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# Political consequences of the conflict in Ukraine

**Report**[1]
Committee on Political Affairs and Democracy
Rapporteur: Ms Kristýna ZELIENKOVÁ, Czech Republic, Alliance of Liberals and Democrats for Europe

*Summary*

The Committee on Political Affairs and Democracy regrets that against a security situation that has deteriorated and in the absence of a sustainable ceasefire, there has been no progress in the implementation of the political aspects of the Package of Measures for the Implementation of the Minsk Agreements. It reiterates its support for a peaceful solution to the conflict and for the Minsk process and calls on the Russian Federation to withdraw its troops from the territory of Ukraine and stop military supplies to the separatists.

The committee reaffirms its commitment to the territorial integrity of Ukraine within its internationally recognised borders. It regrets that, despite the continuing refusal of the international community to recognise the annexation of Crimea by Russia and the application of various types of sanctions against Russia and Russian citizens, not only has the annexation not been reversed, but the human rights situation in the peninsula continues to deteriorate.

The report underlines that only a democratic Ukraine with stable, efficient and accountable institutions will be a strong and prosperous Ukraine capable of stopping external aggression and restoring peace and urges the Ukrainian authorities to take a number of measures.

1. Reference to committee: Bureau decision, Reference 4058 of 27 June 2014.

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## A. Draft resolution[2]

1. More than two years after the outbreak of the military conflict in Ukraine, the Parliamentary Assembly is deeply concerned about its political consequences both for Ukraine itself and for the overall stability and security in Europe.

2. For Ukraine, the conflict has resulted in the violation of its sovereignty and territorial integrity. This started, in the aftermath of the Euromaidan, with the illegal annexation of Crimea by the Russian Federation and has continued with Russia's support to separatists in eastern Ukraine and its growing role in the ongoing conflict. Since mid-April 2014, more than 9 300 people have been killed, more than 21 500 people have been injured and almost one and a half million people have left their homes as a result of the conflict. Hundreds are held captive or are reported missing.

3. The Assembly reaffirms its commitment to the principle of peaceful settlement of disputes and to the independence, sovereignty and territorial integrity of Ukraine, within its internationally recognised borders.

4. As regards Crimea, the Assembly reiterates its condemnation of the illegal annexation of the peninsula and its continuing integration into the Russian Federation, in breach of international law and the Statute of the Council of Europe (ETS No. 1). It regrets that, despite the continuing refusal of the international community to recognise Crimea's annexation by the Russian Federation and the application of various types of sanctions against the Russian Federation and Russian citizens, not only has the annexation not been reversed, but the human rights situation in the peninsula continues to deteriorate. In particular, the Assembly:

4.1. is deeply concerned about actions against critical media outlets, acts of intimidation and harassment against opponents, cases of disappearances and threats of abduction and the repression of persons belonging to minorities, in particular the Crimean Tatars, in the application of the law on extremism;

4.2. considers the banning of the Mejlis of the Crimean Tatar People, declared to be "an extremist organisation", to be a harsh repressive measure targeting the whole Crimean Tatar community and calls for this measure to be reversed;

4.3. calls for full and unrestricted access to the Crimean Peninsula of all human rights bodies of the Council of Europe in order for them to carry out their monitoring activities unimpeded and in accordance with their mandates;

4.4. calls on the Russian authorities to reverse the illegal annexation of Crimea and allow Ukraine to regain control of the peninsula.

5. As regards the ongoing conflict in eastern Ukraine, the Assembly is deeply concerned about the continuing violations of the ceasefire, in breach of the Minsk Agreements and the Package of Measures for their Implementation of February 2015. The escalation of violence along the contact line in Donbas has resulted in the movement of positions of the two sides closer to the contact line and in an increase in the number of civilian casualties caused by shelling. The Assembly also regrets increasing violations of weapon withdrawal commitments and restrictions on the freedom of movement of the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE).

6. The Assembly reiterates its support for a peaceful solution to the conflict and for the Minsk process. It asks once again:

6.1. the Russian Federation to withdraw its troops from the territory of Ukraine and stop military supplies to the separatists;

6.2. all sides to implement, responsibly and in good faith, the commitments undertaken under the Minsk Agreements and the Package of Measures for their Implementation, starting with the full respect of the ceasefire.

7. The Assembly regrets that, against a security situation that has deteriorated and in the absence of a sustainable ceasefire, there has been no progress in the implementation of the political aspects of the Package of Measures for the Implementation of the Minsk Agreements.

8. As regards, in particular, the issue of local elections to be organised in Donbas, the Assembly underlines that for such elections to be in line with Ukrainian legislation and international standards on free and fair elections there is need to ensure: an improved security environment, following the withdrawal of

2. Draft resolution adopted by the committee on 21 June 2016.

troops and weapons, and safe storage of weapons under international supervision; the possibility for all Ukrainian parties to participate in the elections and for Ukrainian media to broadcast in Donbas during the campaign; and respect of the right of people from Donbas who are internally displaced in Ukraine or have sought asylum in the Russian Federation to take part in the vote.

9. The Assembly welcomes the release of one of its members, Ms Nadiia Savchenko, after repeated calls by the international community, including more recently in Assembly Resolution 2112 (2016) on the humanitarian concerns with regard to people captured during the war in Ukraine. It also welcomes the release of Mr Yuri Soloshenko and Mr Gennady Afanasyev and of other prisoners. These releases are not only important humanitarian gestures, but also offer an opportunity to build trust between the sides to the conflict and provide the Minsk process with positive momentum. The Assembly reiterates its call for the release of all captured persons in line with Resolution 2112 (2016).

10. The Assembly joins the Council of Europe Commissioner for Human Rights in his call to ensure accountability for serious human rights violations committed during the conflict as a key to the reconciliation process. Perpetrators of grave crimes, such as unlawful killings, enforced disappearances and torture on both sides of the contact line, must be brought to account.

11. Only a democratic Ukraine with stable, efficient and accountable institutions, following through at last with the promises of the Euromaidan to reform a corrupt and oligarchic system, will be a strong and prosperous Ukraine, capable of stopping external aggression and restoring peace. Therefore, the Assembly:

11.1. while welcoming the adoption of constitutional amendments on the judiciary, urges the Ukrainian authorities to implement effectively the new measures, resolutely combat all forms of corruption, including at the highest political level, ensure the effective functioning of the newly established anti-corruption institutions and further pursue reforms, including the constitutional reform on decentralisation;

11.2. calls on the Ukrainian authorities to react positively to opinions by the European Commission for Democracy through Law (Venice Commission) concerning Ukraine;

11.3. calls on the Ukrainian authorities to ensure that the investigations and proceedings related to the violent incidents during the Euromaidan demonstrations, as well as to the tragic events in Odessa in May 2014, are accelerated and carried out impartially so as to deliver justice and enhance public confidence in the criminal justice system, in line also with the recommendations by the International Advisory Panel set up by the Secretary General of the Council of Europe;

11.4. welcomes the intensified support that the Council of Europe offers to Ukraine, notably through the Council of Europe Action Plan 2015-2017, and calls on member States to consider further funding, including through voluntary contributions.

12. Beyond Ukraine, the Assembly regrets that the conflict and the Russian Federation's actions in this respect have undermined the overall stability and security on the continent as well as the achievements towards a strategic partnership with the Russian Federation over the last decades. The European Union should also draw its own lessons and reflect upon strategies for the future of the region which will de-escalate the current tensions and help to rebuild confidence in its neighbourhood.

13. Concerning the economic consequences of the conflict, the Assembly notes that they are considerable not only for Ukraine itself and for the Russian Federation, but also for the European Union and several European countries which have been affected to varying but significant degrees by the sanctions against the Russian Federation and Russian counter-sanctions. The debate over sanctions divides the European Union and threatens its cohesion.

14. The Assembly urges Council of Europe member States to do everything in their power to support the peace process in Ukraine so as to avoid a further escalation of violence, with dangerous consequences for civilians living in the conflict area, or the development into a "frozen" or "semi-frozen" conflict, prolonging instability and insecurity in Ukraine and the whole of Europe.

15. For its part, the Assembly could serve as a unique platform for dialogue and inter-parliamentary co-operation and make a positive contribution to the peaceful solution of the conflict, notably by helping to build confidence. It regrets that it has so far been unable to play its natural role of parliamentary diplomacy, mainly due to the fact that Russian parliamentarians have not participated in its activities for two consecutive years. Regardless of the divergences on the origin of the crisis, the Assembly reiterates its call on the Russian Parliament to engage in a constructive dialogue with the Assembly in mutual respect.

16. The Assembly resolves to continue to follow closely the political and humanitarian consequences of the conflict in Ukraine as well the human rights and rule of law-related challenges it raises in areas under or outside Ukrainian Government control.

## B. Explanatory memorandum by Ms Kristýna Zelienková, rapporteur

### 1. Introduction

1. In the framework of the preparation of my report, I have carried out several visits to Ukraine and organised several hearings in the Committee on Political Affairs and Democracy.

2. To recall the main participants of the various hearings, I would mention Ms Iryna Gerashchenko, Chairperson of the European Integration Committee of the Ukrainian Parliament and the Ukrainian President's special envoy for conflict settlement in the Donetsk and Luhansk regions (today first Deputy Speaker of the Ukrainian Parliament); Mr Gianni Buquicchio, President of the European Commission for Democracy through Law (Venice Commission); Mr Armen Harutyunyan, (then) Head of the United Nations Human Rights Monitoring Mission in Ukraine; Professor Aldo Ferrari from the Ca' Foscari University of Venice and the Institute for International Political Studies (Istituto per gli Studi di Politica Internazionale, ISPI), and more recently Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, and Mr Christos Giakoumopoulos, then Special Advisor of the Secretary General of the Council of Europe for Ukraine.

3. My first visit to Ukraine in my capacity as rapporteur took place from 15 to 18 February 2015 and was of particular topicality as I arrived only a few hours after the leaders of the Normandy format met in Minsk to agree on a Package of Measures for the Implementation of the Minsk Agreements. On that first trip, I visited not only Kyiv but also the two Oblasts which are partly controlled by Russian-backed separatists in eastern Ukraine, namely the cities of Sloviansk and Kramatorsk in the Donetsk Oblast and the city of Severodonetsk in the Luhansk Oblast.[3]

4. I have since visited Ukraine as rapporteur three more times: in September 2015, when I held meetings in Kyiv, Lviv (western Ukraine) and Odessa (in the south); in November 2015, when I met President Poroshenko,[4] and, more recently, from 4 to 7 April 2016, when together with Ms Marieluise Beck, the rapporteur of the Committee on Legal Affairs and Human Rights on "Legal remedies to human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities", I visited Kyiv and again the eastern region, this time Mariupol and Dnipropetrovsk.

5. In addition to my meeting with President Poroshenko, during my various visits to Ukraine, I held meetings with government and parliamentary representatives, including the Speaker of Parliament, the Deputy Prime Minister, the Minister and Deputy Minister of Foreign Affairs, governors and local officials, representatives of the international and diplomatic community, including the Special Representative of the Chairperson-in-Office of the Organization for Security and Co-operation in Europe (OSCE) (I met both Ambassador Tagliavini and Ambassador Sajdik) and the Chief of the OSCE Special Monitoring Mission in Ukraine, as well as representatives of civil society including local and international non-governmental organisations (NGOs). I had frank and constructive talks with all interlocutors and was particularly impressed by the resilience, determination and energy of the local people I met. I am grateful to the Ukrainian delegation, and in particular Mr Volodymyr Ariev, Chairperson of the delegation, Ms Iryna Gerashchenko and Ms Mariia Ionova, who helped me organise the first visit to eastern Ukraine, Mr Andrii Lopushanskyi, who accompanied me during all three visits to Ukraine, and Mr Oleksii Goncharenko, who accompanied me during the visit to eastern Ukraine and Odessa. Also, my thanks go to the team of the Council of Europe office in Kyiv for their assistance.

6. I also wished to visit the Russian Federation to obtain the views of the Russian authorities and Russian civil society about the conflict in Ukraine. I obtained the committee's authorisation for this purpose during the June part-session 2015. When I contacted the Russian delegation in this regard, I was told that I would have an answer after the vote on "Consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015))". I received a negative answer following that vote and the adoption of Resolution 2063 (2015) which maintained the sanctions with respect to the members of the Russian delegation.

7. The committee also authorised me to visit "to the extent possible, in agreement with the Ukrainian authorities, the Ukrainian territories outside the control of the Ukrainian authorities". This was not possible for security reasons as will be explained below, in chapter 4.2.

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3. See my information note on the fact-finding visit to Ukraine, 15-18 February 2015, AS/Pol (2015) 02 rev.
4. See my statement following my meeting with President Poroshenko on 11 November 2015.

8. At its meeting on 24 May 2016 in Paris, the committee had the opportunity to hold a first exchange of views on my report on the basis of a preliminary draft. This allowed me to integrate into the present revised version recent developments as well as some of the comments of my colleagues or answers to their questions. I am willing to further update the report, by the means of an addendum, in time for the Assembly debate scheduled for the October 2016 part-session.

## 2. The scope of my report

9. The initial title of my report as proposed by the Bureau of the Assembly, following a current affairs debate held in June 2014, was the issue of "political consequences of the crisis in Ukraine".

10. However, such a title was misleading. What is going on in Ukraine is much more than a mere "crisis". It is a fully-fledged conflict which started in the aftermath of the Euromaidan with the illegal annexation of Crimea by the Russian Federation in February 2014 and continued with Russia's role in the conflict in eastern Ukraine, in violation of Ukraine's sovereignty.

11. Upon my proposal, the committee has therefore agreed to change the title of the report to "Political consequences of the conflict in Ukraine".

12. Following a brief overview of recent developments in Ukraine (chapter 3 below), and also in light of discussions held in the committee, my report will tackle three main aspects of the topic: the political consequences of the conflict for Ukraine itself (chapter 4); the wider geopolitical consequences of the conflict (chapter 5), and, finally, the more specific consequences for and the role of our Assembly (chapter 6).

13. It is not part of the scope of my report to analyse in detail the internal political situation in Ukraine or the various human rights and rule of law-related challenges, including restrictions to human rights and fundamental freedoms as a result of the conflict, or the ongoing reform process. This is part of the mandate of the Monitoring Committee rapporteurs, who are responsible for verifying the fulfilment of the obligations assumed by Ukraine under the terms of the Statute of the Council of Europe (ETS No. 1), the European Convention on Human Rights (ETS No. 5) and all other Council of Europe conventions to which Ukraine is a Party, as well as the honouring of commitments entered into by the authorities of Ukraine upon its accession to the Council of Europe and should also follow the functioning of democratic institutions in the country.[5]

14. The numerous human rights issues that the annexation of Crimea and the ongoing conflict in Donbas have raised are also part of another report on the "Legal remedies to human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities" which is being prepared by the rapporteur of the Committee on Legal Affairs and Human Rights, Ms Marieluise Beck.

15. Last but not least, the humanitarian consequences of the conflict, including issues of major importance such as the rights of the one and a half million internally displaced persons (IDPs) or missing and captured persons are dealt with by the Committee on Migration, Refugees and Displaced Persons. I therefore refer in this respect to the reports already prepared by this committee,[6] as well as to their ongoing work and I will try to limit references to these issues to the minimum extent possible to avoid duplication of work and diverging messages.

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5. The rapporteurs of the Monitoring Committee have been following very closely developments in Ukraine, in particular since February 2014. See the report of the Monitoring Committee (Doc. 13482) and Resolution 1988 (2014) "Recent developments in Ukraine: threats to the functioning of democratic institutions". See also AS/Mon (2014) 16; Honouring of obligations and commitments by Ukraine, information note by the co-rapporteurs on their fact-finding visit to Kyiv and Odessa (7 to 11 July 2014), AS/Mon (2015) 13, Honouring of obligations and commitments by Ukraine, information note by the co-rapporteurs on their fact-finding visit to Kyiv (25 to 27 March 2015), AS/Mon (2015) 21, Honouring of obligations and commitments by Ukraine, information note by the co-rapporteurs on their fact-finding visit to Kyiv, Dnipropetrovsk and Kharkiv (18 to 22 May 2015), and AS/Mon (2016)05, information note, Honouring of obligations and commitments by Ukraine, information note by the co-rapporteurs on their fact-finding visit to Kyiv (1 to 3 February 2016).

6. The humanitarian situation of Ukrainian refugees and displaced persons, Doc. 13651, Doc. 13651 Add and Resolution 2028 (2015); Missing persons during the conflict in Ukraine, Doc. 13808, Resolution 2067 and Recommendation 2076 (2015), and reply from the Committee of Ministers, Doc. 14004; The humanitarian concerns with regard to people captured during the war in Ukraine, Doc. 14015, Doc. 14015 Add, Resolution 2112 (2016) and Recommendation 2090 (2016).

### 3. Brief overview of recent developments

16. My last visit to Ukraine with Ms Beck took place at a moment (4-7 April 2016) when, following months of political infighting which had paralysed efforts to tackle corruption and adopt urgently needed reforms and had delayed foreign and international financial assistance, negotiations for a new coalition and a new government seemed to be reaching their final stage.

17. Whereas President Poroshenko had already called on him to resign in mid-February 2016, Prime Minister Yatsenyuk, after initially surviving a no confidence vote in parliament, finally resigned two days after we left the country, on 10 April 2016. His government had been accused of corruption and an inability to implement reforms. Several ministers and high officials had left his government since the beginning of the year, such as the Minister of the Economy, Mr Aivaras Abromavičius, who left the government in February after accusing it of lacking commitment to end corruption. The political uncertainty grew stronger when two parties, Batkivshchyna, led by Yulia Tymoshenko, and Samopomych, led by the Mayor of Lviv, Andrii Sadovyi, left the coalition.

18. On 14 April 2016, a close ally of President Poroshenko, Mr Volodymyr Groysman, whom we had just met as Speaker of the Parliament, was nominated Prime Minister. It is good news for the Council of Europe that Mr Groysman is an old partner, not only as Speaker of the Verkhovna Rada but also as he had played a prominent role in the decentralisation reform and was a former member of the Congress of Local and Regional Authorities of the Council of Europe. Other Council of Europe discussion partners had stayed the same, such as Justice Minister Petrenko and Vice-Prime Minister and Minister for Regional Development Zubko. It is also interesting to note that a new ministry for temporarily occupied territories and IDPs in Ukraine was created and the new Minister, Mr Vadym Chernysh, visited the Council of Europe very soon after his appointment, in May 2016.

19. The new government appears to strengthen President Poroshenko's influence as not only does the Prime Minister come from his political group but also the new finance minister, Mr Oleksander Danylyuk, was the Deputy Head of the President's administration, and the new minister of Economic Development and Trade and first Vice-Prime Minister, Mr Stepan Kubiv, was the President's representative in parliament. To somewhat balance the increasing power of President Poroshenko's group, the new Speaker of Parliament, Mr Andriy Parubiy, former head of the Euromaidan self-defence force, comes from the People's Front, the second party in the new bi-partisan coalition. Mr Yatsenyuk's party also has more ministers and a Vice Prime Minister in the new cabinet. Some critics regret the departure from the government of former finance minister Natalie Yaresko who had been praised by the international community for the handling of Ukraine's debt crisis.

20. After months of quarrelling over his personality and role, former Prosecutor General Shokin finally resigned and his resignation was approved by the parliament on 29 March. Against the backdrop of numerous scandals in the public prosecutor's office, on 12 May 2016, President Poroshenko appointed as new Prosecutor General one of his close allies, namely the former leader of his party and his parliamentary faction, Mr Yury Lutsenko, former Minister of the Interior of Ukraine.

21. The new government is facing important challenges as it is expected to implement urgently needed reforms, such as the fight against corruption and the building of efficient, transparent and accountable democratic institutions, while, at the same time, facing Russian aggression in eastern Ukraine and in the annexed Crimea. It will also have to move the country out of a very deep economic and debt crisis, reduce the political influence of oligarchs and halt rising populism and nationalism. The new Prime Minister seemed to be fully conscious of these challenges when, upon his approval by the parliament, he stated: "I understand the threats that face us. In particular I would like to highlight three threats: corruption, ineffective governance and populism, which do not pose less of a threat than the enemy in eastern Ukraine."

22. As regards the fight against corruption, one of the main demands of the Ukrainian people in the Euromaidan protests and also indispensable for democratisation, economic development and further European integration of the country, I refer to the information note presented by Mr Michele Nicoletti, rapporteur on "Corruption as governance regime: a barrier to institutional efficiency and progress", following his fact-finding visit to Ukraine in January 2016.[7] Mr Nicoletti has very successfully explained the main historic factors of the phenomenon of corruption in the country and summarised the measures recently taken to counteract it.

7. AS/Pol (2016) 05.

23. The new Prosecutor General, Mr Lutsenko, has made it the primary task of his team to purge the office of the public prosecutor including through a substantial staff overhaul. The Commission on the selection of officials to the inspectorate, expected to be operational as of December 2016, was mandated to "hunt for corrupt officials and traitors" in the office. Following the publication of the latest report on the human rights situation in Ukraine (16 February to 15 May 2016) by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which denounced human rights abuses in Donbas and also implicated the Security Service of Ukraine (SBU) in the illegal detention and torture of hundreds of individuals,[8] Mr Lutsenko invited Ombudsman Representative Mykailo Chaplyha and Verkhovna Rada Commissioner for Human Rights Valeria Lutkovska to perform an unscheduled inspection of an SBU detention facility. It is to be hoped that the new Prosecutor General will take resolute action to demonstrate that there is no impunity for perpetrators of human rights violations. In this regard, I join the Council of Europe Commissioner for Human Rights, who, following his last visit to Ukraine, underlined that accountability for serious human rights violations committed during the conflict is a key to the reconciliation process. Perpetrators of grave crimes, such as unlawful killings, enforced disappearances and torture on both sides of the contact line, must be brought to account.[9] In the same context, it is also of utmost importance to accelerate progress in the investigations and proceedings related to the violent incidents during the Euromaidan demonstrations and the tragic events in Odessa of May 2014, which resulted in 48 deaths and injuries to several hundred people.[10]

24. In a very positive development, on 2 June 2016, the Verkhovna Rada adopted the long-awaited constitutional amendments related to the judiciary and the public prosecution service. The amendments, elaborated with the help of the Council of Europe's Venice Commission, aim to strengthen the independence of judges by strengthening the High Council of Justice and by removing possibilities for the political organs, both the President and the Verkhovna Rada, to interfere with the career of judges. The combined effect of the constitutional amendments and of the new law on the judiciary and the status of judges, which was adopted on the same day, will provide the basis for removing corrupt or incompetent judges. The constitutional amendments will also consolidate the reform of the public prosecution service, including the limitation of the prosecutorial functions, in line with the new law on this service, which was adopted earlier, and European standards.

25. The adoption of the amendments for which the Council of Europe, and in particular its Parliamentary Assembly, have been calling for years, were hailed by the co-rapporteurs of the Monitoring Committee[11] and the Secretary General of the Organisation.[12] A few days earlier, when assessing the mid-term implementation of the Council of Europe Action Plan 2015-2017 for Ukraine[13], the Secretary General of the Council of Europe recalled the intensive support the Organisation offers to the country through expertise and advice. Welcoming the progress achieved with the development of an updated legal framework for the judiciary and the adoption of strategic policy documents, such as new laws on the public prosecution service, on anti-corruption agencies, on the police and on the State bureau of investigation, the Secretary General stressed the importance of effective implementation of new measures, including the effective functioning of the newly established anti-corruption institutions. I share his conclusion that the success of the judicial reform is a precondition for the success of reforms in other sectors too, including economic growth and the prospects for foreign investment.[14]

### 4. The violation of Ukraine's sovereignty and territorial integrity

26. The main political consequence of the military conflict for Ukraine is undoubtedly the violation of its sovereignty and territorial integrity, which is in breach of international law and the Council of Europe's Statute. This started with the annexation of Crimea by the Russian Federation in March 2014 and continued with its support to the rebels in Donbas and its growing role in the conflict there as of April 2014.

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8. www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf.
9. Statement by the Commissioner for Human Rights on 29 March 2016.
10. Report of the International Advisory Panel, established by the Secretary General of the Council of Europe, on its review of the investigations into the violent incidents during the Maidan demonstration, published on 31 March 2015, and the report of the IAP on its review of the investigations into the tragic events in Odessa of May 2014, published on 4 November 2015.
11. Statement by the co-rapporteurs of the Monitoring Committee on 3 June 2016.
12. Statement by the Secretary General on Ukraine's Constitutional amendments on 2 June 2016.
13. Council of Europe Action Plan 2015-2017.
14. Statement by the Secretary General on reforms in Ukraine on 26 May 2016.

### *4.1. Crimea*

27. The Council of Europe, including both its Parliamentary Assembly and the Committee of Ministers, has repeatedly condemned the annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sebastopol and has stressed that it cannot form the basis for any alteration of their status. In doing so, the Council of Europe statutory organs have reaffirmed on many occasions their commitment to the principle of peaceful settlement of disputes, to the independence, sovereignty and territorial integrity of Ukraine within its internationally recognised borders and to the respect for human rights and fundamental freedoms.

28. For its part, the Parliamentary Assembly concretely reacted to the annexation of Crimea by applying sanctions with respect to the members of the Russian parliamentary delegation to the Parliamentary Assembly at its April 2014 part-session. It also applied sanctions in January 2015 as a reaction to both the continuing integration of Crimea into the Russian Federation and Russian actions in relation to the conflict in eastern Ukraine. I will return to the matter of the sanctions imposed on the Russian delegation and the current state of affairs in the relations between the Assembly and the Russian Parliament below, in chapter 6.

29. Beyond the Council of Europe, the annexation of Crimea by the Russian Federation has been condemned by the United Nations General Assembly which, in its Resolution 68/262 on the Territorial Integrity of Ukraine, adopted on 27 March 2014, affirmed its commitment to Ukraine's sovereignty, political independence, unity and territorial integrity within its internationally recognised borders, underscoring the invalidity of the 16 March 2014 "referendum" held in autonomous Crimea. By a vote of 100 in favour to 11 against, with 58 abstentions, the United Nations General Assembly called on States, international organisations and specialised agencies not to recognise any change in the status of Crimea or the Black Sea port city of Sebastopol and to refrain from actions or dealings that might be interpreted as such.

30. The annexation of Crimea by the Russian Federation also constituted a breach of its obligations under the 1994 Budapest Memorandum on Security Assurances. The memorandum provided security assurances for the territorial integrity and sovereignty of Ukraine (and also Belarus and Kazakhstan) by the three nuclear powers which signed it, namely the Russian Federation, the United States of America and the United Kingdom, in exchange for Ukraine's (and the other two States') accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Invoking, *inter alia*, the breach of the Budapest Memorandum, the rest of the partners suspended, on 24 March 2014, Russian membership of the G8 (now G7).

31. In the absence of a resolution by the United Nations Security Council which could lead to the adoption of international sanctions in line with Article VII of the United Nations Charter, the European Union and the United States, as well as some European States, responded with a first wave of unilateral sanctions against the Russian Federation, which were later extended and further broadened over Russian action against Ukraine's territorial integrity or non-implementation of the Minsk Agreements.

32. Three different types of sanctions were adopted by the European Union: immediately after events in Crimea, in March 2014, the European Council adopted political or diplomatic restrictive measures (stage one), such as suspension of discussions on visas, cancellation of official EU–Russia summits, etc.; individual measures with respect to persons and entities, such as visa bans and asset freezing (stage two), were adopted in several waves as of 17 March 2014. They now concern 146 individuals (separatist leaders, members of the Crimean government, oligarchs and some 30 Russian parliamentarians) and 37 entities (mainly in Crimea and eastern Ukraine); economic sanctions related to certain sectors of the economy (stage three) entered into force as of 1 August 2014 and 12 September 2014, in co-ordination with the United States. Different deadlines apply to different types of EU sanctions. The EU restrictive measures put in place specifically in response to the annexation of Crimea and the city of Sebastopol, such as the prohibition of imports into the European Union of goods from Crimea or the prohibition of European investments in Crimea have been extended until 23 June 2017.

33. However, today, despite the continuing refusal of the international community to recognise the annexation of Crimea by Russia and the ongoing application of various types of sanctions against Russia as a follow up to Russia's actions in this respect, not only has the annexation not been reversed, but the human rights situation in the peninsula is continuously deteriorating, including the denial of freedom of expression, freedom of assembly, freedom of religion and of conscience, acts of intimidation and harassment against opponents and the repression of persons belonging to minorities, in particular the Crimean Tatars.[15]

15. Ministers Deputies' decisions of 27 April 2016.

34. Although the issue of the human rights violations in Crimea falls within the scope of Ms Beck's report, I cannot refrain from referring to it just briefly, especially as, during our last joint visit to Ukraine, we met the two Crimean Tatar leaders, Mr Refat Chubarov, the current Chairperson of the Mejlis of the Crimean Tatar People, and Mr Mustafa Dzhemilev, former Chairperson of the Mejlis and currently member of the Ukrainian Parliament who spent 15 years as a political prisoner in Soviet camps. They were both previously banned from entering Crimea; they can now do so but at the risk of arrest.

35. As we already stated with Ms Beck, the fact that both leaders, as are other Crimean Tatars, are indeed opposed to Crimea's annexation by the Russian Federation which breached international law, does not turn their work into "extremist activity".[16]

36. In fact, since the annexation, Crimean Tatars have been the most frequent (although not the only) targets of operations conducted by the occupying authorities under the application of the law on extremism as they are considered by the latter as the biggest threat of extremism and dissent towards the present order. Such operations include searches (often without warrant), disproportionate use of force by law-enforcement officers, intimidation and threats of abduction. The reported cases of disappearances concern both Crimean Tatars and Ukrainians. Also, the wrongful closure of the ATR media outlet, which has a significant outreach within the Crimean Tatar community, constitutes a grave violation of the freedom of the media in the peninsula.

37. Against this background, the decision of the so-called "Highest Court of Crimea" to ban the activities of the Mejlis, declared to be "an extremist organisation", indicates a new level of repression targeting the Crimean Tatar community as a whole.[17] The Mejlis is the representative body of the Crimean Tatars and an important social and traditional structure of this community. The ban, which could apply to more than 2 500 members of 250 village and town mejlises in Crimea, will further increase the risk of alienation of the Crimean Tatar community and of isolating it from the rest of the population living in the peninsula.

38. Both the Ministers' Deputies and the President of the Assembly reacted to the ban on the Mejlis which also comes at a time of deteriorating relations between Russia and Turkey. Considering it an "extremely harsh repressive measure targeting the whole Crimean Tatar Community", the President of the Assembly urged the authorities to take "whatever steps possible to reverse this decision".[18] At his meeting with President Poroshenko in Ukraine on 13 March 2016, the latter underlined that such a new wave of unprecedented repression of Crimean Tatars and Ukrainians on the peninsula could not be ignored by the Council of Europe.

39. We should insist on the reversal of the decision to ban the Mejlis. We should also join the Ministers' deputies of the Council of Europe in their call for full and unrestricted access to the Crimean Peninsula, of all human rights bodies of the Council of Europe in order that they can carry out their monitoring activities unimpeded and in accordance with their mandates, to urgently address deteriorations of human rights and fundamental freedoms. This was also the main conclusion of the report on his human rights visit to Crimea presented to the Secretary General of the Council of Europe by Ambassador Stoudmann[19] who stressed that "it is neither normal nor acceptable that a population of 2.5 million people should be kept beyond the reach of the human rights mechanisms established to protect all Europeans".

40. Last but not least, it remains my position that as long as the annexation of Crimea has not been reversed there can be no return to business as usual in our relations with the Russian Federation.

### *4.2. Security challenges and prospects for peace and stability in eastern Ukraine*

41. More than 9 000 people have been killed and more than 21 500 injured in the conflict area in eastern Ukraine, from mid-April 2014 to mid-May 2016, including civilians, Ukrainian armed forces and armed separatists. These figures correspond to a "conservative estimate" made on the basis of available data from the OHCHR in its latest report on the situation of human rights in Ukraine.[20]

16. Joint statement issued by Ms Beck and I on 14 April 2016.
17. Report on his human rights visit to Crimea presented to the Secretary General of the Council of Europe by Ambassador Stoudmann.
18. President's statement, 27 April 2016.
19. See footnote 17 above.
20. See footnote 8 above.

42. The report also confirms that the situation in the east of Ukraine remains volatile and summarises the options that lie ahead: it may develop into a "frozen conflict", creating a protracted environment of insecurity and instability; escalate, with dire consequences for civilians living in the conflict-affected area; or move towards sustainable peace through the meaningful implementation of the Package of Measures for the Implementation of the Minsk Agreements.[21]

*4.2.1. The Minsk process*

43. Let me briefly recall that the "Package of Measures for the Implementation of the Minsk Agreements" agreed in Minsk on 12 February 2015 (hereinafter also referred to as the "Package" or "Package of Measures") constitutes a road map covering, on the one hand, the security situation on the ground (ceasefire, withdrawal of heavy weaponry, control of the process by the OSCE and, ultimately, return to Ukraine of the control over its border with Russia), and, on the other hand, a political process aimed at the resolution of the conflict (amnesty, exchange of prisoners on the basis of an "all for all" principle, constitutional reform on decentralisation, "special status" for Donbas and local elections to be held there "in accordance with Ukrainian legislation") in respect of the sovereignty and territorial integrity of Ukraine.[22] The Package refers to the Minsk Protocol of 5 September 2014 and its Memorandum of implementation of 19 September 2014 and encompasses most of the points already included in these documents, offering some further explanation of the political aspects and processes. Thus the implementation of a ceasefire remains the primary precondition for the beginning of many of the other measures to follow.

44. The Package was signed by the same persons as the Minsk Protocol and the Memorandum of September 2014, namely the members of the Trilateral Contact Group established by the Normandy format (Ambassador Tagliavini, then Special Representative of the OSCE Chairperson-in-Office, the Second President of Ukraine, Mr Kuchma, the Ambassador of the Russian Federation to Ukraine, Mr Zurabov, and the representatives of certain areas of the Donetsk and Luhansk Regions, Mr Zakharchenko and Mr Plotnitski). There has, however, been an important addition, namely a declaration by the four leaders of the Normandy format (France, Germany, Russia and Ukraine) "endorsing" these measures and reaffirming their "full respect for the sovereignty and territorial integrity of Ukraine". They have also agreed to establish an oversight mechanism in the Normandy format (regular meetings at administrative, ministerial and heads of State and government levels). Moreover, the United Nations Security Council, in its Resolution 2202 adopted on 17 February 2015, called for the full implementation of the Package of Measures after having unanimously reaffirmed its "full respect for the sovereignty, independence and territorial integrity of Ukraine" and expressed its conviction that "the resolution of the situation in eastern regions of Ukraine can only be achieved through a peaceful settlement to the current crisis".

45. Four thematic working groups, meeting under the OSCE aegis, facilitate the implementation of the agreed measures. The deadline initially fixed of 31 December 2015 for their implementation was prolonged at the Normandy format summit of 2 October 2015 in the light of insufficient progress.

46. I would like to recall that the political support that the four leaders expressed for the February 2015 Package of Measures was seen at the time as an "historic chance" or even as "the last chance" for peace. And this, despite all the criticism that was made of the measures agreed already at the time of their adoption, including the lack of a clearly defined set of procedures for verifying their implementation or the much contested fact that border control will only return to Ukraine after a number of conditions are met, such as local elections and a comprehensive political settlement, including constitutional reform providing for decentralisation. It is also quite clear that the measures were agreed at a desperate time for Ukraine, when its army was facing collapse confronted with Russian troops, and President Poroshenko's margin for negotiations was very limited. With the notable exception of Debaltsevo,[23] the measures had the merit of leading to a general decrease in violence across the country and setting in motion a political process; this should not be forgotten by those who criticise the deal.

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21. Ibid.

22. For more details, see AS/Pol (2015) 2 rev and Appendix 1. See also the report by the French Senate, 1 June 2016 relating to the sanctions regime of the European Union against the Russian Federation (in French only).

23. In Debaltsevo, fighting by the Russian-backed separatists continued and even intensified after the deadline for the entry into force of the ceasefire (15 February 2015, 12 a.m. local time). On 16 February 2015, OSCE observers were denied access to the area. Fierce military clashes continued in the days that followed and the OSCE monitors were denied access on several occasions. This culminated in the announcement, on 18 February 2015, by President Poroshenko of a "planned and organised" withdrawal of Ukrainian troops from the town of Debaltsevo. He subsequently suggested the deployment by the United Nations of a peacekeeping operation in Ukraine as an instrument to ultimately help implement the peace agreement. This idea was mentioned to me, almost at the same time, by the Minister of Foreign Affairs. The international community, including the former President of the Assembly, Ms Anne Brasseur, with whom I was in contact,

47. Rather than the lack of clarity of its provisions, what delays and undermines the implementation of the political aspects of the Minsk Agreements, including the Package of Measures, is the lack of implementation of the security aspects, starting with the ceasefire as the primary precondition for the beginning of the other measures to follow. As the measures announced in Minsk are steps to be taken one after the other, there can be no tangible progress with the rest of the commitments undertaken, including political dialogue, as long as shooting is ongoing.

*4.2.2. The security situation on the ground*

48. There has been an escalation of violence since last winter and a significant deterioration of the security situation along the contact line in the Donbas. In this respect, the ceasefire entered into force on 1 September 2015, which gave rise to hopes that it would be a decisive step in the right direction, led to a great disappointment as it only lasted a few weeks.

49. It was against this worsened security background that we visited the country with my colleague Ms Beck from 4 to 7 April 2016, including Dnipropetrovsk and Mariupol. We were informed that, on a number of occasions, the intensity of fighting between Ukrainian forces and Russian-backed rebels reached levels not seen since August 2014. During the week which preceded our visit, from 28 March to 3 April 2016, the OSCE Special Monitoring Mission (SMM) recorded the highest number of mortar and artillery explosions in the two years since its deployment. It also noted the use of multiple launch rocket systems on numerous occasions.

50. Whereas the SMM does not establish which side is responsible for the ceasefire violations, our Ukrainian interlocutors, and mainly Mr Groysman, insisted that the worsened security situation was the result of increasing provocations and an escalation of violence by the rebels and Russia. Mr Groysman spoke about 140 incidents of shelling per day in early March.

51. International interlocutors told us that fighting was generally conducted from static positions and was mainly of a tit-for-tat nature rather than aimed at any apparent tactical or strategic objectives. However, in some locations there has been movement of positions of the two sides closer to the contact line – and in one place, even across it. In some places, movements have resulted in the sides' position coming to within 100 metres of each other in the buffer zone. The Ukrainian Officer we met at the Checkpoint 1 in Mariupol told us that, in one location, at night, the rebels come as close as 30 metres to the Ukrainian troops.

52. The increased violence also resulted in an increase in the number of civilian casualties caused by ceasefire violations. Thus between 16 February and 15 May 2016, five civilians were killed from shelling (three women and two men) and 41 injured (14 women, 19 men and five adults whose sex is unknown; two boys and a child whose sex is unknown).[24]

53. Equally, low compliance with commitments undertaken by the sides is noted in recent months regarding the withdrawal of heavy weapons, as agreed in the February 2015 Package of Measures, as well as regarding the withdrawal agreed in the Addendum to this Package of 29 September 2015. Initial achievements which I reported upon at our meeting in October 2015 have been and are currently being reversed. Thus, the SMM reports an increasing number of weapons missing from permanent storage sites and from known holding areas, and many of these facilities have been found to be completely abandoned. These weapons are increasingly back in use at the contact line.

54. The Ukrainian authorities, as well as the officer we met at the Checkpoint 1 near Mariupol during our April 2016 visit, told us that the rebels had profited from the fact that the Ukrainian side had started implementing the withdrawal of weapons to escalate ceasefire violations and advance their positions.

55. The SMM also reports a direct correlation between armed violence, violations of weapon withdrawal commitments and restrictions on the SMM's freedom of movement, which have also been on the rise over the last few months. According to the SMM, such restrictions occur significantly more often in the non-government controlled areas than in those under government control and prevent the Mission from observing compliance with weapon withdrawal.

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condemned the violation of the ceasefire agreement by the Russian-backed separatists. The Secretary General of NATO, Jens Stoltenberg, stated that the rebels' offensive had put the wider peace agreement at risk and urged Russia to "use all its influence on the separatists to make them respect the ceasefire". For his part, Russian Foreign Minister, Sergei Lavrov, insisted the rebels' actions in Debaltsevo had not violated the ceasefire because it was a "rebel-held city" when the peace agreement was signed. However, this was not agreed in Minsk. The Package of Measures made no exception for Debaltsevo or any other town. A ceasefire is a ceasefire; commitments are commitments and cannot be changed. What was agreed in Minsk was that as of 15 February, 12 a.m. local time, all fire would stop.

24. See footnote 8 above.

56. What is even more worrying is that weapons are not only frequently observed in the security zone, but are also at times found in populated areas, creating a risk to the civilian population. While the sides place a token number of weapons in storage sites verifiable by the SMM, in reality, tanks and heavy weapons are consistently deployed on the frontline.

57. At the end of May 2016, two incidents took place which put members of the SMM in danger. At the meeting of the Trilateral Contact Group, on 1 June 2016, the Special Representative of the OSCE Chairperson-in-Office, Ambassador Martin Sajdik, expressed his concern over ceasefire violations which led to military and civilian casualties, as well as the recent deliberate violations against unarmed personnel and assets of the OSCE SMM.

58. In view of the escalation of violence, talks are being held within the OSCE with a view to sending an armed or police mission to the conflict zone as has been proposed by the Ukrainian side. However, for this to happen, all OSCE member States, including Russia, must reach a consensus. This is not the case for the moment. For their part, the separatists have already expressed their firm opposition to any policing mission by the OSCE.

59. Against the worsened security background, it was no surprise to us that the OSCE SMM could not guarantee the security of our delegation and thus was not in a position to accept our request to help us cross the contact line and visit the rebel-held areas.

#### *4.2.3. The political process*

60. Against the escalation of violence and as long as the ceasefire as the first precondition for the other measures to follow is not respected, there has been limited progress with the rest of the requirements/ commitments undertaken in Minsk, including political dialogue.

61. This brings me to the much debated issues of constitutional reform on decentralisation to be carried out in Ukraine and local elections to be held in the Donbas in line with Ukrainian legislation.

62. According to the Package of Measures for the Implementation of the Minsk Agreements, Ukraine should carry out constitutional reform in an effort to promote decentralisation as a “key element” (including a reference to the specificities of “certain areas in the Donetsk and Luhansk regions, to be agreed with the representatives of these regions”) and adopt permanent legislation on the “special status” of these areas in line with measures set out in a footnote to the text. The Package of Measures further notes that control of the Ukraine State border in the conflict zone must be returned to the Ukrainian Government on the first day following elections in the conflict zone to be held in line with Ukrainian legislation.

63. I have repeatedly called for the implementation by the Ukrainian side of its commitment to carry out the constitutional reform on decentralisation, convinced that this would be important for the modernisation and development of the country and beneficial to Ukrainian citizens and not simply a requirement fixed by the Minsk Agreements.

64. The Venice Commission has made it clear from the beginning that decentralisation did not need to be regulated in detail in the constitutional amendments to be adopted. It was enough to remove constitutional obstacles to decentralisation and to send a political signal of readiness to decentralise. A way of doing that would be to make reference in the Constitution to “special arrangements” for certain areas to be specified at a later stage by law, such the case for instance in the Republic of Moldova for the status of Gagauzia.

65. During my first visit to Ukraine, in February 2015, I had, however, the impression that most of my Ukrainian interlocutors did not want to favour such an approach of “special arrangements” for certain areas but rather argued in favour of enhanced and deep decentralisation for all Ukrainian regions. I could understand that their approach could make any new provisions more easily acceptable by the population in the whole country.

66. To the extent that a decentralisation model satisfying the requirements of the Minsk package could be introduced in the whole country and be constitutionally guaranteed, I could hardly see any objections that could be raised. For instance, if the Minsk Package of Measures provide for the right to “linguistic self-determination” in “certain areas of the Donetsk and Luhansk regions”, I saw no reason why this right could not be granted to other regions of Ukraine in the western part with respect to languages such as Hungarian or Polish. I also understood that three areas would be excluded from decentralisation: security, defence and foreign affairs. In this respect, we were informed of various solutions for ensuring compliance with the Minsk

Package, including its footnote. For instance, the chief of the local police in any region could be proposed by the local council but should be formally appointed by the Minister of the Interior (provided that certain conditions were met, such as for instance that he had not participated in crimes against humanity).

67. Finally, following consultations also with the Venice Commission, draft constitutional amendments on decentralisation, prepared by the Constitutional Commission led by the then Speaker of Parliament, Mr Groysman, included as part of the Transitional Provisions of the Constitution a provision (Section 18) according to which: "Specific arrangements for self-government in some parts of Donetsk and Luhansk oblasts shall be set forth in a separate law."

68. The amendments passed at first reading on 31 August 2015 by simple majority with the support of MPs from the Poroshenko Bloc, the People's Front and the Opposition Bloc. They were opposed by the Radical Party, which had earlier left the coalition, and two of the four parties which then still formed part of the coalition, Batkivshchyna and Samopomych.

69. I arrived in Ukraine on my second visit just one week after the decentralisation-related amendments passed at first reading. The main complaints I heard then from the opponents to these amendments were based on procedural and substantial grounds: on the one hand, I heard allegations of lack of communication and consultation and, on the other, objections as to the content of decentralisation and the link to the Minsk Agreements. Section 18 of the Transitional Provisions was, in particular, harshly criticised by the leadership of the above-mentioned political parties as the basis for "giving away" Donbas to the rebels.

70. It was not within my mandate (but rather part of the mandate of the co-rapporteurs of the Monitoring Committee) to comment on the substance of the decentralisation reform, which was positively assessed by the international community, including the Council of Europe. I could not judge either how the consultation process went and especially if there were any misunderstandings from various sides of each other's position.

71. I did however express my disagreement on the position that the proposed section 18 of the transitional provisions would give away power to rebels. This provision only aims at ensuring compliance with the Minsk Agreements by creating the possibility for extended competencies to be given to certain areas in the currently rebel-held areas in the future, when the necessary conditions are met.

72. Regardless of any arguments, the political opposition to the decentralisation-related amendments, and especially the transitional provision, was extremely strong and it was clear that they would not go through the second reading, which required a two-thirds majority. The second round was thus postponed. Following an interpretation of the relevant constitutional provisions, the vote could be taken by the current parliament at any moment when the constitutional majority could be reached.

73. During my last visit to Ukraine in April 2016, I discussed the matter with all parliamentary factions, the Speaker of Parliament and the Deputy Foreign Minister. It was clear from my talks that as long as violence was escalating in Donbas, it was politically impossible for the government and President to convince two thirds of the Ukrainian members of parliament to vote on the possibility of providing for "specific arrangements" in the region even in future.

74. Mr Groysman insisted that if the Russians put an end to the escalation of violence and withdrew their troops, this would enhance confidence in the peace process and allow the Ukrainian parliamentarians to reach the constitutionally required two thirds majority for passing constitutional amendments on decentralisation. In the meantime, Mr Groysman underlined that new legislation on decentralisation, which was already in force, had strengthened the competences and financial powers of regions. We were told that even today, if the Ukrainian legislation was in force, Donetsk would be a much better decentralised city than any other Russian city.

75. Recently, the new Speaker of Parliament has expressed his conviction that if section 18 of the proposed transitional provisions is removed, the remaining decentralisation-related amendments could be accepted by two thirds of the Ukrainian MPs. But for this to happen, there should be a new cycle of adoption (opinion of the Constitutional Court and two readings) as the text of the amendments cannot change before the first and second reading.

76. In conclusion, I encourage the Ukrainian political leaders to find the minimum common denominator which will allow them to adopt the constitutional reform on decentralisation with a view to further promoting the democratic development of their country, with the continuing support and advice of the Council of Europe. To the extent that a decentralisation model satisfying the requirements of the Minsk package could apply to all

regions and be constitutionally guaranteed, this should also satisfy the Minsk requirements. It is to be hoped that the momentum gained by the adoption of the constitutional amendments on the judiciary could also contribute to the advancement of the constitutional reform on decentralisation.

77. In the meantime, despite lack of agreement on the decentralisation-related constitutional reform and the ongoing escalation of violence on the ground, discussions on a possible law on local elections in Donbas are ongoing at the working group on political issues of the Trilateral Contact Group.

78. For our Ukrainian interlocutors, in addition to the full respect of the ceasefire, minimum conditions to organise local elections in Donbas, not met at the moment, include the withdrawal of troops and weapons and safe storage of weapons, as well as an international presence at the Ukrainian border with Russia. In this respect, we heard about the need for an international peacekeeping presence and especially about the need to enhance the OSCE mandate to introduce military or police competences, an issue which, as mentioned above, is under discussion.

79. Moreover, as President Poroshenko also underlined when I met him in November 2015, free and fair elections, in line with international standards and the Ukrainian legislation (as provided by the Minsk Package of Measures), are inconceivable without the possibility for all Ukrainian parties to participate in the elections, as well as respect of the right of the 1.5 million internally displaced persons (IDPs) from Donbas to take part at the vote. Refugees from Donbas in Russia should of course also be allowed to vote and this is foreseen in the draft produced by the Ukrainian side. President Poroshenko also insisted on the possibility for all Ukrainian media, and in particular television channels, to broadcast in Donbas during the campaign, as well as on the independence of the Central Electoral Commission.

80. At our meeting in November 2015, President Poroshenko handed me a draft law on local elections in Donbas prepared by the Ukrainian side which constituted a good basis for these discussions. It was regrettably rejected by the rebels who produced their own draft. The latter is however unacceptable as it is not in line with international standards on free and fair elections. More specifically, the rebels refuse to allow the Ukrainian parties to participate in the elections and are opposed to the presence of Ukrainian media in the campaign. They reject the right to vote for IDPs and disagree on the electoral system, the composition of the Central Electoral Commission, etc.

81. For his part, Russian Foreign Minister Sergey Lavrov, at the end of the meeting of Foreign Ministers of the Normandy format on 11 May 2016, referred to the need for a law on elections “agreed with Donetsk and Luhansk”, for a decision envisaging “special status” for Donbas, in the form of a separate law and of a constitutional amendment, and for amnesty to the militants as a precondition for local elections, saying “no amnesty – no elections”. For him, the deployment of an OSCE military mission in the Donetsk and Luhansk regions was not necessary for the holding of local elections there.

82. More recently, the United Nations OHCHR expressed its “serious concerns about the ability to implement free and fair elections in the Donetsk and Luhansk regions as prescribed in the Package of Measures for the Implementation of the Minsk Agreements”, quoting the lack of freedom of expression, freedom of association and freedom of assembly in the areas controlled by armed groups.[25]

83. As during my previous visits to Ukraine, when I visited the country in April 2016, all my interlocutors were unanimous as to Russia’s role in the conflict in eastern Ukraine. In their view, the population in the eastern regions, and also the representatives of these regions, could be convinced to work together towards a peaceful political settlement, along the lines agreed in Minsk, provided that Russia would stop interfering. Russia’s involvement is not limited to the provision of heavy weaponry and fighters but is also present in the line of command and policy decision making.

84. Russia’s involvement is also evidenced in the form of an extensive information or propaganda war which is almost as dangerous as the military one as it precisely impedes attempts at reconciliation and confidence building. The Ukrainian media are not present in Donbas and Russian propaganda claims that neo-Nazis are fighting peaceful people there.

85. More recently, and contrary to continuing declarations by Russia that it is not a party to the conflict in Donbas, there are signs of increasing Russian involvement in the two separatist entities in Donbas. Moscow provides money for pensions, other social payments and government and military salaries, and the rouble has become the most frequently used currency in the separatist entities.[26] [27] Also, the majority of Russian advisers (*Kurators*) were recently replaced by officers from the Federal Security Service (FSB). Thus, major

25. See footnote 8 above.

political and military decisions seem to be taken in Moscow and their implementation is overseen by Russian officials on the ground. This could indicate Russia's wish to consolidate its position in the entities for a considerable period of time.[28]

86. Recent developments thus confirm even more clearly that there is no such thing as a "civil war" in the eastern regions of Ukraine. For many of my interlocutors in Ukraine, in particular civil society and some members of parliament and international observers, it is rather a war between Russia and the West on Ukrainian territory. For them, what the Kremlin wants is not a frozen but a semi-frozen conflict so as to destabilise Ukraine and threaten its territorial integrity and sovereignty (see also chapter 5 below).

87. While Donbas used to be one of the most prosperous regions of Ukraine, the risk that a conflict of low intensity continues for a long period of time is an obstacle not only to the development of this region but also of the whole Ukraine, while representing an increasingly heavy burden on Russia's budget.[29]

88. The international community continues to support the implementation of the Minsk Agreements as the only means of ensuring the peaceful resolution of the conflict in eastern Ukraine and reversing dynamics that would lead to a frozen or a semi-frozen conflict.

89. At the same time, as the security situation on the ground is not improving, more and more voices both in Ukraine and abroad raise the need for a new diplomatic attempt to promote a political solution to the conflict. Thus, I have repeatedly heard from my Ukrainian interlocutors but also international observers[30] the need for a greater involvement by the United States and the United Kingdom, in their capacity as guarantors, together with Russia, of the sovereignty and territorial integrity of Ukraine under the 1994 Budapest Memorandum on Security Assurances.

90. For my part, I believe that our Assembly should continue to support the Minsk process and call for the implementation of the Minsk Agreements, despite their weaknesses and the so far slow progress, as they offer a concrete framework for negotiations under international supervision. This should not exclude an enhanced engagement of other actors, such as the United Kingdom or the United States, which are also States participating in the OSCE.

### *4.3. The Savchenko case*

91. The release of our colleague Nadiia Savchenko, on 25 May 2016, 708 days after her abduction in Ukraine, has probably been the best news in this file for a long time. We are all happy that Ms Savchenko has been able to return to her country and family, after all the calls we made for her release for almost two years.

92. Her release one day after the Normandy format leaders of Ukraine, Russia, France and Germany held a telephone conversation, was formally speaking the result of a pardon by the Russian President on humanitarian grounds, upon the request of the families of the victims for whose murder she had been convicted following a trial which the international community, including the European Union and the United States, considered unfair. At the same time as Ms Savchenko was boarding a plane to return from Russia to Ukraine, two Russian servicemen, captured on Ukrainian soil and convicted of terrorist-related charges and then pardoned by President Poroshenko, were boarding a plane to return from Ukraine to Russia.

93. Upon her return to Ukraine Ms Savchenko expressed her support for the Minsk Agreements and said that she would do "everything for them to be fulfilled". In welcoming her back, President Poroshenko stated that her release would have been impossible without the Minsk Agreements and thanked Ms Savchenko for her clear public support for them noting that it was a "statehood position". For his part, Russian President Putin insisted that Ms Savchenko's pardon and release had nothing to do with the Minsk Agreements but was decided on humanitarian grounds.

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26. An extensive investigation by *BILD*, published on 16 January 2016 and entitled "How Russia finances the Ukrainian rebel territories", revealed how Russia took over the payment of salaries and social payments as of April 2015. According to the same investigation, a Russian "Inter-ministerial Commission for the Humanitarian Support of the Affected Areas in the Southeast of Donetsk and Luhansk" was founded on 14 December 2014 and attached to the Ministry of Economic Development of the Russian Federation. See also The Central Bank With No Currency, No Interest Rates, But ATMs.

27. For a briefing on recent political changes in the separatist entities, their relations with Moscow and the nature of Russia's presence and control see Russia and the Separatists in Eastern Ukraine, International Crisis Group, Europe and Central Asia Briefing No. 79, Kyiv/Brussels, 5 February 2016.

28. Ibid.

29. See also the report by the French Senate, 1 June 2016, relating to the sanctions regime of the European Union against the Russian Federation (in French only).

30. See also What the West should do next in Ukraine, Marieluise Beck and Ralf Fücks, *Newsweek*, 27 April 2016.

94. Ms Savchenko's release has been welcomed by the international community, including the President of our Assembly and the Secretary General of the Council of Europe. We all see in this development not only an important humanitarian gesture but also an opportunity to build trust between the sides to the conflict and provide the Minsk process with positive momentum, something it desperately needs.

95. Since her arrival in Ukraine, Ms Savchenko has quickly immersed herself in Ukrainian politics. Having been elected to the Verkhovna Rada in 2014 while in detention, she was officially sworn in as a member of parliament on 31 May 2016 and confirmed that she would take up her duties as a member of our Assembly.

96. For the last two years, I have been constantly raising the case of Nadiia Savchenko and calling for her release in my different capacities: as Assembly rapporteur, during all my visits to Ukraine, all meetings of the Political Affairs Committee and all relevant statements and other information documents I have issued; as a member of the ALDE group, where I initiated a campaign in favour of Nadiia Savchenko's release; and as a member of the Czech Parliament, where I have organised several events in support of her release.

97. Within the Assembly, her case has been followed closely at the highest level, that of the Assembly President. Most recently, our Assembly took position on her case in the framework of a debate on "The humanitarian concerns with regard to people captured during the war in Ukraine", held on 21 April 2016. The addendum to the main report summarises the events leading to the trial and sentencing of Nadiia Savchenko as well as the reaction of the international community to it, including the various calls by our Assembly, its President and relevant rapporteurs, in favour of her release both prior to and after her sentencing. To avoid unnecessary repetitions I refer to this document (Doc. 14015 Add) as well as to Resolution 2112 (2016) adopted by the Assembly calling for the release also of other Ukrainian captives.

98. Both Ms Savchenko and President Poroshenko have declared that their top priority now will be the return of other Ukrainian captives illegally convicted in Russia or held in the occupied territories. I welcome the release, on 14 June 2016, of two of them, Mr Yuri Soloshenko and Mr Gennady Afanasyev.

## 5. The geopolitical consequences of the conflict in Ukraine[31]

99. The first geopolitical consequence of the conflict is Ukraine's – apparently definitive – withdrawal from Moscow's sphere of influence. While previously, since the collapse of the USSR, Ukraine had fluctuated between two very different directions, one generally defined as "pro-Russian" and the other "pro-Western", now the country would appear to have firmly committed to the second path. From this point of view, the action taken by Russia seems to have contributed significantly not only to a policy choice, but also to the strengthening of Ukrainian national identity.[32]

100. In annexing Crimea and violating Ukraine's territorial integrity, Russia has not only breached its obligations towards Ukraine under the 1994 Budapest Memorandum on Security Assurances, but has undermined the credibility of the whole system of security guarantees offered in exchange for non-proliferation commitments. On the other hand, Moscow's exclusion from the G8, partly as a consequence of its action in breach of the Budapest Memorandum, has had a major impact, also in symbolic terms.

101. In a wider context, the conflict in Ukraine has caused a serious crisis between Russia and the West – a crisis much more serious and long-lasting than the crisis which broke out at the time of the Russia–Georgia war in August 2008, when there was even talk of a new Cold War.[33]

102. The Ukrainian crisis has prompted Russia to openly and comprehensively question the international order formed in the decades that followed the collapse of the Soviet Union. Moscow has thus launched an open challenge to the European order as established since the end of the Cold War. If Russia has consistently, though often covertly, tried to prevent NATO enlargement into its neighbourhood, it is now

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31. This chapter is based on an expert report drafted upon my request by Mr Aldo Ferrari, Professor at the Ca' Foscari University of Venice, who also works for ISPI (Istituto per gli studi di politica internazionale), Milan. See also from the same author: Oltre la Crimea.*La Russia contro l'Europa?*, e-book ISPI (Istituto, Milan, July 2014, www.ispionline.it/sites/default/files/pubblicazioni/oltre_la_crimea.pdf and Beyond Ukraine. EU and Russia in search of a new relation, e-book ISPI, Milan, June 2015, www.ispionline.it/sites/default/files/pubblicazioni/beyondukraine.euandrussiainsearchofanewrelation.pdf.

32. D. Trenin, The Ukraine crisis and the resumption of great-power rivalry, July 2014, http://carnegieendowment.org/files/ukraine_great_power_rivalry2014.pdf.

33. See, in this respect, A. Ferrari, Una nuova guerra fredda per il Caucaso? Scenari internazionali dopo il conflitto in Ossetia", in Dopo la guerra russo-georgiana. Il Caucaso in una prospettiva europea, ISPI study undertaken with the support of the Ministry of Foreign Affairs, October 2008, www.ispionline.it/it/ricerca.php?id=55.

challenging these principles explicitly. Russia wants to both restore and re-legitimise spheres of influence as an organising principle of European order and, in any event, is no longer ready to accept the post-Cold War Western-led order.[34] In this respect, if NATO decides, in July 2016, to expand its presence in eastern Europe, as it is expected,[35] this will most likely be interpreted by Moscow as a provocation.

103. If Russia's relations with the United States were already largely imbued with incomprehension and mistrust, the latter have now grown stronger. Russia feels that its own vital security interests have been damaged following the February 2014 political upheaval in Ukraine, while the United States has absolutely no intention of recognising Russia's special sphere of influence in Ukraine and the other post-Soviet countries.

104. The Ukrainian conflict, however, has harmed not just Russia's relations with the United States, but also Russia's relations with the European Union, which were previously more positive on a political level, and characterised by close economic interdependence, primarily in the energy field. Not only have important economic sanctions, visa bans and asset freezing been imposed by the European Union on Russia and Russian citizens, as a direct result of the conflict in Ukraine, followed by Russian counter-sanctions; in more political terms, this conflict has considerably weakened the traditionally pro-Moscow position of the larger countries in the "old Europe". This has naturally emphasised the attitudes of the Republics of the former central and eastern Europe and, in particular those of the Baltic States, which are understandably more wary of Russia and are the main advocates of the Eastern Partnership which Moscow has always opposed, in almost the same way as it has opposed NATO's eastward expansion.

105. Clearly, the Ukrainian conflict has had considerable negative economic consequences. First of all, for Ukraine itself which is the main victim of the conflict and which has lost Donbas, its most industrialised region, which accounted for a quarter of the country's exports. Secondly, for Russia and various European countries, which have been affected to varying but significant degrees by the sanctions against Russia and the subsequent Russian counter-sanctions.[36] The sanctions and counter-sanctions, regardless of their economic effectiveness, have struck a major blow to relations between Russia and Europe.

106. Furthermore, the conflict in Ukraine has considerably strengthened anti-Russian feeling in various European countries; even in some countries where such feelings were almost non-existent. At the same time, the intense geopolitical and ideological confrontation with the West has strongly revived patriotic and nationalistic sentiments in Russia and increased the Russian President's popularity.

107. Russian aggression against Ukraine marks a shift in Russian foreign policy[37] which has given rise to another major significant consequence, namely the revitalisation of NATO as an alliance primarily directed against Moscow, as it was in the time of the Cold War. Until quite recently in fact, the Kremlin strongly supported respect for national sovereignty, non-interference in the internal affairs of another State, the inviolability of borders and the illegality of the unilateral use of force. Following the annexation of Crimea and its involvement in the conflict in Donbas, Russia is now openly challenging the legitimacy of the post-Soviet borders and is claiming the right to use force to defend the ethnic Russian population.

108. This path of open confrontation with the United States and NATO is extremely risky, especially for Russia. As Dmitri Trenin, the Director of the Moscow Carnegie Center, observed: "On this path, Russia will find formidable opponents and very few allies. As for friends, it will be able to rely on only two, its army and its navy. The outcome of this very unequal competition will define Russia's future in the 21st Century."[38] Furthermore, in order to sustain a globally challenging position, a "strong but isolated" Russia would need to be based on a much more developed and dynamic economy than is currently the case.

109. The Ukrainian conflict, with the annexation of Crimea and the overtly nationalistic and revanchist developments, has a further dangerous consequence for Russia insofar as it places it in opposition not only to the West, but also to various post-Soviet countries, even those more interested in the prospects of economic

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34. P. Buras, A. Dworkin, F. Godement, D. Levy, M. Leonard and K. Liik, 10 conseguenze globali della crisi ucraina (10 global consequences of the Ukraine crisis), www.ecfr.eu/article/commentary_ten_global_consequences_of_ukraine272.

See also the Russian analysts F. Lukyanov, "Why Moscow is being so decisive over Ukraine", in *Russia beyond the headlines,* 21 March 2014, and D. Trenin, Moscow determined to follow its own path, 1 April 2014, http://carnegie.ru/2014/04/01/moscow-determined-to-follow-its-own-path/h6sy.

35. See also NATO Declaration 428 on "A united and resolute agenda for NATO at the Warsaw Summit", 30 May 2016.

36. P. Havlik, Economic Consequences of the Ukraine Conflict, The Vienna Institute for International Economic studies, http://wiiw.ac.at/economic-consequences-of-the-ukraine-conflict-dlp-3427.pdf.

37. See also Russia 2030: A story of great power dreams and small victorious wars.

38. D. Trenin, Where next after Crimea?, 19 March 2014, http://america.aljazeera.com/articles/2014/3/19/russia-where-nextaftercrimea.html.

and political co-operation. Thus, the Ukrainian crisis has resulted in a substantial setback in the plan to create a Eurasian Union, in which the Russian President had invested heavily since his electoral campaign for a third presidential term.

110. The annexation of Crimea has caused widespread concern both in Belarus and – in particular – Kazakhstan (where the Russians constitute a sizeable minority, concentrated in the north of the country), namely in those countries which, together with Armenia, have so far been Moscow's closest partners and the first to join the Eurasian Customs Union. The already considerable resistance put forward by these two countries to the transformation of the Eurasian economic project into a political one has increased substantially in recent times. From this point of view, the successive entry into the Eurasian Economic Union of countries such as Armenia and Kyrgyzstan changes little. It is not only the loss of Ukraine, which was an essential component of the project both politically and economically, but also the very behaviour of Moscow in this crisis which has considerably undermined the prospect of further integration within the Eurasian area.

111. A potentially more important consequence of the Ukrainian conflict, even though its seriousness has not been sufficiently taken on board, is that it has led to an eastward shift by Russia. The perception that the West has closed its doors to Russia following the Ukrainian conflict has accelerated a trend which was nonetheless already present in Moscow's strategic vision, primarily in order to capitalise more than in the past on the vast regions of Siberia and at the same time to exploit Russia's position as a bridge between Europe and a Far East in a period of inexorable political and economic growth: an eastward shift, reflected predominantly in a strengthening of economic collaboration, especially in the energy field, between Russia and China. It was no coincidence that President Putin's most significant visit following the start of the Ukrainian crisis was to Shanghai where, on 20 May 2014, a major 30-year contract was signed to supply gas from Siberia to Beijing.

112. In addition, possible further political and economic rapprochement with China, given the worsening relations with the West, is something which for Russia is perhaps more advantageous in the short term but is certainly not without risks, even serious risks, in the longer term. Moscow is fully aware of these risks, but its further strategic rapprochement with China cannot be ruled out if the gulf that has opened up between Russia and the West is not quickly narrowed.

113. Over and above the prospects of closer collaboration with China, the Ukrainian conflict appears to have significantly strengthened the Asian focus of Russia's foreign policy, at the expense of its focus on the West.

114. A more recent consequence of the conflict in Ukraine is evidenced in the divisions it causes within the European Union, threatening its cohesion. More specifically, there are growing divergences among EU member States as to the need to prolong sanctions against Russia and Russian citizens linked to the conflict (annexation of Crimea, Russian action in the Donbas or lack of implementation of the Minsk Agreements) or to lift them or ease them gradually depending on progress in the implementation of the Minsk Agreements. Thus, the French Senate adopted on 8 June 2016 a non-binding resolution calling, *inter alia*, for the immediate lifting of sanctions against Russian MPs in order to re-establish inter-parliamentary dialogue for the purpose of unblocking the political situation.[39] In Germany, there seem to be diverging views between members of the government, on the hand, and the Chancellor, on the other. Several EU member States have expressed doubt over continuing sanctions against Russia or adopted actions displaying their doubt, such as Italy, Hungary, Greece and the Czech Republic, invoking economic arguments or considering the prolongation of sanctions unproductive. On the other hand, the United Kingdom, Poland and the Baltic States remain the countries most in favour of maintaining the sanctions against Russia within the European Union.[40]

### 6. The consequences of the conflict in Ukraine for the Assembly

115. The conflict in Ukraine has also had direct and indirect consequences on the relations between our Parliamentary Assembly and the Russian Parliament and also on the work of the Assembly.

116. As both Russia and Ukraine are member States of the Council of Europe, one of the biggest challenges for the Parliamentary Assembly has been how to defend the fundamental principles of international law and of the Statute of the Council of Europe while maintaining a meaningful dialogue with Russia.

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39. www.senat.fr/leg/tas15-154.pdf.

40. For her part, EU foreign policy chief Ms Federica Mogherini, evoking the differences of opinion between EU States, has recently said that she expects the energy, financial and defence sanctions to be renewed. Noting that it will be in the second half of 2016 that the EU member States should evaluate to what degree the Minsk Agreements have been implemented and how the conflict in Ukraine can be solved, Ms Mogherini considered that was likely that any change in EU policy towards Russia would emerge later on in 2016.

117. Following the escalation of violence in Ukraine and the illegal annexation of Crimea by the Russian Federation in March 2014, the Assembly, at its April 2014 part-session, expressed its gravest concerns over the actions of the Russian Federation leading up to the annexation of Crimea, including the unanimous vote in the Council of the Federation authorising the use of military force in Ukraine, the approval of a constitutional amendment allowing for the annexation of Crimea and the ratification of the illegal treaty of unification.

118. However, while condemning Russia's actions in Ukraine, the Assembly believed that political dialogue should remain the preferred way to find a compromise. For this reason, with the adoption of Resolution 1990 (2014) in April 2014, the Assembly decided not to annul the credentials of the Russian delegation, which would have made such dialogue impossible, but to suspend the voting rights of its members, the right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee, and the right to participate in election observation missions, until the end of 2014.

119. The aim of the sanctions was not to exclude Russia from the work of the Council of Europe, but to give a strong signal and to promote a political settlement of the conflict. However, following the vote, the Russian delegation decided to exclude itself. They left Strasbourg immediately after the vote and refused to participate in any plenary session for the rest of the year. Regrettably, the non-participation of the members of the Russian delegation during plenary debates, and their limited participation in committee meetings, made any dialogue impossible.

120. At the opening of the January 2015 part-session, the credentials of the Russian delegation were challenged on the grounds that the role and participation of the Russian Federation in the conflict in eastern Ukraine and its continued illegal annexation of Crimea were in violation of the Statute of the Council of Europe.

121. The discussions and the vote took place in a very tense environment: as an example of this, two members of the Russian delegation to the Assembly were physically attacked in the forecourt of the Council of Europe by two Ukrainian parliamentarians, not members of the Ukrainian delegation to our Assembly.

122. Again, in a shared spirit of commitment to continue dialogue with the Russian delegation, the Assembly resolved to ratify the credentials of its members but, as a clear expression of its condemnation of continuing grave violations of international law, it decided to suspend the voting rights of its members, the right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee, the right of its members to be appointed rapporteur, the right to participate in election observation missions, and the right to represent the Assembly in Council of Europe bodies and external institutions.

123. Despite our willingness to leave the channels of communication open, the Russian delegation formally decided to suspend all official contacts with the Assembly until the end of 2015, including all visits on behalf of Assembly bodies.

124. In Resolution 2034 (2015), adopted in January 2015, the Assembly also decided that it would annul the credentials of the Russian delegation in June 2015 if no progress were made regarding the Assembly demands, including the implementation of the Minsk Protocol and Memorandum. The issue was then examined during the June part-session, which was a further opportunity to reiterate the importance of respecting the sovereignty, unity and territorial integrity of Ukraine, as well of fostering an open dialogue between the Assembly and the Russian delegation in order to find a lasting solution. As an additional signal of its commitment to maintaining the channels of dialogue open, in its Resolution 2063 (2015), adopted in June 2015, the Assembly, while noting the sanctions in place, resolved, again, not to annul the credentials of the Russian delegation.

125. In January 2016, the Russian parliament did not present any credentials to the Assembly so that as of the beginning of the year there are no Russian parliamentarians among us.

126. During the committee meeting on 24 May in Paris, the role of the Assembly in the conflict in Ukraine was raised in conjunction with the aim of my report. One member of the committee asked whether the Assembly should not be more actively involved in the process aimed at the resolution of the conflict in Ukraine and propose its own mediation to replace the Minsk process. Another colleague suggested that, whereas it was important to stand firm on our principles and condemn any violation of international law, if we wanted to play any role in the developments with respect to Ukraine, we should allow for dialogue with the other side, listen to the reasons given by the Russian parliamentarians for actions in Ukraine, as well as their point of view on the reality on the ground, and enquire as to whether it was still possible to reach a compromise between the two sides.

127. In reaction to this discussion, I would like to clarify certain points and explain my own position.

128. As regards the former issue, I would like to clarify the point that our Assembly cannot substitute itself to the Minsk or any other negotiation process. Conflict resolution is part of the OSCE's, and not the Council of Europe's mandate. The Council of Europe contributes to conflict resolution through the enhancement of democracy and promotion of the rule of law and human rights in the member States where conflicts arise, in line with the concept of "deep" or "democratic security". For its part, the Assembly can serve as a unique platform for dialogue among parliamentarians and make a positive contribution to easing tensions among member States, notably by building confidence. This is in fact the essence of parliamentary diplomacy. But this cannot go as far as to grant a "mediation" role for our Assembly.

129. Without wanting to enter into a detailed discussion on this subject, which is not the purpose of my report, it is worth recalling that, in the past, the Assembly has successfully used the tools of parliamentary diplomacy in contribution to easing tensions within member States, for instance between the majority and opposition in Albania and in the Republic of Moldova or even in the conflict in Chechnya. It has, however, been much less successful whenever it tried, in various formats, to assume a role in conflict situations arising among two member States, such as for instance with respect to the Nagorno-Karabakh conflict or the 2008 Russia–Georgia war.

130. In any event, as long as members of the Russian Parliament do not participate in the Assembly's activities, the Assembly cannot play any role in promoting a dialogue between Ukrainian and Russian parliamentarians with a view to building, for instance, confidence which could help promote the implementation of commitments under international law and the Minsk Agreements. On this point, I would like to reiterate that this is not because our Assembly excluded the Russian delegation from its midst or refused to listen to the arguments of its members, but because the Russian Parliament decided to suspend any contacts with us following the decision on sanctions. I would also like to reiterate that, as far as my own report is concerned, I repeatedly tried to get the Russian delegation's views and visit the country, but was not given the chance. I think we should listen to our Russian colleagues if they want to talk to us, but we cannot force them to talk to us if they do not want to do so.

131. It is surely not the purpose of this report to discuss the issue of future relations between the Assembly and the Russian Parliament. This matter will probably return on the agenda of our Assembly after the election of a new parliament in Russia in September 2016, either already in autumn this year or in January 2017.

## 7. Concluding remarks

132. The Ukrainian conflict was not a bolt out of the blue. For more than 20 years, Russia, on the one hand, and the European Union (together with the United States and NATO), on the other, have had substantially different strategies regarding the post-Soviet territories of eastern Europe and the South Caucasus. The European Union's vision of its own eastward expansion is not shared by Moscow, while Europe does not accept Russia's determination to maintain some form of control over the post-Soviet territories, in particular its strong opposition to their becoming part of NATO.

133. The contrasting assessment of the colour revolutions, the disagreement over missile installations in eastern Europe, the Russia–Georgia war in August 2008 and the opposing policies of the Eastern Partnership and the Eurasian Customs Union have all fuelled the antagonism which has gradually increased and which erupted in late 2013 in Ukraine. Under the rule of President Viktor Yanukovych, Ukraine swung in search of a better deal between the European Union, on the one hand, and its offer of closer ties through the Eastern Partnership programme and eventually an Association Agreement, and Russia, which, on the other hand, was trying to seduce the former Soviet Republics into the project of a customs union.[41]

134. More effort should probably have been spent at the time in trying to find a "third way" rather than pushing Ukraine into choosing between two opposite directions. In this respect, as Mr Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy from February 2010 until October 2014, has also confirmed to me, the European Union has probably its own *mea culpa* to make and has surely learnt some lessons from what happened in Ukraine. The European Union should reflect upon strategies for the future of the region which will de-escalate the current tensions and help to rebuild confidence in its neighbourhood. But for Ukraine, it is now impossible to come back on what happened and rewrite history.

41. See the reports by the Monitoring Committee of April 2014, Resolution 1990 (2014) and Doc. 13483 "Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation"; Resolution 1988 (2014) and Doc. 13482 "Recent developments in Ukraine: threats to the functioning of democratic institutions".

135. We of course all regret the violence to which the Maidan events led and the ensuing loss of lives, following Yanukovych's decision not to sign the Association Agreement with the European Union but rather to opt for closer ties with Russia. We, in the Council of Europe, have also tried to help the country to investigate into the darkest pages of these events through an Advisory Expert Panel.[42]

136. Nevertheless, Maidan will first and foremost be remembered as the symbol of the Ukrainian people's struggle for democracy, respect for the rule of law and human dignity (in a country where corruption was widespread), as well as for European integration.

137. It is really dramatic that at that very moment when in Maidan Ukrainian people were striving for closer ties with Europe, for more freedom and real democracy, their neighbour from the East gave a strong signal not only to Ukrainians but to Europe and the whole world that it would not accept such closer ties with the European Union in a country that it considered to be legitimately within its own sphere of influence.

138. First came the annexation of Crimea by the Russian Federation, in blatant violation of international law, which shocked us all. And then, the conflict expanded to the Donbas. Ukraine has lost large areas of this region and the industrial areas in the East and Southeast. Sanctions imposed on Russia to obtain a change in its policy towards Ukraine have so far failed to produce their objective. The events in Ukraine were quickly driven beyond Ukraine's borders, destabilising the post-Cold War European and world order.

139. The situation in Ukraine is indeed accelerating shifts in power. Russian–EU and Russian–American relations have reached their lowest point since the end of the Cold War. The United States and the European Union have stood their ground and continue to deploy sanctions to counter Russia's use of military force, while the latter, faced with an increasingly hostile West, has visibly turned towards the East: China and Russia have become even closer and Russia has reaffirmed its role as a major actor in the Middle East. More recently, increasingly divergent views among the EU member States on whether sanctions against Russia should be maintained are causing divisions threatening the EU unity and cohesion.

140. Despite their growing economic interdependence, the European Union and Russia have so far been unable to find lasting forms of political understanding based on the acceptance of differences in interests and values between the two sides.

141. Whereas there can be no negotiation over fundamental values, including Ukraine's sovereignty and territorial integrity, the exclusion of a dialogue with Russia and the latter's isolation are in the interest of neither Russia nor the rest of Europe, including Ukraine.

142. The Minsk Agreements, despite their many weaknesses and certain lack of clarity, seemed to have offered at least the starting point of a resolution of the conflict in Donbas which could open the way out of the logic of sanctions and help build the basis for further dialogue. Whereas other States could be more actively engaged in the conflict resolution process in Ukraine (such as those which, together with Russia, have signed the 1994 Budapest Memorandum), what matters is less the format of negotiations than the demonstration of goodwill by all sides, and by saying this I mainly refer to Ukraine and Russia (as the separatist leaders in Donbas will always follow Russia's position). If there is no goodwill, no matter how many diplomatic attempts and negotiation formats there are, the situation on the ground and the political dialogue will not improve.

143. Today, against the background of a deteriorating security environment on the ground, but also increasing Russian control over the separatist regions in Donbas, the chances for an effective implementation of the Minsk Agreements in the near future seem to be slim. After all, it is unclear whether Russia really wants to have these agreements implemented and Ukrainian sovereignty restored over the separatist regions. It may prefer to protract (rather than freeze) the conflict in eastern Ukraine and, with that, the whole country's instability and insecurity, while continuing to launch hybrid threats (recalling the Cold-War era) to the rest of Europe.

144. For its part, Ukraine understandably doubts the possibility to advance seriously with political dialogue under the Minsk Agreements, including special provisions for the Donbas and local elections there, as long as the very first step envisaged in this agreement, namely the ceasefire, is not respected and as long as Russian troops and heavy weapons are reportedly present in the region.

145. However, as slim as the chances might be for success and despite all their weaknesses, the Minsk Agreements are the only concrete framework for negotiations we have at the moment and we should continue to give it our support. The release of our colleague Nadiia Savchenko and other prisoners after almost two

42. International Advisory Panel on Ukraine, see also footnote 10 above.

years of negotiations is seen as a positive sign that the Minsk Agreements are alive and can produce results (although the Russian President insists that Ms Savchenko's release has nothing to do with Minsk); hopefully this can create a positive momentum for progress on other issues as well.

146. At the same time, if Ukraine wants to benefit from continuing European support vis-à-vis its neighbour, it has to demonstrate determination and strong political will in implementing urgently needed reforms and following through at last with the promises of the Euromaidan to reform a corrupt and oligarchic system. This is all the more so since it cannot put the blame for the delay in their implementation on the continuation of the conflict or the non-respect of the Minsk Agreements by the other side. In this respect, the adoption by the Ukrainian Parliament of long-awaited constitutional amendments on the judiciary is another significant positive development. These reforms will now have to be implemented and there is still the need, in addition to and beyond any legislative reforms, to finally reach tangible results in the fight against corruption. These objectives are also vital for the economic development of the country and the encouragement of foreign investment. The decentralisation constitutional reform should also be completed not simply for satisfying the Minsk Agreements but mainly for the sake of modernising the Ukrainian State. All the political forces need to be more united than ever and find a minimum common denominator to allow this reform to go through as well.

147. As we have reiterated on numerous occasions and as the new Prime Minister of Ukraine has himself underlined, the internal front is just as important as the external front. Only a democratic Ukraine with stable State institutions respectful of the rule of law can be a strong and prosperous Ukraine, capable of stopping external aggression and restoring peace. Successful reforms will also be the best way to convince the population in the areas under the rebels' control that their future is within Ukraine.