

“Donbas reintegration bill”

An opportunity not to be wasted

PAX Position Paper

April 2018



About PAX

PAX means peace. For over 60 years PAX has worked together with people in (post) conflict areas and concerned citizens to build just and peaceful societies across the globe. In times of war and conflict, PAX works towards protection of civilians whatever their political or religious background. We are committed to bringing armed conflict to an end and to building peace with justice. PAX campaigns for the rights of people who are harmed by governments or companies looking to exploit natural resources in the areas where they live. We also work at the international level to prevent conflict and to curb the manufacture, trade and use of weapons that cause unacceptable humanitarian harm. Our guiding principles in this are solidarity and human dignity because we believe that everyone has the right to live free from fear.

Prepared by Andriy Korniychuk & Cinta Depondt (Eastern Europe and Eurasia Program)

About the Program

From the beginning of 2014, PAX has been following closely as events unfolded in Ukraine. During two scoping missions (in May and in September), PAX spoke to over 60 interlocutors from civil society, local authorities and administrations, and churches. The network has expanded ever since and as of 2015 PAX officially started its Eastern Europe & Eurasia Program with a main focus on Ukraine. More information: <https://www.paxforpeace.nl/our-work/regions/ukraine>

Contact details

korniychuk@paxforpeace.nl

depondt@paxforpeace.nl

Acknowledgments

Eastern Europe and Eurasia Program would like to thank Dion van der Berg and Jan Jaap van Oosterzee for their valuable contribution to the publication.

PAX

Sint Jacobsstraat 12
3511 BS Utrecht
The Netherlands

Contents

Contents	2
Summary	3
Recommendations for the Ukrainian authorities	4
1. Recommendations for the members of the Parliament, the President and the Cabinet of Ministers	4
2. Recommendations for the representatives of local authorities	5
3. Recommendations for the representatives of civil society.....	5
Recommendations for the international community	6
1. Recommendations for Germany, France, the US and the UK.....	6
2. Recommendations for the European Union	7
3. Recommendations for European civil society organizations	7
Recommendations for the Russian authorities	8
Recommendations for the representatives of the authorities from the non-government controlled areas of Ukraine	8
Background information	9
Context	9
Impact on the peace process in the future	12
2.1 Short to medium-term perspective	12
2.2 Long-term perspective	13

Summary

In response to the outbreak of violent conflict in the Donbas (Donets Basin) in 2014, the Ukrainian government introduced the so-called "anti-terrorist operation" (ATO). At the beginning of 2018 this regime was replaced by a new legal framework that addresses the situation in the east of Ukraine - the "Bill on special aspects of state policy to ensure Ukraine's state sovereignty in temporarily occupied areas in Donetsk and Luhansk Oblasts". PAX believes that this legislation has the potential to become an important step in re-energizing the peace process, but only if a series of amendments and effective implementing measures to the law (such as regulations) are adopted, recommendations for which are provided in this paper. Key to those recommendations is that despite the increased powers of the Ukrainian Armed Forces, peaceful measures must remain in the center of the activities of all actors involved in the conflict resolution in Ukraine.

Part of the recommendations concerns the Russian Federation, which should embrace its role as a side to the conflict, and proceed from rhetoric to factual measures of conflict resolution. In the new law, the role of the Russian Federation in the conflict is clearly articulated; this interpretation falls in line with the position of the vast majority of members of international community. PAX strongly believes that measures such as sanctions must be maintained if the provisions of international law are violated by the Russian Federation in Ukraine. We call for the international community to be consistent in its response.

Promising provisions in the bill do not mean that this in itself is a big achievement in the peace process in Ukraine. The success of the peace process depends on the delegating and implementing acts that will largely determine the impact of the bill. The authorities in Ukraine should guarantee unhindered access to the non-government controlled areas (NGCA) to facilitate people-to-people contacts and allow the work of peacebuilding and humanitarian organizations to proceed without restrictions. The increased powers of the Ukrainian President and Armed Forces should be accompanied by an effective system of checks and balances, preventing abuse of power and securing the rights of citizens, including those affected by the conflict.

The success of peacebuilding in Ukraine depends on the ability of different actors to find a common ground in the peacebuilding efforts. Declaratory measures of support should thus be followed by the implementation of practical steps. As a result

The Donbas reintegration bill can positively impact the peace process if

- ◆ Activities of the actors involved in the conflict will prioritize peaceful measures and lead to a de-escalation of violence.
- ◆ Effective implementing measures to the bill will be adopted and controversial provisions will be amended.
- ◆ The international community, in cooperation with the Ukrainian authorities, will ensure that the implementing measures to the bill correspond to international standards of peacebuilding and humanitarian assistance.
- ◆ Actors involved in conflict resolution will focus on the promotion of people-to-people contacts, non-violent dialogue and inclusive governance.

Recommendations for the Ukrainian authorities

1. Recommendations for the members of the Parliament, the President and the Cabinet of Ministers

Promote people-to-people contacts and ensure access to the territory

- ◆ Adopt legislative, delegating and implementing acts that:
 - support peacebuilding activities and humanitarian assistance through granting unhindered access to the territory and freedom of movement to those who contribute to the peace process.
 - promote dialogue in the NGCA by facilitating the mobility (including access to the territory) of citizens affected by the conflict.
 - allow citizens affected by the conflict to receive adequate support from the state (e.g. judicial, psychological, financial, social support).
 - introduce the possibility for individuals affected by the conflict to claim their rights from all sides involved in the conflict.
- ◆ The possibility for an individual living in the NGCA to confirm basic facts of life contributes to peaceful reintegration efforts. The list of documents declared valid by the law on government-controlled territory should be expanded. At a minimum, it must allow people residing in the NGCA to confirm the basic facts of life pertaining to birth, death, marriage, education, employment and housing. The discrepancy between existing legislation and the adopted bill when it comes to the confirmation of facts of life must be resolved immediately through amended legislation to ensure that the proposed solutions can be practically implemented.
- ◆ For the benefit of the reconciliation process do not criminalize in the adopted legislative, delegating and implementing acts those who were involved in the administration of the NGCA, yet who have not committed crimes and/or used lethal weapons.
- ◆ Ensure that the ongoing decentralization process encourages locally driven initiatives that promote inclusive and non-violent solutions to the conflict resolution.

Introduce an effective system of checks and balances

- ◆ Taking into account the changes in decision-making structures and the further use of armed forces in the NGCA, introduce a system of checks and balances that will prevent any abuse of power and falls in line with the country's international obligations when it comes to the protection of human rights.
- ◆ Clearly specify (de jure) the instances in which the Armed Forces of Ukraine are allowed to carry out inspections and use weapons. A legal mechanism that allows to gather evidence about abuse of power and enables the prosecution of military personnel involved in potential abuse of power must be introduced.
- ◆ Adopt amendments to the bill that ensure that the President's role lies within his constitutional powers (art. 106 in particular).

Implement practical diplomatic measures

- ◆ Use the momentum from positive steps regarding the peace process such as the hostage exchange at the end of 2017.
- ◆ Use political dialogue to end the conflict in Ukraine as soon as possible. Alternative solutions to the Minsk peace process must be agreed upon. The Normandy Group and the discussions regarding a UN peacekeeping mission should continue. In order to prevent more casualties, an emphasis has to be made on ensuring that the ceasefire holds.
- ◆ Engage in an active dialogue with the representatives of Ukrainian and international civil society organizations (CSO's), among others through regular participation in CSO events.
- ◆ Use public statements to promote support for dialogue and people-to-people contacts between residents of the government-controlled and non-government controlled areas.
- ◆ Make sure that the OSCE SMM can carry out its monitoring mission to its full mandate and in safe and secure conditions.

2. Recommendations for the representatives of local authorities

- ◆ As part of the decentralization process, implement locally driven initiatives that promote inclusive and non-violent solutions to the conflicts.
- ◆ Provide various groups in the society with an opportunity to engage in the preparation and implementation of local policies through participatory mechanisms (e.g. public councils, public consultations, participatory budgeting).
- ◆ Engage in an active dialogue with Ukrainian and international CSO's, among others through regular participation in CSO events.
- ◆ Use public statements to promote support for dialogue and people-to-people contacts between residents of the government-controlled and non-government controlled areas.

3. Recommendations for the representatives of civil society

- ◆ Engage in an active dialogue with the representatives of the Ukrainian and international decision-makers through advocacy activities and the organization of CSO events.
- ◆ Implement locally driven initiatives that promote inclusive and non-violent solutions to conflicts.
- ◆ Promote a networked approach in the activities aimed at conflict prevention/resolution by combining the efforts of various civil society actors.
- ◆ Disseminate knowledge and best practices (national, international) pertaining to peacebuilding.
- ◆ Use public statements to promote support for dialogue and people-to-people contacts between residents of the government-controlled and non-government controlled areas.

Recommendations for the international community

1. Recommendations for Germany, France, the US and the UK

The Normandy Format, the UN Security Council, the OSCE and bilateral meetings should be used to proceed with the following diplomatic measures:

- ◆ Despite various global and regional challenges, Eastern Europe, and Ukraine in particular, must remain in the focus of the international community. Russia's role in the conflict requires full attention. Germany, France, the US and the UK must be consistent in holding the parties involved in the escalation of violence responsible for their actions.
- ◆ Use the momentum from positive steps regarding the peace process such as the hostage exchange at the end of 2017.
- ◆ Use political dialogue to end the conflict in Ukraine as soon as possible. Alternative solutions to the Minsk peace process must be agreed upon. The Normandy Group and the discussions regarding a UN peacekeeping mission should continue. In order to prevent more casualties, an emphasis has to be made on ensuring that the ceasefire holds.
- ◆ Make sure that the Ukrainian authorities adopt legislative, delegating and implementing acts that grant unhindered access to the territory to peacebuilding and humanitarian organizations.
- ◆ Make sure that the Ukrainian authorities adopt legislative, delegating and implementing acts that promote dialogue in the NGCA by facilitating the mobility (including access to the territory) of the citizens affected by the conflict.
- ◆ Make sure that the representatives of the NGCA and Russia grant unhindered access to the territory to the peacebuilding and humanitarian organizations and facilitate the mobility (including access to the territory) of the citizens affected by the conflict.
- ◆ Make sure that the individuals affected by the conflict can claim their rights from all the sides involved in the conflict.
- ◆ Make sure that the individuals on both sides of the conflict receive support (judicial, psychological, financial, social support) from the international community if the support of the Ukrainian state does not meet the full needs of the local population.
- ◆ Make sure that the OSCE SMM can carry out its monitoring mission to its full mandate and in safe and secure conditions.
- ◆ Maintain and/or strengthen sanctions on Russia as long as its authorities continue to decline responsibility for the escalation of the situation in Ukraine.
- ◆ Support the civil society initiatives that promote dialogue and cooperation between the different sides of the conflict through financial assistance, expertise, capacity building and visibility campaigns.
- ◆ Support the emerging civil society groups working on conflict resolution, dialogue and reconciliation in the process of their institutionalization by delivering expertise and financial support.
- ◆ Continue to work on tackling the disinformation and the hybrid war tactics pertaining to the conflict in Ukraine.

2. Recommendations for the European Union

Use the available (supra)national fora to proceed with the following diplomatic measures:

- ◆ Despite other global and regional challenges, the EU must not lose its focus on Eastern Europe and Ukraine in particular. Russia's role in the conflict requires the full attention of international actors. The EU must be consistent in holding parties involved in the escalation of the violence responsible for their actions. We encourage the European community to stand as one.
- ◆ Use the momentum from positive steps regarding the peace process such as the hostage exchange at the end of 2017.
- ◆ Use the political dialogue to end the conflict in Ukraine as soon as possible. Alternative solutions to the Minsk peace process must be agreed upon. The Normandy Group and the discussions regarding a UN peacekeeping mission should continue. In order to prevent more casualties, an emphasis has to be made on ensuring that the ceasefire holds.
- ◆ Make sure that the Ukrainian authorities adopt legislation and implementing acts that grant unhindered access to the territory to peacebuilding and humanitarian organizations.
- ◆ Make sure that the Ukrainian authorities adopt legislation and implementing acts that promote dialogue in the NGCA by facilitating the mobility (including access to the territory) of the citizens affected by the conflict.
- ◆ Make sure that the representatives of the NGCA and Russia grant unhindered access to the territory to peacebuilding and humanitarian organizations and facilitate the mobility (including access to the territory) of the citizens affected by the conflict.
- ◆ Make sure the individuals affected by the conflict can claim their rights from all the sides involved in the conflict.
- ◆ Make sure citizens receive support from the EU (judicial, psychological, financial, social support), if the support of the Ukrainian state does not meet the full needs of the local population.
- ◆ Make sure that the OSCE SMM can carry out its monitoring mission to its full mandate and in safe and secure conditions.
- ◆ Maintain and/or strengthen sanctions on Russia as long as its authorities continue to decline responsibility for the escalation of the situation in Ukraine.
- ◆ Support through financial assistance, expertise, capacity building and visibility campaigns those civil society initiatives that promote dialogue and cooperation on the different sides of the conflict.
- ◆ Support the emerging civil society groups working on conflict resolution, dialogue and reconciliation in the process of their institutionalization by delivering expertise and financial support.
- ◆ Continue to work on tackling the disinformation and the hybrid war tactics pertaining to the conflict in Ukraine.

3. Recommendations for European civil society organizations

- ◆ Engage in an active dialogue with Ukrainian and international decision-makers through advocacy activities and the organization of CSO events.
- ◆ Support the implementation of locally driven initiatives that promote inclusive and non-violent solutions to the conflict in Ukraine.

- ◆ Promote a networked approach in the activities aimed at conflict prevention/resolution by combining the efforts of various civil society actors involved in peacebuilding in Ukraine.
- ◆ Disseminate knowledge and best practices (national, international) when it comes to successful peacebuilding in Ukraine.
- ◆ Use public statements to promote support for dialogue and people-to-people contacts between residents of the government-controlled and non-government controlled areas.

Recommendations for the Russian authorities

- ◆ Take responsibility for the involvement in the armed conflict in Donbas.
- ◆ Proceed with diplomatic and humanitarian measures that will lead to a de-escalation of the situation in Ukraine. Use the Normandy Format, UN Security Council, the OSCE and bilateral meetings as diplomatic fora to make tangible steps toward peace in Donbas.
- ◆ Use the momentum from positive steps regarding the peace process such as the hostage exchange at the end of 2017.
- ◆ Use public statements to promote support for dialogue and people-to-people contacts between residents of the government-controlled and non-government controlled areas.
- ◆ Through appropriate legislation introduce the possibility for individuals affected by the conflict to claim their rights from all the sides involved in the conflict.
- ◆ Delegate representatives to The Joint Center for Control and Coordination (JCCC) on ceasefire and stabilization of the demarcation line between the parties to the conflict in Donbas.
- ◆ Make sure that the OSCE SMM can carry out its monitoring mission to its full mandate and in safe and secure conditions.

Recommendations for the representatives of the authorities from the non-government controlled areas of Ukraine

- ◆ Use the momentum from the positive steps regarding the peace process such as the hostage exchange at the end of 2017.
- ◆ Use the political dialogue to end the conflict in Ukraine as soon as possible. Alternative solutions to the Minsk peace process must be agreed upon. The Normandy Group and the discussions regarding a UN peacekeeping mission should continue. In order to prevent further casualties, an emphasis has to be made on ensuring that the ceasefire holds.
- ◆ As part of conflict resolution facilitate mobility (including access to the territory) and people-to-people contacts among individuals residing on both sides of the conflict.
- ◆ Through cooperation with international actors and Ukrainian authorities make sure that people affected by the conflict have access to adequate support (for example, humanitarian assistance, psychological support etc.).
- ◆ Make sure that the OSCE SMM can carry out its monitoring mission to its full mandate and in safe and secure conditions. ◆

Background information

On the 18th of January 2018, the Ukrainian Parliament (*Verkhovna Rada*) adopted the “Bill on special aspects of state policy to ensure Ukraine’s state sovereignty in temporarily occupied areas in Donetsk and Luhansk Oblasts”¹. The draft bill was proposed by the Ukrainian president Petro Poroshenko on 4th of October 2017. At the beginning of January 2018, 280 out of 450 members of parliament voted in favour of the bill in the second reading. The bill was signed by the president on 20th February 2018.

Ukrainian decision-makers provided the following argumentation for the need to adopt a new piece of legislation regulating the situation in the non-government controlled areas²:

- ◆ The resolution of the conflict requires a comprehensive legal framework. Since 2014, the situation in Donbas has been regulated mainly through the so-called “anti-terrorist operation” (ATO). The ATO regime with its policy solutions did not provide enough legal instruments for the Ukrainian state to address the security, economic and social situation in the non-government controlled areas.
- ◆ A new legal framework is needed to effectively counteract the ‘enemy aggression’ in Donbas, both by increasing the resilience of the army and its ability to respond with adequate measures, and from a legal standpoint in international courts, for the purpose of holding accountable those who committed crimes, atrocities and violated human rights in the NGCA.
- ◆ The law is needed to protect the rights and freedoms of Ukrainian citizens still residing in the NGCA.

In the public discourse, this legislative act is best known as the “Donbas reintegration bill”. The provisions of the bill describe the state policy in regard to the territories which are not under government control. They refer to the territorial integrity of Ukraine as a core principle and mention the importance of liberating the Luhansk and Donetsk regions (NGCA). The informal title popularized in the general discourse is misleading because the question of the de-facto reintegration of the non-government areas is not being elaborated on in the body of the text. PAX believes that the Ukrainian legislature should allow the actors involved in the conflict resolution to arrive through dialogue and consultation at the most sustainable solution when it comes to the future relations between the NGCA and the Ukrainian state. At the minimum, new legislation must not diminish the previous positive steps taken during the Minsk peace process. Preferably it should add positive momentum and enlarge the currently ineffective Minsk framework to create new opportunities to end the conflict in Ukraine◆

Context

The adoption of the bill is one of the few recent developments of high political and practical relevance that can re-energize the discussions around the Minsk peace process. The Normandy Group allows for formal communication on the government level to continue, however, its format (mainly phone calls between senior officials) has not led

¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62638 (accessed on 04.04.2018)

² See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62638 (accessed on 04.04.2018).

to much progress in the peace process so far. A UN peacekeeping mission is another recent solution that has been discussed by the members of the international community in the context of Ukraine. As of 2018, these conversations have not yet materialized into an actual agreement due to the lack of political will and common understanding regarding the terms of a possible mission among the parties involved in the conflict and its resolution.

It is too early to proclaim the Minsk agreements dead, however, they did fail to deliver on practical results when it comes to conflict resolution. The ceasefire that forms the basic requirement of their implementation, has never been fully respected. Casualties and injuries among military personnel and civilians are reported almost daily on both sides of the conflict. At a rapid pace, the region of Donbas is becoming one of the most mined places in the world³. PAX, being aware of the imperfections of the Minsk peace accords, believes that the parties involved in the conflict resolution should nevertheless respect its provisions, starting with the ceasefire. Before there can be "a new game in town", Minsk II offers a roadmap that can help make incremental steps toward peace in Donbas, beginning with the reduction of the number of casualties.

The sheer amount of amendments (637) submitted after the first reading in parliament, reflects the controversy around some of the proposed solutions in the Donbas reintegration bill. A number of commentators and activists concluded that important challenges were left unresolved, especially concerning the protection of human rights⁴. The adoption of the bill comes at a difficult time, with growing tensions around the Donbas despite the positive momentum marked by a hostage exchange at the end of December 2017, the largest since the conflict started. In a statement from 23rd January 2018, OSCE Special Monitoring Mission Principal Deputy Chief Monitor Alexander Hüge concluded that the "Failure to de-mine, withdraw weapons and disengage, and continued preparedness, constitutes an early warning, as sides, instead of ending the violence, get ready for more"⁵. At the end of 2017, it was first reported that the Trump administration approved lethal arms sales to Ukraine⁶. This step has since been criticized by the Russian authorities and declared a sign that the situation may escalate and turn into a full-fledged war.

The bill has not been received well in Moscow. In an official statement, the Ministry of Foreign Affairs of the Russian Federation called the document "a preparation for a new war", stating that it "risked a dangerous escalation in Ukraine with unpredictable consequences for world peace and security". The representatives of the non-government controlled areas in the Donetsk region (NGCA) stated that the adoption of the law violates the Minsk agreements⁷, while their counterparts in Luhansk (NGCA) commented on the bill as an attempt to legalize violence⁸. The EU took note of the adoption of the bill and emphasized further support for the full implementation of the Minsk agreements as the

³ <http://www.unocha.org/sites/unocha/files/statement-and-speech/ASGUkraineMSBriefingAsDelivered%2023102017.pdf> (accessed on 04.04.2018).

⁴ <https://docs.google.com/document/d/1-BD24ASCufaKsLHbMBLoylFhjkAtiyz5jGrdDd4dBT8/edit> (accessed on 04.04.2018).

⁵ As reported in the official press release on the Twitter account (@OSCE_SMM) of the OSCE SMM to Ukraine (accessed on 04.04.2018).

⁶ https://www.washingtonpost.com/amhtml/news/josh-rogin/wp/2017/12/20/trump-administration-approves-lethal-arms-sales-to-ukraine/?utm_term=.9c5882055da8&_twitter_impression=true (accessed on 04.04.2018).

⁷ https://ria.ru/amp/world/20180115/1512639988.html?_twitter_impression=true (accessed on 04.04.2018)

⁸ <https://news.rambler.ru/ukraine/39194944-v-lnr-prokomentirovali-reintegratsiyu-donbassa/> (accessed on 04.04.2018)

basis for a peaceful and sustainable resolution of the conflict in Ukraine⁹. The United States Special Representative for Ukraine Negotiations, Kurt Volker, discussed the bill with President Petro Poroshenko and Secretary of the National Security and Defense Council of Ukraine Oleksandr Turchynov. The diplomatic and peaceful measures were voiced to be priority solutions to end the conflict, although Secretary Turchynov did not rule out the liberation of the occupied territories by means of force – a scenario that PAX condemns as unjust and counterproductive¹⁰.

Regarding public opinion on the conflict, it is worthwhile to point out that only 18% of the population supports the establishment of peace in the Donbas by force (as of December 2017)¹¹. Despite the complexity of the situation and regional differences in public opinion, a considerable number of Ukrainians (49%) are ready to discuss some kind of compromise in order to end the conflict. That feeling is especially strong near the frontlines. The provision of and access to social services, trade and people-to-people contacts (dialogue) with the NGCA are solutions that find support among many Ukrainians.

For the peace process, it is important to look at the latest legislative development from the context of its possible impact on the (de)escalation of the situation in Donbas and the ongoing efforts toward the resolution of the armed conflict in Ukraine. For the perspectives of sustainable conflict resolution the following provisions are the most important:

- ◆ The Russian Federation is designated as an aggressor and, according to the law, becomes a side to the conflict. The Russian state is held responsible for the moral and material losses inflicted on Ukraine, both on state authorities and citizens. Russia's presence in the territories is declared an occupation and thus illegal.
- ◆ Any individual involved in the armed aggression is held criminally liable for violating Ukrainian legislation and norms of international humanitarian law.
- ◆ At the same time, the law does not use the term war, but refers to "measures to ensure national security and defence, deterrence and countering the armed aggression of the Russian Federation". Diplomatic relations with the Russian Federation have not been suspended. No explicit reference is made to the Minsk agreement(s) in the body of the text¹². The starting date of the occupation of the Ukrainian territories is not specified in the bill, albeit a reference is made to a piece of legislation regarding the occupation of the Crimean peninsula. According to that bill, the Russian aggression commenced on 20th of February 2014.
- ◆ The law introduces changes in the decision-making and institutional arrangements concerning the NGCA. The authority of the Ukrainian president to act in the context of armed conflict, and the NGCA in particular has been

⁹ <https://www.unian.info/politics/2355643-eu-comments-on-ukraines-new-donbas-reintegration-law.html> (accessed on 04.04.2018).

¹⁰ https://www.unian.info/politics/amp-2393877-donbas-reintegration-law-not-to-rule-out-liberation-of-occupied-territories-by-force-nsdc-secretary.html?_twitter_impression=true (accessed on 04.04.2018)

¹¹ The national survey was conducted by the Ilko Kucheriv Democratic Initiatives Foundation in conjunction with the Razumkov Center sociological service from December 15 till December 19, 2017. <http://dif.org.ua/article/mir-na-donbasi-chi-za-bud-yaku-tsinu-gromadska-dumka13890> (accessed on 04.04.2018).

¹² As explained by the Secretary of the Committee on Defense in the Ukrainian Parliament such decision was made due to the legal nature of the Minsk agreements. The argument is that diplomatic accords or political agreements tend to change over time and hence can't be incorporated into the Ukrainian primary law. https://espreso.tv/news/2018/01/18/minski_ugody_ne_povernuly_do_zakonu_pro_reintegraciyu_donbasu (accessed on 04.04.2018).

increased. The United Operative Staff of the Armed Forces of Ukraine takes over control of the developments related to the armed conflict from the Security Service of Ukraine (SBU). Formally, the armed conflict in Ukraine is no longer an "anti-terrorist operation", but neither did it become a war.

- ◆ The introduction of novel concepts such as "a safe zone": territories near the actual conflict areas in which special measures can be imposed by the authorities to ensure Ukraine's state sovereignty in the NGCA. ◆

Impact on the peace process in the future

The developments mentioned below should be taken into account when assessing the potential impact of the bill on the success of the peace process in the future. These can be grouped according to the timeline of their potential impact.

Short to medium-term impact: peacebuilding efforts from an ongoing perspective, focusing on daily access to the NGCA such as the freedom of movement and the ability to deliver assistance without major impediments.

Long-term impact: the impact of the proposed solutions on the diplomatic dialogue within the existing and/or potential platforms among the parties involved in the conflict resolution. In addition to bilateral contacts (United States Special Representative for Ukraine Negotiations, Russian presidential aide), the important structures for dialogue currently in place include the Minsk peace process, the Normandy Group (Germany, France, Ukraine, Russia) and the United Nations Security Council. In context of the long-term impact, also a possible change in the actual conflict dynamics on the ground in the regions of Donetsk and Luhansk has to be taken into account.

2.1 Short to medium-term perspective

- ◆ Since the start of the conflict, the mobility of the population on both sides of the conflict has considerably decreased due to the situation at the frontline. The movement through check-points is not only time consuming, but also depletes the physical and psychological resources of the population. The law introduces a special regime (access through checkpoints) for movement between government-controlled areas and NGCA. The commander-in-chief of the Ukrainian Armed Forces can deny entrance at a checkpoint based on the assessment of the "security situation", a term that has not been specified in the law. A similar problem occurs with the so-called "safe zones", the geographical limits of which are not specified by the provisions of the law. It is important that these boundaries are clearly set and that the practice of granting access to the NGCA for activists, journalists, peacebuilding and humanitarian organizations is conducted in a transparent manner and according to clear and well-known procedures.
- ◆ Birth and death certificates issued on the territory of NGCA are the only official documents declared valid by the bill on the government-controlled territory. This provision is arguably the only one that can be regarded as a potential tool for the reintegration of the NGCA population. Such a step is not enough. No reference is made to the validity of other important documentation, such as marriage certificates, educational diplomas etc. Moreover, according to existing laws (Civil Procedure Code of Ukraine), the registration of birth or death of a citizen without a proper court proceeding is not possible. This is an example of a legal collision, that most probably will

seriously hamper the access of individuals to international assistance as well as state-run services on the territory of Ukraine. It has to be resolved immediately.

- ◆ The President of Ukraine decides on the start and end of measures aimed at ensuring national security and countering Russia's aggression. The new law also enables him to initiate a martial law regime, though this term is not used in the bill. Such provisions are worrisome because they open the door to potential arbitrariness and human rights abuses.
- ◆ The law gives broad powers to the Armed Forces of Ukraine. In certain cases, its servicemen are permitted to check documents and detain people to confirm their identity, to search citizens and their belongings, to restrict movement of vehicles and pedestrians, to enter residential and other buildings, and to use the personal vehicles and means of communication of citizens and organizations for official purposes. In exceptional cases, the servicemen can use weapons against those who obstruct their actions. A complete list of cases where the use of weapons is permitted should be provided so that human rights organizations can monitor the compliance.

2.2 Long-term perspective

- ◆ The Russian Federation is declared liable for the damages caused in the NGCA. The law does not specify the territory, period, nor the circumstances leading to the damage. Provisions of the bill as they stand may leave an individual in a judicial vacuum and thus seriously affect the process of post-conflict reconciliation. De jure, the Ukrainian state cannot be held liable for any damage in the NGCA, even if a credible claim for such damage would be made. Taking into account Russia's denial of being a side to the conflict, it is unclear how, through which procedures, using which instruments and in what courts the individuals affected by the conflict would claim their rights.
- ◆ Individuals that participate in the armed aggression of the Russian Federation or are involved in the 'occupational administration of the Russian Federation' (term used in the bill) will face criminal responsibility for actions violating Ukrainian legislation and the provision of international law.
- ◆ Individuals (regardless of whether they acquired a special legal status and/or are registered as internally displaced persons) and legal persons retain the right of ownership and other property rights, including real estate, located in the NGCA in Donetsk and Luhansk Oblasts (if such property is acquired in accordance with Ukrainian law). As a result, the status (their validity) of the transactions that took place in the NGCA since 2014 must be clarified (de jure). The procedures to claim the right of ownership and other property rights in case it has been violated must be put in place.
- ◆ In December 2017 Ukraine handed over 246 prisoners (the identity of which has been kept secret) in exchange for 74 people, mostly Ukrainian citizens detained on the territory of the NGCA, usually for serving in the Ukrainian army or for their alleged support for an enemy (in this case, Ukraine) as well as other alleged crimes related to the situation in the Donbas. This was the largest hostage exchange since the outbreak of conflict. A considerable number of people still remain in detention on both sides of the conflict (according to various estimates). The bill recognizes the importance of assistance to the prisoners and promises support from the Ukrainian state to those who have been illegally detained in the NGCA. The situation in prison

facilities where many of the hostages (as well as convicts serving time for crimes) are being held in the NGCA remains dire ¹³.

- ◆ An escalation of violence on the ground is possible:
 - if the increased role of the Armed Forces of Ukraine is not accompanied by measures (political dialogue, system of checks and balances, state information policy) that give a clear preference to a peaceful resolution of the conflict.
 - if the legislative, delegating and implementing acts to the bill fail to prioritize peaceful measures and do not address the shortcoming of the current provisions, which are pointed out in this paper. ◆

In a nutshell

Potential repression and/or further alienation of the residents of the NGCA will not lead to a peaceful resolution of the conflict in Ukraine in the foreseeable future. Legislative, delegating and implementing acts based on the recommendations presented in this paper will allow the "Donbas reintegration bill" to direct the process of conflict resolution in Ukraine towards peacebuilding instead of further escalation of violence.

¹³ <http://khp.org/files/docs/1507890520.pdf> (accessed on 04.04.2018)