

**'Peace to Ukraine' publication series**

**State of Minsk agreements implementation:  
An unofficial Ukrainian experts' opinion**

Hanna Shelest  
Oleksii Izhak  
Maksym Palamarchuk  
Oleksiy Haran  
Dmytro Shulga (ed.)

## Table of contents

<b>Summary</b> .....	3
<b>Introduction</b> .....	5
<b>Assessment of Minsk agreements implementation</b> .....	7
1. Ceasefire .....	8
2. Withdrawal of weapons .....	11
3. OSCE monitoring .....	15
4. and 12. Local elections .....	16
5. Amnesty .....	18
6. Hostages release .....	19
7. Humanitarian aid .....	20
8. Socio-economic reconstruction .....	21
9. Border .....	22
10. Withdrawal of foreign troops .....	23
11. Constitutional reform .....	24
13. Trilateral Contact Group .....	25
<b>Further Minsk commitments implementation</b> .....	26
<b>About the authors</b> .....	27

## Summary

'Minsk agreements' is a common name for a package of documents adopted in September 2014 and February 2015. The ceasefire of September 2014 was violated by Russian and separatists' forces, leading to a significant increase of the area not controlled by Ukrainian government by February 2015. 'Package of measures for the implementation of Minsk Agreements' ('Minsk-2') was signed on 12 February 2015 after its content was negotiated at 'Normandy format' summit in Minsk between the Presidents of Ukraine, Russia, France, and Chancellor of Germany. The Agreements were supported by the US, the EU and the UN Security Council. In March 2015, the European Council has agreed that the duration of the economic sanctions against Russia shall be linked to the complete implementation of the Minsk agreements.

Analysis of the Minsk agreements implementation demonstrates that despite few steps forward made, the trend is observed of the systematic violation of the certain clauses as well as serious manipulation of the others by the so-called 'Donetsk People Republic' / 'Luhansk People Republic' ('DPR'/'LPR') separatist combatants and the Russian Federation.

Lifting international sanctions seems the only incentive for Russia to comply with Minsk agreements. Its current tactic lies in partial implementation, which would help to apply for easing sanctions and thus decreasing the cost of her waging war against Ukraine. At the same time, Russia preserves the possibility to once more escalate the currently low intensity conflict at any convenient moment.

For the time being, the main violations and non-conformity lay in the security domain, which should be considered as a basic prerequisite for the political settlement. Without full implementation of the cease-fire, and trust based on the withdrawal of the agreed weapons as well as permission of the full-access to all territories for the OSCE, it is difficult to start negotiations or practical implementation of the clauses regarding reconstruction of the destroyed territories or local elections – in case these elections are expected to meet the international standards.

Separatists' troops, backed by Russia, are violating ceasefire on almost daily basis, using mostly mortars and heavy machine guns but occasionally also heavy artillery or "Grad" multiple rocket launcher system (MLRS). As a result, in total 430 Ukrainian servicemen were killed during March – October 2015. In general, for the period of 15 February – 4 December 2015 there were only 47 days (15%) without wounded and killed from the Ukrainian side. Even during relatively 'calm' September–October 2015, 54 Ukrainian soldiers were killed. In November–December 2015, shelling of the Ukrainian positions intensified. Thus, independent assessment confirms that what is in place should not be considered as a ceasefire but rather a low-intensity conflict.

In a clear violation of the contact line agreed for the ceasefire, 'DPR' maintains control over the town of Debaltsevo and other territories gained during September 2014 – February 2015.

Strengthening the mandate and capabilities of the OSCE Special Monitoring Mission (SMM) is welcomed by Ukraine, which also seeks deployment of a wide international mission in the conflict area, perhaps under the auspices of the UN or the EU. Meanwhile, 'DPR'/'LPR' representatives continue to prevent the OSCE SMM to have a full access for monitoring purposes. In particular, 'LPR' members continue to prevent the OSCE SMM from monitoring many areas close to the border with the Russian Federation in parts of Luhansk region not controlled by the Government of Ukraine. Continuing prevention of the OSCE's monitors to observe the situation at the uncontrolled territory reveals both the attitude towards the international obligations and desire to hide non-conformity.

There is no sign of decrease of the Russian military contingent in Eastern Ukraine. More and more evidences appear of the new weapons modifications present only in Russia being found in Donbas. New Russian MLRS "Tornado-S" were even mentioned in the text of the Minsk-2 agreement. Recently, a heavy multiple launch thermobaric rocket system (TOS-1 *Buratino*, 220mm) has been spotted by the OSCE SMM.

As it is widely reported and confirmed by Russia itself, it continues to allow a free flow of fighters and weapons over the part of the state border not controlled by the Ukrainian government. Supplying separatists with fighters, ammunition, finance, and even regular troops should be regarded as taking a side to the conflict and thus defining Russia's role as an aggressor state according to the UN General Assembly Resolution 3314.

Since Minsk-2, three thousand Ukrainian citizens were released from captivity by separatists. Still, by early December 2015 around 140 confirmed to remain in captivity while yet around 800 are named as 'missing'. Another 10 Ukrainian citizens are held in prison in Russia as political prisoners (such as Sentsov and Savchenko).

While Ukraine has repeatedly shown readiness for the exchange of detainees as quickly as possible on the “all for all” principle, Russia /‘DPR’/‘LPR’ insist, contrary to the text of Minsk-2, on adoption by Ukraine of the law on total amnesty for all participants to the conflict with momental effect as a precondition.

The situation with the humanitarian aid to the occupied territories is not stable, first of all due to the problems international humanitarian organisations have while acquiring accreditation from the separatist ‘republics’ for delivering humanitarian aid to the area.

Ukraine is paying pensions and other social benefits to the people registered at the uncontrolled territories but exercising this on the territory controlled by the Ukrainian government. For simplification, special logistical centres were created near the contact line with ‘DPR’/‘LPR’ to provide banking services and goods trade. At the same time, the uncontrolled territories are not paying their utility bills and taxes.

Back in September 2014, Ukraine adopted the law on amnesty which has not been yet enacted, however, for the reasons of chronic failure of Russia/‘DPR’/‘LPR’ to comply with the ceasefire and other conditions of the Minsk agreements. In general, Ukrainian position is that the amnesty cannot be full, as some of the cases should be considered as acts against humanity due to their extreme violence and intention. This position is in line with international practice and the provisions of the Additional Protocol II of 1977 to the Geneva Conventions of 1949. At the same time, ‘DPR’ announced preparation of their own variant of legislation to be presented, excluding terroristic acts from the list of exceptions.

Proper conditions for organisation of local elections are another point of fundamental difference between the parties. Ukraine insists that these elections should be held ‘in accordance with the Ukrainian legislation’ and ‘in compliance with the relevant OSCE standards’, as stated in Minsk-2 Agreement. This means free access of the media and international observers; free competition of the Ukrainian political parties; the top authority of the national Central Election Committee; proper security situation with disarmament of illegal military groups; and possibility for more than 1 million IDPs to come back and participate in the elections. The position of ‘DPR’/ ‘LPR’ leaders is that the admission of the Ukrainian political parties, Ukrainian media and IDPs to the elections is unacceptable. At the same time, the separatists demand a total amnesty for all as a precondition for holding local elections. Overall, it is obvious that Russian/‘DPR’/‘LPR’ intention is not to have free and fair elections in Donbas but to limit political competition there and get legitimization of the rule of the armed Russian proxies.

Ukrainian legislation on a special status of certain districts of Donetsk and Luhansk regions was adopted back in September 2014 with the Law ‘On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions’. But Russian pressure for a ‘special status’ in the Constitution of Ukraine heavily complicated the constitutional process of the general decentralisation reform in Ukraine. Still, on 31 August 2015 the Parliament of Ukraine adopted in the first reading the draft of constitutional amendments on decentralisation for the whole Ukraine together with a provisional article on the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions.

In the eyes of many Ukrainians, Western pressure on Kyiv to implement the clause on constitutional changes ahead of implementing ceasefire and other urgent clauses of Minsk-2 looks like “appeasing” Russia for aggression and assisting it to achieve its goals of ‘Bosnianisation’ of Ukraine. It is widely seen that Kyiv can have a meaningful dialogue on the future constitutional devolution of powers only with legitimately democratically elected representatives of the Donbas region.

Free and democratic elections as well as reconstruction of the destroyed towns are not possible while security situation remains fragile. However, provision of a secure environment demands not only a steady ceasefire but also effective control over the Ukraine-Russia state border and stop of the illegal inflow of weapons and military to the uncontrolled territory. If implementation of other clauses of Minsk agreements can be presented as a responsibility of the self-proclaimed ‘Donetsk’ and ‘Luhansk’ ‘People’s Republics’, the effective border control is a clear single responsibility of the Russian Federation.

## Introduction

Following the military occupation and illegal annexation of Crimea in February–March 2014, Russia continued to destabilise Ukraine. The armed conflict in Donbas, a region in the Eastern Ukraine closest to the Russian border, was triggered by the Russian security service officers in spring 2014<sup>1</sup>. Since then the conflict was continued with steady inflows of fighters and weapons from the territory of the Russian Federation and eventually with direct aggression by Russian regular armed forces on Ukrainian soil which was the only way to save Russia's proxies<sup>2</sup>. At present, as a result of this Russian aggression, 1/3 of Donbas or less than 3% of Ukrainian territory is controlled not by Ukrainian government but by so called 'Donetsk People's Republic' ('DPR') and 'Luhansk People's Republic' ('LPR').

The first Western sanctions after annexation of Crimea in March 2014 appeared to be weak and sent the wrong message to Kremlin. Then, however, the evidences of the Russian interference in Ukrainian internal affairs, violation of its territorial integrity and support of the separatist movements were too vivid to ignore and not to take respectful actions to confirm the EU's own adherence to the democratic values and principles of the international law. The turning point in Western reaction was Russia's military infiltration in Donbas and death of three hundred civilians on Malaysian MH17 flight shot down in July 2014 from a separatists-controlled area.

On 27 June 2014, the European Council presented a set of requirements that could postpone introduction of the economic sanctions against Russia. Among these requirements were agreement on a verification mechanism, monitored by the OSCE, for the cease-fire and for the effective control of the border; return to the Ukrainian authorities of the three border checkpoints (Izvarino, Dolzhanskiy, Krasnopartizansk); release of hostages including all of the OSCE observers; launch of substantial negotiations on the implementation of President Poroshenko's peace plan<sup>3</sup>.

Given that Russia failed to respond to these demands of the European Council, on 31 July 2014 the Council of the EU introduced a package of economic sanctions (restrictive measures targeting sectoral cooperation and exchanges with the Russian Federation) with a view to increasing the costs of Russia's actions to undermine Ukraine's territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis<sup>4</sup>.

The EU's 'economic sanctions' against the Russian Federation consist of measures aimed at limiting access to EU capital markets for Russian state-owned financial institutions for loans beyond 30 days of maturity, an embargo on trade in arms, an export ban for dual use goods for military end use and end users, and restrictions on access to certain sensitive technologies particularly in the oil sector.

These economic sanctions constitute the most powerful part of all EU sanctions (restrictive measures) imposed on Russia and on specific entities and individuals since March 2014 in response to their deliberate destabilising actions in Ukraine (or support for these actions) as well as the illegal annexation of Crimea and Sevastopol by Russia. The sanctions are intended to bring about a change in policy or activity by Russia and the targeted entities and individuals<sup>5</sup>.

In March 2015, the European Council has agreed that the duration of the economic/sectoral measures against Russia shall be linked to the complete implementation of the Minsk agreements<sup>6</sup>. The EU's economic sanctions are currently valid until 31 January 2016<sup>7</sup> and the EU is expected to take relevant decisions on their prolongation in December 2015.

---

1 Interview with I.Girkin (Strelkov), commander of the group which started the hostilities in and around the town of Slov'yansk: <http://svpressa.ru/war21/article/103643/>

2 'Russia's proxies' would be probably a more suitable term instead of the usually applied 'separatists' as the latter usually neither destroy their own factories and infrastructure nor they dismantle factories and move their equipment to another country – as it was seen in Donbas. Also, their formations in Donbas were led by Russian officers or Russian citizens and were partially comprised of Russian 'volunteers' which included soldiers who were 'on vacations in Donbas'.

3 European Council 26/27 June 2014 Conclusions [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/143478.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf)

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

5 [http://eeas.europa.eu/factsheets/news/faq\\_eu-russia\\_sanctions\\_factsheet\\_en.htm](http://eeas.europa.eu/factsheets/news/faq_eu-russia_sanctions_factsheet_en.htm)

6 [http://www.consilium.europa.eu/en/meetings/european-council/2015/03/european-council-conclusions-march-2015-en\\_pdf](http://www.consilium.europa.eu/en/meetings/european-council/2015/03/european-council-conclusions-march-2015-en_pdf)

7 [http://eeas.europa.eu/factsheets/news/faq\\_eu-russia\\_sanctions\\_factsheet\\_en.htm](http://eeas.europa.eu/factsheets/news/faq_eu-russia_sanctions_factsheet_en.htm)

'Minsk agreements' is a common name for a package of documents adopted in September 2014 and February 2015. 'Minsk-1' refers to September 2014 agreements – Protocol on the results of consultations of the Trilateral Contact Group (Ukraine, Russia, OSCE with participation of the separatist leaders) dated 5 September 2014 and subsequent Memorandum dated 19 September 2014. These documents contained provisions on establishing a cease-fire, withdrawal of the heavy weapons, withdrawal of the illegal combatants, prohibition for drones except those owned by the OSCE etc. The ceasefire of September 2014 was violated by separatists' forces, leading to a significant increase of the area not controlled by Ukrainian government by February 2015.

'Minsk-2' commonly refers to the 'Package of measures for the implementation of Minsk Agreements' signed on 12 February 2015 by the Trilateral Contact Group representatives (Ukraine, Russia and OSCE) and leaders of the separatists<sup>8</sup>. The content of Minsk-2 was negotiated at 16 hours long 'Normandy format' summit in Minsk between the Presidents of Ukraine, Russia, France, and Chancellor of Germany, who issued a declaration in support of the package<sup>9</sup>. In fact, Minsk-2 extended and specified a number of Minsk-1 provisions and for the time being still remains the principle reference document for the peaceful settlement of the conflict in the Eastern Ukraine. The Agreements, though in contradictory and complicated way, outlined the ceasefire, exchange of prisoners, withdrawal of foreign troops and illegal military formations from Ukraine, and Ukraine's control over the border with Russia. They were supported by the US, the EU and the UN Security Council. Thus, connection of the EU sanctions with Minsk agreements implementation looks quite logical.

---

8 <http://www.osce.org/ru/cio/140221?download=true>

9 <http://www.president.gov.ua/ru/news/deklaraciya-prezidenta-rosijskoyi-federaciyi-prezidenta-ukra-34695>

## Assessment of Minsk agreements implementation

The analysis of the Minsk agreements clauses' implementation demonstrates that despite few steps forward, the trend of a systematic violation of the certain clauses as well as serious manipulation of the others by the so-called 'Donetsk People Republic' / 'Luhansk People Republic' ('DPR'/'LPR') separatist combatants and Russia can be observed.

For the time being, the main violations and non-conformity lay in the security domain, which should be considered as a basic prerequisite for the political settlement. Without full implementation of the cease-fire, and trust based on the withdrawal of the agreed weapons, as well as permission of the full-access to all territories for the OSCE, it is difficult to start negotiations or practical implementation of the clauses regarding reconstruction of the destroyed territories or local elections – in case these elections are expected to meet the international standards.

Since the European Council had extended economic sanctions on 22 June 2015 until 31 January 2016, the level of aggression has been decreased from the side of 'DPR'/'LPR' separatist combatants. There have been no new major attempts for military offensive (however, at least partly, this is due to the improved Ukraine military capabilities). At the same time, separatists' troops, backed by Russia, are violating ceasefire on almost daily basis, using mostly mortars and heavy machine guns but sometimes also heavy artillery or "Grad" multiple rocket launcher system (MLRS).

Thus, Minsk agreements implementation has been taking place on different speed for different clauses. From the very beginning, it was a problem of a lack of defined deadlines for all the clauses implementation as well as a sequence for implementation of the individual clauses in the list, resulting in serious disputes between the parties. While Ukraine insists on the simultaneous start of implementation of all clauses, the Russian Federation manipulates with few clauses, for example insisting that full control of the Ukrainian border by the Ukrainian authorities can be restored only after local elections and Constitutional changes.

At the same time, there must be certain logic in implementation of the agreed actions. Free and democratic elections as well as reconstruction of the destroyed towns are not possible while security situation remains fragile. However, provision of a secure environment demands not only a steady ceasefire but also effective control over the Ukraine-Russia state border and stop of the illegal inflow of weapons and military to the uncontrolled territory. If other clauses can be presented as a responsibility of the self-proclaimed 'Donetsk' and 'Luhansk' 'People's Republics', the effective border control is a clear single responsibility of the Russian Federation.

Lifting international sanctions seems the only incentive for Russia to comply with Minsk agreements. Kremlin's current tactic lies in partial implementation, which would help to apply for easing sanctions and thus decreasing the cost for Russia of waging war against Ukraine. At the same time, Moscow preserves the possibility for escalating the currently low intensity conflict at any convenient moment.

Below is the analysis of implementation of each particular clause of the Minsk agreements<sup>10</sup>. This analysis demonstrates the systematic character of the violations from the Russian/separatists' side. In particular, continuing prevention of the OSCE's monitors to observe the situation at the uncontrolled territory reveals both the attitude towards the international obligations and desire to hide non-conformity to them.

---

<sup>10</sup> The text of the Minsk-2 clauses is given according to the unofficial translation: <http://www.ibtimes.com/minsk-ceasefire-deal-full-text-agreement-between-russia-ukraine-germany-france-1814468>

## 1. An immediate and comprehensive ceasefire in certain areas of Ukraine's Donetsk and Luhansk regions and its strict implementation starting at 00:00 (Kiev time) on 15 February 2015.

Signing of the Minsk agreement was happening in the time of the intense fighting near Debaltseve, started due to the 'DPR' and Russian forces attack. This attack was significantly changing the separation line agreed in September 2014 by the conflict sides. During the Minsk negotiations (11–12 February), Russia tried to postpone the date for cease-fire initiating, to get final results of the battle. But even with the date of the ceasefire agreed as 15 February, actual intensive fighting continued till 20s February 2015. As a result, 'DPR' managed to occupy the town of Debaltseve. It continues to control the town, in a clear violation of the contact line agreed for the ceasefire.

Since then, situation remained tense with regular escalations, most intensive one being 'DPR's' failed attack on the Ukrainian village of Maryinka in June 2015. As a result, in total 430 Ukrainian servicemen were killed during March – October 2015, including 54 during relatively 'calm' September–October 2015 period<sup>11</sup>.

In general, for the period of 15 February – 4 December 2015 there were only 47 days (15%) without wounded and killed from the Ukrainian side. Multi-days cease-fire without losses from the Ukrainian side (except of the mine detonations casualties) happened only few times: 20–23 September, 10–19 October, 1–8 November, so only these periods can be considered as a formal cease-fire.

Intensity of fighting decreased only in September 2015 after the Trilateral Contact Group once again agreed the ceasefire on 26 August 2015. A crucial factor was that in September 2015 Russia started preparations for its military operation in Syria and refocused its attention from Ukraine. If it had been Ukraine who initiated fighting, it would have been logical to expect increase of fighting in September–October 2015, using this moment of Russia's other military priorities. But in fact, with Russia's attention shifted to Syria, almost full ceasefire lasted in Donbas from September till mid-November 2015, with Ukrainian losses caused mostly by mines.

In November–December 2015, however, shelling of the Ukrainian positions intensified. Usually, the new wave of shelling coincides with the important dates, such as Independence Day, the anniversary of the beginning of the Euromaidan or new round of the negotiations of the Trilateral Contact Group. For example, in its report on 19 November 2015, the Organization for Security and Cooperation in Europe Special Monitoring Mission to Ukraine (OSCE SMM) stated:

- "In Donetsk region, the SMM recorded a significant increase in ceasefire violations"
- "In Luhansk region, the SMM observed over a four-hour period continuous live-fire training some 2km east of "Lugansk People's Republic" ("LPR")-controlled Oleksiivka (33km south-west of Luhansk). The SMM heard explosions consistent with the use of heavy artillery – which is restricted in this area – and mortars, as well as SALW [small arms and light weapons]"<sup>12</sup>

Table 1. **Shelling of Ukrainian positions with prohibited weapons (not counting handguns and grenades fire etc. minor violations), 24 August – 1 December 2015<sup>13</sup>**

Date	What type	Where	Note
1 December	82 mm mortars	near Avdiyivka (Donetsk region)	Mortar shelling report
25 November	"Grad" multiple rocket launcher	DPR-controlled Spartak settlement in direction of Horlivka	Lunch of 20 rockets.
24 November	120 mm mortars, 82 mm mortars	near Donetsk	Mortar shelling report
23 November	Mortars (unknown)	Near Horlivka	Mortar shelling report
21 November	82 mm mortars	Shchastia (near Luhansk), Maryinka and Krasnohorivka (near Donetsk), Shyrokyne (near Mariupol)	Mortar shelling report
20 November	82 mm mortars	Maryinka and Krasnohorivka (near Donetsk)	Mortar shelling report
18 November	82 mm mortars	Krasnohorivka (near Donetsk)	Mortar shelling report
18 November	Mortars (unknown)	near Novotroitske entry-exit checkpoint on Mariupol, Mayorsk (near Horlivka)	Mortar shelling report

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

12 <http://www.osce.org/ukraine-smm/201701>

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



18 November	82 mm mortars	Troitske (Luhansk region)	Four mortar shots
17 November	82 mm mortars	Krasnohorivka (near Donetsk)	Three mortar shots
16 November	Grad multiple rocket launcher	Near Donetsk	Lunch of 9 rockets.
16 November	82 mm mortars	Maryinka (near Donetsk)	Mortar shelling report
14 November	120 mm mortars	near Avdiivka (Donetsk region)	Mortar shelling report
13 November	82 mm mortars	near Avdiivka (Donetsk region)	Mortar shelling report
11 November	82 mm mortars	near Trokhizbenka (Luhansk region)	Mortar shelling report
10 November	82 mm mortars	near Bolotene (Luhansk region) Zaitseve and Mayorsk (near Horlivka)	Mortar shelling report
9 November	120 mm mortars	near Popasna	Mortar shelling report
8 November	82 mm mortars	near Donetsk	Mortar shelling report
7 November	82 mm mortars	near Novoselivka Druha (Donetsk region)	Mortar shot report
6 November	82 mm mortars	near Krasnohorivka (Donetsk region)	Mortar shelling report
5 November	82 mm mortars	near Krasnohorivka (Donetsk region)	Two mortar shots
30 September	Mortars (unknown)	near Krasnohorivka (Donetsk region)	Mortar shelling report
21 September	Mortars (unknown)	Sokilnyky (Luhansk region)	Mortar shelling report
15 September	Mortars (unknown)	Chermalyk (near Mariupol)	Mortar shelling report
7 September	Mortars (unknown)	Maryinka (near Donetsk)	Mortar shelling report
5 September	120 mm mortars	near Donetsk	Mortar shelling report
4 September	82 mm mortars	Maryinka (near Donetsk)	Mortar shelling report
2 September	120 mm mortars	near Novotoshkivske(Luhansk region)	Mortar shelling report
1 September	Mortars (unknown)	Shchastia (near Luhansk)	Mortar shelling
28 August	152 mm artillery, 120 mm mortars	Hranitne (near Mariupol)	Artillery and mortar shelling
28 August	Artillery, mortars	near Donetsk	Artillery and mortar shelling
28 August	120 mm mortars	Troitske (Luhansk region)	Mortar shelling report
28 August	82 mm mortars	Shchastia, Stanytsia Luhanska, Tryokhizbenka and Popasna (Luhansk region)	Mortar shelling report
27 August	Artillery	Syze (Luhansk region)	Artillery shelling
27 August	Mortars (unknown)	near Stanytsia Luhanska, Stary Aidar (Luhansk region)	Mortar shelling report
27 August	120 mm mortars	Area of Tryokhizbenka – Krymske – Orikhove (Luhansk region)	Mortar shelling report
27 August	Artillery	area of Luhanske (Donetsk region)	Artillery shelling
27 August	Grad multiple rocket launcher	Opytne (near Donetsk)	Rocket attack
27 August	Artillery	Avdiivka (near Donetsk)	Artillery shelling, part of the projectiles exploded in the residential area
27 August	122 mm artillery, 120 mm mortars	line from Bohdanivka to Starohnativka (Donetsk region)	Artillery and mortar shelling
26 August	Multiple rocket launcher	near Starohnativka (Donetsk region)	Rocket attack
26 August	122 mm artillery	Lebedynske (Donetsk region)	Artillery shelling
26 August	Artillery	Line near Donetsk	Artillery shelling
26 August	Artillery, mortars	area of Luhanske (Donetsk region)	Artillery and mortar shelling
26 August	Mortars (unknown)	Stanytsia Luhanska, Troitske (Luhansk region)	Mortar shelling report
25 August	122 mm artillery	Avdiivka (near Donetsk)	Artillery shelling. Several houses and power supply lines were damaged
25 August	152 mm artillery	near of Luhanske (Donetsk region)	Artillery shelling
25 August	Artillery	Position between Horlivka and Donetsk	Artillery shelling
25 August	Mortars (unknown)	Line Starohnativka – Hranitne (Donetsk region)	Mortar shelling report
25 August	Mortars (unknown)	near Popasna, Stanytsia Luhanska, Shchastia, (Luhansk region)	Mortar shelling report
24 August	Artillery, mortars	Krymske and Nyzhne (Luhansk region)	Artillery and mortar shelling

---

24 August	Artillery, mortars	Avdiivka, Krasnohorivka (near Donetsk)	Artillery and mortar shelling
24 August	Artillery	Novotoshkivske and Tryokhizbenka (Luhansk region)	Artillery shelling
24 August	Mortars (unknown)	Stanytsia Luhanska, Shchastya, (Luhansk region)	Mortar shelling report

**2. Withdrawal of all heavy weapons by both sides at equal distances in order to create a security zone to be at least 50-km-wide from each other for 100mm or bigger caliber artillery systems, a 70-km-wide security zone for MLRS [multiple launch rocket systems], and a 140-km-wide security zone for Tornado-S, Uragan and Smerch MLRS and Tochka-U tactical missile systems .... The withdrawal of the abovementioned heavy weapons shall begin no later than on the second day after the ceasefire and shall end within 14 days...**

A specific document on the withdrawal of the weapons arms, 'Control plan for coordination and implementation of a package of measures to implement the Minsk agreements', was signed on 20-22 February 2015 by representatives of the military commanders of Ukraine, Russia, 'DPR' and 'LPR'<sup>14</sup>. The document was agreed at the Joint center for control and coordination of issues regarding ceasefire and gradual stabilization of the contact line (this center was created with the beginning of the Minsk process in September 2014 and is a point of communication between the military of Russia and Ukraine in Donbas).

According to the plan, weapons should have been withdrawn simultaneously by both sides, starting from 22 February, within the period of 14 days. This plan has already constituted a break of the Minsk-2 as it clearly required beginning withdrawal of weapons no later than 17 February and completing it within 14 days. The reason for the delay was that the Russian forces have been unable to meet the deadline set by the Russian leadership (before start of the Minsk talks of 11-12 February 2015) for capturing area around the town of Debaltseve.

Although the sides have declared completion of the withdrawal of heavy weapons at the appointed time, the OSCE SMM has regularly reported violations – heavy weapons were recorded in the prohibited area, changing of weapons occurred in places of permanent deployment, and until recently, "DNR" and "LPR" did not provide identification numbers of their weapons to be controlled. The reason was a constant movement of weapons of "DNR" and "LPR" to the territory of the Russian Federation (for repair and recycling) and back (new and refurbished samples). Mentioning in the text of the Minsk agreement of the multiple launch rocket systems (MLRS) "Tornado-S", which was added to the Russian armoury only in 2012, confirms the movement of the arms from the Russian territory.

There are more and more evidences of the new weapons modifications present only in Russia (not delivered for export). For example, a heavy multiple launch thermobaric rocket system (TOS-1 *Buratino*, 220mm), which is produced only in Russia, never supplied to Ukraine and was spotted by observers from the OSCE SMM at the training area at LPR-controlled Kruhlyk (31 km south-west of Luhansk)<sup>15</sup>.

After shift of Russian attention to Syria, it was possible to sign an additional document – "Agreement on the withdrawal of weapons calibre up to 100 mm and tanks from the line of contact" (beyond the requirements of the Minsk agreements), which was issued as a supplement to the Minsk agreements. It was worked out back on 21 July, but was not signed because of the constant violations of the ceasefire. The signing took place on 29-30 September in Minsk by members of the Trilateral Contact Group and on the next day by the leaders of "DNR" and "LPR". It was envisaged to withdraw tanks and artillery up to 100 mm for 15 km, in two stages, during a total period of 41 days: the first stage – in two days after the signing, the second stage – in 24 days. Withdrawal process was formally completed on 12 November 2015. OSCE SMM has not yet confirmed the full withdrawal of the arms, but notes that efforts are being taken in this direction.

Table 2. **List of the noticed DPR/LPR weapons in violation of respective withdrawal lines according to the Minsk agreement and additional protocol after 15 February 2015<sup>16</sup>**

Date noticed	Type of a weapon	Place noticed	Note
1 December	12 stationary towed howitzers (D30, 122 mm).	Near LPR-controlled Yurivka (26km south-west of Luhansk)	Three armed LPR members prevented the SMM from approaching the weaponry
28 November	14 towed artillery pieces, 24 tanks, 100 unspecified armoured vehicles and 30 trucks	near LPR-controlled Buhaivka (36km south-west of Luhansk), within the 25km exclusion zone	Aerial surveillance imagery available to the SMM

14 From the Ukrainian side by Major-General Oleksandr Rozmaznin, from the Russian side by Colonel-General Aleksandr Lentsov.

15 SMM OSCE report on 27 September – <http://www.osce.org/ukraine-smm/186276>

16 According to the daily reports of the Special Monitoring Mission OSCE

26 November	12 howitzers (D30, 122 mm)	Near LPR-controlled Yurivka (26km south-west of Luhansk)	
22 November	1 self-propelled howitzer (2S1 <i>Gvozdika</i> , 122mm)	Near DPR-controlled Makiyivka (12km northeast of Donetsk).	
18 November	11 towed howitzers (D-30, 122mm)	LPR-controlled Oleksiivka	
16 November	two self-propelled howitzers (2S1, <i>Gvozdika</i> , 122mm)	DPR-controlled Makiyivka (12 km north-east of Donetsk)	
12 November	two tanks (T-64)	in LPR-controlled areas close to Luhansk city;	
8 November	At least one and probably up to four (three were camouflaged under a canopy), self-propelled howitzers (2S1 <i>Gvozdika</i> , 122mm)	DPR-controlled Makiyivka (12km north-east of Donetsk)	The SMM was refused to access into the compound by armed DPR members
8 November	one tank (T-64)	LPR-controlled Luhansk city	
4 November	5 tanks	DPR-controlled Rozdolne (67km north – east of Mariupol)	The SMM unmanned aerial vehicle (UAV). The SMM UAV carried out an emergency landing following jamming of its GPS near the launch site shortly after take-off
3 November	One howitzer (122mm D-30)	LPR-controlled Luhansk city	
3 November	5 self-propelled howitzers (122mm 2S1 <i>Gvozdika</i> )	DPR-controlled Rodnykove (70km northeast of Mariupol).	SMM UAV observed
30 October	5 tanks	area of DPR-controlled Donetsk city	SMM UAV observed
30 October	One tank	area of Bezimenne (29km east of Mariupol)	SMM UAV observed
24 October	One tank	DPR-controlled Michurine (56km north-east of Mariupol)	
24 October	4 infantry fighting vehicles (BMP-1) – one fitted with an anti-tank system	area of DPR-controlled Telmanove (67km south-south-east of Donetsk)	
22 October	16 tanks	DPR-controlled area of Sontseve (59km north-east of Mariupol)	SMM UAV observed
19 October	2 self-propelled howitzers (2S1 <i>Gvozdika</i> , 122mm)	area of DPR-controlled Petrivske (42km south-east of Donetsk)	SMM UAV observed
19 October	3 tanks	area of DPR-controlled Michurine (55km north-east of Mariupol)	SMM UAV observed
19 October	26 tanks and one mobile air defence missile system (9K35 <i>Strela-10M</i> )	area of DPR-controlled Sontseve (60km north-east of Mariupol)	SMM UAV observed
19 October	2 tanks	area of DPR-controlled Bezimenne (30km east of Mariupol)	SMM UAV observed
19 October	2 self-propelled howitzers (2S1 <i>Gvozdika</i> , 122mm)	area of DPR-controlled Oktiabr (28km north-east of Mariupol)	SMM UAV observed. SMM UAV experienced jamming over DPR-controlled Zaichenko (25km north-east of Mariupol)
18 October	25 tanks and other military equipment.	DPR-controlled area of Sontseve (59km north-east of Mariupol)	SMM UAV observed
18 October	2 tanks	area of DPR-controlled Bezimenne (30km east of Mariupol)	SMM UAV observed
17 October	2 self-propelled howitzers (122mm 2S1 <i>Gvozdika</i> )	DPR-controlled area of Petrivske (77km north-east of Mariupol)	SMM UAV observed
17 October	5 tanks (T-64)	outskirts of DPR-controlled Horlivka (39km north-east of Donetsk)	
15 October	two 152mm D-20 towed-howitzers	In a field south of DPR-controlled Donetsk.	SMM UAV observed
14 October	8 self-propelled howitzers (122mm 2S1 “ <i>Gvozdika</i> )	Area of DPR-controlled Ternove (56 km east of Donetsk).	SMM UAV observed

14 October	one self-propelled howitzer (122mm 2S1 "Gvozdika")	area of DPR-controlled Petrivske (40km south-south-east of Donetsk)	SMM UAV observed
14 October	8 tanks	area of DPR-controlled Sontseve (60km north-east of Mariupol)	SMM UAV observed
13 October	2 tanks (T-72)	area of "DPR-controlled Yasynovata (15km north-east of Donetsk)	
13 October	tank	area of DPR-controlled Donetsk airport (9km north-west of Donetsk)	SMM UAV observed
13 October	2 tank	area of DPR-controlled Bezimenne (30km east of Mariupol)	SMM UAV observed
13 October	one self-propelled howitzer (122mm 2S1 "Gvozdika")	area of DPR- Petrivske (77 km north-east of Mariupol)	SMM UAV observed
10 October	one self-propelled howitzer (122mm 2S1 "Gvozdika")	area of DPR-controlled Petrivske (77km north-east of Mariupol)	SMM UAV observed
10 October	7 tanks and other military equipment	area of DPR-controlled Komsomolske (74km north-east of Mariupol)	SMM UAV observed
10 October	23 tanks and other military equipment	area of DPR-controlled Sontseve (60km north-east of Mariupol)	SMM UAV observed
9 October	3 tanks	close to DPR-controlled Bezimenne (30 km east of Mariupol)	SMM UAV observed
8 October	12 tanks	area of DPR-controlled Sontseve (60 km north-east of Mariupol)	SMM UAV observed
8 October	3 tanks	area of DPR-controlled Michurine (56 km north-east of Mariupol)	SMM UAV observed
8 October	4 122 mm self-propelled howitzers 2S1 "Gvozdika"	area of DPR-controlled Michurine Kozlivka (42km east of Mariupol)	SMM UAV observed
7 October	3 tanks and one self-propelled howitzer	area of DPR-controlled Bezimenne (30km east of Mariupol)	
6 October	22 tanks	area of DPR-controlled Sontseve (59 km north-east of Mariupol)	SMM UAV observed
6 October	3 tanks	area of DPR-controlled Michurine (56km north-east of Mariupol)	SMM UAV observed
6 October	2 self-propelled howitzers (122mm 2S1 "Gvozdika")	in the area north of DPR-controlled Starolaspa (60 km north-east of Mariupol)	SMM UAV observed
6 October	2 tanks and other military equipment	DPR-controlled Komsomolske (73 km north-east of Mariupol)	SMM UAV observed
4 October	21 tanks	DPR-controlled area of Sontseve (58 km north-east of Mariupol)	SMM UAV observed
4 October	two towed artillery pieces	in the DPR-controlled area of Oktyabr (29 km north-east of Mariupol)	SMM UAV observed
4 October	one self-propelled howitzer ("Gvozdika", 122 mm) and one tank	DPR-controlled Bezimenne (30 km east of Mariupol)	SMM UAV observed
3 October	6 tanks and other military equipment	DPR-controlled Komsomolske (73 km north-east of Mariupol)	SMM UAV observed
3 October	2 tanks	DPR-controlled Michurine (56km north-east of Mariupol)	SMM UAV observed
3 October	2 tanks	DPR-controlled Bezimenne (30 km east of Mariupol)	SMM UAV observed
3 October	20 tanks	DPR-controlled area of Sontseve (58 km north-east of Mariupol)	SMM UAV observed
2 October	20 tanks	DPR"-controlled area of Sontseve (58 km north-east of Mariupol)	SMM UAV observed
2 October	6 self-propelled howitzers	DPR"-controlled area of Rozdolne (64 km north-east of Mariupol)	SMM UAV observed
2 October	7 tanks, at least 14 infantry fighting vehicles (BMPs)	DPR-controlled Komsomolske (73 km north-east of Mariupol)	SMM UAV observed
2 October	64 tanks	Area of DPR-controlled Ternove (56 km east of Donetsk).	SMM UAV observed

Note: It should be considered that 'DPR'/'LPR' militants often prohibit OSCE SMM observers to visit some areas under their occupation. According to the Ukrainian security sources as well as volunteer group "Information resistance"<sup>17</sup>, 'DPR'/'LPR' avoid withdrawing of essential quantities of heavy weapons. Militants use industrial areas, especially closed plants and coalmines to hide MLRS, heavy artillery and tanks in close proximity to a contact line, especially in Donetsk, Horlivka and Luhansk.

---

17 <http://sprotyv.info/en>

### **3. Ensure effective monitoring and verification of the ceasefire regime and the withdrawal of heavy weapons by the OSCE from the first day of the withdrawal, with the use of all necessary technical means, including satellites, unmanned aerial vehicles, radar systems and so on.**

At the time of signing the Minsk agreements, a Special Monitoring Mission (SMM) of the OSCE was already operating in Ukraine, launched in March 2014 with the beginning of Russian aggression against Ukraine. The Mission started monitoring the situation in the conflict area immediately after the signing of Minsk agreements. From the very beginning, Ukraine's position on the SMM has been to strengthen its mandate and increase in personnel numbers. This corresponds to the position of Ukraine to deploy in the conflict area a wide international mission, perhaps under the auspices of the UN or the EU, to facilitate a comprehensive conflict resolution.

Since September 2015, SMM operation intensified with the start of the implementation of the supplementary document on the withdrawal of tanks and artillery calibre of up to 100 mm. On 2 October 2015, the "Normandy format" summit in Paris agreed on expansion of the mission and widening its responsibilities to demining. To date, mission staff has reached 650 people, 570 of which are located in the east of Ukraine in the conflict area. On the 22th OSCE ministerial conference in Belgrade on 3–4 December 2015, it was decided to extend the mission's mandate for another year, to advance its technical equipment and increase the personnel number.

A major question, however, continues to be the restriction of access for SMM monitors. Both 'DPR'/'LPR' representatives and the Russian officials prevent the OSCE mission to have a full access for monitoring purposes. If some areas are not monitored due to the security reasons (mine field, shelling), so others are impossible to monitor due to the deliberate restrictions. For examples, "LPR" members continue to prevent the SMM from monitoring many areas close to the border with the Russian Federation in parts of Luhansk region not controlled by the Government" – as stated in one of the daily reports issued by the Mission, with details of such restrictions of access<sup>18</sup>.

Also, numerous cases of violent attitude towards the observers were reported. For example, in August 2015, the SMM reported about an apparent arson attack on its cars in militant-controlled Donetsk<sup>19</sup>. Direct violence committed against OSCE monitors also being noticed, and named by the Deputy Chief of the Mission Hug as "deliberate, hostile interference with the work of the OSCE SMM that amounts to censorship"<sup>20</sup>.

Such restrictions are applied not only by the separatist combatants, but the Russian side itself, what can be considered as an evidence of unwillingness to fulfil their Minsk commitments. Since the very beginning, Russian side prevents observers of OSCE SMM to monitor Russian – Ukrainian border in "the certain areas of Donetsk and Luhansk regions"<sup>21</sup>.

---

18 <http://www.osce.org/ukraine-smm/201701>

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

20 <http://uacrisis.org/30171-obsye-12>

21 SMM OSCE report on 1 December, see "Restrictions to SMM's freedom of movement or other impediments to the fulfillment of its mandate" – <http://www.osce.org/ukraine-smm/205451>

**4. On the first day following the withdrawal, to start the dialogue on the modalities of holding local elections in accordance with Ukrainian legislation and Ukraine's law "On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions" as well as on a future regime of these districts on the basis of this law.**

**Immediately, no later than in 30 days since the date of the signing of the given document, to adopt a Verkhovna Rada [Ukrainian parliament] resolution to specify the territory to which the special regime applies in accordance with the law of Ukraine "On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions" on the basis of the line set by the Minsk memorandum of 19 September 2014.**

And in addition to it,

**12. Issues related to local elections shall be discussed and agreed with representatives of certain districts of Donetsk and Luhansk regions within the framework of the Trilateral Contact Group on the basis of the Ukrainian law "On the special procedure of local self-government in certain districts of Donetsk and Luhansk regions". Elections shall be held in compliance with the relevant OSCE standards and monitored by the OSCE ODIHR [Office for Democratic Institutions and Human Rights].**

Dialogue on modalities for local elections began in the framework of the Trilateral Contact Group after the formal announcement of the withdrawal of heavy weapons. The positions of Russia and Ukraine are fundamentally different. The Russian leadership believes, and this view is broadcast through the leaders of "DPR" and "LPR", that such negotiations should take place at the political level between Kyiv, Donetsk and Luhansk. In Russia, this is called "a political part" of the Minsk agreements, which Ukraine allegedly does not comply with. Russia's goal is to have the leaders of "DPR" and "LPR", appointed in Moscow, legalized within Ukrainian political and legal field, to influence through them the political life of Ukraine. This interpretation of the Minsk agreement is excessively arbitrary and contrary to its text. Clause 4 of the Minsk-2 Agreement does not specify how exactly the dialogue on the modalities of the elections should be conducted. From a Ukrainian point of view, the format of the Trilateral Contact Group is quite adequate and clearly defined by Clause 12 of the Minsk-2.

Proper conditions for organisation of local elections are another point of fundamental difference between the parties. Discussions intensified on the eve of the Ukrainian local elections in October 2015 while the leaders of the separatists unilaterally announced the organisation of their own local elections for 18 October 2015 in 'DPR' and 1 November 2015 in 'LPR' without any correspondence to the Ukrainian legislation. Only after the 2 October 2015 'Normandy format' summit in Paris the sides managed to persuade unrecognized 'republics' to postpone their elections till 2016 and move to a substantive discussion of the conditions for elections organisation.

Ukrainian position is based on the text of the Agreements where it is mentioned that these elections should be held 'in accordance with Ukrainian legislation' and 'in compliance with the relevant OSCE standards'. Thus, it means free access of the media and international observers; free competition of the Ukrainian political parties; and the top authority of the national Central Election Committee. Organization of the elections is also challenged by the current security situation, as it is impossible to organize free elections under the guns, without ceasefire and disarmament clauses of the Minsk agreements fulfilled. Also, one should consider more than 1 million IDPs in Ukraine from the Eastern regions, who do not have a possibility to vote under the current conditions. So, logically, these issues should be addressed first as the proper conditions for having free and fair elections.

On 17 March 2015, the Parliament of Ukraine adopted corresponding amendments to the Law "On the special procedure of local self-governance in some districts of Donetsk and Luhansk regions"<sup>22</sup> as well as adopted a resolution on the determination of individual regions, cities, towns and villages of Donetsk and Luhansk regions

22 <http://zakon2.rada.gov.ua/laws/show/256-19/paran2#n2>



where the special procedure for the local self-government is introduced<sup>23</sup>. A violation can be seen here only in three days delay for adoption from the schedule provided in the Minsk-2 (33 days after signing instead of 30).

The position presented by 'DPR'/ 'LPR' leaders, is that the admission of Ukrainian political parties, Ukrainian media and internally displaced persons to the elections is unacceptable. It is obvious that their intention is to have such elections that would lead to the legitimization of those armed people who are now controlling the territory without a possibility for political competition from those who were forced to move from the area.

In addition, the latest demand of the separatist combatants is to have a momental total amnesty for all 'participants of the events in the Donetsk and Luhansk regions' as a precondition for holding elections. This would allow participation in elections to all participants to the conflict from the 'DPR'/'LPR' side, including Russian citizens, regardless of the type and scale of crimes committed during the conflict. Russia argues that this position is consistent with the provisions of the Minsk agreements, but it is not, as can be seen from the text.

---

23 <http://zakon2.rada.gov.ua/laws/show/252-19>

## **5. Ensure pardon and amnesty by putting into force a law that would ban persecution and punishment of individuals in connection with the events that took place in some areas of the Donetsk and Luhansk regions of Ukraine.**

This clause is not bound in time with the other provisions of the Minsk agreements.

Back in September 2014, the Parliament of Ukraine, on the initiative of the President of Ukraine, adopted the Law 'On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions', which provides a general condition on amnesty in Art.3<sup>24</sup>, and the Law 'On prevention of prosecution and punishment of persons – participants of the events in the Donetsk and Luhansk regions'. The only restrictions for amnesty envisaged were terroristic acts and murder, rape and plunder<sup>25</sup>. This latter law is not yet in force, however, due to the chronic failure of Russia/'DPR'/'LPR' to comply with the conditions of the Minsk agreements, so it was not signed by the Speaker of the Parliament and the President of Ukraine.

After Normandy format summit in Paris on 2 October 2015, Ukraine once again confirmed that legislation on amnesty could be considered. In general, Ukrainian position is that the amnesty cannot be full as some of the cases should be considered as acts against humanity due to their extreme violence and intention.

The position of Ukraine is in line with international practice and the provisions of Additional Protocol II of 1977 to the Geneva Conventions of 1949. The requirement for amnesty means that certain crimes were committed but persons who committed them should be subjects to the maximum possible exemption from punishment. The requirement for a broad amnesty does not imply amnesty for any crimes during the conflict. Heavy crimes and crimes against humanity are not a subject to amnesty. This rule is followed by all countries overcoming an armed conflict. The Parliament of Ukraine has already been discussing possible variations, including so-called "Croatian scenario", when process of amnesty had been taking place more than 11 years.

Moreover, if the conflict considered as an internal one, as Russia claims, then the amnesty cannot be extended to foreign citizens, i.e. citizens of Russia who took part in the events in the Donetsk and Luhansk regions.

At the same time, DPR representative announced in October 2015, that their side has started preparation of their own variant of legislation to be presented at the Trilateral Contact Group meeting, as they definitely would like to exclude terroristic acts from the list of exceptions.<sup>26</sup>

---

24 'The State guarantees, in accordance with the law, prevention of criminal prosecution, criminal and administrative liability and punishment of persons – participants of the events in the Donetsk and Luhansk regions. The authorities and their officials, enterprises, institutions, organisations of all forms of ownership are prohibited from discriminating, prosecuting and punishment of persons in relation to events that took place in Donetsk and Luhansk regions.' – <http://zakon2.rada.gov.ua/laws/show/1680-18>

25 [w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52183&pf35401=313104](http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52183&pf35401=313104)

26 <http://glavcom.ua/news/333940.html>

## **6. Ensure the release and exchange of all the hostages and illegally held individuals on the basis of the “all for all” principle. This process should be completed no later than on the fifth day after the withdrawal.**

Implementation of this clause of Minsk-2 is bound in time to the implementation of the clause 2 on withdrawal of heavy weapons. If withdrawal had been assessed as completed on 8 March 2015, as it was envisaged and declared by the sides, then there would be a breach of the five days deadline for the hostages' release. However, the withdrawal has not been yet announced as completed, so the release of hostages is taking place on the basis of bilateral agreements. In fact, negotiations on the exchange of hostages and illegally detained persons (the term 'prisoner of war' under international humanitarian law applies only to the situation of formally declared war between sovereign states) are constant since the conflict began in the spring of 2014.

According to the official Ukrainian estimations, at the time of signing Minsk-2 on 12 February 2015, the Russian authorities, 'DPR' and 'LPR' held more than 2000 Ukrainian citizens. By the 20 September 2015, according to the Ukrainian representative in the humanitarian working group of the Trilateral Contact Group Iryna Gerashchenko, 2911 Ukrainian citizens were released. In captivity of 'DPR' and 'LPR' there were 163 Ukrainians, including 99 soldiers and 64 civilians. Another 10 people were held in prison in Russia. For the opinion of I.Gerashchenko, the 'DPR'/'LPR' representatives are understating the list of hostages taken<sup>27</sup>. As a result, there are two lists: one is officially agreed (around 140 remaining in captivity by early December 2015) and those who named as 'missing' (around 800 people).

In addition, while discussing the hostages list, those who are under political prosecution in the Russian courts (such as Sentsov and Savchenko) are not taken into account by the Russian Federation.

A number of people illegally detained in 'DPR'/'LPR' urgently need medical help. However, in October 2015 'DPR' de-facto authorities banned, on charges of “espionage”, the activities of international organisation “Doctors without Borders» (MSF), which deals with, among other things, medical assistance to the hostages and illegally detained persons.

Ukraine has repeatedly shown readiness for the exchange as quickly as possible on the “all for all” principle. However, Russia, 'DPR' and 'LPR' inhibit this process by insisting on additional preconditions – first of all, adoption by Ukraine of the law on a momental and total amnesty for all participants to the conflict<sup>28</sup>. This is contrary to the text of Minsk-2, as it does not set any preconditions for “all for all” exchange except for the heavy weapons withdrawal.

---

27 <http://m.mignews.com.ua/ukraine/7432385.html>

28 <http://m.mignews.com.ua/politics/8210461.html>

## 7. Ensure safe access, delivery, storage and distribution of humanitarian aid among those who need it on the basis of an international mechanism.

The situation with the humanitarian aid to the occupied territories is not stable. The first problem is that not all humanitarian organisations can receive accreditation from the separatist 'republics' for delivering humanitarian aid to the area. Usually access is given to either Russian organisations or those from private foundations who had past connections in the region (e.g. Rinat Akhmetov's foundation). The latest scandal happened, when Red Cross reported of their blocking while delivering aid, and that many of their representatives lost their accreditation. In addition, they expressed their opinion that 'DPR' authorities started a mass campaign to discredit representatives of the humanitarian organisations<sup>29</sup>.

Another problem is that there are plenty of cases reported when the humanitarian aid is not provided for free but sold on the occupied territories. In addition, there were cases reported that under the cover of the humanitarian aid, delivery of weapons and smuggling of alcohol etc. take place. The attempts to fight smuggling by the Ukrainian forces resulted in violent attacks against them.

---

29 <http://www.dw.com/uk/%D1%85%D1%82%D0%BE-%D1%96-%D1%87%D0%BE%D0%BC%D1%83-%D0%BD%D0%B5-%D1%85%D0%BE%D1%87%D0%B5-%D0%BC%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D1%83-%D0%B3%D1%83%D0%BC%D0%B0%D0%BD%D1%96%D1%82%D0%B0%D1%80%D0%BD%D1%83-%D0%B4%D0%BE%D0%BF%D0%BE%D0%BC%D0%BE%D0%B3%D1%83-%D0%B2-%D0%BB%D0%BD%D1%80/a-18743036>

## **8. Definition of the modalities of a complete restoration of socio-economic ties, including social transfers, such as pension payments or other payments (receipts and income, paying the utility bills on time and renewing taxation within the framework of Ukraine's legal field).**

**To meet these objectives, Ukraine will restore control over the segment of its banking system in the areas affected by the conflict, and an international mechanism to facilitate these transfers may be set up.**

Not all socio-economic ties can be quickly restored due to the security situation. Numerous cases of attacks to the banks' cars made them to stop money delivery to the uncontrolled territories. At present, 'DPR'/'LPR' allow flow of all possible currencies – Russian rubles, Ukrainian hryvnias and US dollars, with prices in supermarkets mostly presented in rubles. The uncontrolled territories are not paying their utility bills and taxes.

According to the Fourth Geneva Convention of 1949, there is a responsibility of the occupying side to provide services to the civil population in the conflict zone. One may debate whether separatists can be considered as occupying side while Russia, despite its military involvement, is not taking responsibility as a side to the conflict. Anyway, Ukraine as a side which does not control this territory cannot be responsible for meeting the needs and demands of the local population. Ukraine can bear responsibility only about those territories returned under its control where it can guarantee security of the social-economic infrastructure.

Nevertheless, Ukraine does take obligations towards all Ukrainian citizens, including those living under occupation, but fulfils them on the Ukrainian-controlled territory. At present, Ukraine is paying pensions and other social benefits to the people registered at the uncontrolled territories but doing this on the territory controlled by the Ukrainian government, so people need to travel there. For simplification, special logistical centres were created near the contact line with 'DPR'/'LPR' to provide banking services and goods trade for citizens living at the uncontrolled territories who can visit these centres without the line crossing permissions. There are numerous cases when separatists themselves or their close relatives were regularly receiving Ukrainian pensions.

**9. Restoration of full control over the state border in the whole zone of the conflict on the part of the Ukrainian government, which should begin on the first day after local elections and finish after an all-inclusive political settlement (local elections in certain districts of Donetsk and Luhansk regions on the basis of Ukraine's law, and constitutional reform) by the end of 2015, providing the implementation of clause 11 – in consultations and with the agreement of representatives of certain districts of Donetsk and Luhansk regions within the framework of the Trilateral Contact Group.**

This clause is one of the most important for the realization of the Minsk agreement and political designation of roles for the parties involved in the crisis. The border is always a bilateral thing, so as soon as Ukrainian government is not controlling the border due to the uncontrolled territories, another side responsible is the Russian Federation. As the inflow of the illegal weapons and military personal is regularly reported by the OSCE, journalists and others, in addition to the Russian soldiers caught at the Ukrainian territory, one can say that the Russian Federation is either directly supporting the separatists in Donbas or is not able to control its own border. However, Russian Federation provided assurance that it was controlling its borders<sup>30</sup>, meaning it was just ignoring the fact of the weapons and fighters flow.

Allowing a free flow of fighters and weapons should be regarded as taking a side to the conflict and supplying separatists with fighters, ammunition, finance, and even regular troops, and thus be regarded as a role of an aggressor state, according to the UN General Assembly Resolution 3314.

The Russian Federation has already expressed one of its conditions that it could close the Russian-Ukrainian border along Donetsk and Luhansk regions only after all other clauses of the Minsk agreements were implemented. Such statements are quite illogical since if other clauses are implemented it means the conflict is more or less solved. Implementation of provisions of the Minsk agreements on local elections, delivery of humanitarian aid, the restoration of the economic infrastructure, the withdrawal of foreign armed groups etc. logically demand restoration of Ukraine's control over the border, possibly with the mediation and presence of missions of international organisations like OSCE.

---

30 [http://zn.ua/POLITICS/rossiya-otkazalas-zakryvat-granicu-s-donbassom-i-vyvodit-voyska-161550\\_.html](http://zn.ua/POLITICS/rossiya-otkazalas-zakryvat-granicu-s-donbassom-i-vyvodit-voyska-161550_.html)

## 10. Withdrawal of all foreign armed formations, military hardware and mercenaries from Ukrainian territory under the OSCE's supervision. Disarmament of all illegal groups.

There is no sign of essential decrease of the Russian military contingent in Eastern Ukraine. Ukrainian and foreign military experts say that there are still at least 8 thousand regular Russian troops in "the certain areas of Donetsk and Luhansk regions".

It is necessary to mention that the so-called "people militia" of "Donetsk People Republic" (DPR) and "Luhansk People Republic" (LPR) form a 36 thousand strong military structure, which possess hundreds battle tanks, MLRS and field artillery (see table. 3).

Table 3. **Weapons of Russian army and DPR/ LPR forces in "the certain areas of Donetsk and Luhansk regions" according to the Ukraine military intelligence<sup>31</sup>**

Type of weapon	DPR/ LPR forces	Russian army
Tanks	450	240
Armoured vehicle	950	530
Field artillery	370	160
Multiplies rocket launcher systems	200	90

Ukrainian military intelligence has evidences that the main forces of the self-proclaimed DPR and LPR, are not only armed and supplied by Russia, but integrated in the Russia army structure<sup>32</sup>. They are organized in two military corps, one for Donetsk, one for Luhansk region, under direct command of the Centre of the Territorial Forces, established on the basis of the 12th Reserve Command, Southern Military District of the Russia Federation.

Before autumn 2014, the mosaic of the forces involved had been complicated and manifold, as comprised of different groups, including uncontrolled and criminal, who used the conflict as a possibility. During autumn 2014 – summer 2015, the Russian special services had dismantled uncontrolled separatist armed groups using arrests and even assassinations of local warlords as well as leaders of such groups as "cossacks" – paramilitary groups legally established in Russia since 1990-s<sup>33</sup>. Ordinary militants from such groups were forced to join "official units" or give up weapons. Some insight about this system, where a mix of local militants and Russian mercenaries almost fully controlled by the Russian military staff, presented in the interview of the Russian Major Vladimir Starkov for Euronews in August 2015<sup>34</sup>. His trucks with ammunition for separatists "accidentally" came to the Ukraine military position, where he was arrested.

It is necessary to mention that Russian direct military involvement is not a secret for the international community. The EU in its personal sanctions acknowledged the Russian military senior staff involvement, e.g. Deputy Minister of Defence Anatolij Antonov appeared in the EU sanction list with the wording: "in that capacity, involved in supporting the deployment of Russian troops in Ukraine"<sup>35</sup>.

At the same time, Russia considers Ukrainian former volunteer battalions as illegal, insisting on their disbandment. However, Ukrainian volunteer battalions, which appeared in spring of 2014, starting from autumn 2014 have been fully incorporated in the Military Forces of Ukraine, National Police and the National Guard. A bit longer problem existed with "Right sector" battalion, but its fighters have been integrated by autumn 2015. So insisting on disbanding the so-called volunteer battalions, the Russian Federation is trying to prohibit an integral part of the Ukrainian armed forces, which are fully bound by Ukrainian state legislation.

31 <http://gur.mil.gov.ua/en/content/russia-armed-aggression-against-ukraine.html>

32 About reorganization of the 12th Reserve Command, Southern Military District into the Center of the Territorial Forces – <http://gur.mil.gov.ua/en/content/shchodo-reorhanizatsii-12-komanduvannia-rezervu-pivdennoho-viiskovoho-okruhu-u-tsentri-terytorialnykh-viisk.html>

33 <http://time.com/95898/wolves-hundred-ukraine-russia-cossack/>

34 <http://www.euronews.com/2015/08/12/caught-red-handed-the-russian-major-fighting-in-ukraine/>

35 [http://www.consilium.europa.eu/en/press/press-releases/2015/09/pdf/150915-sanctions-table---Persons--and-entities\\_pdf/](http://www.consilium.europa.eu/en/press/press-releases/2015/09/pdf/150915-sanctions-table---Persons--and-entities_pdf/)

## **11. Realization of constitutional reform in Ukraine, with the new constitution to enter into force by the end of 2015, and assuming as a key element the decentralization (taking into account the peculiarities of certain districts of Donetsk and Luhansk regions, as agreed with representatives of these districts), and the enactment of permanent legislation on the special status of certain districts of Donetsk and Luhansk regions in accordance with the measures specified in the footnotes, until the end of 2015.**

As mentioned above, legislation on special status of certain districts of Donetsk and Luhansk regions was adopted back in September 2014 when the Parliament of Ukraine, on the initiative of the President of Ukraine, adopted the Law ‘On the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions’<sup>36</sup>. Despite the tense debate during the closed session of the Ukrainian parliament, the bill was approved. In March 2015, the Parliament of Ukraine adopted corresponding amendments to the Law “On the special procedure of local self-governance in some districts of Donetsk and Luhansk regions” to provide basic requirements to hold local elections<sup>37</sup> as well as adopted a resolution on the determination of individual regions, cities, towns and villages Donetsk and Luhansk regions where the special procedure for the local self-government is introduced<sup>38</sup>. Thus, legislation allowing special treatment of the currently uncontrolled territories is already largely in place.

It may be argued, however, that by imposing the requirement to pursue *constitutional* changes under Minsk-2 agreement, the Western powers and Russia made President Poroshenko to go beyond his authority, since defining the Constitution belongs to the responsibility of the Parliament and the people of Ukraine.

It is clear that Russia does not want to annex Donbas in the same way as Crimea. Instead, Moscow wants Donbas to remain a part of Ukraine to be used as a leverage on Kyiv. Kremlin would like to see ‘federalisation’/‘Bosnianisation’ of Ukraine as a result of the constitutional process, i.e. turning it into a dysfunctional divided state. In such a scenario, Moscow would remain in full de facto control over legitimised autonomous separatist ‘republics’ with their own ‘people’s militia’, i.e. de facto military, and local executive and judicial authorities. Moreover, Ukraine (and probably the West) would pay for the reconstruction of the destroyed Donbas economy and infrastructure. What is more important, these separatist enclaves could gain the veto power over major national political decisions in Ukraine. This Russian pressure for a ‘special constitutional status’ for Donbas heavily complicated the constitutional process of the general decentralisation reform in Ukraine.

Still, on 31 August 2015 the Parliament of Ukraine adopted in the first reading the draft of constitutional amendments on decentralisation for Ukraine together with a provisional article on the special procedure of local self-governance in certain districts of Donetsk and Luhansk regions. Actually, decentralisation of Ukraine is generally supported by the public and has been a priority of the Ukraine-EU Association Agenda. However, the ‘special status’ for the occupied areas has provoked a serious political divide within the ruling coalition. Still, these changes were approved due to the hints from the President Poroshenko to the Parliament that Kyiv was in danger of losing Western support (US Assistant Secretary of State Victoria Nuland’s presence in the Rada during the vote was seen by Ukrainians as open pressure). This vote led to clashes in front of the Parliament and the death of four soldiers of the National Guard.

Currently, the adopted draft is expected to come for the second reading. It is estimated, however, that for the time being it will be difficult to collect 300 votes (out of 450) needed for the second reading of the constitutional changes, because of the ‘special status’ clause. At the same time, there are no principle objections to the overall decentralisation of powers in Ukraine and therefore this reform has been actively continued<sup>39</sup>.

In the eyes of many Ukrainians, Western pressure on Kyiv to implement clause 11 on constitutional changes ahead of implementing ceasefire and other urgent clauses of Minsk-2 looks like “appeasing” Russia for aggression and assisting it to achieve its goals of ‘Bosnianisation’ of Ukraine. It is widely seen that Kyiv can have a meaningful dialogue on the future constitutional devolution of powers only with legitimately democratically elected representatives of the Donbas region, i.e. it can be possible after proper implementation of the clauses 4 and 12 of Minsk-2 (see above).

36 <http://zakon2.rada.gov.ua/laws/show/1680-18>

37 <http://zakon2.rada.gov.ua/laws/show/256-19/paran2#n2>

38 <http://zakon2.rada.gov.ua/laws/show/252-19>

39 Details on the decentralization reform implementation in Ukraine can be found on the official thematic website: <http://decentralization.gov.ua/en>



### **13. Intensification of the activities of the Trilateral Contact Group, including by means of establishing working groups to fulfil the respective aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.**

The Trilateral Contact Group on Ukraine was set up following the first Normandy format meeting in June 2014 to facilitate dialogue between the governments of Ukraine and the Russian Federation to find diplomatic resolution to the war in Donbas.

The Group originally was composed of representatives from Ukraine (former President of Ukraine Leonid Kuchma), the Russian Federation (Russian Ambassador to Ukraine Mikhail Zurabov), and the Organization for Security and Co-operation in Europe (Swiss diplomat Heidi Tagliavini, later changed to the Austrian Ambassador Martin Sajdik). Representatives of separatists ('Donetsk People's Republic' and 'Luhansk People's Republic') take part in the discussions of the Group.

Currently, the Group is supported by four thematic working groups:

- On security issues;
- On political issues;
- On humanitarian issues;
- On socio-economic issues.

At present, the Group with its working groups is the major platform for discussions between the parties on peace settlement in Donbas. At the same time, top level discussions take place in 'Normandy format' of four leaders: Chancellor of Germany Angela Merkel, President of France François Hollande, President of Ukraine Petro Poroshenko and President of the Russian Federation Vladimir Putin.

## Further Minsk commitments implementation

Except of the Minsk-2 provisions, which originally should complement the Minsk-1, there are few items of the previous agreements, that are also still violated.

According to the Memorandum on the fulfilment of the protocol on the results of consultations of the Trilateral Contact Group about the steps towards implementation of the peace plan of Ukrainian President Petro Poroshenko and initiatives of Russian President Vladimir Putin<sup>40</sup>, better known as a 'Memorandum on cease-fire': (7) *A ban from the moment of approval of this memorandum is to be introduced on flights of military aviation and foreign drones, with the exception of drones used by the monitoring mission of OSCE, along the line of juxtaposition in the weapons-free zone of 30 kilometres width.*

However, within the last year there were numerous incidents including drones, both reported and knocked out. Only for the last three months, more than 20 drones were reported by Ukrainian border guards near the line of contact (see table 4).

Table 4. **List of incidents including unidentified drones for the period 1<sup>st</sup> September – 1<sup>st</sup> December 2015, spotted by Ukrainian border guards near the line of contact<sup>41</sup>**

Date	Where noticed	Result
1 November	near Mariupol	1 drone reported
15 October	near Kurakhove and Kostyantynivka (Donetsk region)	1 drone reported
10 October	near Mariupol	1 drone reported
8 October	near Mariupol	3 drones reported
5 October	near Mariyinka and Mariupol (Donetsk region)	3 drones reported
5 October	Donetsk region	1 drone reported
24 September	near Mariupol	1 drone reported
11 September	Donetsk region	2 drones reported
8 September	near Mariupol	6 drones reported
7 September	near Novoaydar (Luhansk region)	2 drones reported
6 September	Near Mariupol	1 drone reported

40 Signed 5 September 2014, <http://en.interfax.com.ua/news/general/224954.html>

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

## About the authors

**Hanna Shelest**, Editor-in-chief of UA: Ukraine Analytica (<http://ukraine-analytica.org>) and curator of the Ukrainian Peacebuilding School. Previously H.Shelest served as a Senior Researcher at the Odesa branch of the National Institute for Strategic Studies and a Visiting Research Fellow at the NATO Defense College (Italy). She has a PhD in International Relations, specializing in conflict resolution and security issues. She has more than 50 academic and more than 100 media articles on conflicts and security. H.Shelest is a Rotary Peace Fellow (2010), John Smith Fellow (2012) and Marshall Memorial Fellow (2015/2016).

**Oleksii Izhak**, Deputy Director of the Dnipropetrovs'k branch of the National Institute for Strategic Studies. Before starting his career at NISS he worked in defence industry. At his current position his main responsibility is preparing analysis on security issues. Oleksii Izhak has published widely in Ukrainian professional journals and periodicals as well as in international academic publications on issues of nuclear disarmament and control, regional security in Eastern Europe and Black sea region.

**Maksym Palamarchuk**, Political scientist. He had worked as an analyst in National Institute of Strategic Studies and Secretariat of National Security and Defense Council of Ukraine. M. Palamarchuk is an author of more than thirty publications on different aspects of internal security in Ukraine and the Russian Federation.

**Oleksiy Haran**, Professor of Comparative Politics at the National University of Kyiv-Mohyla Academy and Research Director at the Ilko Kucheriv Democratic Initiatives Foundation. He was previously Vice President for Ukraine, Belarus, and Moldova at the Eurasia Foundation (2005–2006) and Dean of the Department of Social Sciences at the Kyiv Mohyla Academy (1991–1994).

**Dmytro Shulga**, European Programme Initiative Director at International Renaissance Foundation. Studied International Relations in Ukraine and European Integration Law in Germany, since 2005 works for IRF.



*The International Renaissance Foundation's mission is to foster an open, participatory, pluralist society based on democratic values in Ukraine. It is part of the Open Society Foundations network, established by investor and philanthropist George Soros.*

[www.irf.ua](http://www.irf.ua)

*'Peace to Ukraine' is a series of publications initiated by the IRF's European programme initiative with the purpose to present views of Ukrainian independent experts on the peace settlement process in Ukraine. The publications represent only the views of its authors.*