Mediation in the Crisis in Eastern Ukraine up to 23 June 2015

General Remarks

On 6 June 2014, the presidents of Ukraine, the Russian Federation, and France, and the German chancellor met on the margins of the commemoratation of the Normandy landing of the allied forces during the Second World War. They proposed that a Trilateral Contact Group (TCG) be established to support the peace efforts in eastern Ukraine.

Two days later, the newly established TCG met for the first time. Ukraine was represented by the then Ambassador of Ukraine to Germany, Pavlo Klimkin; the Russian Federation by its Ambassador to Ukraine, Mikhail Zurabov; and the OSCE Chairmanship by me. When, soon thereafter, Ambassador Klimkin was appointed to be Ukraine’s minister for foreign affairs, former President Leonid Kuchma became Ukraine’s representative to the TCG.

The TCG is a working body effectively in permanent session, comprised of senior representatives of Ukraine, the Russian Federation, and the OSCE Chairperson-in-Office (CiO).

Its agenda covers practically all issues related to the conflict in eastern Ukraine. These include issues raised in documents such as President Poroshenko’s Peace Plan of 20 June 2014 and President Putin’s initiatives, the Minsk Protocol of 5 September 2014 and the Memorandum of 19 September 2014, the Package of Measures for the Implementation of the Minsk Agreements and the Minsk Declaration of the Four Heads of State and Government (the presidents of Ukraine, France, and the Russian Federation and the chancellor of Germany) of 12 February 2015, as well as any other developments directly or indirectly related to the conflict, as decided by the TCG.

All decisions, recommendations, agreements, press releases, etc. of the TCG are adopted by consensus.

The TCG commenced its work on 8 June 2014. Since 23 June 2014, it has also conducted numerous consultations with illegal armed groups from eastern Ukraine (rebels, officially called representatives of certain areas of the Donetsk and Luhansk regions – CADR/CALR). Very early on, on 23 and 27 June 2014, the TCG had direct meetings with representatives of CADR/CALR in the city of Donetsk, located in rebel-controlled territory. As the security situation worsened during July 2014, and a venue for subsequent direct meetings could not be identified in Ukraine, it was proposed that the TCG conduct their direct meetings with representatives of the rebels in Minsk, the capital of Belarus. This happened on several occasions, including
For practical purposes and to discuss operational issues, the TCG also arranged numerous video conferences with the rebels, with the assistance of the OSCE Special Monitoring Mission (SMM). These were convened by the TCG based on need and opportunity. Occasionally, there was more than one video conference per day.

Summary of the TCG’s Activities Prior to the Minsk Arrangements

During the first phase of its existence, the TCG largely focused on developing a peace proposal, which served as a basis for President Poroshenko’s Peace Plan. The model included the cessation of hostilities, control of the Ukrainian-Russian border, the release of hostages and other illegally detained persons, and the provision of humanitarian assistance to conflict areas. After the tragic downing of Malaysian Airlines Flight 17 (MH17) on 17 July 2014, the TCG served as a first-response crisis centre, working closely with the SMM to secure access for international experts to the crash site.

Ceasefire: The TCG has discussed the issue of cessation of hostilities on many occasions, calling for an unconditional and sustainable ceasefire. On 20 June 2014, President Poroshenko proposed suspending what the government called its “anti-terrorist operation” (ATO) as a unilateral gesture and declared a week-long ceasefire, which was later extended for an additional three days to 30 June 2014. Despite this, sporadic fighting continued throughout this period, resulting in further casualties on both sides, including the loss of a Ukrainian military aircraft with 49 people on board, and the loss of government control over territory including three border-crossing points. This prompted the Ukrainian president to resume the ATO.

After the crash of Flight MH17, the TCG’s efforts focused on agreeing with the rebels on steps indispensable to securing access to the crash site and arranging a local ceasefire to guarantee the security of the foreign investigation teams.

Border control: After having lost control over a large stretch of the border, the Ukrainian side frequently raised the issue of control of the Ukrainian-Russian border, accusing the Russians of illegally smuggling (regular and irregular) troops and military supplies across the border to the rebels. Very early on, the Ukrainians expressed their concern that there could be no real stabilization of the situation in the conflict zone or beyond as long as the Ukrainian-Russian border was not secured. The Ukrainian authorities believed that the actions on the Ukrainian side of the border should be complemented by appropriate actions on the Russian side as well.

Hostages/detainees: In the early days of the TCG’s existence, the Group worked closely with the SMM to achieve the release of eight OSCE monitors.
who had held by the rebels for several weeks. Their release was secured following two direct meetings with the representatives of CADR/CALR (on 23 and 27 June 2014, as mentioned above). In addition, the TCG made numerous efforts to persuade all sides to undertake an exchange of illegally detained persons, with the possible involvement of the International Committee of the Red Cross (ICRC), which has experience in such operations. Although dozens of detainees were released earlier, the real breakthrough on this issue came with conclusion of the Minsk arrangements of September 2014.

Humanitarian assistance: While the need for further humanitarian assistance undoubtedly existed, particularly in the conflict zone in eastern Ukraine, the Russian decision of 8 August 2014 to send a humanitarian convoy to Ukraine, and Kyiv’s mixed reaction to it, added yet another element to the agenda of the TCG and its consultations with the rebels. The tension around this issue, which could have had serious consequences, seems to have been partly defused due to activities of the TCG. More Russian humanitarian convoys followed, although the proper implementation of the agreed modalities for handling this issue continues to be outstanding.

Minsk Arrangements of September 2014

Against the background of a rapidly deteriorating security environment in August, the TCG intensified its efforts towards achieving a comprehensive ceasefire. These succeeded on 5 September 2014 with the signing of a Protocol by the members of the Trilateral Contact Group and representatives of CADR/CALR. The Protocol called for the immediate cessation of hostilities together with other measures such as the withdrawal of illegal armed formations and their military equipment from Ukrainian territory, monitoring of the ceasefire and of the Russian-Ukrainian frontier by the OSCE, the release of hostages and detainees, a law on amnesty, a national dialogue, decentralization, local elections, humanitarian assistance, and the economic rehabilitation of the zone of conflict.1

On 19 September, at another meeting in Minsk, the Protocol was supplemented by a Memorandum, whose aims included the consolidation of the ceasefire regime, the establishment of the line of contact between the sides, and the withdrawal of heavy weapons from this line, as well as the establishment of a 30-km security zone, free of heavy weapons and mines and subject to a no-fly regime. The Memorandum also called for the withdrawal of all

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1 Cf. Protokol po itogam konsultatsiy Trekhstoronnei kontaktnoi gruppy otnositelno kommunisticheskikh shagov, napravlyennykh na implemenatsiyu Mirnogo plana Prezidenta Ukrainy P. Poroshenko i initsiativy Prezidenta Rossii V. Putina [Protocol on the results of consultations of the Trilateral Contact Group with respect to joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin], signed in Minsk on 5 September 2014, at: http://www.osce.org/home/123257.
foreign armed formations, mercenaries, and their military equipment from Ukrainian territory.2

These two documents did not stop the conflict, as we later learned, but in most of the area under the ceasefire, especially in the initial phase, they brought a certain respite from the violence, which had been threatening to escalate further. They also established a body of rules and targets that set benchmarks for future action.

A Summary of the TCG’s Activities After the Conclusion of the September 2014 Minsk Arrangements

After the adoption of the Minsk Protocol and Memorandum, the TCG focused primarily on the implementation of their provisions.

In a bilateral arrangement between Ukraine and the Russian Federation, following the adoption of the Minsk Memorandum, a Joint Centre for Control and Co-ordination (JCCC) was set up in the hope of promoting de-escalation in the conflict zone. The JCCC consists of members of the Russian and the Ukrainian general staffs, the former (75-plus officers) having arrived in eastern Ukraine upon invitation of the Ukrainian authorities.

In the period between the adoption of the Minsk arrangements and the end of 2014, there were no major military operations in the conflict zone in eastern Ukraine. However, clashes and shelling with heavy weapons continued practically unabated, causing additional human casualties and material damage, and keeping tensions in the area high. The hostilities concentrated mainly in or around four strategic locations: Donetsk airport, Debaltseve (which lies on a strategically important crossroads), Shchastya (which has important bridges and a power station), and the Black Sea port of Mariupol. In some areas, the rebel forces made territorial gains. These advances have subsequently been regarded by the rebels as grounds for questioning the contact line between the opposing forces as defined in an annex to the Minsk Memorandum.

The Minsk arrangements had a tangibly positive effect on the question of the release of detainees. The process of release was considerably accelerated, and by the end of 2014, at least 2,500 detainees had been freed. Nevertheless, several hundred people reportedly still remained in captivity or illegal detention, while new hostages were also taken during this period.

2 Cf. Memorandum ob ispolnenii polozheniy Protokola po itogam konsultatsiy Trekhstronnai Kontaktnoi Gruppy otnositelno vtorcheniya k implementatsii Mirnogo plana Prezidenta Ukrainy P. Poroshenka i initsiativy Presidenta Rossii V. Putina, Minsk, 19 Sentyabrya 2014 goda [Memorandum with respect to the performance of the provisions of the Protocol on the results of consultations of the Trilateral Contact Group with respect to joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin, Minsk, 19 September 2014], at: http://www.osce.org/home/123806.
On 16 September 2014, following the signing of the Minsk Protocol, the Ukrainian parliament adopted a law “On interim local self-government order in certain areas of the Donetsk and Luhansk regions” (known as the “law on a special status”), as envisaged by paragraphs three and nine of the Protocol. Among other things, this law called for early municipal elections to be held in CADR/CALR on 7 December 2014 under Ukrainian law. However, the rebel leaders eventually decided to hold “presidential and parliamentary elections” on 2 November 2014, in contravention of Ukrainian law and the letter and spirit of the Minsk Protocol, despite numerous appeals from the international community, including the OSCE, not to hold them. Furthermore, some rebel leaders made calls for a revision of the Minsk arrangements.

In view of these illegal acts by the self-proclaimed Donetsk and Luhansk “People’s Republics” (DPR/LPR), the Ukrainian president announced the suspension of this law. At the same time, the Ukrainian authorities stated that they would be ready to consider a new law on the same subject if the future situation in the conflict zone and the behaviour of the DPR and the LPR warranted such a move.

As far as the security situation in the conflict zone was concerned, after a certain relaxation of tension in the period immediately following the Minsk arrangements, the OSCE SMM reported new military build-ups in the area later in 2014, particularly in the rebel-controlled territory, which contributed to a new escalation.

In this context, one of the positive developments of December 2014 was a temporary ceasefire (the so-called “day of silence”), announced by the president of Ukraine for 9 December 2014, which led to a significant lowering of the intensity of violence that lasted more or less up to the end of 2014. After some time, however, tension in the area started rising again, with a growing number of armed clashes, including the use of heavy weapons.

On 19 December 2014, the TCG resumed its consultations with the rebels after a break of a few weeks caused by the 2 November 2014 illegal “elections” in the rebel-controlled territory. These consultations, which took the form of a video conference, were followed by direct meetings in Minsk on 24 December 2014 and 31 January 2015 as well as additional virtual consultations between the TCG and the rebels.

Developments Since January 2015

In January and early February 2015, offensive operations in the conflict zone intensified again, resulting in, among other things, the seizure of the government-controlled Donetsk airport by the rebels, the shelling of the port of Mariupol, and rebel advances in the areas adjacent to the strategically important transport hub of Debaltseve.
At the same time, diplomatic contacts between Kyiv and Moscow continued at various levels. High-level international efforts to support a peaceful settlement of the conflict had also never stopped. These included numerous quadrupartite phone calls between the leaders of Ukraine, the Russian Federation, Germany, and France as well as correspondence and direct meetings between foreign ministers and senior diplomats from these four countries (within the so-called Normandy Format). These efforts culminated in the Normandy Format summit meeting in Minsk on 11-12 February 2015, which was held in parallel with TCG consultations with the representatives of CADR/CALR. The Minsk discussions ended with the adoption of a Package of Measures for the Implementation of the Minsk Agreements (signed by the representatives of Ukraine, the Russian Federation, the OSCE CiO to the TCG, and CADR/CALR), followed by a Declaration3 by the four leaders endorsing the Package of Measures.

In addition to the measures envisaged in the previous Minsk documents (the Protocol and the Memorandum of September 2014), including a comprehensive ceasefire, the withdrawal of heavy weapons from the line of contact, and their monitoring and verification by the OCSE, the 13-point Package of Measures established a firmer basis for political dialogue between the government and the rebels; it provides for local elections, an interim self-government, and constitutional reform. The Minsk Package also ties the implementation of the provisions to a timeline. Additional stipulations call for the resumption of socio-economic ties between the CADR/CALR and the rest of Ukraine, the reinstatement of full control of the Ukrainian-Russian frontier by the Ukrainian government, and the establishment of working groups on the implementation of relevant aspects of the Minsk agreements.4

In spite of the mutual reconfirmation of the ceasefire on 15 February 2015, the rebel forces continued their attacks on the government-controlled transportation hub of Debaltseve and the surrounding areas, seizing them after several days of heavy fighting that caused many human casualties and serious material damage. In the following weeks, the general situation in the conflict zone improved considerably, but the ceasefire regime remained fragile. The fighting around Debaltseve led to a certain delay in the implementation of other provisions of the Package of Measures, including those on the withdrawal of heavy weapons. By mid-March, both sides had announced the

3 Cf. The Press and Information Office of the Federal Government, Declaration by the President of the Russian Federation, the President of the Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany in support of the “Package of Measures for the Implementation of the Minsk Agreements” adopted on February 12, 2015 in Minsk, 12 February 2015, at: http://www.bundesregierung.de/Content/EN/Pressemittelungen/BPA/2015/2015-02-12-ukraine-erklarung_en.html.
completion of the withdrawal process, but this could not be verified by the SMM, since the parties failed to provide the SMM with the requested information and frequently restricted the freedom of movement of the SMM monitors, particularly in areas outside the government’s control.

On 17 March 2015, the Ukrainian parliament passed amendments to the law on a special status of CADR/CALR (adopted on 16 September 2014), linking its implementation to the prior holding of local elections under Ukrainian law and with international supervision. In their first reactions, the rebel leaders declared that this linkage and the lack of prior consultations with them on the matter was an impediment to the full implementation of the political provisions of the Minsk arrangements.

Since the adoption of the Minsk Package of Measures, there has been a significant increase in contacts, meetings, and exchanges within the TCG. The TCG’s consultations with the rebels via video conferences also became more frequent.

As the OSCE CiO Special Representative, I remained in close contact with all sides in order to promote the full implementation of the Minsk agreements, including the elaboration of modalities for the access of people providing humanitarian assistance to the population in need in the conflict-affected areas. However, since the rebels remained reluctant to allow Ukrainian government agencies access to these areas to provide humanitarian assistance, assistance to the rebel-controlled territories during my tenure arrived mainly from the Russian Federation and international donors, as well as from some Ukrainian private sources.

Activities of the Trilateral Contact Group from April to June 2015

Throughout April 2015, the TCG continued to meet in the established trilateral format and at the same regular frequency in Kyiv. After the appointment of Ambassador Azamat Kulmukhametov as a new Russian representative to the TCG on 27 April (replacing the Russian Ambassador to Ukraine, Mikhail Zurabov) and the launch of the Working Groups on 6 May 2015, the frequency of TCG meetings, which were, with one exception, henceforth held exclusively in Minsk, decreased.

The TCG had held meetings on 1, 14, 15, 23, 24, and 29 April (in this last instance via video conference between Kyiv and Moscow), on 15 May 2015 in Kyiv, and on 6 and 22 May, and 16 and 23 June 2015 in Minsk. The TCG also conducted consultations with CADR/CALR representatives via video conference on 1, 14, and 29 April 2015, with the participation of representatives of the SMM and the heads of both the Ukrainian and Russian contingents to the JCCC. The TCG held also direct consultations with CADR/CALR in Minsk on 6 and 22 May, and 16 and 23 June 2015.
The agenda of these video conferences and meetings was largely dominated by discussions of the implementation process of paragraphs one to three of the 12 February Package of Measures, covering the ceasefire, withdrawal of heavy weapons, and verification by the OSCE SMM.

Another item on the agenda extensively discussed at the TCG meetings and with representatives of CADR/CALR concerned the implementation of paragraph 13 of the Package of Measures: “Intensify the work of the Trilateral Contact Group including through the establishment of working groups on the implementation of relevant aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.”

My office elaborated and proposed an overall concept as well as operational modalities for the establishment and activities of four Working Groups (WGs). After due consultations and discussions within the TCG and with the CADR/CALR, and their endorsement by the Normandy Format, these proposals served as a procedural basis for the activities of the four WGs: the WG on security, the WG on political issues, the WG on refugees/internally displaced persons (IDPs) and humanitarian assistance, and the WG on economic issues. On 28 April 2015, the OSCE CiO appointed Ambassadors Pierre Morel, Ertuğrul Apakan (the SMM Chief Monitor), Dr Thomas Mirow, and myself (ad interim; followed by Ambassador Toni Frisch in May 2015) to co-ordinate the activities of the WGs on political, security, economic, and humanitarian affairs, respectively.

Nevertheless a number of important questions remained open at the end of my tenure as Special Representative, and they may have a significant impact on the work of the WGs, including the possible involvement and roles of specialized international organizations in their activities. In addition, the Ukrainian side in the TCG believes that a fifth WG should be set up to discuss issues related to the re-establishment of control of the entire state border between Ukraine and the Russian Federation.

Since the four WGs generally met on the same days, the TCG tried to schedule its meetings in Minsk immediately after the conclusion of WG sessions. This allowed the TCG to hear presentations by the Co-ordinators on the outcomes of WG discussions.

As per established procedure, the meetings of the TCG in Minsk were followed by consultations with representatives of CADR/CALR. However, on 2 June 2015, as a consequence of the ongoing controversy over the format and the status of participation of representatives of CADR/CALR, the latter decided to leave the consultations and were followed in this move by the representative of the Russian Federation.

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5 Package of Measures, cited above (Note 4).
This controversy was accompanied by an increasingly more outspoken preference, expressed by the Russian Federation and the representatives of CADR/CALR, for the latter to be present and participate in all meetings of the TCG, thereby effectively enlarging the TCG format. Since this constituted a departure both from the decision of the Normandy Format to form the TCG with representatives of Ukraine, the Russian Federation, and the OSCE Chairperson-in-Office and from the already well-established practice, such a transformation remained unacceptable to the Ukrainian side.

The following two TCG meetings, on 16 and 23 June 2015, took place in the trilateral format as before, although the Russian Representative to the TCG repeated his preference for the attendance of the representatives of CADR/CALR in all TCG deliberations.

Activities of the Working Groups

The main objective of the WGs is to discuss, elaborate, and make concrete recommendations aimed at the implementation of the Minsk arrangements, agreed by consensus amongst all participants of the relevant group. These recommendations are then to be submitted to the TCG for its consideration and decision.

However, the general security situation in eastern Ukraine remained unstable, and the so-called “military part” of the Minsk Package of Measures of 12 February 2015, relating to the ceasefire, withdrawal of heavy weapons, and verification by the OSCE, has still not been implemented, even though some progress has been achieved. Initially, most ceasefire violations occurred in a few hotspots along the line of contact. From early May 2015, however, the intensity and geographical spread of the ceasefire breaches gradually increased. Occasionally, these outbreaks of fighting were accompanied by the redeployment of heavy weapons that had previously been withdrawn.

Under these circumstances, the WG on security focused its discussions largely on the elaboration of two de-escalation plans and on the freedom of movement and unrestricted access to all locations of the SMM monitors in the zone of conflict. The first de-escalation plan concerned the demilitarization of the village of Shyrokyne, where the ceasefire violations had been particularly frequent and serious. The second plan proposed a withdrawal of tanks, mortars, and artillery with a calibre below 100 mm from the line of contact. Initial drafts of both proposals had been worked out within the JCCC in close collaboration with the SMM, and continued to be discussed in the

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7 See the daily and weekly reports published by the SMM, at: http://www.osce.org/ukraine-smm/daily-updates.
WG on security during this period. No final decision on either of the two plans had been reached by the end of June 2015, when my tenure as Special Representative came to an end.

The law on a special status for CADR/CALR and modalities for the organization of local elections in these areas, which are to be discussed with representatives from those areas in accordance with paragraph four of the Package of Measures, constituted key points on the agenda of the WG on political issues. This WG also discussed the general conditions under which such elections could take place, such as a permissive security environment.

During my tenure, however, this WG failed to reach consensus on inviting a representative of ODIHR to give a briefing on the conduct of local elections.

The release of detainees and hostages and the provision of humanitarian assistance to the needy in the zone of conflict were discussed by the WG on humanitarian issues (in accordance with paragraphs five and six of the Package of Measures). The issues of improving humanitarian access and the coordination of activities among different actors, including international organizations, were also discussed at the group’s sessions.

The Co-ordinator of this group invited the Head of the ICRC Delegation in Ukraine to give an informal briefing to the group’s participants on the ICRC’s mandate and activities in Ukraine. The briefing took place on 23 June 2015, prior to the official session of the group. All members of the group attended the briefing.

The WG on economic issues discussed the modalities of the restoration of Ukraine’s socio-economic ties with the areas affected by the conflict (according to paragraph eight of the Minsk Package), focusing primarily on three key areas: the re-establishment of some banking services, facilitating, among other things, the payment of pensions; the restoration of infrastructure (including water supply systems); and the resolution of conflict-related problems faced by enterprises operating in the area. To provide input to the group’s deliberations on the restoration of banking services, an expert team deployed by France and Germany identified various options on how the payment of pensions could be facilitated.

Overall, the first five rounds of Working Group meetings were held in a constructive atmosphere and a number of ideas and proposals were raised, discussed, and tentatively agreed upon in the course of their sessions.

The Co-ordinators encouraged the participants in the Working Groups not to limit their discussions to formal sessions, but also to continue exchanges between sessions by circulating relevant information, ideas, and proposals. Since the formal launch of the Working Groups, this exchange has gradually intensified.

From the outset, the representatives of CADR/CALR and the Russian Federation had expressed a strong preference to see the WG sessions organized in a way that was “as synchronized as possible” rather than following
independent schedules. In most cases, these rounds of meetings were then followed immediately by a meeting of the TCG in Minsk (with the exception of 2 June 2015). Some groups occasionally met separately, as was the case with the WG on economic issues, which met independently on 14 June 2015. During that period, Minsk, the capital of Belarus, had become a de facto venue for all meetings of the Working Groups. No consensus could be found on proposals to convene some WG sessions on security in other locations, e.g., in eastern Ukraine.

Other Activities of the CiO Special Representative

In addition to my activities related to the meetings of the TCG, as the CiO Special Representative I had regular exchanges with the Ukrainian authorities, the diplomatic community, and relevant international organizations. Furthermore, during my tenure, I was invited to brief the OSCE Permanent Council, the UN Security Council, and other important panels on several occasions in order to inform the international community of my activities in the framework of the TCG. I also participated in most meetings of vice ministers of foreign affairs and political directors within the Normandy Format, which preceded the meetings of foreign ministers on the same day.

The Serbian OSCE Chairperson-in-Office appointed Ambassador Martin Sajdik of Austria to succeed me in the role of OSCE CiO Special Representative to the TCG on 22 June 2015.

To sum up, the TCG has become a key instrument for day-to-day conflict management in eastern Ukraine. As the crisis has evolved, the TCG has rapidly adapted to the new circumstances, dealing constantly with new challenges. Yet despite all the efforts of the TCG and other actors, such as the OSCE Special Monitoring Mission, an escalation of the conflict could not be avoided. According to the estimates of the United Nations, at least 6,500 people had lost their lives by mid-2015, an estimated two million have fled the conflict-affected areas, and there has been widespread destruction of homes and infrastructure, leaving the civilian population, in particular, in an increasingly precarious situation. Nevertheless, throughout 2014 and the first half of 2015, the TCG kept up an uninterrupted dialogue among its members, while also holding consultations with representatives of certain areas of the Donetsk and the Luhansks regions, trying to find and often succeeding in finding solutions to a wide array of issues. During its first 18 months, the TCG has developed into a useful and efficient instrument for conflict management and related tasks.