

INTERNATIONAL INTERIM ADMINISTRATION AS A MODEL FOR CONFLICT RESOLUTION IN DONBAS





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Introduction

Two years have passed since the Minsk agreements were approved. The agreements were endorsed by the UN Security Council Resolution 2202 on February 17, 2015 as a tool of conflict resolution in eastern Ukraine. Minsk-2 contributed to de-escalation of the conflict and suspension of full-scale fighting, but not to the conflict settlement. If the Minsk agreements remain as a “no-alternative-mechanism” for conflict settlement in the east of our country, their implementation will require new, additional instruments which are prescribed by the Minsk agreements, but do not contradict to them. The introduction of the International Interim Administration (IIA) under the UN auspices in the non-controlled territories can be one of such innovative tools for the conflict settlement in Donbas. IIA can become acceptable to all conflict parties and a ‘model’ of the Minsk agreements implementation and restoration of Ukraine’s sovereignty over certain areas of Donetsk and Luhansk regions.

WHY THE MINSK AGREEMENTS HAVE NOT BEEN IMPLEMENTED

The lack of progress in the Minsk process is caused by a number of reasons. First and foremost, the text of the «Package of Measures» being the main document of the Minsk agreements contain the **discrepancy between the formal parties to the conflict (Ukraine and certain areas of Donetsk and Luhansk regions) and actual ones (Ukraine and Russia)**. As a result, Ukraine is pressured by all the external players who demand Kyiv to fulfill its commitments. At the same time, none of the external players, except for Russia, have means to influence DPR/LPR. In turn, Russia uses its status in the UN Security Council, the OSCE, the influence on separatists, military-diplomatic, information, economic and other tools for permanent weakening of Ukraine. The pressure from the Western partners on the Russian Federation in the form of existing sanctions is not sufficient to force Moscow to significantly change its position concerning the conflict settlement in Donbas, not to mention the issue of Crimea, which is generally out of the framework of the negotiation process, although it is one of the key elements of the Ukrainian-Russian conflict.



The Minsk process provides for a fast algorithm of peaceful settlement, which cannot be effective with respect to the conflicts of such complexity. The “Ukrainian crisis” is a multilevel problem, which covers the issues of Crimea, Ukrainian-Russian contradictions, Ukraine’s place in the regional system of international relations, confrontation between Russia and the West. **The Minsk agreements try to deal with consequences rather than with causes of the conflict.** Under the ideal scenario, Minsk-2 may only

«freeze» the conflict, but it is very unlikely. The freeze is possible in respect of the conflicts that arise along the certain line of divisions - geographical, religious, linguistic and ethnic, economic or any other line. The Transnistrian conflict is an example of rather effective «freeze». The same situation is possible to occur in case of Crimea - but not in the case of Donbas. The line here crosses “the single organism” dividing a single socio-economic and infrastructural object. The two parts continue to keep significant relationships that are often impossible to break. The Transnistrian Scenario of de facto normalization with de jure non-resolved conflict is unlikely to happen. In other words, there are only two possible scenarios for development of the situation with the conflict: the settlement by political and diplomatic means or regular resumption of hostilities with varying intensity.

Implementation of the political provisions of the Minsk agreements is practically impossible without the establishment of a proper security environment, sustainable ceasefire regime and demilitarization of DPR/LPR militants. The local elections are not possible in non-controlled territories unless the secure public order is established and the necessary conditions for the return of IDPs and their participation in the vote are created. In particular, the local elections require access to the uncontrolled territory of Ukrainian parties and the media, as well as the Central Election Commission and other authorities, including the police and judiciary. The OSCE Special Monitoring Mission (SMM), which reports on the situation in Ukraine, does not have such a mandate and cannot ensure all the requirements even theoretically. Even a change in a mandate or providing the mission

with light or heavy weapons will not solve the issue of the administration of elections by the CEC in Kyiv and ensure access of Ukrainian political parties to the electoral process, etc.

In fact, the population of non-controlled territories is in a legal vacuum: Ukraine is not able to fulfill its sovereign obligations in the field of human rights protection, the rule of law, administration of justice in this territory, and Russian does not recognize its effective control over self-proclaimed LPR/DPR. Recognition of sovereign rights of the incumbent de facto authorities is impossible by neither Ukraine nor the international community. Thus, **the elections in non-controlled territories are impossible without the settlement of security issues, as well as the issue of legal regime in this territory, restoring a minimum level of subordination and setting up infrastructure of interconnections between Kyiv and currently non-controlled territories.**

Thus, the Minsk process is in a deadlock and Ukraine can neither fulfill it nor withdraw from it. Consequently, the future of the uncontrolled Donbas remains uncertain while the social and political circles remain in a sharp debate about the ways of conflict settlement: the use-of-force option, formal separation of non-controlled territories, recognition of non-controlled territories as temporarily occupied, “freezing” of the conflict etc.

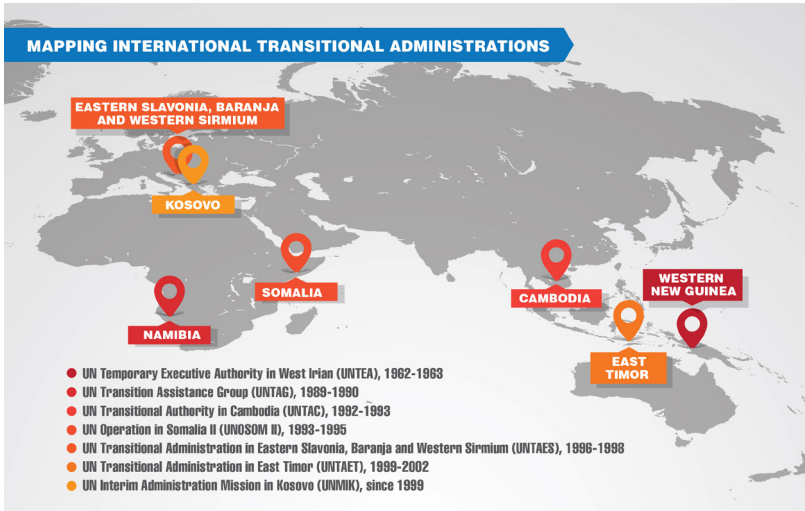
Ukraine’s official position is to restore Kyiv’s sovereignty over non-controlled territories that can be reached through several ways. The first option envisages the withdrawal of DPR/LPR militants from the territory of Donbas with the consent of Russia and restoration of Ukraine’s sovereignty. Under the current circumstances, neither Russia nor the militants consider this option and the existing sanctions can barely force them to do that. Another option is the restoration of control over non-controlled territories by military means. Such a scenario of the conflict settlement will lead to a new military intervention by Russia resulting in Ukraine’s huge military losses, civilian casualties, material damage, political and economic destabilization. In addition, the use-of-force scenario of reintegration of the non-controlled territories would mean the failure of Minsk-2 and violation of the UN Security Council Resolution 2202. In turn, this will have **disastrous international legal implications for the initiator**, who will bear the responsibility for the failure of the process of peaceful conflict settlement.

However, there is an alternative option for the reintegration of the non-controlled territories into Ukraine by attracting an international mechanism for a transitional period, which is not envisaged by Minsk-2, but does not contradict it. Such mechanisms are often used in peacekeeping and peacebuilding practice. The **introduction of the International interim administration (IIA) in the non-controlled territories** may become such an instrument.

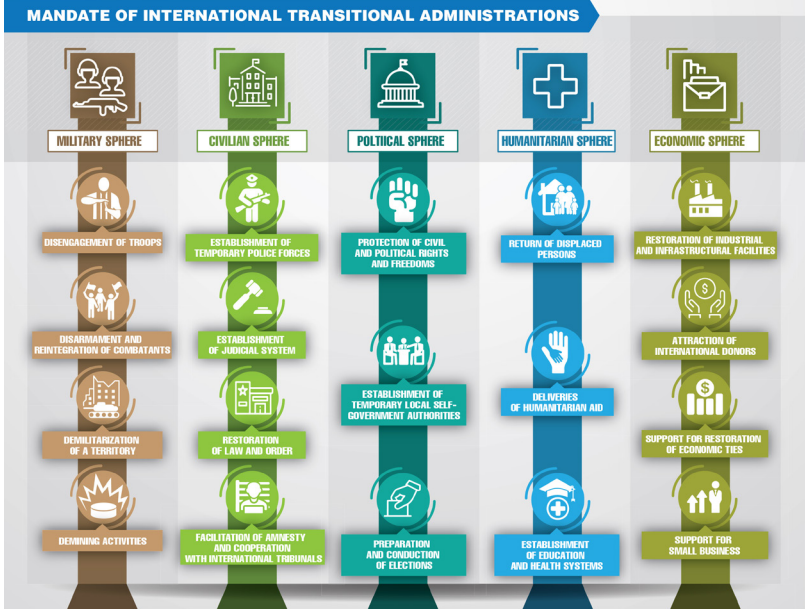
THE ROLE OF INTERNATIONAL INTERIM ADMINISTRATION

In world practice, the IIA is a form of legitimate ensuring of the governance during the transition period in the territory with no legitimate state structures. The establishment of the IIA is coordinated with the conflicting parties and approved by the UN Security Council, which adopts a resolution under Chapter VII of the UN Charter «Actions with respect to threats to the peace, breaches of the peace, and acts of aggression». The UN used

the IIA multiple times in various situations that arose as a result of decolonization (West Irian, Namibia), collapse of states (former Yugoslavia), internal conflict (Cambodia) or foreign occupation (East Timor)..



Usually, the IIA provide for the establishment of military and civil administrations in uncontrolled areas. Under the agreement between the parties to the conflict and the UN Security Council Resolution, the IIA may perform security (withdrawal of forces,



disarmament and reintegration of combatants, demining and demilitarization of the territory, return of displaced persons), police (creation of temporary police forces and judicial system, the restoration of the rule of law, promotion of amnesty and cooperation with international tribunals), political (providing civil and political rights and freedoms, creation of temporary local self-governments, preparation and holding of local elections), social (humanitarian assistance and setting up education and health systems), and economic functions (reconstruction of industrial and infrastructure facilities by attracting international donors, facilitation of the restoration of economic ties). The IIA mostly represents a transitional stage of development of a certain territory and community on its way to separation or return into the state.

There are more than a dozen examples in the world of how the IIA contributed to the restoration or establishment of order in a certain area. However, among many examples, Ukraine should pay attention to the experience of the UN Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium, UNTAES, which contributed to the reintegration of this territory into Croatia.

UNTAES: A SUCCESS STORY

In Ukraine, there are many supporters of the Croatian example of the non-controlled territories' reintegration. Usually, in the Ukrainian political discourse when it comes to the "Croatian scenario" the use-of-force approach of armed conflict settlement is meant. In particular, in the course of successful operations "The Flash" in May of 1995 and "The Storm" in August of 1995, Croatian forces regained control over most of the territory of the self-proclaimed Republic of Serbian Krajina (RSK). However, the reintegration of another part of the RSK - Danube enclave of Eastern Slavonia, Baranja and Western Sirmium - was held in a peaceful way. In November 1995, the Erdut Agreement was reached between the authorities of the Republic of Croatia and the local Serb authorities and it paved a way to the establishment of the United Nations Transitional Authority for Eastern Slavonia, Baranja and Western Sirmium. The agreement created the basis for the United Nations Security Council Resolution 1037 establishing the United Nations Transitional Authority for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). The Croatian analogy is quite close to the Ukrainian realities – a part of the Donbas region was liberated by military means (Mariupol, Sloviansk, Schastya, Severodonetsk), but the rest of Donbas should be returned to Ukraine by political and diplomatic means.

UNTAES is considered to be one of the most successful operations in the UN history. **This operation combines military and civil administrations that were able to achieve impressive results.**

1. **Peacekeeping.** Military presence of the UN not only contributed to peace in Eastern Slavonia, but also created security conditions, without which UNTAES would be unable to perform other functions. Thus, the military administration under the auspices of UNTAES, which included 4849 soldiers, 99 military observers and 401 civilian police officers, was able to prevent a repeat of hostilities between Croatian forces and Serb formations.

2. **Demilitarization of the region.** During a month (from May to June 1996) all heavy weapons were withdrawn from Eastern Slavonia or transferred to the disposal of UNTAES. In addition, the buy-back program of the UNTAES managed to collect about 1.7 million pieces of ammunition.

3. **Border control.** UNTAES carried out customs and police control at the checkpoints with uncontrolled part of the border of FR Yugoslavia and Hungary. As a result, it became possible to establish a cross-border movement and to stop the illegal export of timber and other products.

4. **Return of IDPs.** Through the efforts of the Croatian Government, UNTAES and UNHCR were managed to ensure the return of 27 thousand refugees and internally displaced persons of various nationalities who were forced to leave their homes because of the conflict. In addition, a peaceful reintegration of Eastern Slavonia was not accompanied by a mass outflow of refugees from the region. But at the initial stage, the return of persons of Serbian nationality was slow due to bureaucratic obstacles and unwarranted arrests by the Croatian officials.

5. **Economic restoration.** UNTAES was able to raise funds amounting to more than 59 million USD that were spent on mine clearance of the territories, rebuilding infrastructure, residential buildings and setting monetary and financial system of the region.

6. **Establishment of a temporary police force.** According to the Erdut Agreement the international interim administration was responsible for the law enforcement in Eastern Slavonia. That made possible to restore the rule of law and order in the territory, had created a safe environment for the elections and transferring of power to the national authorities. The fact that the interim administration was able to build up local police forces and structures became an important achievement. Later those structures became a part of the Croatian police despite all the complexity.















7. **Conduction of local elections.** Local elections in Eastern Slavonia were conducted in 15 months after the establishment of UNTAES and were held simultaneously with elections all over the Croatia. UNTAES had established local election commissions, which provided equal opportunities for all registered parties and candidates. The local elections results were accepted by all the parties and had opened opportunities for practical reintegration of Eastern Slavonia into the constitutional and legal field of Croatia. In particular, local elections led to a significant return of refugees and displaced persons.

8. **Compromise between amnesty and criminal liability.** Like in Ukraine, the issue of amnesty was very painful for Croatian politics. Despite serious resistance, the Croatian parliament did adopt the amnesty law that was applied to the persons involved in aggression and armed rebellion in the country. However, an important element of justice restoration and punishment of those responsible for the crimes was the work of previously established international court – the International Criminal Tribunal for the former Yugoslavia (ICTY). The Croatian government and UNTAES cooperated with the ICTY, which pursued the persons involved in war crimes, crimes against humanity and other serious violations of international humanitarian law. Moreover, investigation and punishment touched people from all parties of the conflict.

Certainly, any peacekeeping operation and any conflict are unique. There are entirely similar analogies to what is happening in our country. And there are those components of the current conflict, which require special solutions. Thus, the reintegration of Eastern Slavonia took place under the favourable internal and external conditions. Croatia was able to consolidate the society, to build combat-ready forces, to form an effective economy, to return the majority of uncontrolled territories by force and to define the civilization development vector. FR Yugoslavia was forced to agree with the peaceful reintegration of the last Serb enclave in Croatia due to the military defeat in Bosnia and Herzegovina and

international sanctions. Twenty years ago, the international community was behaving in another way towards Belgrade than now - towards Moscow.

But after careful consideration of the conflicts occurred during the last 20-30 years, it becomes clear that all of them have their own special peculiarities confirming the effectiveness or ineffectiveness of certain settlement instruments. The International interim administration in Donbas may not be able to repeat the experience of Eastern Slavonia reintegration so quickly and effectively. Any peace and reintegration process faces difficulties and obstacles in any reintegration scenario. However, there are much more chances for success if the peace process is based on the correct logic, principles and approaches instead of doing nothing, endlessly criticizing or defending the current Minsk process.

| MECHANISMS OF REINTEGRATING EASTERN SLAVONIA AND UNCONTROLLED TERRITORIES OF DONBAS: COMPARATIVE ANALYSIS | | | |
|--|---|---|---|
| Territory |  | Eastern Slavonia, Baranja and Western Sirmium | Certain districts of Donetsk and Luhansk Oblasts |
| Peace agreement |  | Erdut agreement signed between Croatia and local Serb authorities in 1995 | Minsk agreement I and Minsk agreement II signed in 2014 and 2015 between Ukraine and local representatives |
| UNSC Resolution |  | 1037 (1996) | 2202 (2015) |
| Territorial status |  | Full integration into Croatia | Reintegration into Ukraine on terms of a special status |
| Ceasefire control |  | UNTAES military personnel | OSCE SMM observers |
| Security |  | Demilitarization of a territory | Withdrawal of heavy weapons from contact line |
| State border |  | UNTAES monitoring along the whole uncontrolled border | OSCE observers at two checkpoints (Donetsk and Gukovo); border control to be restored after the elections and constitutional reform |
| Transitional administration |  | UNTAES | — |
| Police |  | Temporary police forces | Local police |
| Justice |  | Amnesty and cooperation with the ICTY | Pardon and amnesty |
| Local elections |  | No later than 30 days before transitional period expires | After epy Ukrainian parliament adopts a law but before border control is restored and constitutional reform is conducted |
| Displaced persons |  | Free and safe return | — |
| Humanitarian aid |  | — | Based on an international mechanism |
| Human rights |  | Protection and non-discrimination | — |

WHAT IS NEEDED TO CREATE THE INTERNATIONAL INTERIM ADMINISTRATION IN NON-CONTROLLED TERRITORIES?

The involvement of an international component to the conflict settlement in Donbas and reintegration of non-controlled territories into Ukraine require consistent diplomatic steps from Kyiv and other players.

1. **Ukraine's initiative.** In the Ukrainian public and political discourse there is currently no consensus on how to reintegrate non-controlled territories. The main focus of the discussion is mainly paid to the feasibility of the implementation of the Minsk agreements or their provisions. At the same time, Ukraine has not proposed a mechanism for resolving the conflict yet. IIA does not contradict to, but complements the existing Minsk agreements and it can break the deadlock in the current peace negotiations.

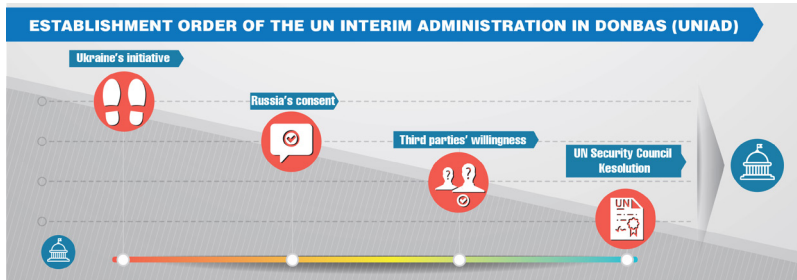
2. **Russia's consent.** Although the so-called DPR/LPR are formal parties to the conflict, their military actions and political steps are entirely dependent on the Russia's position. As a result, Ukraine would have to negotiate with Russia about the IIA establishment in non-controlled territories. For the success of these negotiations, the negotiation package should be maximally extended. The broader negotiation menu will be, the more chances to defend its own version of the conflict settlement Ukraine will have. Limitation of the negotiations only with IIA issue will correspond to the Russian interests rather than the extensive Ukrainian-Russian negotiations. But in any case, these negotiations – either extensive or only concerning Donbas – are needed. For Russia, IIA will allow not only to 'save its face' coming out of Donbas, but to retain some leverages of influence because of the presence (directly or indirectly) in the IIA.

3. **Third parties' willingness.** The establishment of IIA in non-controlled territories by the example of UNTAES will require the involvement of numerous staff potential and considerable financial and material resources of other countries. According to rough estimates, it is necessary to deploy about 40 thousand people to ensure the effective disengagement, sustainable ceasefire regime, providing security and legal order, execution of administrative functions etc. The IIA budget will reach billions of costs. It won't be easy to organize such financing by the international community, but it will be possible if all stakeholders realize that in any case, they will pay a higher price for the conflict continuation. The military component of the IIA should involve an active participation of troops from Asia and Africa. The OSCE can perform the police functions. Special Representative of the UN Secretary General should head the IIA and the administration should include staff from various UN member states.

4. **UN Security Council Resolution.** It is important for the adoption of the relevant resolution that none of the permanent members of the UN Security Council (Russia, USA, China, UK, France) put a veto during the voting. This resolution will be a fundamental document determining the mandate of the possible temporary transitional UN administration in Donbas – United Nations Interim Administration in Donbas (UNIAD).

In the interests of Ukraine and international security, it is necessary that UNIAD would be a complex mission. The disengagement of the parties, demilitarization of DPR/LPR militants, withdrawal of mercenaries and military equipment from non-controlled territories, monitoring over all uncontrolled areas of Ukrainian-Russian border (in

cooperation with OSCE) and creation of conditions for the return of displaced persons should be entrusted to the UNIAD military administration. The mandate of the UNIAD civilian administration may include the formation of temporary international police forces, establishment of transitional justice, human rights and fundamental freedoms protection and also providing humanitarian assistance.



UNIAD ROLE IN THE IMPLEMENTATION OF THE MINSK AGREEMENTS

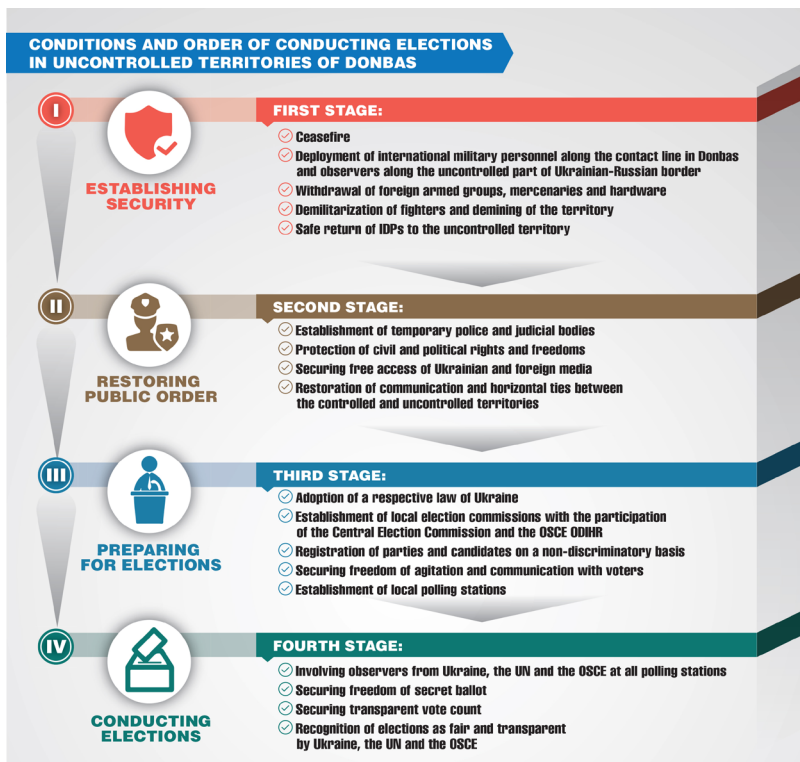
According to the international practice, elections in the conflict-affected territory are conducted approximately in three years after the end of hostilities. Fair and transparent elections in uncontrolled territories should be preceded by a long process which consists of several successive stages: establishing security, restoring public order, conducting a transparent and fair election campaign. The key role in the election process should rest on the UNIAD which in cooperation with the OSCE and the Ukrainian authorities has to ensure a safe, free, transparent, fair and democratic expression of will in non-controlled territories. The results of the local elections in non-controlled territories may be considered valid only if they will get the appropriate qualification from Ukraine, the UN and the OSCE.

After the elections in non-controlled territories are held under the above conditions, Ukraine will have an opportunity to return a border control. According to p. 9 of the Minsk agreements, the entire Ukraine's control restoration over the state border should begin on the first day after the local elections are held. Thus, Ukrainian authorities should be allowed to patrol the uncontrolled part of the border.

Amnesty will be a separate problem in the reintegration process of non-controlled territories into Ukraine. P. 5 of the Minsk agreements obliges Ukraine "to provide the amnesty and pardon by entering the law into force on prohibiting the prosecution and punishment of persons in connection with the events that occurred in certain areas of Donetsk and Luhansk regions of Ukraine". According to the Razumkov Centre's poll in September 2016, only 34% of residents of Ukraine supported an amnesty for members of separatist movements that haven't committed serious crimes, while 38.5% of respondents rejected any amnesty.

Of course, the amnesty and pardon cannot be applied to pro-Russian militants and activists who have committed war crimes, crimes against humanity and other serious violations of international humanitarian law. Therefore, a way-out of this situation is handing off the issue of accountability for war crimes to a higher level, i.e. to international level. UNIAD can become an additional tool in granting amnesty for crimes unrelated to violence and prosecuting in connection with serious crimes committed during the armed conflict. On the one hand, the international civil administration is able to protect residents in non-

controlled territories from baseless persecution by the Ukrainian authorities. On the other hand, this administration can help to investigate cases of gross violations of human rights in cooperation with the Ukrainian authorities, the International Criminal Court (Ukraine has not ratified the Rome Statute, but recognized its jurisdiction over crimes committed in Donbas) or other newly established international judicial institution. It is reasonable that Ukraine should initiate UNSC resolution that provides for the establishment of respective international judicial authority which could establish a truth and punish persons accountable for crimes committed during the Euromaidan, Crimea's annexation and during the armed conflict in eastern Ukraine.



At the same time, completion of the reintegration process requires implementation of the constitutional reform. According to pp. 9 and 11 of the Minsk agreements the entire Ukraine's control restoration over the state border should be completed after the constitutional reform and the adoption of the permanent law on the special status of non-controlled territories. In turn, the Minsk agreements link the new Constitution of Ukraine to decentralization, taking into account peculiarities of the uncontrolled territories of Donbas, but do not limit the constitutional reform only with these issues. Therefore, the most favourable way-out of this situation is the adoption of a new Constitution of Ukraine which should become a "new social agreement", a result of nationwide dialogue on a wide range of issues on the state system (including decentralization, rights and obligations of all regions). This will enable to complete reintegration of the uncontrolled territories without territorial discrimination

against other regions of Ukraine. According to various polls, only 22% of Ukrainian residents support granting a special status provision for the uncontrolled territories of Donbas. IIA will provide time for constitutional reform implementation. Adoption of a new Constitution of Ukraine will complete reintegration of uncontrolled territories of Donbas and restore sovereignty over these areas.



Thus, UNIAD could become an efficient instrument for Donbas conflict settlement. The Ukraine's respective proposal in the international arena will allow Kyiv to return the initiative in the negotiation process, strengthen its subjectivity and restore the image of a constructive, understandable and predictable partner. UNIAD also will be able to reduce the degree of tensions in Ukrainian politics and society on the implementation of the Minsk agreements. Finally, the UNIAD introduction will save the lives of Ukrainian citizens, who are dying every day due to the continued fighting, and restore peace in Ukraine.



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