compro-

www.nytimes.com/2014/04/29/world/europe/one-city-falls-to-pro-russian-militants-in-another-the-mayor-is-shot.html?_r=0 (2019-10-15).

⁸ "Ukraine Rebels Hold Referendums in Donetsk and Luhansk", *BBC*, May 11, 2014. URL <http://www.bbc.co.uk/news/world-europe-27360146> (2019-10-15); "SBU Audio Links Donetsk Republic to Russian Involvement", *Ukrainian Policy*, May 7, 2014. URL <http://ukrainianpolicy.com/sbu-audio-links-donetsk-republic-to-russian-involvement/> (2019-10-15).

⁹ OSCE Special Monitoring Mission 2014b; "Ukraine Fighting: West Warns Russia of Sanctions", *BBC*, June 25, 2014. URL <https://www.bbc.com/news/world-europe-28011179> (2019-10-15).

mise.¹⁰ It looked like the self-proclaimed republics were not interested in a diplomatic solution and were betting on reversing their fortunes on the battlefield. There was increasing evidence of Russian military assistance to the rebel forces.

On July 17, a Malaysian Airlines passenger flight MH17 was shot down over the conflict zone, killing all 298 people on board, of which 15 crew members. A Dutch-led international criminal investigation¹¹ concluded that the 'Buk' surface-to-air missile that shot down the flight came from Russia's 53rd Antiaircraft Missile Brigade based in Kursk, Russia (Dutch Safety Board 2015). The tragedy acted as a catalyst for the international response to Russia's involvement in the conflict, including additional sanctions, Russia's expulsion from G8, and its growing isolation on the international arena. The MH17 tragedy took place amidst intensified hostilities that saw civilians increasingly caught in cross-fire (Human Rights Watch 2014). On August 11, 2014, Ukrainian President Poroshenko began the final operation to reclaim Donetsk city from rebels and mercenaries, as he was hoping to end the war in Donbas by the beginning of September 2014 (Mal-yarenko 2015). Despite Russia's denials of involvement, the conflict clearly evolved from an externally sponsored insurgency to a "limited war" between Ukraine and Russia (Freedman 2014).

In September diplomatic efforts to end the conflict were resumed in the Normandy Format that included heads of state of Russia, France, Germany, and Ukraine.¹² On September 5, the so-called Minsk Protocol (also known as Minsk-I) aimed mainly at the ceasefire and the subsequent withdrawal of weapons and military formations, was signed by the representatives of OSCE, Russia, Ukraine, and two self-proclaimed republics. The ceasefire and withdrawal of weapons and illegal formations as well as control over the Russian-Ukrainian border was supposed to be monitored by the OSCE Special Monitoring Mission. The OSCE Special Monitoring Mission to Ukraine was deployed following a request to the OSCE by Ukraine's government and a consensus agreement by all 57 OSCE participating States. The monitors have the mandate to contribute to reducing tensions and fostering peace, stability and security.¹³ In addition, Ukraine was ex-

10 As of early July, remaining separatist towns are Doneck, Horlivka, Luhansk, Snizhne, Antracyt, Krasnodon, Severodoneck.

11 Joint Investigative Team (JIT) comprised authorities from the Netherlands, Australia, Belgium, Malaysia, and Ukraine. Russia refused to be part of the investigation.

12 The Normandy format was launched on June 6, 2014, when the leaders of these countries met in Normandy on the margins of the 70th anniversary of the D-Day Allied landing to address the conflict in Ukraine.

13 OSCE Special Monitoring Mission was first deployed to Ukraine on the request of the Ukrainian transitional government in March 2014, on the mandate of monitoring and fact checking possible human rights abuses; the mission initially consist-

pected to define a special status for those territories, guarantee amnesty to the participants in the ‘events’ and conduct local elections according to the newly defined “special status”.¹⁴

On his return to Kyiv, President Poroshenko submitted the so-called “Special Status” Law (President of Ukraine 2019a) that envisaged broad autonomy for “certain provinces” of Donetsk and Luhansk.¹⁵ The Law contained generous provisions for socio-economic development of the area (through the “state targeted program” mechanism),¹⁶ mechanisms for a speedy activation of additional agreements on economic, social, and cultural development on the initiative of those provinces, as well as clauses for cross-frontier “deep and intensified” cooperation with provinces of the Russian Federation. More controversially, it envisioned full amnesty and protection from discrimination to “all participants in the events in Donetsk and Luhansk regions” without distinguishing those who committed war crimes from other “participants”. It also delegated two key responsibilities to “local administrations”: the appointment of judges and prosecutors and the formation of local “people’s militias” that would be under the control of local administrations, rather the Ministry of Interior of Ukraine. Not surprisingly, these latter provisions raised concerns over the law being a Trojan horse that would legalize Ukraine’s limited control over its territory.¹⁷

Convincing the lawmakers and the general public of this being the only fast way to resolve the conflict was an uphill battle for President

ed of 100 civilian monitors with the possibility to expand the it up to 400 additional monitors. Monitors were initially deployed to Kherson, Odessa, Lviv, Ivano-Frankivsk, Kharkiv, Donetsk, Dnepropetrovsk, Chernivtsi, Luhansk, with head office in Kyiv. Although the Ukrainian delegation insisted on the possibility that the Mission operate in Crimea, it was not included in the description of the area to be monitored. Deployment of an OSCE Special Monitoring Mission to Ukraine Permanent Council Decision #1117, March 21, 2014, document is available here: URL <https://web.archive.org/web/20140428162439/http://www.osce.org/pc/116747> (2019-10-15).

14 Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk on September 5, 2014 is available here: URL <https://www.osce.org/home/123257> (2019-10-15).

15 “Okremi rajony Doneckoji ta Luhanskoji oblasti” (ORDLO), the term has remained the most widely used name for the territories outside of Ukraine’s control, both in government documents and in the media, up to the moment of writing; the list of provinces that are part of this category was approved by the Parliament on March 17, 2015 (Resolution Nr. 252-VIII).

16 “Deržavna ciljova prohrama”.

17 Despite having been prolonged several times (at the moment of writing until December 31, 2019), the “Special Status” Law never came into force as the preconditions specified in its final clause were never created. In fact, an additional law (Law Nr. 2167-VI-II, October 06, 2017) was passed that emphasised, with reference to article 10 of the “Special Status” Law, that the “necessary preconditions for the peaceful resolution of the situation” included “withdrawal of all illegal armed formations, their weaponry, as well as paramilitaries and mercenaries from the territory of Ukraine”.

Poroshenko. Tellingly, the law was voted in a package with other key legislature: the Lustration Law (Presidente of Ukraine 2015b), the Declaration of the Rada on Ukraine's European Choice (President of Ukraine 2015c), and the Ratification of the political clauses of the Association Agreement with the EU (President of Ukraine 2015d) – all being among key demands of the Euromaidan movement. Importantly, the law set the date for the local elections on December 7, 2014 and contained the clause that all the other provisions would only come into force after these elections, if they were “free, fair, and transparent”, overseen by independent international observers, including from the OSCE and the Council of Europe, conducted without the presence of illegal military formations, and ensured the freedom of electoral campaigning and therefore, under restored access to Ukrainian television and radio broadcasters and with respect to the electoral rights of IDPs.

With these provisions approved by the Ukrainian Parliament, a subsequent memorandum signed in Minsk on September 19, 2014¹⁸ established the line of contact between Ukraine and the self-proclaimed republics, required that heavy weaponry be pulled back from the line of contact, banned offensive operations and flights by combat aircraft over the security zone, and called for the withdrawal of foreign mercenaries under the auspices of the OSCE monitoring mission. As heavy fighting continued for the whole month of September, there was some disagreement between Russia and Ukraine as to where exactly the contact line was. The memorandum referred to the “state of fighting as of September 19” which included new territories under the control of the self-proclaimed republics compared to September 5.

Despite these agreements, the ceasefire was not implemented. In fact, after Minsk-I fierce fighting continued and important changes on the ground reconfigured the size and shape of the conflict zone: Russian military units together with paramilitary formations recaptured Donetsk airport, Debaltseve and a number of other small towns and villages expanding the zone under the rebel control by more than 500 km². Much controversy was sparked around the so-called ‘humanitarian convoys’ coming in from Russia by crossing the stretch of the border outside of Ukraine's control. The convoys were suspected of bringing in weapons and taking out equipment and other valuable assets as well as facilitating smuggling. During the UN General Assembly on September 29, 2014, the Ukrainian delegation denounced the involvement of Russian regular troops on its territory. At the same time, the extraordinary meeting of the NATO-Ukraine Commission concluded that there was “a serious escalation of Rus-

18 Full Memorandum on Implementation of the Protocol is available here: URL <https://www.osce.org/ru/home/123807?download=true> (2019-10-15).

sian military aggression against Ukraine". It became clear that the Minsk agreement was still born.

On November 2, 2014, the self-proclaimed republics conducted elections that respected none of the conditions for transparency or security specified in Minsk-I and were not recognized by Ukraine or other countries, except for Russia. The elections inspired the hardening of the Ukrainian position vis-à-vis the self-proclaimed republics. Ukraine's more confrontational stance was represented, among other things, by the Presidential Decree whereby Ukraine stopped delivery of public services, including payment of social benefits for the population on the territories temporarily outside of the government's control (President of Ukraine 2014c). Around the same time, in the late 2014, Russia started paying pensions and social benefits to the people in the self-proclaimed republics.¹⁹

On January 27, 2015, amidst heavy fighting in parts of Donbas, the Ukrainian Parliament officially called on the UN, European Parliament, Parliamentary Assembly of the Council of Europe, NATO Parliamentary Assembly, OSCE Parliamentary Assembly, GUAM Parliamentary Assembly as well as national parliaments around the world to recognize Russia as an aggressor country and the self-proclaimed republics as terrorist organizations (Parliament of Ukraine 2015a). New negotiations in the Normandy format took place in February 2015 against a very different background: the self-proclaimed republics regained substantial territory; it was also clear Russia was prepared to intervene militarily and to sustain the republics by other means in order to ensure their survival as pseudo-states within Ukraine, despite the possibility for their broad autonomy envisioned in the "Special Status" Law.

On February 12, 2015 a new "Package of Measures for the Implementation of the Minsk Agreements" (Minsk-II) was signed after sixteen-hour talks.²⁰ Although the document refers to similar provisions as Minsk-I, it changes substantially the sequencing of measures. Ukraine is expected to regain control over its border with Russia on the first day after the local elections, however, the full take-over is supposed to be completed only after the special status of those territories is recognized not only under the Ukrainian law but also in its Constitution. At the same time, the elections are supposed to be conducted under the "Special Status" Law already adopted in Ukraine

19 In its report from 2016 International Crisis Group estimated that together with financing the local 'governments' and military expenditures, these payments may cost Russia about \$1 billion per year, see International Crisis Group 2016a.

20 The full document is available here: URL <https://www.osce.org/ru/cio/140221?download=true> (2019-10-15); see also the Declaration of Presidents in support of Minsk Accords, available here: URL <https://echo.msk.ru/blog/echomsk/1491846-echo/> (2019-10-15).

that explicitly states that elections are only possible after the withdrawal of all illegal armed formations, their weaponry, as well as paramilitaries and mercenaries from the territory of Ukraine. Taken together, these two points created a kind of catch-22 that has been at the heart of disagreements between Russia and Ukraine ever since. In addition, the security clauses in Minsk-II have no clear deadlines or enforcement mechanisms. The document also set a thirty-day deadline for Ukraine to finalize the list of provinces that fall under the “Special Status” Law.²¹

4 Stalemate and a Period of “Intended Ambiguity”

Reactions to Minsk-II were mostly pessimistic, even though majority in Ukraine recognized it as a way to stop heavy fighting and hopefully, to achieve a sustainable ceasefire.²² Overall, Minsk-II was seen as detrimental to Ukraine (Galushko 2016). Dealing with political clauses before addressing the security concerns were seen as one-sided concessions and a way to legalize the status quo without real resolution. The widespread feeling was that rather than achieving peace, the Memorandum was creating a deadlock that could only be overcome through political concessions in favor of the self-proclaimed republics and Russia. Despite this, Minsk-II takes precedence over Minsk-I as it was endorsed by the UN Security Council Resolution 2202 (United Nations Security Council 2015). Seeing the OSCE Monitoring Mission greatly constrained in its operations in Donbas, in March Ukraine sent two requests for the deployment of an international peacebuilding mission on its territory, to the Security Council of the UN and to the European Council (President of Ukraine 2015a). Although the peacebuilding missions were never created, EU economic sanctions against Russia were aligned with the implementation of the Minsk agreements. Overall, experts and diplomats agree that the Minsk agreements are an essential ceasefire accord but not a viable conflict resolution instrument.

In May 2015 the Ukrainian Parliament voted on the constitutional amendments that would become the basis for the long-awaited decentralization reform. President Poroshenko, under the pressure from international partners, tried to safeguard the special status of “cer-

21 Ukrainian Parliament 2015b. The list does not include all the territories outside of the Ukrainian government’s control, rather the situation on the ground at the time of Minsk-II; territories that were lost after, most notably Debaltseve that was captured by the rebel forces on February 19, 2015, are not on the list; for this reason the term “territories temporarily outside of the government’s control” is more precise.

22 “Minski domovlennosti: reakcii socmerež”, *Ukrajinska Pravda*, February 12, 2015. URL <https://www.pravda.com.ua/news/2015/07/16/7074624/> (2019-10-15).

tain provinces of Donetsk and Luhansk” by mentioning it directly in the Constitution, as required by Minsk-II. However, this amendment was met with fierce opposition. Those who opposed it insisted that the amendments were not necessary since the “Special Law” was already in place as a sign of Ukrainian goodwill and pointed to the fact that most Minsk-II obligations were not fulfilled by Russia or the self-proclaimed republics and therefore, Ukraine was not supposed to move forward on this sensitive issue. The self-proclaimed republics, on the other hand, insisted that their recognition in the Constitution had to come first.²³

After Minsk-II the conflict entered into a period of intended ambiguity. Although the agreement did not produce a sustainable cease-fire, the number of casualties dropped significantly and there were no major attempts on either side to recapture more territory. The conflict moved from a “hot” to a “simmering” stage or in Malyarenko’s definition, to “no peace – no war” (Malyarenko 2015). Neither side was prepared to make more concessions so, even though the trilateral working group continued to maintain contact, no major diplomatic breakthrough was in sight (International Crisis Group 2016b).

The so-called line of contact between the self-proclaimed republics and the rest of Ukraine remained highly porous. According to some estimates, up to 20,000 people were crossing it daily in both directions (Nadelnyuk 2016). Ukraine maintained economic relations with the separatist-controlled territories by rail (Syzov 2016). In 2015, nearly 16 million tons of coal were brought into Ukraine proper from the occupied territories. The Ukrainian government labeled the territories under the control of the self-proclaimed republics as “temporarily outside of government’s control”, which reinforced the idea of a transitory and fluid nature of the border. It also continued to rely on the ATO terminology that defined military action in the area as “special operations” and not as “war”. While it started working on the legal framework for internally displaced people (IDPs), a broader category of “war affected population” did not receive any legal framing. In 2016 the Ministry of Temporarily Occupied Territories became operational.

According to the polls conducted in 2015 and 2016, people living in the Ukraine-controlled part of Donbas remained overwhelmingly in favor of restoring the pre-conflict status quo for their region and of national unity (up to 75%) (IRI 2015). Although no comparable data is available for the residents of the self-proclaimed republics, it is clear that the majority of Donbas residents thought of themselves as hostages to an arbitrary division that had a hugely negative impact

²³ “Svobodivci, radykaly ta UKROP protestujut pered VR”, *Interfax-Ukraine*, August 31, 2015. URL <https://ua.interfax.com.ua/news/political/286977.html> (2019-10-15).

on the livelihood of their families. Many relatives and friends found themselves on the opposite sides of the dividing line and were hoping to be reunited. No data shows hostile attitudes or “othering” discourses by residents of Ukraine towards residents of D/LPR or the IDPs. However, feelings of disillusionment and a conviction that the war was going to drag on became widespread. A December 2016 national poll conducted by the Kiev International Institute of Sociology (KIIS) found that 65.5% of respondents believed that the Ukrainian government and oligarchs profitted from the war and therefore had no interest in ending it soon.

5 Hardening of the Dividing Lines

In January 2017, the situation along the “line of contact” heated up. A number of veterans from Ukraine’s volunteer battalions blockaded several crossing points between the self-proclaimed republics and Ukraine, their key demand being release of all prisoners by the D/LNR or else a full trade blockade.²⁴ After unsuccessful attempts to disperse the veterans and activists blocking several checkpoints, Ukrainian President Petro Poroshenko gave in to the pressure and transformed a rogue operation into official Ukrainian government policy. The decision was perceived negatively not only by Russia but also by other international partners. Ukrainian government, for its part, blamed the decision on Russian and separatist provocation (MFA of Ukraine 2017). Russian President Vladimir Putin responded with a decree to recognize personal identity documents issued by the breakaway republics, while the republics ‘nationalized’ all Ukrainian companies in the eastern Donbas (according to some estimates approximately 40 factories and coal mines that were still paying taxes to the Ukrainian government). The blockade severed already fragile ties between small and medium entrepreneurs on both sides of the conflict (Mirimanova 2016).

Greater alienation translated into a more bellicose stance by the Ukrainian government. A number of politicians, including the head of the National Security Council, became vocal in their criticism of the anti-terrorist operation, arguing that Ukraine needed to adapt to the realities of a “hybrid war” by openly recognizing occupation, designing a military strategy, and creating more possibilities for full de-

²⁴ “Separatists Seize Ukraine Billionaire’s Operations As Tensions Rise Over Blockade”, *Radio Free Europe*, March 1, 2017. URL <https://www.rferl.org/a/ukraine-blockade-separatists-tensions-rise/28340714.html>.

ployment of the Army.²⁵ Debates around the Law “On Particularities of State Policy to Ensure State Sovereignty of Ukraine on the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts”, also known as “Reintegration Law” or as “Donbas De-occupation Law”, reopened the controversies around how to approach the conflict in Donbas (President of Ukraine 2018). The law officially changed the designation of military hostilities in the Donbas from “terrorist acts” to “armed aggression of the Russian Federation” and named the authorities of the self-proclaimed republics “occupation administrations”. It made reference to the principles of international law and attributed full responsibility for material and non-material damage on the occupied territories to the Russian Federation. By reframing the conflict in this way, the law raised significantly the diplomatic stakes. On the same day, the Parliament voted for the extension of the “Special Status” Law. Taken together, these were meant to show that Ukraine abides by the Minsk agreements but insists on reframing the conflict. The Law also provided the legal framework for the military operations.

The Russian Minister of Foreign Affairs responded that this new law undermined the Minsk agreements.²⁶ At the same time, the OSCE representatives warned that both sides were preparing for an escalation of the conflict. A number of human rights NGOs warned that the law was dangerously passing the responsibility for Ukrainian citizens to an occupying power that could only be held accountable through international courts.²⁷

Following the provisions of the “Reintegration Law”, on April 30, 2018 the government announced the end of the Anti-Terrorist Operation and the beginning of the Joint Forces Operation (JFO) meant to “ensure the security of Ukraine and fight the military aggression of the Russian Federation”. The new operation was headquartered at the Joint Operative Headquarters of the Ukrainian Army and run by the Joint Forces Commander appointed by the President (while the ATO was essentially run by the SBU that responded directly to the President). Most experts agree that the idea behind the new framework

25 “Turčynov: Podalše zvinennja okupovanyh terytorij u ramkach format ATO je nemožlyvym”, *Interfax-Ukraine*, July 13, 2017. URL <https://ua.interfax.com.ua/news/political/428292.html> (2019-10-15).

26 “Lavrov zavjavljae ščo zakon pro Donbas perekrisljuje Minski domovlennosti”, *Ukrajinska Pravda*, January 19, 2018. URL <https://www.pravda.com.ua/news/2018/01/19/7168966/> (2019-10-15); “Soveščanie s postojannymi členami soveta bezopasnosti”, *Prezident Rossiji*, January 19, 2018. URL <http://kremlin.ru/events/president/news/56675> (2019-10-15).

27 KHPG, Kharkiv Human Rights Protection Group. “Donbas Reintegration Law Poses Human Rights Risks”, January 18, 2018. URL <http://khpg.org/en/index.php?id=1516240294> (2019-10-15).

was to realign the notion of being at war with Russia with operational realities. On June 1, 2019 Ukraine left the “Friendship Agreement with Russia” by letting it expire ten years after it came into force. The Law “On Securing Rights and Freedoms of Citizens and Legal Status of Temporarily Occupied Territories” that had been initially passed on April 15, 2014 in reference to the annexation of Crimea was updated on October 2, 2018 in order to include references to Russia as an “occupying power” both in Crimea and in Donbas (President of Ukraine 2019b).

Tensions further mounted on November 25, 2018²⁸ with the first direct clash between Ukrainian and Russian military forces in the Strait of Kerch, as two Ukrainian military ships that tried to pass from the Black Sea to the Azov Sea were assaulted and captured by the Russian navy with 24 sailors taken prisoners.²⁹ The incident marked growing tensions and disagreements about the rights of navigation in what Russia claims to be its territorial waters in the wake of the annexation of Crimea (Pishchikova, Tafuro Ambrosetti 2018). In response to the incident, President Poroshenko introduced the martial law for one month in ten provinces bordering on the zones with the presence of Russian military (i.e. Donbas, Crimea, and Transnistria). The new security policy came to a climax on February 19, 2019 when the constitutional amendment in which Ukraine commits to joining NATO and the EU was signed by President Poroshenko, reversing Ukraine’s previously neutral status.

6 Conclusions

Although it is clear that in the wake of President Yanukovich’s departure the Ukrainian state had lost the monopoly over violence in a number of places throughout east and south of the country, local contentious action by itself is not a sufficient explanation of the conflict that broke out in parts of Donbas. Rather, it was a series of desta-

28 “UN Maritime Tribunal Rules Russia Must Release Ukrainian Sailors, Ships”, *Radio Free Europe*, May 25, 2019. URL <https://www.rferl.org/a/un-tribunal-sea-ukraine-russia-ship-seized/29962293.html> (2019-10-15).

29 On May 25, 2019, the International Tribunal for the Law of the Sea (ITLOS) prescribed provisional measures in the case between Ukraine and the Russian Federation, ordering the Russian Federation to immediately return three Ukrainian naval vessels and release the 24 detained Ukrainian crew members seized during the November 25, 2018 incident near the Kerch Strait. URL https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_26/C26_Order_25.05.pdf (2019-12-12); on September 5, 2019 the sailors were exchanged together with other prisoners in a 35 for 35 swap agreed between President Zelensky and President Putin. See more here: URL <https://www.radiosvoboda.org/a/news-jit-tsemakh-mh17/30148034.html?fbclid=IwAR2qfR4zCzvHdehu6B0v0J4tz-KcQSFNRwuXj6D30cRYbj1zv6qddwzOp8> (2019-12-12).

bilization tactics by Russian state and non-state actors that helped transform the crisis from scattered uprisings, both pro- and anti-Euromaidan, into a separatist military insurgency.

The conflict's boundaries do not correspond to any pre-existing societal cleavages, be those of ethnic, linguistic or political nature. The so-called "line of contact" that currently divides Ukraine from the self-proclaimed republics of Donetsk and Luhansk is a result of military fortunes around the time of heavy fighting in late 2014 and early 2015. Its arbitrariness is a source of anxiety for the Ukrainians living on the Ukraine-controlled side as they worry the "line" could be easily moved further into Ukraine and the conflict would engulf their home, should the Ukrainian government fail to protect them. Unfortunately, there is little reliable original data coming from the territories of the self-proclaimed republics. Yet, a number of reports indicate a clear tendency towards their growing alienation from their "parent state". Long-term separation and severing of social and economic ties between the two territories is likely to bring the Donbas closer to a "frozen conflict" scenario that is evident in other places of Russia's "near abroad" (Malyarenko 2019).

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