

February 2019

country report

Country Office Ukraine (Kharkiv)



The Grand Stalemate of the Minsk Agreements

Tim B. Peters, Anastasiia Shapkina

Four years have passed since the so-called “Minsk-II” peace agreement was signed on 12 February 2015. It meant to revive the first Minsk peace accord of September 2014 and solve the conflict in Eastern Ukraine. Nevertheless, it has achieved modest results to say the least. The only real accomplishment has been the decrease of active hostilities and the number of daily casualties and/or fatalities. In other words, the Minsk agreements have resulted in the formation of a low-intensity conflict. Yet, officials in Ukraine, the Russian Federation, and the European Union have been insisting that there could be no alternative to them. Therefore, the question is why these actors are holding on to the objectively ineffective peace deal and what is next for the Minsk peace process? The analysis suggests that the Minsk agreements have created a stalemate which is the best outcome either of the parties can currently achieve, but which at the same time satisfies nobody. Also, neither of the parties in the present context will attempt any major step which means that the Minsk peace process is likely to endure, at least until Ukraine’s presidential elections in March-April 2019.

The so-called “Minsk-I” peace agreements – the Protocol of 5 September 2014 and the Memorandum of 19 September 2014 – as well as the “Minsk-II” agreement were signed under similar circumstances, have a similar content, and share a number of issues that have caused problems with their implementation. A closer look at them sheds light on the likely future of this peace deal.

The Circumstances of the Signing

In both cases the signing had been preceded by similar events: major escalation of hostilities, direct military incursion of Russia’s regular army units¹ (which Moscow denies), and active involvement of Germany and France in the peace talks and their preparation.

Before “Minsk-I” was signed in July-August 2014, the Ukrainian forces had been making successful advances in the territories of the Donetsk and Luhansk regions proclaimed as the so-called “Luhansk People’s Republic” and “Donetsk Peo-

ple’s Republic” (“LNR/DNR”). Facing the risk that Ukraine could regain control over the territories under the separatist rule,² the Russian Armed Forces launched a full-scale offensive on the directions of Luhansk, Ilovaisk, and Mariupol in August, 2014.³ The Ukrainian side struggled to contain the attack: the number of casualties and fatalities skyrocketed; the Ukrainian forces suffered defeats, including a heavy one in Ilovaisk; and several recently freed towns returned to the control of “LNR/DNR”. By the time Germany and France urged the parties to negotiate, Ukraine had already been willing to talk, and Russia had attained its military and political goals. Despite this, the ceasefire reached on 5 September 2015 was broken within days.

The signing of the February 2015 “Minsk-II” peace accord came in the midst of another major

¹<https://www.nytimes.com/2014/08/23/world/europe/russian-convoy-ukraine.html>

²<https://media.slovoidilo.ua/maps/nsdc/2014/08/large/map-nsdc-2014-08-09-uk-w3000.jpg>

³<https://www.theguardian.com/world/2014/aug/28/ukraine-russia-emergency-un-nato-eu-meetings-invasion-claim>

Russian offensive in January-February, 2015.⁴ In contrast to the reactive incursion in August 2014, this time it was a carefully planned strategic military operation for the control of, first and foremost, a major transport and railway node – the city of Debaltseve and its surroundings which cut deeply into the territory of the so-called “LNR/DNR”. The Ukrainian control over this area hindered the quickest and most convenient route between Donetsk and Luhansk and posed a constant threat for the separatist-controlled Horlivka which had been semi-encircled by the Ukrainian forces.

Amid the heavy fighting, the leaders of Ukraine, the Russian Federation, France, and Germany gathered for an emergency meeting in Minsk, Belarus on 11 February 2015. After 16 hours of negotiations, the de-facto parties to the conflict and the mediators agreed on a 13-point peace plan.⁵ According to it, the ceasefire was to begin at midnight on 15 February 2015. Nevertheless, fighting in the Debaltseve area had been taking place until 18 February and intensified after the declared ceasefire, causing hundreds of deaths among civilians and the military. From 19 February 2015, the ceasefire was “generally upheld” for some time, although “isolated clashes” still occurred.⁶

To put it differently, the “Minsk-II” peace agreement failed to reflect the situation on the ground accurately and realistically. Firstly, considering active resistance of Russian president Vladimir Putin to the proposed dates of the ceasefire⁷ and the perpetual fighting, it was unlikely that the Russian military operation in Debaltseve would be completed by 15 February. Moreover, Debaltseve and its surroundings, according to both the “Minsk-I” and “Minsk-II” peace agreements, were supposed to remain under control of Ukraine, however on 11-12 February 2015 it was already evident that the Ukrainian troops would soon be forced to retreat and abandon their position there.

It is All in the Title

Analysts and commentators have generally disregarded the way the three Minsk documents were entitled. Their designations, nevertheless, lead to two important conclusions. Firstly, it plays into the Kremlin’s narrative that the Russian Federation is not a party to the conflict. Secondly, it indicates that the Minsk peace accords of September 2014 and of February 2015 are essentially identical, suggesting that the lessons of the failed “Minsk-I” were not carefully considered.

The title of the first Minsk agreement is “*Protocol on the Results of Consultations of the Trilateral Contact Group with Respect to the 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*”⁸. Thus, it emphasizes that its text is based on the steps proposed by President Poroshenko⁹ and President Putin¹⁰. The recognition of the ‘initiatives’ of the Russian President (published two days before the accord was adopted) in the formal title of the Minsk Protocol is particularly noteworthy. Considering this and the fact that Russia’s military involvement in eastern Ukraine was never acknowledged in either of the three texts, Moscow appears as a mediator rather than a party to the conflict.

The titles of the two following documents – the *Memorandum on the Implementation of the Provisions of the Minsk Protocol*¹¹ and the *Package of Measures for the Implementation of the Minsk Agreements*¹² – demonstrate that the vision behind the texts remained the same and, in principle, the so-called “Minsk-II” was not new. Indeed, content, composition, and the core clauses are almost identical: ceasefire, withdrawal of heavy weapons, removal of foreign fighters from the Ukrainian territory, OSCE monitoring, amnesty for combatants, exchange of prisoners, local elections, decentralization of power in Ukraine, and the renewal of control over the state border

⁴<https://www.telegraph.co.uk/news/worldnews/europe/russia/11506774/Separatist-fighter-admits-Russian-tanks-troops-decisive-in-eastern-Ukraine-battles.html>

⁵<https://www.osce.org/cio/140156>

⁶<https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

⁷<http://tyzhden.ua/World/218986>

⁸<https://www.osce.org/ru/home/123258?download=true>

⁹<https://www.president.gov.ua/news/petro-poroshenko-predstaviv-v-donbasi-mirnij-plan-z-vregulyu-33044>

¹⁰<http://www.kremlin.ru/events/president/news/46554>

¹¹https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140919_MemolImplementationPeacePlan_en.pdf

¹²<https://peacemaker.un.org/ukraine-minsk-implementation15>

by the government of Ukraine. The February 2015 deal addressed only one problem that added to the failure of the September 2014 peace agreements: the sequence of implementation of its provisions, though not very successfully.

The Minsk Agreements: Not Legally Binding but a Political Commitment

The choice of the signatories of the Minsk documents deserves a special attention. In all three cases the documents were signed by the representatives of the Trilateral Contact Group – Ambassador Heide Tagliavini, an OSCE representative, the second president of Ukraine Leonid Kuchma, and Russian Ambassador to Ukraine Mikhail Zurabov (2009-2016) – as well as Aleksandr Zakharchenko and Igor Plotnitsky (the self-proclaimed leaders of “DNR” and “LNR” at this time), whose credentials were not mentioned.

Leonid Kuchma was authorized by president Poroshenko to represent Ukraine in the Trilateral Contact Group, but not to sign international treaties on behalf of Ukraine,¹³ which is required by the Ukrainian legislation.¹⁴ Likewise, Ambassador Zurabov as a head of the Russian diplomatic mission to Ukraine had the right to negotiate the text of an agreement with Ukraine without further authorization. However, according to the Russian legislation, the right to sign a treaty on behalf of the Russian state belongs solely to the President of Russia.¹⁵ To put it differently, Mr Kuchma and Mr Zurabov did not have ‘full powers’ to sign a legally binding international agreement.¹⁶ Therefore, the Minsk agreements are not legally binding documents, but rather a political commitment.

Next, the lack of essential elements and the standard structure of an international legal instrument hints at an informal nature and a low legal significance of the Minsk agreements. First and foremost, parties who are supposed to as-

sume and fulfil certain obligations are not defined. Particularly, the accords refer to “both parties” or “bilateral” with no specifics. This has resulted in mutual accusations since Ukraine construes the concepts as ‘Ukraine and the Russian Federation’ and Russia – as ‘Ukraine and LNR/DNR’. Similarly, paragraph 10 of the “Minsk-II” agreement reads “Withdrawal of all foreign armed formations, military equipment, as well as mercenaries from the territory of Ukraine under monitoring of the OSCE...”.¹⁷ The obscurities concerning the origin of such units, weapons, and soldiers as well as the question of who is obliged to withdraw them led to the same outcome: Ukraine insists that no political provisions can be fully implemented until security provisions, and this clause in particular, are met; and the Russian Federation maintains that there are no Russian troops or weapons in eastern Ukraine. Also, with few exceptions, the other clauses are loosely formulated, for example “Ensure the release...”, “Launch a dialogue...”, which leads, again, to ill-defined obligations of the parties and a space to maneuver and avoid responsibilities.

The second major issue in this regard is the sequence of implementation of clauses as stipulated by the Minsk agreements. The Minsk Protocol of 5 September 2014 has no references to the sequence of implementation at all. The Minsk Memorandum of 19 September 2014, adopted in response to the almost immediately broken ceasefire, specifies the timing only for withdrawal of heavy weapons (within one day after the Memorandum adoption), prohibition of the flights of military aircraft (as soon as the Memorandum is adopted), and the deployment of the OSCE monitoring mission (within one day after the adoption). Other crucial terms were left undetermined.

The presumed sequence of implementation in the February 2015 agreement is more detailed, however it has a few important flaws. Firstly, the sequence of implementation of the provisions, although dated (to the most part), are interlinked, and thus, not fully clear. For example, the “Minsk-II” agreement precludes that the government of Ukraine can begin the “reinstatement of full con-

¹³<https://www.president.gov.ua/documents/9532014-rp-17449>

¹⁴<http://ils.ooo/en/proekti/7-analiz-kompleksnikh-zakhodiv-povikonannyyu-minskikh-ugod-vid-2-bereznaya-2015-roku-ta-sputnikh-aktiv>

¹⁵http://www.consultant.ru/document/cons_doc_LAW_7258/

¹⁶<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

¹⁷https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf

trol of the state border ... starting on day 1 after the local elections” (paragraph 9); the dialogue about modalities of local elections, in turn, was to begin on the first day after the withdrawal of heavy weapons; the withdrawal “[was] to start on day 2 of the ceasefire at the latest”, and the ceasefire was to start on 15 February 2015. As was mentioned previously, the ceasefire did not come into force on 15 February, as was envisaged by the peace accord. Accordingly, since all provisions are linked to this date, it has resulted in different interpretations of the sequence and the protracted implementation of the accords. Furthermore, as was stated earlier, on the day of the signing of the “Minsk-II” peace agreement it was evident that the ceasefire could not come into force on 15 February. Still, this was the date all sides agreed upon.

Secondly, the “Minsk-II” agreement regards the line of contact as was established by the Minsk Memorandum – positions of the parties to the conflict as of 19 September 2014.¹⁸ In reality, especially considering the unfolding situation in the Debaltseve area in January-February, 2015¹⁹, it was apparent that the line of contact would be different and the separatist forces along with the Russian soldiers would not agree to retreat back to their 19 September 2014 position.

Nevertheless, both in September 2014 and in February 2015, the documents that were signed in Minsk, represent the best possible outcome for contracting parties. The non-binding character of the agreements was chosen deliberately. On the one hand, it allowed to engage the self-proclaimed leaders of the “People’s Republics” without recognizing them, which was important for Ukraine, Germany and France. On the other hand, it does not impose any legally binding obligations on Russia that continues to deny its direct involvement in the conflict and would have obviously refused to sign a proper international treaty. The “soft” character of the agreements does not mean that they should not be implemented. It mainly means that non-compliance will have rather political than legal consequences.

The State of Implementation and its Implications

The state of implementation of the Minsk agreements is poor: ceasefire violations are constant, casualties and fatalities, both civilian and military, occur regularly, and OSCE monitors report that heavy weapons are still employed. Until now, only minor provisions have been met, like the intensification of the work of the Trilateral Contact Group and the adoption of a resolution of the Ukrainian parliament determining the territories that enjoy ‘a special status’ under the Law of Ukraine “On interim self-government order in certain areas of the Donetsk and Luhansk regions” (the so-called law on special status), adopted on 16 September 2014.

Ukraine also formally abided by the Minsk agreements by including all the conditions demanded by President Putin for the so-called “DNR/LNR” (paragraph 5 and footnote of the “Minsk-II” agreement) in the law on special status. However, the clauses that list these terms become effective only when two conditions are met: 1) local elections in certain districts of Donetsk and Luhansk region are held according to international standards and the Ukrainian legislation; 2) all foreign military formations and weaponry are withdrawn from the territory of Ukraine.²⁰

Additionally, the amendments to the Constitution on decentralization of power, that Ukraine was supposed to enact by the end of 2015 according to the Minsk agreements, were approved in the first reading by the Parliament of Ukraine in August 2015. Protests and clashes that accompanied the voting resulted in four servicemen being killed in a grenade attack and dozens of people being injured.²¹ After those events, the government of Ukraine halted its push for the so-called constitutional reform. As of January 2018, opinion polls show that 49% of Ukrainians still believe that this peace term is unacceptable while 28% are ready for such a step.²²

¹⁸ https://ichef.bbci.co.uk/news/624/media/images/81570000/gif/81570998_ukraine_rebel_held_areas_09.2014_02.2015_624ma.p.gif

¹⁹ <https://media.slovoidilo.ua/uploads/news/d48f94e4c82e58fd16799ec911140d58.png>

²⁰ <http://zakon.rada.gov.ua/laws/show/252-19>

²¹ <https://ua.112.ua/statji/zahybli-pid-verkhovnoiu-radoiu-biitsi-natshvardii-dosie-255516.html>

²² <https://dif.org.ua/article/mir-na-donbasi-chi-za-bud-yaku-sinu-gromadska-dumka13890>

The Minsk Agreements Are Likely to Endure, For Now

The current state of implementation of the Minsk agreements and the continuous low-scale conflict inflict tremendous costs on Ukraine. However, it is doubtful if these accords can be fully implemented under existing political conditions and lack of mutual trust. Both sides have certain precautions for the process of Donbas reintegration. Ukraine sees a risk that the separatists will preserve their de facto control over certain regions of Donetsk and Luhansk oblasts as their power might be legitimized through local elections and illegal armed formations could be transformed into local police. Russia fears to lose the possibility to influence Ukraine's politics through the unrecognized "Republics", if they will be reintegrated without broad autonomous rights and Ukraine will execute effective control on these territories. Therefore, the existing status quo is likely to last in a short-term perspective.

The situation is also more or less acceptable for the Russian Federation. Indeed, Ukraine has not given up to Moscow's conditions in the Minsk agreement, but the constant military conflict undermines the economy of Ukraine and causes public dissent which may result in a more concisive president or government coming to power in 2019.²³ The cost of a full-scale military intervention would likely be too heavy on Russia, so it prefers to keep the intensity of the conflict low, thus maintaining a leverage over Ukraine and the West.

Overall, neither of the parties to the conflict – nor Germany and France – is satisfied with the stalemate the Minsk agreements created, but all of them understand that presently a better outcome is unattainable. Therefore, the current status quo is likely to remain in place, however, based on the analysis of the circumstances that preceded "Minsk-I" and "Minsk-II", this status quo may be shaken if another major escalation in Eastern Ukraine takes place.

²³ <http://www.intellinews.com/who-s-who-in-ukraine-s-2019-elections-148161/>