

CHALLENGES OF UKRAINIAN TERRITORIES OCCUPIED BY THE RUSSIAN FEDERATION FORMULATING VISIONARY QUESTIONS FOR DEOCCUPATION STRATEGY

An expert discussion regarding the Ukrainian territories temporarily occupied by Russia was initiated, organized, and supported by the "Health Solutions for Open Society" Foundation, the UCU School of Law, and the Ukrainian Catholic University.

The forum was conducted within the ambit of the project "Developing a Conceptual Strategy for the Reintegration of Key Public Institutions and Services into Deoccupied Territories of Ukraine, Including Territories Occupied Since 2014."

This two-day event took place on February 19 and 20, 2024, in Lviv, bringing together 40 Ukrainian and international participants. These were intellectuals from the legal, humanitarian, cultural studies, and military sectors.

The organizers did not intend to seek quick answers and solutions to the difficult, long-standing, and multifaceted problem. However, as premature as the question of de-occupation of Ukrainian territories might have seemed at the beginning of 2024, preliminary work for further development of a de-occupation strategy needs to be undertaken now. And it should start with the formulation of key visionary questions, which are far from obvious. Sometimes, even posing a question can be psychologically unacceptable en masse.

For this reason, the meeting was not broadcast live. Precisely for this reason, the organizers recorded responses but did not attribute them to specific speakers. And for this reason, the results presented below were not transcribed verbatim but were consolidated into four hypothetical development scenarios, sorting the speakers' theses by these scenarios.

The following themes were proposed for open discussion: What do we truly aspire to – to return the territory itself? To return the territory with its people? To return the people without the territory? Is it possible or advisable to abandon de-occupation in favor of security guarantees? How will the problem of occupied territories affect Ukraine's potential accession to the EU and NATO? Should (and if so, how) the Ukrainian political and legal architecture change after, or for the return of these territories?

The conversations and discussions at the forum were captivating, surprising, sometimes irritating, occasionally impressive, and at times shocking. Lawyers and humanitarians, historians and sociologists, writers and businessmen—naturally have different views on the same issue. Yet, professional competence and experience are capable of mutually enriching anyone who knows how to listen and hear; capable of helping to change or adjust already formed convictions; capable of generating reasoned agreement on what previously seemed unacceptable; capable of demonstrating whether and where the line of intransigence lies.

The beginning of a long journey.

Primary Information



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Introduction. Why Is It Important to Discuss the Reintegration of the Temporarily Occupied Territories Today?

Domestic Political Aspect.

The topic of temporarily occupied territories provides a lens through which to view Ukrainian society and the state after two years of full-scale aggression by the Russian Federation.

Entry into the EU and NATO will require a new political consensus and amendments to the Constitution of Ukraine. Some decisions related to security will be transferred to Washington, while those related to trade and labor will shift to Brussels.

Therefore, it's crucial to determine whether commitments to the return of the Temporarily Occupied Territories will aid or hinder Ukraine's entry into the EU and NATO. Should Ukraine temporarily forego the return of these territories, instead focusing on the development of internal capabilities after joining the EU and NATO, without fundamentally giving up on reclaiming these lands in the future? A meticulous analysis of the overall balance of benefits and risks is required.

Precedents for NATO and EU Membership in Countries with Temporarily Occupied Territories:

- Founded in 1952, the Federal Republic of Germany (FRG) joined NATO in 1955, not being a unified state and considering the German Democratic Republic (GDR) as an occupied territory, where Soviet troops suppressed population protests in 1953.
- Cyprus joined the EU in 2004 as a unified island, but EU legislation is suspended in the northern part, which is not under Nicosia's control.

International Aspect.

From a Black Sea regional security perspective, Crimea holds the greatest value for our partners.

The Crimean Tatars, residing in the temporarily occupied territories of the Autonomous Republic of Crimea, require convincing and continuous communication that they are an integral part of the Ukrainian people. This is especially pertinent as the Crimean Tatars attempted to prevent the hybrid takeover of the Supreme Council of the Autonomous Republic of Crimea in 2014 when the Ukrainian Armed Forces did not resist.

To facilitate dialogue with partners, it is essential to develop arguments that Ukraine's counter-offensive actions in 2024-2025 should be interpreted by partners as a war of necessity, not a war of choice.

Considering that many European politicians are not ready to "hand over Russia to China" and dream of a democratic Russia, it is vital to bring to the agenda the question of whether the temporarily occupied territories could become a separate reality, neither Russian nor Ukrainian territory, if Ukraine's counter-offensive actions do not yield results.

In negotiations with the EU regarding the transition period, Poland secured more support than Romania. Bearing this in mind, it is crucial to strive for the temporarily occupied territories to be part of the negotiations on support and development funds within the policy for the reintegration of these territories.

Scenarios for 2024–2025 and the Next 5 Years

Scenarios→ Factors ↓	Achieving the Goals Set in 2023 (1)	Partial Success in 2024-2025 (2)	Stalemate Situation in the Next 5 Years (3)	Total Negative Changes (4)
External - Friendly	Support from the USA / countries of the "Ramstein" at the 2023 level.	EU support increases, US support decreases.	EU support increases, US support decreases.	Trump's promises are realized / Economic turmoil in the EU.
External - Hostile	Democratic changes in the Russian Federation.	Partial changes in Putin's government policy.	Putin's government policy remains the same as in 2022-2023.	Putin's government policy remains the same as in 2022-2023.
Ukraine - Political	Continuation of the reform course.	Politicization of deoccupation.		Shift in political discourse to the opposite of 2022-2023
Ukraine - Military	Restoration of the 1991 borders.	Partial deoccupation.	Status quo maintenance	Enemy initiative, worsening of the situation on the ground compared to 2023
Integration of Temporarily Occupied Territories	Engagement with the population, reconstruction.		-	Engagement with the population under occupation conditions

Scenario 1: Achieving the Goals Set in 2023

This scenario envisages Ukraine restoring its 1991 borders and regaining control over all temporarily occupied territories (TOT). Under this scenario, Ukraine faces tasks related to the reintegration of the population and economic recovery.

In the early 1990s, the old communist elites were hesitant to cooperate with democratic forces, fearing exposure of their past misdeeds, which they were ashamed of. At that time, what was sorely lacking was a reconciliation commission that would allow individuals to "confess" and stop fearing, thereby starting to support the new government.

The reintegration of the population will require processes of *transitional justice* and reconciliation with the Russian Federation, akin to the processes in post-war Germany. The concept of "transitional justice" emerged after World War II, with successful applications seen in Chile, Argentina, and South Africa. *Reconciliation commissions* should also be part of the reconciliation process.

Ukraine, with and without the TOT, represents two different countries. Therefore, reintegration must occur gradually to prevent the occupied territories from radically influencing the rest of the country.

Furthermore, it's crucial to determine the state model we aim to restore there – be it the model of 1991, 2013, 2022, or something entirely different. All de-occupied territories will require a special legal status, as reintegration must be carried out in stages. It will be necessary to review the principles defined by the law "On the Fundamental Principles of State Policy in the Sphere of Affirming Ukrainian National and Civic Identity."

Reconciliation means providing an individual who reconciles with you a space of dignity, not humiliation. The best way to keep Crimea within Ukraine is to recognize its uniqueness. The language issue also requires attention: to what extent should the use of the Ukrainian language be mandatory in Crimea 5 years or 50 years after reintegration?

Empathy is a crucial component of the new modern inclusive identity, more important than language, religion, or origin. It diminishes the existing discrepancies. The moral compass of the church, an institution to which Ukrainian society grants an unusually large amount of social capital, has yet to realize its potential.

There's an ethical dilemma in distinguishing collaborators from victims. Currently, Ukraine communicates to the TOT how these individuals will be punished, but not how they will be loved. If a large portion of the population potentially faces sentences, we're confronted with the mass criminalization of the populace.

Voluntary collaboration with the Russian occupation administration constitutes up to 20% of the population – a relatively low percentage, especially considering the significant decrease in the number of people in the TOT. For instance, only 5,000 residents remain in Nova Kakhovka, compared to 50,000 before the invasion. The smallest exodus occurred from villages. Overall, departures from the TOT range from 90% (in places like Nova Kakhovka, Oleshky) to 30% (Arabat Spit, Henichesk), varying depending on proximity to the front line and other factors.

The TOT is experiencing a manpower shortage. The Russian occupation administration is replacing the population with Russians from distant regions, actively working to change the ethnic composition of the population in the TOT.

The occupation authorities are also taking children away. Some children have not returned from Crimea, and their parents find themselves trapped because they consented to what was supposed to be a holiday for their children. Similar entrapment mechanisms can be found everywhere, including employment practices where initially, significant cash payments are made, then employees are informed that salaries will only be paid into a bank account and only in rubles, followed by the issuance of a Russian identification code. If individuals retain their Ukrainian citizenship under these conditions, they are marked as "non-residents" and subject to higher taxes. FSB officers also begin to engage with them.

It is already known that those who lived under occupation have radical attitudes (anger, vengeance) towards their neighbors, acquaintances, and relatives who collaborated with the enemy. Overall, Ukrainian society is likely to side with those who evacuated (fled), not with a significant part of the population, for example, in the Luhansk region, who remained. There will be many false accusations, making it very difficult to discern the truth. A flexible response is required, and only the state of Ukraine can tell people who fell into traps whether or not they will be prosecuted.

It's essential to define collaborationism at the normative-legal level and understand the difference between those who merely tried to adapt to the circumstances of occupation and those who were active collaborators.

A presidential decree is an extrajudicial form. If these issues are pushed into the courts, no one will be punished. We have experience from currently deoccupied territories. Some mayors are former collaborators who have not been held accountable.

We have the tool of citizenship revocation, which could be applied to several hundred thousand individuals who took the military oath to Russia.

According to Scenario #1, peace for Ukraine is contingent upon deep and radical reforms in Russia, which it is unlikely to undertake on its own without external pressure and control. If these transformations do not occur, Ukraine should not talk about peace but rather a ceasefire.

Ukraine needs to decide what to do with graves. Graves are a reminder. There is a three-generation rule: assimilation is completed by the third generation. However, there is already a risk that the generation that went to school under occupation may be lost to Ukraine and will be in discord with the Ukrainian state. What should be done with them?

The Institute of Reconciliation Commissions represents a [model for ensuring justice balanced with mercy, with the participation of local communities. If not the church, then a "council of elders" at the community level could make decisions. The outcome should lead to a new phase of lustration.](#)

There are two trajectories of the war: (1) the fight against the Russian terrorist state and (2) the fight for a better future. Is their combination possible?

The path to the future lies through amendments to the Constitution.

It's crucial to understand that the legitimacy and positive outcomes of reintegration are interdependent variables. When people's lives improve, they perceive the government as legitimate.

What measures can be taken with the population of de-occupied territories? There are several possible approaches:

1. Do nothing, as if there was no occupation.
2. Screen everyone who lived in the occupied territories.
3. Deport those who arrived after the occupation.
4. Confiscate property acquired under Russian laws during the occupation.
5. Not recognize certificates and diplomas issued during the occupation.
6. Designate as collaborators all those who received salaries from the Russian budget and those who paid Russian taxes.
7. Recognize as collaborators all those who received a Russian passport.
8. Recognizing as collaborators all those who cannot prove they assisted Ukraine.

When we enter the TOT, the EU will come with us. They may have their own opinions regarding these options.

There has been very little research on how to reintegrate territories. However, the following key elements can be highlighted.

It's necessary to anticipate what will happen when the time for reintegration comes, as everything will unfold very rapidly: 1 – restoration of physical infrastructure; 2 – restoration of the economic system; 3 – population migration (people will be arriving and leaving, which will have social, economic implications and exacerbate social tensions). The story of reintegration will be considered successful if people quickly find it favorable.

Regarding collaborators, the question is not who deserves punishment, but how we proceed thereafter. Significant resources should not be wasted on combating all collaborators.

For those who have not committed particularly grave crimes, a "Truth and Reconciliation Commission" should be established. This is not a model of legal punishment, but rather moral. Accused individuals are given a choice: either they are ready to publicly acknowledge and repent for their actions before their victims, or they face legal proceedings. This is preferable to attempting to hold all 20% of the population accountable.

There are saboteurs who will still cooperate with Russia. This involves not only punishment but creating conditions to prevent such collaboration.

Legitimacy includes the value of truth. Speaking the truth and prioritizing transparency are essential!

Also, we must preserve our capacity for moral outrage. There are individuals who acted very poorly during the occupation, and they must be condemned. Simply granting immunity to everyone would doom reintegration to failure.

The feasibility of decentralization must align with security needs. Liberal language and religious policies are also required.

Furthermore, it is necessary to ensure that the updated Constitution functions properly. Currently, people in temporarily occupied territories (TOT) are treated as objects, but Ukraine should make them subjects responsible for their own future.

The Constitution should help determine the price society is willing to pay for the reintegration of territories and the population currently residing there. Some believe that we should repent and come to them.

When we defend, we lose significantly fewer people than when we attack. Can we abandon these people to advance if we understand that they will be denied the right to life for the sake of the rights of our fellow citizens in the occupied territories, for dignity, for property?

How much are we willing to spend on rebuilding the Donbas at the expense of repairing roads in Lviv Oblast? This price may become so high that we simply cannot recover demographically, morally, psychologically, in any way. Also, you cannot demand protection from the government for roads in Lviv Oblast, or elsewhere, if you do not pay taxes and engage in smuggling.

Scenario 2: Partial Success in 2024-2025

This scenario entails regaining control over some temporarily occupied territories (TOT), such as reaching the line of demarcation prior to the full-scale invasion on February 24, 2022. Under this scenario, Ukraine faces challenges of reintegrating the population, economic recovery, and working with the population that has remained under occupation since 2014.

Similar to the previous scenario, it is necessary to clearly distinguish between "adaptation without collaboration" and "collaboration."

There is a belief that the level and scale of collaboration are determined not by the population itself but by the occupying regime. Nazis minimized collaboration in Ukraine because they did not trust Ukrainians and did not consider them equals. Conversely, Russia actively encourages Ukrainians to collaborate. However, what we see is that the level of collaboration is relatively low. In the examples of Kherson and Kharkiv Oblast, we see that active collaborators flee on their own.

If collaboration is defined broadly, collaborators will not make up 20%, but rather half. People living in TOT are not within the Ukrainian frame of reference. They want peace and to avoid being shot at, but their allegiance to Ukraine as a state is highly questionable.

In scenario No 2, the population in the deoccupied TOT will be smaller. Filtering measures will identify those who continue to believe in the "Russian world." Exams, polygraphs, special checks, tests – there are plenty of options, and the experience of the Baltic states could be useful. Everyone who wishes should be given the opportunity to leave for Russia.

The biggest loss is the group that can be described as "moderately pro-Ukrainian": according to participants' subjective assessments, this is a result of a failed counteroffensive. There emerges a critical attitude towards the leadership of Ukraine. Similarly, in Crimea, people initially put their lives on hold, and then they became accustomed to the occupation.

The rule of law means that those who committed crimes or aided in crimes must be held accountable. This is what we failed to do in the 1990s.

What are the demographic options? How to resettle territories abandoned by occupiers and collaborators?

1. No action is needed; the problem will resolve itself naturally.
2. Establish surveillance over individuals suspected of collaboration.
3. Voluntary relocation of Ukrainians from other territories through economic incentives and patriotic fervor.
4. Seek migrants from European and American countries.
6. Seek migrants from Asian and African countries.
7. Resettlement of illegal migrants from the EU along with financial incentives.
10. Resettlement of Ukrainians based on labor distribution, and so on.

Scenarios 3. Stalemate Situation in the Next 5 Years

This scenario involves the preservation of the LOC (Line of Contact) as of the beginning of 2024. The front-line territories are placed under a special regime, and Ukraine faces tasks related to working with the population under occupation and managing social connections regarding the population living in the special regime.

Ukraine temporarily agrees to territorial losses but becomes a member of the EU and NATO. Examples such as Finland, South Korea, and West Germany are cited. Different examples, but the logic is the same: buying time to build capabilities.

However, among our citizens in the front-line territories, many want Ukraine's return. Fulfilling this desire is our moral duty. When there were certain expectations from the counteroffensive, the behavior was one thing; when they did not materialize, it was another. Now, we are moving towards Europe, and they won't allow us to do much.

People in the front-line territories must feel the legitimacy of Ukrainian authorities, feel that they are being listened to and heard. Is there a possibility of creating a special electoral system? Because it is crucial to talk about people on the ground. These are people who have been living under occupation for the past 10 years.

Scenarios 4: Total Negative Changes

In this scenario, the Line of Contact (LOC) moves deeper into regions of Ukraine that were under Ukrainian control at the beginning of 2024. Under this scenario, Ukraine faces tasks related to working with the population under occupation and managing social connections regarding the population living in the special regime near the new LOC.

Resistance is the most crucial marker. Even Surzhyk has become a tool of resistance, allowing easy identification of who is with us and who is not. People fear mobilization into the Russian Occupation Forces (ROF). They suffer from the catastrophic state of affairs in healthcare. Complaints against the Russian occupation system begin to flood in.

How can we ensure the transition of people living in the occupied territories to Ukrainian rules of the game? Ukraine has changed significantly since Crimea and Donbas stopped voting in national elections. These are people who have been out of the Ukrainian discourse for decades, who do not fully understand the language or arguments.

It is necessary to emphasize the unethical nature of the proposals from pacifists and Realpolitik supporters, who suggest sacrificing territories for the sake of safety and saving lives.

It is necessary to emphasize the disappointment of the pro-Russian faction, which had inflated expectations of what would happen when Russia came.

In Russia, the goal is to create an image as if people are happy about its arrival and collaborate joyfully, and their lives have improved. The Russian Occupation Administration (ROA) works with pensioners and national minorities.

