

241
DECEMBER
2020

CONFLICT MANAGEMENT IN THE DONBAS: The Elections that could not be

Anna Korbut, Ukrainian journalist and analyst

On the ground, there have been no substantial changes that allowed plans for democratic elections in the occupied Donbas. A more favorable scenario on elections there would be to have a transition period after the establishment of solid security conditions and Ukraine gets nearly 400km of its border with Russia back under its control.

The longer the occupied territories remain under control of the Kremlin and the self-declared "authorities", the more the demographic, economic and societal context changes in that part of Ukraine preventing a long term peace.

The fundamental conflict between the end goals of Ukraine and Russia remains in place. Moscow and its Donbas proxies seek to legitimize facts on the ground created through Russia's aggression, and make constructive reintegration of it nearly impossible.

Russia has not come to terms with Ukraine's independence and its choices as a sovereign state, nor has it changed its behavior in any tangible terms.

Ending the war was among the key rallying points in Volodymyr Zelensky's campaign for presidency. He pledged to focus on diplomacy, dialogue with Russia and efforts to win the hearts and minds of Ukrainians in the occupied territory without putting Ukraine's sovereignty and vital interests at risk. Should these efforts fail, he spoke of separation as a reluctant scenario of last resort.

Showing its will to seek progress, Kyiv took a sequence of steps from the onset of Zelensky's presidency. On the political track, Ukraine agreed in writing to the so-called "**Steinmeier formula**"¹ in the fall of 2019. In May 2020, Zelensky upgraded Ukraine's representation in the Trilateral Contact Group² (TCG) by including Vice Premier Reznikov, deputy ministers and chairs of Verkhovna Rada (Parliament) committees. On the security track, Kyiv proactively implements the agreements on withdrawal of forces and ceasefire regime. Moves on the humanitarian track include efforts to simplify public services for residents of "certain areas of Donetsk and Luhansk oblasts" (known as ORDLO), increasing the number of crossing points across

1. In its agreed wording, the Steinmeier formula specifies that the law on the special self-governance regime in ORDLO should come into force temporarily on the day of the local elections and permanently after and if the OSCE/ODIHR mission recognizes them as overall compliant with international standards for democratic elections and Ukrainian legislation. The formula emerged in public discussion in 2016 but was never signed in writing until September 2019 nor implemented.
2. The Trilateral Contact Group for Peaceful Resolution of the Situation in Eastern Ukraine was established in 2014 as a diplomatic platform for talks on the conflict management, implementation of the Minsk Agreements and work on humanitarian, prisoner exchange and other aspects of the conflict. Comprised of representatives of Ukraine, Russia and the OSCE, it convenes in Minsk, Belarus.

the contact line —so far unreciprocated on the part of Russia and the separatists backed by it— and improving their infrastructure, a TV channel launched for the residents of the occupied territory and expanded opportunities for school graduates from ORDLO to enter universities in the Kyiv-controlled territory.

Zelensky's policy of reinvigorating conflict management efforts should have been crowned by elections in these "certain areas of Donetsk and Luhansk oblasts" as part of the nationwide local election campaign on October, 25, 2020. But conditions on the ground made that prospect unrealistic despite limited progress on some elements of the conflict.

In the latest development, former president Leonid Kravchuk, the current head of Ukraine's delegation to the TCG, mentioned March 31, 2021 as another potential date for elections after the self-declared ORDLO representatives and Ukraine's delegation to the TCG tabled their proposals on the roadmaps to implement Minsk II³ in October-November 2020. However, the version of the ORDLO document disclosed in the

Zelensky is moving on the political and security tracks *simultaneously*, while focusing heavily on the humanitarian track in an attempt to show goodwill to the population in and around the occupied territories — which, however, has not yielded political benefits to his political force.

media contains provisions that have so far been unacceptable to Kyiv. Another episode in the run-up to the October local elections is illustrative of Russia's approach. In July 2020, **Ukraine's Verkhovna Rada passed a regulation on the October local elections in Ukraine**, where it stipulated that local elections in the non-government-controlled territory could not take place in the current situation and would be scheduled under a number of conditions, including termination of the temporary occupation and Russia's armed aggression, withdrawal of all Russia-funded and controlled illegal armed formations and equipment, restoration of

Ukraine's full control over its border, disarmament of mercenaries, restoration of the constitutional order in the temporarily occupied territory and more. **Russia and self-declared ORDLO representatives demanded a change of the regulation to abolish these conditions**, claiming that they do not comply with the TCG decisions and threatening to block the work of the TCG on all other issues.

A key result of Kyiv's efforts so far is a lower intensity of shooting in the war zone with fewer victims among the Ukrainian military and civilians compared to previous periods. While observers **continue reporting ceasefire violations and construction or reinforcement of positions** by the Russia-controlled forces in ORDLO, and the Ukrainian military continue to suffer injuries and casualties, Kyiv has so far avoided harsh declarations on these cases and stated that the ceasefire is holding. Exchange of detainees was another accomplishment in 2019, but the process has stalled since the latest round in April 2020. Ukrainian officials expect the next round of exchange to happen by year-end. And the prospect of the next Normandy Four⁴ meeting remains distant at best after the latest one in Paris in December 2019.

There are both differences and similarities in conflict management during Petro Poroshenko's and Volodymyr Zelensky's presidencies. For now, Zelensky's team largely stays within the framework set out previously, while changing the tactics within that framework. So far, this has delivered tactical results, but no progress on more fundamental strategic aspects of the conflict.

When Poroshenko was president, Kyiv prioritized security over political steps. Poroshenko was more proactive in the first years of his presidency in 2014-2016 — which were also the hottest stages of war. It was then that Minsk Agreements were signed, attempts to withdraw troops took place and Kyiv moved to amend the Constitution with decentralization provisions, including on the special self-governance procedure for ORDLO (although in a format different from that demanded by Russia or self-declared ORDLO representatives).

Zelensky is moving on the political and security tracks simultaneously, while focusing heavily on the humanitarian track in an attempt to show goodwill to the population in and around the occupied territories — which,

3. The Minsk Protocol, also known as Minsk I, was concluded by representatives of Ukraine, Russia and the OSCE, as well as signed by the self-declared representatives of Donetsk and Luhansk "people republics" in September 2014 in an attempt to establish a ceasefire. After it failed, the subsequent Minsk II, officially titled the Protocol on the results of consultations of the Trilateral Contact Group, signed in February 2015, outlined the sequence of steps to be taken to implement the Minsk I Agreement, including ceasefire, non-use of weapons verified by the OSCE, decentralization of power, monitoring of the Russia-Ukraine border by the OSCE, release of hostages, amnesty, improvement of the humanitarian situation in Donbas, removal of unlawful military formations and hardware from Ukrainian territory and more. Most of these provisions were never implemented.

4. The Normandy Format, also known as the Normandy Four, consists of the top representatives of Ukraine, Russia, Germany and France. It is the high-level diplomatic platform for mediated talks aimed at seeking solution to the Russia-Ukraine conflict. The Normandy Four first convened in June 2014 and met biannually until 2016, including through some of the most intense phases of the war, but gathered only twice at the level of country leaders in 2016-2019 and once, on November 13, 2020, at the level of advisors to country leaders.

however, has not yielded political benefits to his political force. He, too, sponsored a bill to amend the Constitution with decentralization provisions — to reflect Ukraine’s decentralization reform (again, in a format different from that demanded by Russia). That bill was recalled for further discussion after criticism from decentralized communities in the government-controlled territory. Moves to amend the Constitution under both presidents triggered protests in Ukraine.

Initially, Moscow somewhat adapted its tactics too and agreed to the exchange of detainees – though under unpalatable conditions for Kyiv, including the release of the special police officers accused of killing Maidan protesters or of Volodymyr Tsemakh suspected in involvement in the launch of the BUK missile that shot down the MH17 plane in July 2014 — and to the Normandy Four summit in December. However, Russia’s strategy of pressure has not changed as it insists on the steps that prevent constructive reintegration of ORDLO with Ukraine in the long-term prospect and undermine Ukraine’s national red lines against direct talks with the illegitimate representatives of “republics”, change of Constitution under foreign pressure or on the launch of democratic processes in an undemocratic and unsafe environment.

Election rhetoric vs reality

On the ground, there have been no substantial changes that allowed plans for democratic processes in ORDLO. This lack of progress results in the continuation of fighting, even if less intense, and victims among the military and civilians, in economic burden on Ukraine and degradation of the regions in and around the war, as well as tensions within Ukraine — including mounting criticism of its political leadership. Meanwhile, a generation of children is growing up in ORDLO with no experience of living in peaceful Ukraine and amidst heavy pro-Russian and anti-Ukrainian indoctrination. The same indoctrination targets the population that remains in ORDLO via media and official policies. The longer it remains under control of the Kremlin and the self-declared “authorities”, the more the demographic, economic and societal context changes in that part of Ukraine that militate against national cohesion and long term peace in general.

In 2014, Ukraine passed the Law on the Special Regime for Local Self-Governance in ORDLO that has been extended ever since. It lists the changes in the status of ORDLO in line with the Minsk Agreements that should come into effect with the election of local self-governance bodies there. The election should comply with the Constitution and legislation of Ukraine and international criteria for free and fair elections. To ensure

that compliance, Kyiv has repeatedly stated that the elections can only take place in ORDLO after foreign forces and equipment are withdrawn from there and Ukraine gets nearly 400km of its border with Russia back under its control. This position echoes what Poroshenko insisted on during his presidency too⁵ and makes Zelensky’s presidency closer to his predecessor in terms of the security-politics sequence.

According to the letter of Minsk II Agreement, restoration of the Ukrainian government’s full control over the state border in the whole conflict area should start on the first day after local elections and finish after the comprehensive political settlement. It is also contingent on the fulfillment of the provision on the constitutional reform in Ukraine that includes decentralization taking into account the specifics of ORDLO as agreed with representatives of the region. This is another point of contention: Russia insists on integrating special self-governance regime for ORDLO into Ukraine’s Constitution. Ukraine has so far been rejecting that as coercion into federalization and interference with its constitutional lawmaking. Instead, Ukraine intends to

Kyiv has repeatedly stated that the elections can only take place in ORDLO after foreign forces and equipment are withdrawn from there and Ukraine gets nearly 400km of its border with Russia back under its control.

amend its Constitution to reflect the nationwide decentralization reform that has taken place since 2014, while legalizing the status prescribed for ORDLO by the Minsk framework in a law. However, both agreements were signed under significant Russian military pressure on Ukraine’s political leadership. Poroshenko signed the Minsk II protocol on February 12, 2015, amidst some of the bloodiest fighting. Both agreements were met with harsh criticism domestically in Ukraine. Yet, they equipped the Kremlin with a convenient tool of leverage which it keeps using.

Key obstacles for elections in the ORDLO

Firstly, insecurity remains a fundamental challenge. Access to non-government-controlled territory stays limited for international organizations, including humanitarian missions (not just the OSCE). Restrictions escalated with the closure of the contact line as a result of the COVID-19 measures in March. About 96% of restrictions faced by the OSCE Special Monitoring

5. The Minsk framework does not specify clearly the sequence of elections and withdrawal of forces and equipment, which leaves room for different interpretations.

Mission (SMM) during January-June 2020 were in non-government-controlled territory, according to its Thematic Report over that period.

After Volodymyr Zelensky was elected President in spring 2019, Kyiv intensified efforts to withdraw troops and equipment following the 2016 TCG Framework Decision on disengagement of forces and hardware. Previous disengagement attempts failed as ceasefires never lasted long enough. Throughout 2019, quieter periods alternated with intensification of the shooting, yet Kyiv proceeded with withdrawals in three areas be-

A Freedom House report denounced the absence of political pluralism or participation, no right to organize in political parties or competitive political groupings and no realistic opportunity for the opposition to gain support or power through elections in non-government-controlled territory.

tween June and November 2019. Disengagement terms were violated repeatedly.

The OSCE SMM reported a 25% decrease in the number of ceasefire violations over January-March 2020 compared to the previous quarter, 89% of them recorded in non-government-controlled areas, and a seven-fold increase of explosions from weapons that should have been withdrawn. Subsequent reporting periods — especially the July-September one that stretched into the latest and longest yet ceasefire from July 27 — showed a further decrease in the number of both ceasefire violations and explosions. However, SMM also continued reporting the presence of weapons in violation of the agreed withdrawal lines, over 80% of those observed in the non-government-controlled territory.

Secondly, Russia exercises full control over the Ukraine-Russia border in non-government-controlled areas. During the two presidencies, Kyiv put forward different compromise modes of border control. Under Poroshenko, Ukraine proposed control by an international peacekeeping mission which Russia rejected in the format suggested by Kyiv. Under Zelensky, Ukraine continued to offer that, then joint control by Ukraine, OSCE and representatives of ORDLO. So far, there has been no sign of consent to any of these options from Russia or self-declared ORDLO representatives.

Thirdly, Ukrainian media or political actors have zero access to non-government-controlled territory in which there is no media, nor political pluralism or basic free-

doms. Freedom House's [Freedom in the World 2020](#) report confirms that no free and independent media have operated in the occupied Donbas since 2014, when local newsrooms were raided by armed men and many journalists were forced to flee the separatist-controlled areas. Most Ukrainian and foreign journalists have not been able to go to the non-government-controlled territory since 2014-2015 due to restrictions and unsafe conditions. According to Oksana Romaniuk, director of the Institute of Mass Information, a media watchdog NGO based in Kyiv, over 80 Ukrainian journalists have been detained by the militants in the East over the years of

war. Reports about the armed conflict in ORDLO are exclusively based on statements from separatist militias and coverage of government-controlled Ukraine is almost always negative, whereas reporting on the local economy focuses on minor positive events.

Since the beginning of the war, Ukrainian websites have been blocked and TV and radio channels jammed in ORDLO, while Russian and local channels are readily available and the militants control transmission equip-

ment in non-government-controlled territory. Kyiv has been taking efforts to strengthen transmission by installing additional transmission equipment along the contact line and launching a new TV channel for the non-government-controlled territory that will broadcast "positive" light and entertainment content and just an hour of news per day. However, receiving Ukrainian media content, especially TV and radio, remains highly problematic in and around non-government-controlled territory.

The same Freedom House report points to the absence of political pluralism or participation, no right to organize in political parties or competitive political groupings and no realistic opportunity for the opposition to gain support or power through elections in non-government-controlled territory. It says that Russia has established a complex web of control over the "People's Republics" that affects all aspects of daily life, including political affairs, all institutions — including schools, media, public services and more — are dominated by people loyal to the separatist leadership, and some key positions are held by Russian citizens. In March 2020, the Ukrainian language was stripped of the official status in the "DNR" (Donetsk People's Republic) and the "LNR" (Luhansk People's Republic) followed with a similar decision shortly after.

Fourthly, there is no understanding on who could run and vote in potential elections, take official positions after elections, provide security during the elections and what model of transitional justice could be applied with

regard to the war — both in ORDLO and in Crimea. On the one hand, Minsk II contains a provision on amnesty and prohibition of prosecution of individuals linked to the “events”⁶ in ORDLO. On the other hand, there are numerous testimonies — including from survivors who return to the government-controlled territory via exchanges — of serious crimes committed in ORDLO, such as illegal jailing and torturing of both military personnel and civilians (including inhuman physical and psychological treatment, tortures, sexual violence, severe beatings that at times resulted in disabilities or death and more); kidnapping for ransom from relatives; extrajudicial executions and killings; confiscation of property. After the April 16 exchange, the militants are still keeping **over 200 people in illegal detention**).

In August 2019, a working group was established by Kyiv under the leadership of Anton Korynevych, President’s Representative on Crimea, tasked with drafting the transitional justice framework law. According to the current concept, it will be built on a number of key components: punishment for the most serious crimes and crimes against humanity that cannot be amnestied; establishment of historical truth on the war and construction of a unifying narrative on it; compensation to the victims of war and restoration of their rights; prevention of armed conflicts in Ukraine via lustration of war criminals and investigation of war crimes, education of law enforcers on international humanitarian and criminal law; and institutional reforms to ensure that the judiciary system can work with such categories of cases.

There are other important aspects to be dealt with, including administrative and economic. The last elections in the region took place in 2012 and statistics have not been provided from there to the center since the beginning of war. Massive displacement of population has taken place. The inflow of the Russian citizens, including those involved in the fighting, has contributed to the change in the socio-political landscape. According to Joint Forces Commander Volodymyr Kravchenko, as of April 2020, the two army corps (1st and 2nd based in Donetsk and Luhansk respectively) with de facto control in ORDLO counted over 35,000 personnel and reported to the 8th Combined Arms Army of the Russian Ground Forces — over 2,000 Russian staff officers are in ORDLO commanding these army units; the

rest were mostly locals and mercenaries from Russia. In June 2019, in yet another sign of the gap between Moscow’s official insistence on Minsk implementation and its actual actions on the ground, Russia began to issue its passports to the residents of ORDLO under a simplified procedure, a decision heavily criticized by Ukraine and its Western partners. According to Russian sources, over 200,000 people registered in ORDLO received Russian passports in 2019-2020. So the real number of people with the right to vote in ORDLO should be established and the register of voters updated respectively.

Institutionally, some of Ukraine’s key actors that should contribute to a return to peaceful life, including through democratic processes such as elections, lack credibility in broad swathes of Ukrainian society. These include police, courts, Prosecutor General’s Office, Security Bureau of Ukraine and others.

Economically, Kyiv has no feasible plan for accumulating or distributing the resources to restore ORDLO. The key question is who is to pay for the destruction of the region. Its economy and infrastructure is devastated by the war, economic blockade, exploitative or ruinous administration by the de facto authorities and by the displacement of equipment from many production facilities in ORDLO — ammunition, radio-electronics or machine-building plants — to Russia at the beginning of war. In recent years, reports emerged in the media of mines flooded in ORDLO, which results in looming environmental and economic challenges. All this requires economic solutions which Ukraine cannot afford to provide, especially as its own economy is hit by COVID-19 measures and the potential global downturn.

Risks of a rushed transition

President Zelensky is likely to continue taking steps on the political, security and humanitarian agendas of the Minsk framework. A more favorable scenario on elections in ORDLO for Ukraine would be to have a transition period after the establishment of solid security conditions. However, the Minsk framework does not envisage that and Russia or its Donbas proxies demonstrate no flexibility on this. A scenario of rushed-up elections in ORDLO without proper conditions on the ground creates risks in several dimensions for Ukraine.

Politically, this could inject actors with questionable background into Ukraine’s already convoluted polit-

6. The term “events that took place in ORDLO” is based on the Minsk II text as translated from Russian and is used in the reference to amnesties for the people involved in these events. It covers war-conditioned developments since 2014 but does not contain specific definitions or lists of these activities.

ical landscape unless reliable lustration mechanisms are applied. It could boost the pro-Russian segment and the pre-Maidan regime supporters. Such a scenario could fuel protests and tensions domestically in Ukraine and ruin the reforms Ukraine has undertaken after 2014.

Economically, this raises the issue of resources for restoration and revival of the war-affected territory. Funding and an efficient program for reconstruction are key to any efforts to reintegrate ORDLO. Russia — which should be held internationally accountable

Massive displacement of population has taken place and the inflow of Russian citizens, including those involved in the fighting, has contributed to the change in the socio-political landscape.

for its role in the war — must play a key role in providing that compensation. It is important that the administration of such resources and restoration, if available, is implemented under the supervision of credible actors to prevent corruption or manipulative exploitation by local political actors. The latter often represent the political segment associated with the former Party of Regions — the Donbas was traditionally its stronghold — that has a long record of embezzlement, abuse of office and poor administration at every level.

Institutionally, some of Ukraine's key actors that should contribute to a return to peaceful life, including through democratic processes such as elections, lack credibility in broad swathes of Ukrainian society. These include police, courts, Prosecutor General's Office, Security Bureau of Ukraine and others. They were never reformed fully and are heavily influenced by whoever is in power on the national and regional level at any given point in time. Therefore, they are not widely perceived as an anchor and guarantor of law where they should be.

Last but not least, the fundamental conflict between the end goals of Ukraine and Russia remains in place. Ukraine seeks the end of war and constructive reintegration of ORDLO, even if this requires far more time and efforts beyond elections. Russia and the leaders of self-proclaimed "republics" insist on the sequence of steps that legitimize facts on the ground created through Russia's aggression, and are aimed at cementing Russia's influence in ORDLO and make constructive reintegration of it nearly impossible. All the efforts described above tackle just one side of the conflict as the other, the annexation of Crimea, remains unresolved.

More broadly, Russia has not come to terms with Ukraine's independence and its choices as a sovereign state, nor has it changed its behavior in any tangible terms. Using the pandemic turmoil and the surge of thinking about its impact on the global situation, while waiting for the West to soften its approach with no real conditions, the Kremlin keeps promoting the idea of a geopolitical order with "spheres of influence", mounting its military forces on the borders with Ukraine and in the occupied Crimea — including in the maritime domain — and offering Russian passports to the residents of both ORDLO and the rest of the Donbas, including the parts controlled by Kyiv. Its recent decision is to recognize the residents of Ukraine and Belarus as "bearers of the Russian language" without any tests or exams, which, too, qualifies as a condition for simplified granting of Russian citizenship.

Beyond elections, it is important to keep pressure on Russia, including via sanctions, to push for change of facts on the ground it has created and for progress on strategic dimensions of the conflict, not just tactical. Softening of pressure without such progress will only help it cement the new status quo.