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One year after Minsk II: consequences and progress

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Abstract Ukraine is currently undergoing one of the most decisive phases since its independence. It has to both contain the Russian aggression in Donbas and deal with the consequences of the illegal annexation of the Crimean peninsula. This requires substantial effort and resources, which Ukraine is lacking. At the same time, it is also undergoing a deep and comprehensive transformation process in order to have a chance of firmly standing on its own feet. The struggle for security (survival) and the future (development) is continuing in parallel. The article argues that the Minsk II agreements are unlikely to be implemented in the foreseeable future due to the political calculations of Russia, which is playing the blame game with Ukraine. The article also reasons that Ukraine has a unique window of opportunity to focus on reforms, thus building the pillars of its future strength, as it has been able to avoid the deterioration of the security situation in the east.

The views expressed in this article are strictly those of the author and do not necessarily reflect those of the Group of the European People's Party in the European Parliament.

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Introduction

President Jimmy Carter’s National Security Adviser Zbigniew Brzezinski wrote that: ‘The loss of Ukraine was geopolitically pivotal, for it drastically limited the Russia’s geostrategic options’. He went on to say, ‘However, if Moscow regains control over Ukraine, with its 52 million people and major resources as well as its access to the Black Sea, Russia automatically regains the wherewithal to become a powerful imperial state, spanning Europe and Asia’ (Brzezinski 1997).

Since the collapse of the Soviet Union, Russian political leaders have had a difficult time accepting the notion of an independent Ukraine. What tipped the balance for Russia was the planned signing of the EU–Ukraine Association Agreement/Deep and Comprehensive Free Trade Area at the Eastern Partnership Summit in Vilnius in November 2013. The conclusion was that Russia was losing Ukraine.

The Kremlin had begun applying pressure on Ukraine in summer 2013, when it imposed restrictive measures on Ukrainian exports to Russia. However, Russia crossed the Rubicon when it illegally annexed Crimea and launched a military attack in Donbas in early spring 2014. These actions were attempts by Russia to keep Ukraine in its sphere of influence by force. The former was the first case of a forcible change of a border of one European country by another since the end of the Second World War, and it violated one of the most important principles of the current international order. By doing so Russia violated the sovereignty, independence and territorial integrity of Ukraine, and contravened international law and its own commitments thereto.¹ Both Crimea and Donbas are practical realisations of ‘hybrid war’.² In Donbas military hostilities have been ongoing since spring 2014. Russian proxy pseudo-states have been created in the occupied territories of Donbas—the so-called Donetsk People’s Republic and the Luhansk People’s Republic—which are formally controlled by Russia. Both so-called states are instruments in the hands of the Russian Federation.

The agreement reached in Minsk in February 2015 during the Normandy Format talks³ is an important point of reference for any political attempts to resolve the situation

¹ This action contravened the UN Charter, the 1975 Helsinki Final Act and the 1994 Budapest Memorandum on Security Assurances.

² The term ‘non-linear war’, as referred to by Galeotti (2014), a Russia specialist from New York University, could also be applied here. The tactics of the Russian state have been very well described by General Gerasimov (2013), chief of staff of the Russian Armed Forces. The aggressor in a hybrid war is hard to pin down (there is no formal declaration of war, its involvement is concealed), and the intensity of the conflict varies, thus the aggressor is not a direct threat to the lives of the majority of the population. However, such an attack seriously strains the resources of the country experiencing it, in a comparable way to a war situation. It includes a wide variety of military and non-military measures, both overt and covert, used to destabilise the political, social and economic situation of the country under attack by creating confusion and chaos.

³ The ‘Normandy Format’ is the name given to government-level meetings between Germany, France, Russia and Ukraine. The first meeting took place on 6 June 2014 on the margins of the ceremony to commemorate the 1944 Allied landings in Normandy.

in Donbas. All the parties that contributed to the agreement becoming a reality have underlined that there is no alternative and have publicly stated their strong support for it. The devil, however, is in the detail. The role of Ukraine in the agreement can only form part of the success of Minsk II. The stronger part—Russia and its proxies—has been proven to be genuinely uninterested in delivering on its commitments, as this would weaken its current position in Ukraine. This is rational behaviour from Russia's point of view.

Ukraine's situation within the Normandy Format is therefore very complicated. Russia, the aggressor, which claims that the situation in Donbas is a 'civil war' (*Ukraine Today* 2014), sits at the negotiating table and appears to be trying to look for a diplomatic solution. Russia is like a wolf in sheep's clothing. In his 2016 posture statement, the departing Supreme Allied Commander of Europe, US Air Force General Breedlove (2016) said:

Russia modulates these conflicts by manipulating its support to the participants, while engaging in diplomatic efforts in order to preserve its influence [in] the affected regions. Just as the Soviet Union dominated the nations of the Warsaw Pact, Russia coerces, manipulates, and aggresses against its immediate neighbours in a manner that violates the sovereignty of individual nations, previous agreements of the Russian government, and international norms.

At the moment, Ukraine and its Western allies do not have the necessary leverage to force Russia to fulfil its commitments, despite the sanctions regime and Russia's deteriorating economic situation. Yet the security situation in Donbas, however fragile due to constant violations of the ceasefire, is not deteriorating in strategic terms. This is due to the increased resilience of the Ukrainian Armed Forces, which have become an agile fighting force over the last two years. In the foreseeable future we should not expect any significant change of balance in this respect. Therefore, Ukraine should focus its efforts on where it can substantially change the reality on its own. That is, on the transformation of the state, and on reforms and efforts to build a genuinely democratic system. Times of national crisis can be transformational (Lough and Solonenko 2016). Only a strong and healthy Ukraine, with effective institutions, transparent procedures, a robust economy and functioning rule of law, will become resilient to Russian pressure and be able to be a more equal partner to the West. From that position of relative strength, it will be able to more effectively advance its interests and will have the means to try to overcome the aggression in Donbas, as well the occupation of Crimea, which is too often omitted in the public discourse.

Minsk II

Since the beginning of the Russian aggression, the capital of Belarus has been the focus of international diplomatic efforts. The first Minsk Protocol was agreed on 5 September 2014 after six months of fighting.⁴ The Protocol aimed to establish an immediate

⁴ Followed by the adoption of the Minsk Memorandum on the 19 September 2014.

ceasefire in Donbas. The ceasefire was, however, short-lived and did not lead to the expected permanent cessation of hostilities. The security situation in Donbas in the second half of 2014 continued to deteriorate.

Early 2015 brought an intensification of fighting in the region. Heavy fighting in and around the airport in Donetsk and at the transit hub in Debaltseve, and the death of a dozen people on a bus hit by a mortar in Volnovakha (*BBC News* 2015), as well as the constant shelling of residential areas in the city of Mariupol (Kononczuk and Wilk 2015), are just some examples of the results of this escalation.

Against this backdrop, the leaders of the Normandy Format met in the Belarusian capital of Minsk on 11 February 2015 to try to de-escalate the spiking conflict, agree to a ceasefire and work out a political solution to the conflict. Following a 16-hour marathon of negotiations, a new ceasefire was agreed upon and was translated into the 13-point ‘Package of Measures for the Implementation of the Minsk Agreements’, known as Minsk II. In the joint statement issued, the leaders reaffirmed their full respect for the sovereignty and territorial integrity of Ukraine, underlined that there is no alternative to an exclusively peaceful settlement and noted their intention to use their influence on the relevant parties to facilitate the implementation of the agreement (Germany, Federal Foreign Office 2015).

Minsk II constitutes a comprehensive catalogue of undertakings, ranging from security and political to economic and constitutional changes. Its full implementation, conducted in good faith, would allow a de-escalation of tensions and would end the fighting. It would give Ukraine the desperately needed control over its own border, but at the same time would ‘regularise’ the pro-Russian proxies in the Ukrainian political and legal landscape.

Minsk II, one year on: the state of implementation

The Minsk II Agreement deadline of 31 December 2015 was not kept and thus has been further extended into 2016.⁵ This is the best indication that it is far from being implemented. It is therefore questionable whether the aim of a serious de-escalation has been achieved. A complete ceasefire has not been achieved. Violations occur on virtually a daily basis. The withdrawal of heavy weapons is hard to fully verify because of the difficulty that the international monitors from the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (SMM OSCE) (OSCE 2015)⁶ have had in getting permanent access to the pro-Moscow separatist-held territories

⁵ This was agreed by the Normandy Format during a conference call on 30 December 2015.

⁶ The SMM OSCE was set up in Ukraine on 21 March 2014 following a decision of the Permanent Council of the OSCE. Its current mandate was extended in February 2016 to 31 March 2017, with the option of a further extension if necessary.

(Beznosiuk 2016). The periodic intensification of ceasefire violations suggests that heavy weapons continue to be used. This has also made it impossible for the SMM OSCE to set up an effective monitoring regime.

Elections in the self-proclaimed People's Republics of Donetsk and Luhansk have been postponed until 2016.⁷ However, since this decision was made there has been no serious progress on the modalities of the elections in Donbas as agreed in Minsk. These elections should be held under Ukrainian law and in accordance with recognised international standards, monitored by the Office for Democratic Institutions and Human Rights. A security environment that is conducive to stability during the campaigning and polling will also be needed.

The issue of amnesty has not yet been resolved. The new law has been adopted,⁸ but it has not yet been sent to the president for promulgation. The Ukrainian authorities consider it only reasonable to expect that an amnesty law can only be put into force once the conflict it concerns has come to a definite end (Beznosiuk 2016).

The release of all hostages and illegally detained persons has not yet been fully carried out. The sentencing of Servicewoman Nadiya Savchenko to 22 years in prison, which has become a symbolic case, best illustrates the lack of progress.

International humanitarian organisations are not enjoying unimpeded access to the rebel-held territories, where the so-called authorities require them to be 'accredited'. On the other hand, Russian 'white convoys' regularly access these areas.⁹ The humanitarian situation in the conflict-affected territories continues to be dire.

Fulfilment of the 'restoration of full social and economic links with affected areas' is being realised via the delivery of gas and electricity, as well as the payment of pensions and other benefits by the Ukrainian state. In the latter case this involves ordinary people crossing from the Ukrainian-controlled territory to separatist-held territories.¹⁰ Additionally, infrastructure is being repaired (gas, water and electricity lines) when destroyed, as the security situation permits.

Ukraine has not regained full control over the nearly 500-km-long strip of border with Russia in Donbas, hence the withdrawal of Russian troops and mercenaries has not materialised, and the supply of weapons and manpower from Russia to the separatists continues.

⁷ In Donetsk from 18 October 2015 and in Luhansk from 1 November 2015, as agreed by the Normandy Format meeting in Paris on 2 October 2015.

⁸ The law, 'On the prohibition of persecution and punishment of individual participants in events in the territories of Donetsk and Luhansk oblasts', was adopted in September 2014.

⁹ On 21 April the 51st Russian humanitarian convoy entered Donbas (*Gorshenin Weekly* 2016, 6).

¹⁰ As the Ukrainian banking system does not function in the rebel territory.

Constitutional reform, particularly focusing on decentralisation, has already started in Ukraine. On 31 August 2015, a draft law on amending the constitution in the area of decentralisation was adopted at first reading. The law includes clauses on the special status of certain regions of Donbas (the occupied territories). However, the vote following the second reading has thus far not taken place. A qualified majority (300 votes) is required for the adoption at second reading, and this has not yet been secured.¹¹ Moreover, a law granting special status to the Donetsk and Luhansk regions was adopted in September 2014. It can only take effect once the security situation in Donbas has been permanently resolved.

At the security conference in Munich this year, Russia's Prime Minister Medvedev accused Ukraine of being responsible for stalling the implementation of the Minsk Agreement as, according to him, the country is not showing sufficient 'will and a desire', in contrast to Russia's 'reasonable flexibility' (Medvedev 2016). However, the Russian side bears overwhelming responsibility, together with its proxies, for sustaining the current unstable security situation. Stabilisation of the security situation can be achieved both once Ukraine regains control over its border and consequently stops the influx of weapons and mercenaries, and once the SMM OSCE is able to effectively monitor the ceasefire and the withdrawal of heavy weapons by having full access to all rebel-held territories. The Russian blame game as witnessed in Munich is an old technique from the Soviet tool-box, aimed at diverting interest from where the real problem lays, creating more confusion and diluting one's own responsibility. The progress in fulfilling Minsk II is poor at best. This is because the Russian side, together with its proxies, does not see any practical gain from its fulfilment. It is therefore a desirable instrument in sustaining the beneficial status quo of a grey zone.

Beyond Minsk II: the way forward in Ukraine

What is the Russian nightmare scenario in Ukraine? It is Ukraine becoming a normally functioning country; having successfully transitioned from a post-Soviet to a European democratic state; and having managed to overcome the heritage of corruption, cronyism, incompetence, patronage and privileged access, and pursuit of personal interests at the expense of the whole. This permanent change of mentality is probably a much more dangerous threat to Putin and his system of power than a colour revolution or a Maidan on Red Square in Moscow.

In order to become resilient to any Russian threats and destabilisation, Ukraine must become a normally functioning democracy, with respect for the rule of law and a free market economy. It needs an independent, effective and fair judicial system; a prosecutorial service which represents the interests of the people and not of the privileged; a civil

¹¹ A controversial ruling of the Constitutional Court of Ukraine from 15 March 2016 reviewed the process of amending the constitution, which now no longer has to take place within two consecutive sessions of the parliament.

service based on meritocracy; good governance; macro-economic stability; and the ability to unlock the potential of the economy by cutting red-tape (through the deregulation of various sectors, de-monopolisation, the elimination of the unnecessary burden of vast licences and permissions, and a reduction in the influence of often-corrupt bureaucrats on the economy, public procurement and taxation reform). Last but not least, Ukraine needs to eradicate corruption. It needs strong and independent institutions and transparent procedures.

Transparency in public and economic life needs to become the new norm. The reform task that the Ukrainian authorities have been facing since early 2014 is unprecedented and can probably only be compared, taking all the differences into account, with the challenges faced by the reform-oriented governments in the Visegrád and Baltic states in the early 1990s.

Many new laws reforming the state and creating new institutions have been adopted during the last two years. The zeal for reform is unprecedented in Ukrainian history. However, whether the reforms are a success will depend on the implementation of those laws and the operational activities of those new institutions. After two years it is still not possible to state without a doubt whether the reforms have reached a critical mass and have become irreversible. Moreover, there is frustration among Ukraine's Western partners that reforms are becoming the victims of traditional power struggles among the Kyiv elite. This was best expressed recently by Christine Lagarde (2016), managing director of the International Monetary Fund, who had sobering words to offer: 'Ukraine risks a return to the pattern of failed economic policies that had plagued its recent history. It is vital that Ukraine's leadership acts now to put the country back on a promising path of reform'. Therefore, Ukraine needs to remain under permanent strong pressure from the EU and the international community to deliver and avoid reform fatigue.¹²

The failed vote of no-confidence in the Yatsenyuk government on 15 February has shown that the position of oligarchs in Ukrainian politics remains strong. De-oligarchisation was one of the central demands of the Revolution of Dignity (Kościński 2016). It is probably second in importance to eradicating corruption. The influence of the oligarchs is still overwhelming. They are not interested in promoting reforms that strengthen transparency and the rule of law, or in eradicating corruption. This will continue to be a big challenge for any reform-minded Ukrainian authorities.

The single most important challenge is the eradication of corruption. This is possibly the source of all problems in Ukraine. One of the first steps to overcoming the culture of corruption is to decrease the incentives behind it, first by increasing the salaries in the administration, but also by harshly naming, shaming and prosecuting all acts of corruption. The newly established anti-corruption institutions¹³ will have a big role to play. A zero-tolerance policy must function on all levels of society and government. Determination, courage and political will are necessary to combat corruption.

¹² Otherwise the currently temporary suspension of the payment of the next tranche of \$1.7 billion in financial support from the IMF, and the €600 million of macro-financial assistance from the EU tied to it, will become permanent.

¹³ The National Anti-Corruption Bureau, the National Agency for the Prevention of Corruption and the Anti-Corruption Prosecutor's Office.

On 1 January, the provisional implementation of the Deep and Comprehensive Free Trade Area with the EU, which had been postponed by 18 months, came into force. This agreement is a bone of contention between Russia and Ukraine. It provides a detailed roadmap for the comprehensive reforms that Ukraine is required to undertake. Once implemented, it will allow Ukraine to accept the majority of the EU *acquis*, approximating its standards, increasing the competitiveness of its economy and improving the investment climate. It will create a free trade area between the EU and Ukraine, leading to increasing trade between the two and thus opening up the 500-million-consumer-strong single market to Ukrainian business. It offers a very serious incentive to boost the economy and will provide something more than just trade benefits. It will serve as a kind of Copernican revolution, forcing Ukraine to cut off its Soviet heritage of kleptocracy and move in the direction of Western standards and norms. This will provide a strong transformative push in the long run, the positive impact of which should not be underestimated.

The success of the Ukrainian reforms will depend on the government's determination, political will, and continuous communication with society to explain the costs and benefits of them. The role of civil society as a bottom-up driver and an effective watchdog of reform will be particularly crucial to its success. Not fulfilling the comprehensive reform agenda will have a more far-reaching and negative strategic effect on Ukraine in the long run than the failure of Minsk. On the other hand, the success of the Ukrainian reforms will ensure that Ukraine is not a low-hanging fruit for Russia to pick.

Conclusions

For Russia the Minsk II Agreement is a convenient political and diplomatic tool for sustaining the current state of 'not an entirely frozen conflict' (Wilk et al. 2016) in Donbas. It is a bargaining chip. Russia will operate flexibly by fulfilling one requirement, stalling on another and at the same time accusing the Ukrainian side of having no desire whatsoever to deliver on anything. This should come as no surprise. After all, coercion, manipulation and deception are basic Russian foreign policy tools. Minsk simply provides tactical leverage to keep Ukraine and the West busy focusing their attention and political capital on looking for ways to ensure that its implementation occurs. As long as that is the case, Ukraine will continue to be a hostage of the agreement. We have to see beyond Minsk. That is why reforms should be the focus for Ukraine. Reforms will not supplement security, but at the moment—and in the foreseeable future, assuming that the security situation does not deteriorate—there is a window of opportunity for Ukraine to strengthen its resolve and try to stand firmly on its own feet.

The world-views of the West and Russia conflict—indeed, they are irreconcilable. The situation of Ukraine has shown this very clearly. Freedom, democracy and international rule-based order are being defied by spheres of influence, revisionism and coercion. Russia considers the international order as developed after the fall of Communism to be unjust and to not sufficiently take its interests into consideration. Therefore, it is challenging this world order with the goal of changing it. That is why Ukraine today is the setting for a geopolitical struggle. The outcomes of this struggle will determine the future of those world-views.

When analysing Russian actions in Ukraine, the words of Winston Churchill (2014) from his famous Iron Curtain speech delivered in Fulton in 1946, come to mind: ‘From what I have seen of our Russian friends and allies during the war, I am convinced that there is nothing they admire so much as strength, and there is nothing for which they have less respect than for weakness, especially military weakness.’ Weakness is no longer an option for Ukraine.

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