



# The Elephant in the Room: Ukraine between Decentralization and Conflict

Francesco Palermo

To cite this article: Francesco Palermo (2020) The Elephant in the Room: Ukraine between Decentralization and Conflict, *Ethnopolitics*, 19:4, 369-382, DOI: [10.1080/17449057.2020.1795473](https://doi.org/10.1080/17449057.2020.1795473)

To link to this article: <https://doi.org/10.1080/17449057.2020.1795473>



Published online: 20 Jul 2020.



Submit your article to this journal [↗](#)



Article views: 212



View related articles [↗](#)



View Crossmark data [↗](#)

# The Elephant in the Room: Ukraine between Decentralization and Conflict

FRANCESCO PALERMO

EURAC Research, Italy

**ABSTRACT** Ukraine is a big and diverse country. However, a regionally decentralized territorial setup has never been considered due to the extremely delicate geopolitical situation, to fears of state-capturing and, not least, to a principled approach which sees autonomy as a slope inevitably leading to secession. While the experience with autonomy in independent Ukraine has been indeed negative, this paper argues that the question should at least be considered, as to whether the lack of autonomy and not its supposed presence could be one of the reasons for the present difficult situation. Such a reading, that would have been unthinkable until present, is now being made possible or at least less unrealistic by the limited but overall positive administrative decentralization reforms that took place recently.

## 1. Introduction: A Long and Continuing Spillover

Since independence in 1991, Ukraine is in a state of chronic political instability, due to a number of complex factors, not least its delicate geo-political position and its squint look towards Europe on one side and Russia on the other. When it comes to its territorial setup, the country is trapped in an apparently unresolvable paradox, which has produced an unstoppable spillover: on the one hand, political decentralization is the only possible option to manage such a big and profoundly diverse country; on the other, any form of decentralization, even merely local and administrative, is automatically associated with conflict. Being perceived as a threat to the territorial integrity of the state, and as a potential vehicle for seizing power by oligarchs, decentralization currently represents a self-realizing prophecy: that of a country torn apart by its territorial, cultural and ultimately political diversity, to which it cannot provide convincing answers as the medicine is considered the cause of the illness. Autonomy is the elephant in the room in Ukraine's political debate. It is the remedy that can cure or kill the patient, depending on circumstances that are largely outside of domestic control.

This paper focuses on the territorial reforms that have been proposed but not realized as well as on those that have been implemented. It argues that the so-called decentralization process which has been going on since 2015 has produced significant results, but has failed to address the issue of political autonomy, which however remains critical to a

workable territorial setup of the country. Shying away and distorting attention from it might produce negative consequences in the long run.

Ukraine is a large country, covering a surface of more than 600.000 square kilometers, with a population of nearly 45 millions.<sup>1</sup> It is also very diverse: according to the last available census data from 2001,<sup>2</sup> more than 130 nationalities and ethnic groups live on its territory (including Crimea).<sup>3</sup> The most prominent minority—in cultural and (geo-)political more than in ethno-national terms—is that of the Russians.<sup>4</sup> While there is a marked difference, including in legal terms, between ethnic Russians (17.3% of the population according to the census, to which the minority rights provisions apply) and the much more numerous Russian-speakers<sup>5</sup> (who predominate in the East and in the South and are significantly present in all parts of Ukraine other than the West),<sup>6</sup> the presence of the Russian element and of its perceived threat often blurs the distinction in practical and political terms (Protsyk, 2008).

Since independence, the Ukrainian government has adopted a consistent policy of nation-building around the Ukrainian language (Ulasiuk, 2010; Stepanenko, 2001, pp. 309–346; Zhurzhenko, 2014), whose intensity varied depending on the successive cabinets. Unlike in Soviet times, when Ukrainians were for the most part rural and marginalized, today they represent the majority in urban centers.<sup>7</sup> This has been perceived as pendulum shift in terms of power and prestige and has produced a tense situation, exacerbated by the geopolitical tensions with the Russian Federation over the years (Stefan, 2016).

## 2. The Territorial Conundrum: Steps and Trajectory

The territorial design of Ukraine is an unresolved dilemma since independence (Wolczuk, 2002, pp. 65–88) and actually long before that. It currently presents at least three different dimensions, each one with its own dynamic, although obviously interlinked: Crimea, the East and administrative decentralization.

### 2.1. *Crimea*

The Crimean peninsula, with its long and turbulent history and its diverse population, was moved from the Russian Soviet Socialist Republic (SSR) to the SSR of Ukraine in 1954 by a decision of the Supreme Soviet, based on the alleged close economic and cultural relations between the Crimean region and the Ukrainian SSR (Tatarenko, 2014). After independence in 1991, Crimea was reinstated as an autonomous Republic (as it was between 1921 and 1945) and became, together with the city of Sevastopol, a special status territory within the Republic of Ukraine. A few months after, however, the Crimean Parliament proclaimed self-government and the strong push for independence could be countered only after a complex, internationally-mediated compromise, which provided, in essence, for a very strong autonomy for the peninsula (regulated in articles 134–139 const. as well as in the constitution of the Autonomous Republic of Crimea)<sup>8</sup> in exchange of its remaining part of Ukraine (Packer, 1998, pp. 295–316).

In 1994, an agreement with Russia was found, which recognized the territorial status quo and reached a solution for the Russian Black Sea fleet, that was allowed to use Sevastopol until 2017. The compromise, which also paved the way to the adoption of the Ukrainian constitution in 1996, to some extent froze the relations between Kiev and Simferopol, which essentially ignored each other for almost two decades, the former continuing its

nation-building process to which Crimea was more and more alien, the latter fostering its russification in cultural, economic and political terms. In 2014, the Russian Federation seized the opportunity provided by the confusion following the Euromaidan regime change—triggered by the retreat of then President Yanukovich from signing the association agreement with the EU,<sup>9</sup> reportedly under pressure from Russia (Cherviatsova, 2018)—and illegally annexed Crimea,<sup>10</sup> formally based on a decision made by the Crimean population in a legally highly problematic and politically contested referendum.<sup>11</sup> Despite some protest by Western countries and by the international community<sup>12</sup> that led to a commercial embargo against Russia and the vehement but ineffective Ukrainian reaction through the adoption of a series of laws aimed at reintegrating Crimea into its territory,<sup>13</sup> the Russian annexation has become a factual reality and is practically accepted as *fait accompli* by the international order (Fabry, 2015, pp. 416–433).

## 2.2. *The Donbass Conflict*

Parallel to the loss of Crimea in early 2014, a violent conflict erupted in the Eastern regions of Donetsk and Luhansk in the Donbass basin. After a referendum that declared independence from Ukraine, clashes exploded between the Ukrainian military and pro-Russian separatists. The conflict escalated into an international crisis, with more than 10,000 people killed in 6 years. After the failure of the so called Minsk Protocol signed in 2014 among the involved parties (Russia, Ukraine and the two breakaway ‘People’s Republics’ of Donetsk and Luhansk), since February 2015, France, Germany, Russia and Ukraine took over in an attempt to reach peace in the area through the so called Minsk Accords, overseen by the OSCE. The agreement includes a number of provisions such as the cease-fire, disarmament, full Ukrainian control over the conflict zone while granting it autonomy.<sup>14</sup> After five years, the Minsk agreements remains unimplemented, despite some minor progress in late 2019, and casualties continue to occur occasionally in the Eastern breakaway regions which are becoming more and more frozen conflict zones similar to several others in Eastern Europe. In January 2018, a Law on reintegration of Donbass was adopted,<sup>15</sup> pushed by then President Poroshenko, aimed at the reintegration of breakaway territories. It explicitly charges Russia with aggression and defines the regions of Donetsk and Luhansk as well as Crimea ‘temporarily occupied territories’. The law is generic and will not have any significant impact, besides increasing the President’s military and emergency powers.

On top of geopolitical fears, skepticism towards political decentralization at regional level also comes from the likelihood that it might empower oligarchs, who could find it easier to seize power and capture institutions at subnational level (Pleines, 2016).

## 2.3. *Administrative Decentralization*

In such a context, autonomy and any other related term (federalism, regionalization, even decentralization) are considered and in fact are highly problematic and carry a heavy political load. As a consequence, despite its size and heterogeneous make-up, Ukraine remains a highly centralized state, in which even the mere decentralization of administrative powers to local governments proves a titanic endeavor.

While administrative decentralization is on the table since independence, very little has been done until the so called Euromaidan revolution in 2014<sup>16</sup> (Jarábik & Yesmukhanova, 2017).

After that, a major reform project was started,<sup>17</sup> which should include two pillars: the amendment of the constitution, in order to streamline the territorial setting of the country by strengthening the control of the President; and a package of new legislation to amalgamate local governments and reorganize their functions in order to improve their efficiency.

While not implying any regionalization nor political decentralization, nor being linked in any way to the idea of territorial autonomy for the benefit of minority groups, even the plan for administrative reform has initially faced severe resistance, both in Parliament and on the streets.<sup>18</sup> Step by step, however, administrative decentralization took place through ordinary legislation, having its core in financially supported<sup>19</sup> amalgamation of the far too numerous and unviable smaller settlements and villages into bigger units (*hromadas*)<sup>20</sup> and in the subsequent reallocation of administrative and financial functions to these merged and enlarged local communities as well as introducing the necessary electoral instruments.<sup>21</sup> The reforms produced a significant amalgamation of small settlements and villages for the sake of increasing the fiscal capacity of (especially smaller) municipalities and of rationalizing the provision of services, particularly in the areas of infrastructure, education and health care.<sup>22</sup>

The reform has been successful overall (Lobunets, 2019) in terms of increasing the performance of local governments and of coping with European standards (Romanova & Umland, 2019). However, it has by no means addressed the structural issues behind the territorial structure in the country nor it has contributed to remove fears towards political decentralization.

In 2019, the decentralization process entered a second phase, which envisages an administrative-territorial reform at the level of districts (*rayons*). To be completed, however, the reordering of power, including redefinition of regional prerogatives, requires constitutional changes that have yet to be made. These reached a stalemate after the constitutional reform proposal was abandoned in 2015 because of the widespread perception of an existing relationship between the decentralization reform and the Minsk process, thus as an attempt to impose an external (Russian) interference in the domestic political process.

It was only towards the end of 2019 that the new President Zelensky restarted the constitutional reform project<sup>23</sup> to change the territorial picture of the country, as currently provided by article 133 of the constitution: 24 *oblasts* (regions), three areas with a special status (Kyiv<sup>24</sup> and, at least on paper, Crimea and Sevastopol), *rayons* (districts), the new *hromadas* and the remaining (but gradually merging) smaller settlements and villages. The situation thus remains in a state of flux, with the coronavirus pandemic slowing down and further complicating the completion of the picture.

### 3. The (Geo)Political Struggle and its Impact on Decentralization: Some Recent Examples

Most developments in Ukraine can be explained by two often intertwined factors: the geopolitical situation and the domestic political struggle (Marples, 2017). The territorial setup of the country has been held hostage of both these factors throughout the history of independent Ukraine and this can be seen in all major events marking the recent developments affecting the country. A few examples better illustrate what seems to be an inextricable link.

### 3.1. *Territorial Reforms and the Push for Re-centralization*

During his term between 2010 and 2014, President Yanukovych—ironically leading the ‘Party of Regions’<sup>25</sup>—centralized the power by transferring some responsibilities from *rayons* and *oblasts* to the central government. After the 2014 Euromaidan revolution, the new pro-European leadership under President Poroshenko put the territorial reform high on the political agenda. In March 2015, the President appointed a constitutional commission as a presidential advisory board tasked with proposing constitutional amendments.<sup>26</sup> The commission also included foreign members, representing international institutions such as the Council of Europe, in order to seek broader international legitimacy. The commission formally had three working groups, respectively on fundamental rights (a mere lip service), on the judicial reform (the only issue in which the international community really pushed for reform in order to adopt European standards—and indeed the amendments to the constitution, together with a new law ‘On Judiciary and Status of Judges’, were adopted in June 2016)<sup>27</sup> and on decentralization.

The latter was from the beginning the most contentious, at times even schizophrenic issue. Initially, under international pressure, the plan for administrative decentralization was put in the same ‘package’ with the highly controversial Minsk Agreement, i.e. with the provision of substantial autonomy for the eastern territories outside of governmental control. When it (rather quickly) became clear that such a proposal would have never been supported by the required majority in Parliament,<sup>28</sup> the constitutional implementation of the Minsk Agreement was abandoned, and the reform plan was limited to the reform of the local government.<sup>29</sup> As noted by the European Commission for Democracy through Law (Venice Commission, the advisory body of the Council of Europe in constitutional and legal matters), the constitutional reform proposal submitted to Parliament did ‘not leave any space for providing special arrangements for certain administrative territorial units’ nor did it include ‘a constitutional basis for proposals aimed at settling the present conflict in Ukraine’.<sup>30</sup> Nevertheless, the fear remained in the general perception and in the political discourse, that whatever constitutional reform of the territorial setting could become the Trojan horse of Russia’s direct or indirect control over certain areas thus undermining the nation-building project and the territorial integrity of the country. As a consequence, not even the much humbler constitutional reform proposal on administrative decentralization and on the reform of local government was put to the Parliament’s vote for constitutional amendment.

This might have changed more recently, when President Zelensky pushed for further administrative and for a constitutional reform, quite similar to the one proposed in 2015, with the notable exception that Draft Transitional Provision 18 (the so-called ‘Minsk Agreement clause’) has been abandoned. The constitutional reform is necessary to carry out a real restructuring and modernization of the local government and it seems to be just a matter of time before it is eventually adopted.

The core question is of course about the contents of such a reform and its effects. The latest text suggests some important improvements, such as the introduction of the principle of subsidiarity in article 132 and a long-due clarification and systematisation of the territorial structure in article 133, replacing the long list of various types of entities, some without real legal existence and of very different levels and natures, with a more consistent one.<sup>31</sup> At the same time, following the proposal put forward in 2015, the whole decentralized structure should be put under the strict control of prefects in charge of the state executive power.

It is proposed that prefects are to be linked to the President of Ukraine for their appointment and dismissal and to be accountable to him. They shall be vested with far-reaching powers, including suspending local officials and acts adopted by local authorities, not least under the suspect that such acts might pose ‘a threat of violation of state sovereignty, territorial integrity, or a threat to national security’.<sup>32</sup>

Paradoxically enough, this political move might indirectly have the effect of not limiting but rather strengthening centralization, notably in the hands of the state President. The centralizing effect that such reform would have seems more significant than the rather symbolic change proposed in article 132 const., which aimed at replacing the overarching principle of territorial organization based on ‘the combination of centralization and decentralization in the exercise of state power’ (article 132) by a mere ‘decentralization of power’.

### *3.2. The Impact of Language and Other Nation-building Tools on Decentralization*

The difficulties in decentralizing power in Ukraine also have a cultural, linguistic, geopolitical and nation-building related component, which is exemplified by the language issue. Article 10 of the Constitution provides that the State language be Ukrainian, while ‘development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed’.

Until 2012, the language law in force was the one adopted in 1989 by the then SSR of Ukraine, making Ukrainian the State language and granting Russian the status of language of interethnic communication, which made its use possible essentially in every area. In July 2012, then President Yanukovich pushed the Parliament to adopt a new law ‘On the principles of the National Language Policy of Ukraine’,<sup>33</sup> which provided for the possibility to make minority languages regional languages in the regions where they are spoken by at least 10% of the population.<sup>34</sup> According to the then opposition, the law aimed at making Ukraine a de facto bilingual Ukrainian-Russian country, and also the international community pointed out the polarizing effect that the law had on Ukrainian society.<sup>35</sup> At the culminating point of the Euromaidan demonstrations on 23 February 2014, the Verkhovna Rada (Parliament) voted to abrogate the law, but the then acting President Turchynov vetoed the abrogation. The matter was then referred to the Constitutional Court by a qualified minority of deputies of the Verkhovna Rada, and in 2018 the Court declared it unconstitutional not on merit but rather due to severe violations of the rules on parliamentary adoption of legislation.<sup>36</sup>

Under strong pressure by outgoing President Poroshenko, who was running for reelection with the slogan ‘army, faith, language’, a new law was adopted in April 2019,<sup>37</sup> just a few days after Poroshenko lost the first round of the presidential election and just before he lost the second round as well to political newcomer Volodymyr Zelensky.<sup>38</sup> Following the trend already inaugurated by some sectoral reform, especially the new law on education 2017,<sup>39</sup> which considerably restricts the possibility to receive teaching in minority languages even in areas densely populated by persons belonging to national minorities,<sup>40</sup> the new language law strengthens the status of Ukrainian as the sole official language of the country and (again) ‘fails to strike a fair balance between the legitimate aim of strengthening and promoting the Ukrainian language and sufficiently safeguarding minorities’ linguistic rights’.<sup>41</sup> Ukrainian must dominate in the administration, including at local level, in the work of NGOs, in the provision of services, in the army, in the law enforcement, in the media.<sup>42</sup> The inextricable link between language and territory emerges in the



preamble of the law, where Ukrainian language is referred to as a factor for ‘strengthening of the unity of Ukraine’. Devolution of powers, in such a view, might empower levels of government in which languages other than Ukrainian might have official status, and this automatically undermines the unity of the country.

Also other recent political moves are prompted by domestic political considerations trying to counter the current delicate geopolitical situation in which Ukraine finds itself, and these moves necessarily albeit indirectly impact on the territorial setting and the discourse surrounding it, especially in terms of threats to territorial integrity. One could think, for example, of the amendment to the Preamble of the Constitution approved in February 2019<sup>43</sup> incorporating the ‘European identity of the Ukrainian people’ and on the irreversibility of the European and Euro-Atlantic course of Ukraine (Kyrychenko, 2018). A few weeks after the submission of the reformulation of the preamble of the constitution, some naval incidents happened in the Black sea with Russian ships, which again prompted the proclamation of martial law.<sup>44</sup> A few days after the Ukrainian presidential elections in April 2019, Russia’s President Putin issued a decree which simplified the procedure for acquiring Russian citizenship for persons residing in the territories of Donetsk and Luhansk, and in May a subsequent decree extended the facilitated procedure to other Ukrainian citizens too.

Relevant is also the trajectory surrounding the establishment of the autocephalous Ukrainian Orthodox Church. A Ukrainian patriarchate independent from Moscow (to which the Ukrainian Orthodox Church was bound since 1686) was established in 1992 but was considered schismatic and was followed by a minority of believers. In January 2019 the Constantinople Patriarchate granted autocephalous status to the Ukrainian Patriarchate thus acknowledging its independence from Moscow and the establishment of a national Ukrainian church. This act prompted harsh reaction from Moscow, whose Patriarchate represents 70% of all Orthodox. This act not only could lead to a real schism in the Orthodox world but severely affects the ongoing conflict in Donbass, as the Kiev patriarch Epifanyi believes that the independent church can be conducive to the peace process while the Russian Primate Kirill supports the opposite view. As a matter of fact, it is extremely difficult to divorce domestic issues and decisions from the broader geopolitical context. This context, in turn, influences Ukrainian considerations about the different options for the future territorial structure of the country.

#### **4. The F Word(s): Another Reading is Possible**

Six years after the Maidan regime change, the domestic and international situation in Ukraine remain inextricably linked, sentencing the country to chronic instability. Politics is captured by interest groups, making it very difficult for every elected official to effectively pursue any political agenda. Political survival of the ruling parties and personalities often encourages further radicalization of political positions, frequently combined with symbolic moves. Fear is the dominant feeling, especially in politics, as every single move could have destabilizing effects.

Against this background, words become symbols and often weapons in a battle of uncertainties and asserted identities. Ukraine is hostage to a war of the words: the words of the language issue, the words of the media system (also polarized between Ukrainian and usually nationalistic media and the rather imperialistic media outlets coming from Russia), and not least the words that have become flags of political ideologies, including



federalism, autonomy and even decentralization. While even administrative decentralization faces immense resistance, political decentralization and its terminology (federalism, regionalism, autonomy) is simply anathema and a forbidden topic in Ukraine (Barrington & Herron, 2004, pp. 53–86). This is due to five main reasons: the lack of any ‘federal spirit’ (Burgess, 2012) in politics and public opinion; the negative experience with the political autonomy of Crimea; the fears associated with the Minsk peace process, which in some way hints to political autonomy to solve the conflict in the Eastern breakaway regions; the fear of regionalization being a trojan horse for local oligarchs to capture decentralized institutions and make them instruments for their personal power; finally, the fact that Russia supports the federalization of Ukraine further contaminates the debate and emotionalizes it even further.

In such a context, any de-ideologized, constructive approach to the territorial issue is simply impossible and there is no evidence that this might change in the foreseeable future. The swinging attitude by the international community exemplifies the delicacy of the issue and at the same time the absence of a strategy on how to deal with it.

The international community, especially the Council of Europe and the OSCE, and later the EU, have been heavily involved in Ukraine since independence and have provided considerable help in several areas, including constitutional issues. With regard to the territorial setup, involvement was massive right after independence, when the Crimean issue was settled by granting strong, constitutionally entrenched territorial autonomy to the peninsula. After brokering that agreement, however, the pressure has considerably decreased and while the territorial setting remained an issue, the international community took a very mild and ultimately indifferent stand. Since 1996, advisory and monitoring bodies consistently recommended constitutional changes in several areas, not however with regard to the territorial setup. Even administrative decentralization has always been handled with extreme care<sup>45</sup> and no international body has really tabled the issue of a territorial restructuring of the country.

Prudence is of course mandated in this regard: legally, because territorial organization is an internal prerogative of each country and there is no international norm that provides differently (Hannum, 1996; Skurbaty, 2005); politically, because it is a sensitive topic (Brown, 2009, pp. 1–4) (especially in countries like Ukraine) and international proactivity in this regard is likely to be counterproductive. It is easy to imagine what would happen in Ukraine if international bodies would call for more decentralization, or even regionalization, autonomy, asymmetry, federalism and the like: it would be seen as tantamount to aligning with Russia and the international community would lose every credibility in the country.

At the same time, however, prudence cannot be the excuse for avoiding difficult but essential questions. The border between paying the necessary deference to the States’ political attitudes (and sometimes even paranoia) and disregarding one potentially helpful conflict prevention tool such as territorial autonomy is very difficult to draw. As a matter of fact, in all international organizations’ work, territorial autonomy has usually been considered in a *status-quo* perspective: where existing, it has been (usually moderately) endorsed; where not granted, it has been (not less moderately) discouraged. In most cases, it has been simply ignored or taken as a fact (Palermo, 2009, pp. 653–663).

The embarrassment of the whole international community in dealing with the most recent Ukrainian developments in this regard are symptomatic: Crimea has disappeared from the radars as there is basically nothing to do; the commendable efforts to propose solutions for

the Donbass are in vain as (differentiated) autonomy for these territories is not accepted as an option, being too much for Ukraine and probably now too little for the separatist leaders; finally, the decentralization proposals are just observed without raising the issue of what arrangement is more viable for the country. Put bluntly: Crimea is not addressed in order not to upset Russia; political decentralization is not addressed in order not to upset Ukraine; and autonomy for the Donbass is not addressed in order not to upset both.

For all actors involved, there seems to be a severe problem of culture and perspective when dealing (or not dealing) with territorial issues. For most Western partners and observers, autonomy could fix the problem of Russian-backed separatism, as especially in the West there are enough examples of more or less successful forms of accommodation of secessionist claims by means of substantial political autonomy. For the Ukrainian society at large, this is not an option as it is considered to endorse unlawful secessionist claims and open the door to *de facto* Russian control over part of the Ukrainian territory. Russia is indeed exercising such control fomenting separatist trends, which the absence of autonomy further radicalizes. This way, the problems simply become more acute. Since the respective attitude is not going to change, this negative and dangerous spillover will unfortunately continue.

The problem goes far beyond Ukraine, which is simply the most dramatic example of a much broader attitude that affects a growing number of countries, especially in Central and Eastern Europe. According to this attitude, territorial autonomy, especially in areas where minority groups are settled in consistent numbers, means to 'sell' that territory to those groups, with all connected fears in terms of threat to territorial integrity. This is indeed the experience in several Central and Eastern European countries after 1989, because territory has always been seen in terms of exclusive ownership of one group (Palermo, 2015, pp. 13–32). In fact, such an understanding of territorial autonomy is misleading. Autonomy as a small substitute for statehood is illusory, although it is most frequently seen as such.<sup>46</sup> But as long as it is seen in this perspective by the states, by the (minority) groups and ultimately by the international organizations, it will be inevitably regarded as related to issues of territorial integrity and therefore its potential can never really start to be explored.

Autonomy and related concepts have however a potential that goes far beyond the accommodation of group claims. It is primarily an instrument of good governance, targeting a territory as a whole and not only the dominant group(s) within it. It was created for this purpose and this function becomes even more relevant the more complex the society and the more complex the administration. In some way, the constant underlying, in the Ukrainian context, of the role of decentralization as an instrument to provide better services at local level could be seen as a step towards a positive reading of territorial issues. Unfortunately, however, this is not done out of persuasion, but out of fear, in order to avoid the reading that is commonly attached to autonomy and decentralization, i.e. a threat for territorial integrity of the country. Again, this is not a Ukrainian phenomenon only: one may think of the opening (article 1.2) of the Ohrid Framework Agreement concluded in 2001 in the then former Yugoslav Republic of Macedonia: 'there are no territorial solutions to ethnic issues'. The Agreement, however, does exactly the opposite, by strengthening local self-government and districting it as a tool for the accommodation of the Albanian community.

Such a pragmatic approach to decentralization, underlying the efficiency and good-governance dimension for a territory rather than the self-governance dimension for groups, still

has potential to take root in Ukraine. Especially if the positive effects of the small decentralization reform will continue, a new discourse around territorial reorganization could be inaugurated. Ultimately, ‘the existence or absence of politically salient demands for local autonomy often hinges on the nature of politics at the center’ (Way, 2019, p. 21).

## 5. Conclusions: The Challenges Ahead

Not only is the territorial question the elephant in the room in Ukraine’s political debate. It is not even seen as the same animal by the different actors involved. Since the strategies to deal with an elephant, a snake or a tiger ought to be different, no agreement can be found on how to domesticate the beast, the result being that the elephant remains in the room and keeps growing in size and weight.

While territorial restructuring and political decentralization could indeed be extremely dangerous for the country, not giving it a try can be even more dangerous. Ukraine has simply closed its eyes with regard to the territorial setting for the past 27 years, after reaching a difficult agreement on Crimea. With the condescending, patronizing support of the hands-off policy of the international community and the interested, destabilizing interference by Russia, the disregard of the territorial question has taken the country where it stands now. The question should at least be raised as to whether the separation of Crimea, the loss of control on the eastern regions, the turbulence in some other areas in the south, the exacerbated identity question and the overall unstable situation are linked to the denial of a territorial issue in the country. So far the predominant narrative in Ukraine has been that these factors impede considering a more decentralized territorial setting. The time has come to at least wonder whether the lack of such a setting also bears responsibility for the current state of the art. Most likely, it does.

## Notes

1. Figures are contested as no recent census took place. The strong emigration has certainly impacted on the numbers, which are likely to be lower.
2. The next population census was scheduled for 2011, then postponed to 2013, then to 2016, and it is now scheduled to take place in 2020. This is due to the high politicization of the data results.
3. See State Statistics Committee of Ukraine, Main Points in Brief (<http://2001.ukrcensus.gov.ua/eng/>). It must be noted that Ukrainian legislation does not contain a list of officially recognized nationalities, and identification is free.
4. Other significant minorities are the Hungarians, mostly settled in the western region of Transcarpathia, Romanians, Roma, as well as numerous smaller nationalities that have had homes in Ukraine for many generations, such as Poles, Belarusians, Jews, as well as Bulgarians in the Odesa Oblast in the south. See Advisory Committee on the Framework Convention for the Protection of National Minorities, 4th Opinion on Ukraine, 2017, ACFC/OP/IV(2017)002 (hereinafter ACFC, 4OP).
5. According to the census, the percentage of Ukrainians who considered Russian to be their first language was 25.7% and 52% of the population considered Ukrainian to be their native language. More recent studies suggest that despite decreasing trend, about half of the population actively uses Russian at work and in other social contexts and about 80% of the population is fluent in Russian (in the mid-1990ies it was nearly the whole population). See Arefev (2013).
6. Russians comprise significant communities in the far eastern oblasts of Donetsk and Luhansk, as well as in Dnipropetrovsk, Odesa, Kharkiv, and others, although the only part of Ukraine with an ethnic Russian majority was the Autonomous Republic of Crimea.
7. This is due to several factors, including urbanization and the rediscovery of national pride actively put forward by successive governments after independence. See Virág (2012).

8. After Crimea joined Russia in 2014, the Constitution of the Autonomous Republic of Crimea was repealed and replaced by a new Constitution of the Republic of Crimea as a federal subject of Russia.
9. The association agreement eventually entered into force in September 2017.
10. The illegality of the annexation was declared in particular by the Venice Commission in its Opinion on

Whether Draft Federal Constitutional Law No. 462741–6 on Amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation And Creation of a New Subject within the Russian Federation is Compatible with International Law

Op. No. 763/2014 (21 March 2014), CDL-AD(2014)004.

11. Venice Commission, Opinion on ‘Whether the Decision Taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to Organize a Referendum on Becoming a Constituent Territory of the Russian Federation Or Restoring Crimea’s 1992 Constitution is Compatible with Constitutional Principles’, Op. No. 762/2014 (21 March 2014), CDL-AD(2014)002. The referendum was held on 16 March 2014 based on the Resolution on the All-Crimean Referendum adopted by the Supreme Council of Crimea on 6 March 2014, and resulted in 96.77 per cent approval of the reunification with Russia. See also Vidmar (2015, pp. 365–383).
12. Among others, on March 27, 2014, the UN General Assembly adopted the Resolution ‘Ukraine’s Territorial Integrity’, calling on States, international organizations and specialized agencies not to recognize any change in the status of Crimea or the City of Sevastopol.
13. See inter alia the law ‘On Creation of the Crimea Free Economic Zone and on Specifics of Economic Activity on the Temporarily Occupied Territory of Ukraine’, adopted on August 12, 2014 (no. 1636-VII); the law ‘On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine Law of Ukraine’, adopted on April 15, 2014 (no. 1207-VII). In November 2018, after Russia seized Ukrainian ships in the Kerch Strait, which separates Crimea from Russia, martial law was imposed in several regions.
14. The Minsk Agreements stipulated that decentralization would mean special status for the two eastern regions and for three years they would receive some form of autonomy. These new powers, however, would only come into force with an end to the fighting, the withdrawal of all foreign (Russian) troops and the Ukrainian ‘Anti-Terrorist’ forces from the scene, along with heavy weapons, and Ukrainian control over the border area by the end of 2015. That has not happened, though the serious fighting has abated and both sides have desisted from major campaigns.
15. Bill No. 7163 ‘On the peculiarities of state policy on the restoration of the state sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine’.
16. The most important achievement being the ratification of the European Charter of Local Self Government in 1997.
17. So called Concept of Reforming Local Self-Government and Territorial Structure of Power. See the detailed description of its goals at <https://mfa.gov.ua/en/news-feeds/foreign-offices-news/21459-koncepcija-reformuvannyamiscevogo-samovryaduvannya-ta-teritorialnoji-organizaciji-vladi-v-ukrajini>
18. In August 2015, when Parliament was summoned to approve the constitutional amendments that should give constitutional coverage to the decentralization reform, violent protests erupted outside the Parliament building and four guards were killed in a grenade attack.
19. Also from Western donors.
20. See in particular the law ‘On voluntary amalgamation of territorial communities’, Law No.157-VIII (2015).
21. See law ‘On amendments to certain laws of Ukraine regarding the organization of the first elections to local councils and the elections of mayors of villages, towns and cities’, Law No. 676-VIII (2015).
22. In every piece of legislation and in every official political statement it is explicitly said that a more rational and effective provision of services to the citizens is the purpose of decentralization. See inter alia the webpage on decentralization set up by the government of Ukraine at <https://decentralization.gov.ua/en>
23. A series of subsequent draft constitutional amendments have been presented, the last on 27 December 2019 (no. 2598) ‘On Amendments to the Constitution of Ukraine (On Decentralisation of Power)’, subsequently withdrawn for further consultations.

24. The organization and powers of the capital city are also undergoing deep changes with a view of strengthening both the self-government and the President's control over the city. See the draft law (2019) 'On Capital of Ukraine – Hero City Kyiv' (#2143-3).
25. The Party of Regions was in fact a pro-Russia party, originating in the Donbass, which then extended its influence throughout the country, becoming the biggest party in the late 2000s. Its political agenda included an increased role for local self-government, but nothing more than that in terms of territorial setting. The name rather echoed the Russian call for a stronger regionalization but essentially as a means to protect the rights of the Russian speaking population.
26. Presidential decree no 119/2015.
27. No. 1402-VIII.
28. Amendments to the Constitution can only be considered by Parliament after the Constitutional Court has issued a judgment on the amendment's compliance with articles 157 and 158 const. (which include the inviolability of the territorial indivisibility of Ukraine) – art. 159 const. Than amendments can be adopted by an absolute majority of members of Parliament in the first reading and by a 2/3 majority in the second reading (art. 155 const).
29. A partial attempt to implement the Minsk Agreement was carried out by ordinary legislation, too. In 2014 Parliament adopted a law 'On a Special Status of Local Self-Government in Some Districts of the Donetsk and Luhansk Oblasts', no. 1680-VII.
30. Venice Commission, Opinion 'On the Amendments to the Constitution of Ukraine Regarding the Territorial Structure and Local Administration as Proposed by the Working Group of the Constitutional Commission in June 2015' (26 October 2015), CDL-AD(2015)028, para 27.
31. According to the Draft constitutional amendments presented on 27 December 2019 (no. 2598), these will be: 'hromadas, okruhs, oblasts, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol'. There seems to be broad consensus for such a restructuring, including in the international community.
32. Article 119.4 const. in the formulation proposed by the Draft amendment submitted by President Zelensky (no. 2598). His predecessor Petro Poroshenko defined the proposed prefects as 'a vaccination against separatism'.
33. No. 5209-VI.
34. In at least 9 regions of Ukraine Russian has been declared regional, thus co-official language – see ACFC, 4OP, para 119.
35. See the opinion by the Venice Commission on the Draft Law on languages in Ukraine adopted in 2011 (CDL-AD(2011)051). The opinion referred to an early draft of the law, not to the final text, which was rushed through in Parliament.
36. Ruling 28 February 2018 No. 2-r/2018.
37. Bill No. 5670-d 'On ensuring the functioning of Ukrainian as a state language'.
38. Zelensky's initial approach to the language issue seems in continuity with his predecessor, although less central in his political agenda. Zelensky's first priority was the consolidation of his power: just after having been elected, he dissolved Parliament (with the approval of the Constitutional Court) and called snap elections for the summer.
39. No. 3491-d.
40. See the Opinion by the Venice Commission No. 902/2017 on the provisions of the law on education of 5 September 2017 (CDL-AD(2017)030).
41. Venice Commission, Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, Dec. 2019, CDL-AD(2019)038, para. 137.
42. The law provides severe monetary sanctions if its provisions are not respected. However, sanctions won't be implemented for the first three years the law is in force.
43. Bill no. 9037.
44. It must also be recalled that in late 2017 the US Government approved the provision of deadly weapons to Ukraine, after former President Obama had opposed this move for a long time.
45. Among the many possible examples see the 2017 4OP issued by the Council of Europe's Advisory Committee on the Protection of National Minorities, which merely

notes that legislation was adopted on administrative territorial reform in 2014 and 2015 with the aim of including laws on state regional policy, fiscal decentralisation, as well as on co-operation and amalgamation of local communities (*hromadas* at the lower and *rayons* at the intermediary level of local self-government). The reform of the territorial structure and local administration

has been undertaken with the aim of strengthening the local administrative units (*hromadas*) by decentralising power and creating larger local communities capable of delivering basic services to the population. (para 182)

46. For this reason, ‘autonomy is most often only reluctantly granted, and usually ungratefully received’ (Friedlander, 1981, pp. 135–148).

## References

- Arefev, A. L. (2013, October 14–31). Russkiy yazyk v Ukrainской respublike. *Demoskop Weekly*, 571–572. <http://demoscope.ru/weekly/2013/0571/analit03.php>
- Barrington, L. W., & Herron, E. S. (2004). One Ukraine or Many? Regionalism in Ukraine and its political consequences. *National Papers*, 32(1), 53–86. <https://doi.org/10.1080/0090599042000186179>
- Brown, G. K. (2009). Federalism, regional autonomy and conflict: Introduction and overview. *Ethnopolitics*, 8(1), 1–4. <https://doi.org/10.1080/17449050902738887>
- Burgess, M. (2012). *In search of the federal spirit*. Oxford University Press.
- Cherviatsova, A. (2018, December 5). *Lessons learned? Fifth anniversary of Euromaidan*. *VerfBlog*. <https://verfassungsblog.de/lessons-learned-fifth-anniversary-of-euromaidan/>
- Fabry, M. (2015). How to uphold the territorial integrity of Ukraine? *German Law Journal*, 16(3), 416–433. <https://doi.org/10.1017/S2071832200020927>
- Friedlander, R. A. (1981). Autonomy and the thirteen colonies: Was the American revolution really necessary? In Y. Dinstein (Ed.), *Models of autonomy* (pp. 135–148). Tel Aviv University Press.
- Hannum, H. (1996). The right to autonomy: Chimera or solution? In K. Rupesinghe & V. A. Tishkov, (Eds.), *Ethnicity and power in the contemporary world*. United Nations University Press. [www.unu.edu/unupress/unupbooks/uu12ee/uu12ee00.htm](http://www.unu.edu/unupress/unupbooks/uu12ee/uu12ee00.htm)
- Jarábik, B., & Yesmukhanova, Y. (2017). Ukraine’s slow struggle for decentralization. *Carnegie Endowment for International Peace*. <http://carnegieendowment.org/2017/03/08/ukraine-s-slow-struggle-for-decentralization-pub-68219>
- Kyrychenko, J. (2018, October 29). Constitutionalizing Ukraine’s EU-NATO aspirations: Genuine conviction or electoral strategy? *Constitution Net*. <http://www.constitutionnet.org/news/constitutionalizing-ukraines-eu-nato-aspirations-genuine-conviction-or-electoral-strategy>
- Lobunets, V. (2019). Assessment of the results of administrative territorial system and local government reform in Ukraine. *Management and Entrepreneurship: Trends Of Development*, 1(07), 80–92. <https://doi.org/10.26661/2522-1566/2019-1/07-09>
- Marples, D. R. (2017). *Ukraine in conflict: An analytical chronicle*. E-International Relations Publishing.
- Packer, J. (1998). Autonomy within the OSCE: The case of Crimea. In M. Suksi (Ed.), *Autonomy: Applications and Implications* (pp. 295–316). Kluwer.
- Palermo, F. (2009). When the Lund recommendations are ignored. Effective participation of national minorities through territorial autonomy. *International Journal on Minority and Group Rights*, 16(4), 653–663. [https://doi.org/10.1163/15718115\\_016\\_04-12](https://doi.org/10.1163/15718115_016_04-12)
- Palermo, F. (2015). Owned or shared? Territorial autonomy in the minority discourse. In T. Malloy, & F. Palermo (Eds.), *Minority accommodation through territorial and non-territorial autonomy* (pp. 13–32). Oxford University Press.
- Pleines, H. (2016). Oligarchs and politics in Ukraine. *Demokratizatsiya The Journal of Post-Soviet Democratization*, 24(1), 105–127. <https://www.forschungsstelle.uni-bremen.de/UserFiles/file/pleines2016-Oligarchs-UA.pdf>
- Protsyk, O. (2008). Majority-minority relations in the Ukraine. *JEMIE – Journal on Ethnopolitics and Minority Issues in Europe*, 7(1), 1–42. [https://www.ecmi.de/fileadmin/redakteure/publications/JEMIE\\_Datens%C3%A4tze/Jemie-datens%C3%A4tze\\_2008/1-2008-Protsyk.pdf](https://www.ecmi.de/fileadmin/redakteure/publications/JEMIE_Datens%C3%A4tze/Jemie-datens%C3%A4tze_2008/1-2008-Protsyk.pdf)
- Romanova, V., & Umland, A. (2019). Decentralising Ukraine: Geopolitical implications. *Survival*, 61(5), 99–112. <https://doi.org/10.1080/00396338.2019.1662108>
- Skurbaty, Z. A. (Ed.). (2005). *Beyond a one-dimensional state: An emerging right to autonomy?* Martinus Nijhoff.
- Stefan, S. (2016). Multiple identities in a Unitary State: Tracing the origins of the Ukrainian crisis back. In M. Nicolini, F. Palermo, & E. Milano (Eds.), *Law, territory and conflict resolution. Law as a problem and law as a solution* (pp. 219–243). Brill/Nijhoff.

- Stepanenko, V. (2001). A state to build, a nation to form: Ethno-policy in Ukraine. In A. M. Bíro & P. Kovacs (Eds.), *Diversity in action: Local public management of multi-ethnic communities* (pp. 309–346). OSI.
- Tatarenko, A. (2014, April 2). *The legal status and modern history of Crimean autonomy*, *verfBlog*. <https://verfassungsblog.de/the-legal-status-and-modern-history-of-crimean-autonomy/>
- Ulasiuk, I. (2010). *Europeanization of language rights in Russia and Ukraine: A myth or a reality*. Lambert Academic Publishing.
- Vidmar, J. (2015). The annexation of crimea and the boundaries of the will of the people. *German Law Journal*, 16(3), 365–383. <https://doi.org/10.1017/S2071832200020903>
- Virág, A. (2012). The cultural and geopolitical dimensions of nation-building in the Ukraine. *Society and Economy*, 34(4), 619–641. <https://doi.org/10.1556/SocEc.2012.0002>
- Way, L. (2019). Dealing with territorial cleavages: The rise and fall of Ukraine’s Faustian Bargain. *Forum of Federations Occasional Papers* No. 40.
- Wolczuk, K. (2002). Catching up with Europe? Constitutional debates on the territorial-administrative model in independent Ukraine. In J. Batt & K. Wolczuk (Eds.), *Region, state and identity in Central and Eastern Europe* (pp. 65–88). Frank Cass.
- Zhurzhenko, T. (2014). A Divided nation? Reconsidering the role of identity politics in the Ukraine crisis. *Die Friedens-Warte*, 89(1/2), 249–267. [https://www.academia.edu/13764936/A\\_Divided\\_Nation\\_Reconsidering\\_the\\_Role\\_of\\_Identity\\_Politics\\_in\\_the\\_Ukraine\\_Crisis](https://www.academia.edu/13764936/A_Divided_Nation_Reconsidering_the_Role_of_Identity_Politics_in_the_Ukraine_Crisis)