

# Donbas and the democracy dilemma in de facto states

If part of eastern Ukraine becomes a de facto state, the West faces a difficult choice over supporting democracy there.

by **Nicolas Bouchet**

Since the start of 2016, the EU and US have given every sign of seeking any way to bring the crisis in Donbas to a conclusion that is imperfect but tolerable to them, if not to Ukraine. The Obama administration wants to have the matter resolved before it leaves office in January 2017, while many EU members want to put the sanctions on Russia behind them as soon as possible. However, the longer the fighting in eastern Ukraine and the failure to implement the Minsk II agreement go on, the more likely that the separatist-controlled territory will become a de facto state (DFS).

If Minsk II – or another diplomatic effort – fails to reintegrate Donbas into the Ukrainian state under a constitutional settlement, the EU and US will have to decide what their policy should be towards such an entity (or two) in parts of Donetsk and Luhansk regions. As with other post-Soviet DFSs, their top goal would be conflict resolution that leads to reintegration. To date, they have acted as though the status quo in these was not costly, making it easy to be little concerned with their democratic status. The events in Ukraine (and also recently in Nagorno-Karabakh) suggest this might not be viable. Since the EU and US generally see democratization as pacifying, democracy assistance might fit within a reintegration policy by trying to make Donbas less of a thorn in the side of Ukraine. Yet, leaving aside their very mixed record in promoting democracy in

the post-Soviet space, the question is whether they could do so without strengthening and entrenching a Donbas DFS in the process.

Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh have been DFSs for over two decades. Russia gives them security guarantees and supports them politically, economically and diplomatically. This helped them survive as separate political entities, unrecognized under international law but shielded from pressure from their respective parent states or the West. They have outsourced part of their governance and political functions to Russian institutions to varying degrees.<sup>1</sup> There is debate, however, over whether Russia really wants to integrate

## KEY POINTS

- The ongoing failure to implement the Minsk II agreement makes a de facto state in eastern Ukraine a growing prospect.
- It would be in the interest of Ukraine and the West that any de facto state in Donbas is stable, better governed and more democratic.
- As with other post-Soviet de facto states, EU-US policy towards Donbas would prioritize conflict resolution and reintegration into Ukraine.
- EU-US democracy assistance could make Donbas less of a problem for Ukraine, but it could also make reintegration less likely.

them into its own state, and over how much they would want this. After the 2008 war with Georgia, Russia stepped up integration moves toward Abkhazia and South Ossetia, whose residents were given Russian citizenship. Recent developments there indicate integration is an uneven possibility. South Ossetia expects to hold a referendum on joining Russia in 2017, but Abkhazia has said it would not go down this route. The case of Transnistria is complicated by geography. Overall, though, rather than seeing them as objects of eventual integration, Russia has used these DFSs more as clients whose situation can be exploited to pressure and hinder neighboring governments.

Minsk II is intended to end the fighting in Donbas and pave the way for a political settlement between the Russia-backed separatists and Ukraine's government. By the end of 2015 Ukraine was supposed to adopt a new constitution, proceed with decentralization and legislate a special status for parts of Donetsk and Luhansk that would effectively grant them autonomy. Local elections were also to be held there. But, just as Minsk II has not ended the fighting, its political part has not been fully implemented.<sup>2</sup> Ukraine's government wants the ceasefire and its control of the territory and border to be fully implemented first, whereas the separatists and Russia want the political part to come first. The law on special status, unpopular in Ukraine, has been approved but has not yet been implemented because it is conditional on a ceasefire. The constitutional amendment on decentralization appears stalled in parliament, not least since it requires a two-thirds majority. It was agreed to delay local elections in the separatist-controlled parts of Donbas until February 2016, so they could be organized under Ukrainian law and OSCE observation, but now it is not clear when they could be held. Germany, France and the US are pushing for this to happen before the end of this year and might compromise on the letter of Minsk II to ensure it does. Again there is a fundamental disagreement between Ukraine's government, which says elections should be held first, and the separatists and Russia who want them to follow special status.

If it is not reintegrated into Ukraine, Donbas would not necessarily go down the path of integration with Russia in the short or medium term, despite occasional talk of a referendum on this, separatist areas using the Russian currency and Russian passports being issued to their inhabitants. Russia initially pushed for the federalization of Ukraine, along lines it had once suggested for Moldova and Transnistria. Since this was

rejected by Ukraine, Russia now effectively encourages the development of a DFS that would permanently destabilize the country and prevent its integration into Western structures.<sup>3</sup> Based on its record with other DFSs, it could be content to keep using its influence over Donbas to that end rather than push for integration, which would be costly.

One challenge for Ukraine's Western supporters would therefore be how to deal with a Donbas DFS, given that they have had no success in encouraging reintegration elsewhere in the region and that their efforts could be derailed by Russia whenever this looks likely. A DFS is not a desirable outcome for Ukraine but, if it becomes reality, a better governed and more democratic Donbas would be in its interest and that of the West. The more unstable and undemocratic it is, the worse for Ukraine. The EU and the US could support democratization in Donbas to make it less of a permanently debilitating problem for Ukraine. The dilemma they face, though, is that this could help solve security and other problems associated with DFSs, but in doing so undermine restoration of the sovereignty and territorial integrity of Ukraine.

#### Promoting democracy in de facto states

Lack of international legal recognition does not automatically impede democratization.<sup>4</sup> Nor is de facto statehood

#### FURTHER READING

##### **Unrecognized States: The Struggle for Sovereignty in the Modern International System** *Nina Casperson, Cambridge: Polity, 2012*

This book offers a comprehensive review of the history of unrecognized states around the world, investigating how they come about and how they survive as political entities without recognition. The author also uses their experience to examine the concepts of sovereignty and statehood in the international system.

##### **Scripts of Sovereignty: The Freezing of the Russia-Ukraine Crisis and Dilemmas of Governance in Eurasia** *Alexander Cooley, Washington, DC: Center on Global Interests, 2015*

A leading scholar on Eurasia analyzes Russia's policy toward de facto states in its neighborhood and its use of the issue of sovereignty to undermine the West's policy in support of reintegration and territorial integrity there – and how this is a source of conflict between them.

##### **In Search of Legitimacy: Post-Soviet De Facto States Between Institutional Stabilization and Political Transformation** *special issue, Communist and Post-Communist Studies, 45(1–2), 2012*

This journal special issue groups case studies that look at the political processes in the post-Soviet de facto states and discuss their various experiences in state-building and democratization. One overarching theme is the challenge to the notion that recognized external sovereignty is a necessary precondition for democratization.

synonymous with lack of democracy. DFSs often vaunt their democratic credentials to prove their viability as independent entities and improve their prospects of recognition, especially if they can show themselves as more democratic than their parent state. The post-Soviet ones are not particularly less democratic by the standards of their peers, with which they share many pathologies. Elections in Abkhazia, Nagorno-Karabakh and Transnistria have been judged more competitive than many in the region and have led to transfers of power.<sup>5</sup> In recent Freedom House surveys they score better than Russia and its more autocratic neighbors. They score worse, however, than their parent states, except for Nagorno-Karabakh. One of their most glaring democratic deficit is the exclusion of

people displaced as a result of the original conflicts. What democratic practices there are in the DFSs have limited credibility if thousands expelled are not able to take part.

The post-Soviet DFSs have never been a Western priority, but they have attracted a bit more attention in recent years owing to developments such as the EU's Neighbourhood Policy and Eastern Partnership, the Russia-Georgia War, and Russia's greater regional assertiveness. Through 'strategic patience' and 'engagement without recognition', the EU and US have sought conflict resolution that does not undermine the sovereignty and territorial integrity of parent states. They have provided some humanitarian and development aid to the DFSs, but very little of their engagement can be described as democracy assistance. There has been a small amount of narrowly prescribed Western support for independent civil society in the DFSs – targeting people-to-people reconciliation, confidence building, independent media, rule of law, access to information, and youth participation. Much of this has been through NGOs and foundations, or through the OSCE and UNDP, rather than directly through government agencies like USAID. The National Endowment for Democracy (NED) and the European Endowment for Democracy (EED) have also supported activities in the DFSs. They have more scope to work there, but ultimately not in ways that would clearly go against the official EU and US non-recognition policy.

There are therefore limited precedents for EU and US democracy assistance in an eventual Donbas DFS. There would also be major obstacles to this. The most obvious, practical one is access. Democracy assistance has not always been welcome by DFS authorities and/or parent states. Transnistria has been more open while South Ossetia and Nagorno-Karabakh have been mostly closed, with Abkhazia becoming more like the latter. Ukraine could hinder access, as Georgia did with its 2008 Law on



A combination photograph of windows of homes destroyed after shelling in Ukraine's Donbas region during the month of October, 2014. Reuters / Shamil Zhumatov

Occupied Territories. Also, the closer a DFS becomes integrated with Russia, the more it will be influenced by the latter's vehement anti-democracy promotion stance. A Donbas DFS would therefore likely be more closed than open to democracy assistance. Even if access was possible, 'demand' there may be limited if 'supply' is from the Western backers of Ukraine's government. Whatever demand there is might also not be expressed freely if it risks antagonizing the DFS's patron in Russia.

The issue of displaced people, of which there are about 760,000 from within Donetsk and Luhansk, is also central.<sup>6</sup> This already matters for the EU-US push for elections in 2016, which would not leave time to solve the issue of their participation. In future, any demand for democracy assistance from a Donbas DFS may not be taken as fully legitimate if coming from a society that excludes displaced citizens. What is more, Western assistance would have to avoid helping make their displacement permanent *de jure* by facilitating political processes and decisions in which they had no part. Democracy activities in and around the DFS may need to have a component involving the displaced in order to resolve this contradiction, but insisting on including them could also alienate the separatist population.

The more fundamental issue is whether Western democracy assistance can support reintegration or at least avoid making it less likely. Already there is only a slim chance that the EU and US could engage at this level to prevent Donbas becoming a DFS. After this, almost any assistance to political processes or institutions could risk strengthening that status. Even support for less directly political and institutional activities could lead to a civil society that is more democratically minded but not necessarily less separatist. The EU and US could fund democracy assistance in Donbas through the likes of the EED and NED, and different NGOs, but however nimble these in-

stitutions are in working in difficult contexts, the official policy of non-recognition will ultimately set a ceiling to what they can do.

For more than two decades, accepting the status quo in the post-Soviet DFSs has been mostly cost-free for the EU and US. A new one in eastern Ukraine could change this. The events of the last two years and how they have affected relations between them and Russia, and thus their wider foreign policy agenda, suggest that they need to re-think their engagement with the post-Soviet DFSs so that these are not permanent contributors to geopolitical tensions and regional instability. This engagement should be based on the most probable final outcome. If reintegration is unlikely, especially after two decades, it may not be best to prioritize territorial integrity and sovereignty. The EU and US (and the parent states) need to consider if it is better ultimately that a DFS is democratic and stable, even if this might lead to independence or, for some, integration with Russia, rather than holding out for reintegration at the risk of keeping them unstable and problematic indefinitely.

As long as the EU and US keep reintegration as their overriding goal, there will be a limit to what they can do to promote democracy in DFSs. And even if they want to do so, not only will they have to compromise on reintegration, they will also risk tensions with the parent state or Russia, or both. For the EU and US, eventual independence might be acceptable if it can be legitimated by a democratic process in the DFS that allows them to fudge the sovereignty issue, but it would be far less acceptable to Ukraine and other parent states. It is possible also that a more democratic DFS would not see integration with Russia as desirable, given the latter's political trajectory. The danger in this is that a democratic DFS becoming more independently minded, even if not independent, could end up in a conflict

with Russia or its parent state. In this context, it is not sure that the EU and US would consider the potential benefits for substantial democracy assistance to a DFS in Donbas or elsewhere worth the negative consequences, especially if it makes their wider foreign policies more complicated. The dilemma of supporting democracy in such setting are thus unlikely to be resolved soon.

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