

Russia's Dictated Non-Peace for Ukraine in 2014-2022

Why the Minsk Agreements Were Doomed from the Start and What Lessons They Teach

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Summary

Before 24 February 2022, the Russian-Ukrainian agreements signed in the capital of Belarus in 2014–2015 were seen by many observers as a path to a settlement of the Donbas conflict. However, the contradictory Minsk deals were signed under duress. Contrary to a common belief held over the past seven years, the various documents the Kremlin forced on Kyiv in the context of devastating Ukrainian military defeats by regular and irregular Russian forces in September 2014 and February 2015 were not a solution but part of the problem. These agreements were partially in manifest violation of international law as they undermined such principles as the political sovereignty and territorial integrity of states, non-use of force and national self-determination. Their welcome and legitimization by various Western states effectively helped to make more permanent transgressions that undermined the post-1945 international system. The Minsk Agreements also implicitly undermined basic democratic standards. They constituted Kremlin instruments to harvest the fruits of Russia's initially covert military aggression against Ukraine. Oddly, Western states furthered the Kremlin's obvious subversion of the European Security Order by condoning the conclusion of the Minsk Agreements and pressuring Ukraine to implement their more dubious provisions, while also insufficiently supporting a normatively acceptable interpretation of the agreements and not holding Moscow accountable for its violations of the agreements and subversion of the negotiations in the Trilateral Contact Group (TCG) and elsewhere.

Today's discussion of a possible end to Russia's eight-year aggression against Ukraine is still informed by the unsuccessful implementation of the 2014–2015 so-called Minsk Agreements between Kyiv and Moscow. Many still see these agreements as a missed opportunity. Some even want to resurrect them. However, the Minsk Agreements do not provide a path to peace. Contrary to widespread belief, they were not a potential instrument of resolution, but part and parcel of the issues that led to the 2022 escalation.

The History of the Minsk Agreements

After years of illegitimate meddling, Russia's covert armed attack on Ukraine began with the military occupation of Crimea in late February 2014. In parallel with a successful operation to annex the South Ukrainian peninsula, Russia instigated unrest in the eastern Ukrainian Donets Basin (Donbas) and attempted to do so elsewhere in the country. In May 2014, Moscow's agents managed to establish two unrecognized artificial statelets, the "Donetsk People's Republic" (DNR) and the "Lugansk People's Republic" (LNR). In doing so, Moscow employed some of the tools it had previously used to prop up the non-government-controlled areas that had emerged in Moldova and Georgia in the 1990s. It then used older recipes from its interventions in Georgia and Moldova to establish negotiation formats and foundational texts in order to trap the victims of Russian aggression and involve Western states in the logic of "frozen conflict".

After some territorial gains by the Moscow-led paramilitary units, the Ukrainian armed forces launched an initially successful counter-offensive in the summer of 2014. Kyiv reconquered a significant amount of lost territory, including the strategically crucial port city of Mariupol. Before this, apart from special forces operatives and irregular fighters sent by Moscow, only smaller groups of regular Russian troops had entered eastern Ukraine. In late August 2014, however, Russia intervened for the first time in this part of the country, sending a large detachment of unmarked regular ground forces to fight on behalf of its Donbas proxy militias. Following a devastating defeat of the Ukrainian army at Ilovaisk and fearing significant further losses, Kyiv agreed to negotiations with Moscow in Minsk, the capital of Belarus.

The Minsk Protocol, which became known as "Minsk I", was signed in early September 2014 by representatives of the OSCE Chairperson-in-Office, Russia and Ukraine, as participants of the so-called Trilateral Contact Group (TCG). Two envoys of the so-called People's Republics, Oleksandr Zakharchenko (1976–2018) and Ihor Plotnytsky (b. 1964), also put their signatures to the protocol without their self-declared functions being mentioned. Ostensibly, this format was a compromise since Russia but not Ukraine considered the "people's republics" to be parties to the conflict. Later that month, Minsk I was supplemented by a Memorandum with some clarifications and further commitments.

Although the Minsk Protocol and Memorandum paid tribute to Russian interests and a fragile ceasefire was established, the two documents did not resolve the conflict. Instead, in January–February 2015 the pattern of August–September 2014 was repeated. Ukraine suffered another devastating defeat by newly invading Russian regular troops at Debaltseve. In view of looming deeper Russian incursions into Ukraine, Kyiv signed a so-called Package of Measures for the Implementation of the Minsk Agreements. This "package", which became known as Minsk II, contains more detailed provisions than Minsk I. Shortly afterwards, the Minsk II package was endorsed by the United Nations Security Council in Resolution 2202

(2015), which legitimized an agreement containing manifest violations of international law.

Minsk I and II comprise provisions on security measures, such as a ceasefire, the withdrawal of heavy weapons from the contact line and disarmament of all illegal groups; and political measures, such as local elections in the non-government-controlled territories under Ukrainian law and some autonomy for the regions. They also foresee the restoration of Ukrainian control over the border with Russia. Implementation of the agreements was to be further discussed in the TCG, with “political guidance” from the so-called Normandy Format, made up of Russia, Germany, France and Ukraine. The positive results of the two agreements usually mentioned in press and other reporting were a fragile ceasefire, a partial withdrawal from the contact line, some mitigation of humanitarian suffering and the theoretical prospect of future conflict resolution.

This story is what many observers have in mind when speaking about the Minsk Agreements, their negotiation and their attempted implementation. However, there were at least three fundamental problems with the emergence, content and implications of the Minsk Agreements as a basis for conflict resolution. These problematic aspects need to be avoided in future agreements in Ukraine and elsewhere in the post-Soviet area.

Problem 1: Legitimizing International Legal Nihilism

The principal defect of the Minsk Agreements is their manifest disregard of Ukraine’s sovereignty, resulting from Russia’s violations of international law. The agreements (if it is possible to use the term) were concluded by Ukraine under enormous duress. Moscow deliberately increased armed pressure on Kyiv before their conclusion, allowing the Kremlin to frame the conflict’s definition and presumed resolution in the documents. Worse, implementation was characterized by a glaring lack of accompanying Western pressure on Russia or support for Ukraine (more on this problematic moral equidistance below).

The Minsk Agreements’ domestic secessionist premise was fiercely promoted by Russia, as demonstrated by the presence of separatists in the TCG working groups, and largely accepted by many diplomats, politicians and observers. While most outside actors acknowledged Moscow’s role in the war, many continued to treat it as an internal rather than international conflict, despite the fact that this conceptual framework was in manifest contradiction with the genesis, determinants and course of the Donbas War. Moreover, to the extent that Russia was considered a party to the conflict, there was an underlying assumption that it would implement the agreements in good faith.

Even more than the partly similar situations in Transnistria, Abkhazia and the Tskhinvali region/South Ossetia, the Donbas schism was prepared, triggered and directed by the Kremlin. As scrupulously demonstrated in empirical research by, among others, Nikolai Mitrokhin (University of Bremen), Sanshiro Hosaka (University of Tartu) and Jakob Hauter (University College London), the war was started and conducted under the guidance of the Russian state (see Hauter 2021 a, 2021 b; Mitrokhin 2014a, 2014b, 2015, 2017). From April 2014, if not earlier, it involved both regular and irregular military units under Moscow’s thinly disguised command.

The February–March 2014 “secession” of Crimea was even more obviously Moscow-initiated. Even so, it was supported by at least some prominent persons in the peninsula,

among them the speaker of the Crimean parliament, Volodymyr Konstantinov. The start of the Donbas “rebellion”, in contrast, never attracted any widely notable figures from the Donets Basin, be they from the region's political, economic, cultural, civic or scientific elites. Not even the outspokenly pro-Russian politicians in the Donbas played any noteworthy role in the allegedly popular Russophile local uprising by their hometowns. The only nationally known co-leader of the alleged Donbas rebellion is Oleh Tsariov (b. 1970), a former Deputy Head of the Party of the Region's faction in Ukraine's unicameral national parliament (the Verkhovna Rada). Tsariov, however, is a native of the city of Dnipro, and not of the Donbas.

In the first months of the “uprising” in eastern Ukrainian, several of the crucial commanders and political leaders were plainly Russian citizens, often without any noteworthy biographical or family links to the Donets Basin. They had crossed the border to Ukraine as Russian state agents, Moscow's paid mercenaries or irregular fighters. Only several months later were most of the pseudo-states' senior positions filled with previously marginal and largely unknown local individuals.

These and other aspects of the “Donbas rebellion” constituted manifest violations of Ukraine's sovereignty, integrity, and borders, and thus also of the European Security Order in particular, and international law more generally. These breaches were only punished in the West by relatively minor sectoral and select individual or corporate sanctions. Their limited range and effects were not commensurate with the geopolitical salience of Russia's annexation of Crimea and pseudo-civil war in eastern Ukraine.

Problem 2: Ignoring Basic Democratic Standards

A conundrum closely related to the interpretation of the conflict and the reintegration of the de facto Russia-controlled territories into the Ukrainian state was the question of who Kyiv's negotiation partner would be. Initially, there was Ukrainian readiness to swiftly fulfil the Moscow-dictated September 2014 Minsk I commitments, despite their denigrating provisions. The democratically elected Verkhovna Rada decided to play its part in implementing the agreements.

The Rada adopted a special status law for the occupied territories of the Donetsk and Luhansk regions. Kyiv scheduled local elections in the occupied territories according to Ukrainian law for December 2014. The results of these elections, if carried out in accordance with Ukrainian law and international principles, would have provided an opportunity to replace Russia as the negotiation partner with more or less legitimate representatives of the region. This procedure would certainly also have constituted a disruption of regular Ukrainian domestic politics by an outside power. Nonetheless, it was accepted by Ukraine's government and parliament.

One month before the scheduled elections, however, in early November 2014, the two Moscow-controlled de facto regimes illegally conducted their own public votes, proclaimed as elections to the legislatures and for the leaders of the People's Republics of Donetsk and Luhansk. These heavily staged polls were not agreed with Kyiv and most likely orchestrated by Moscow, which “respected” the votes. They also took place without the participation of any all-Ukrainian parties – even the pro-Russian ones.

Moreover, illegal armed groups were omnipresent throughout the elections, the media environment was dominated by Russia-controlled outlets and there was no proper

international observation. Even so, the act provided the leaders of Russia's puppet statelets in Ukraine with some fake legitimacy. Moscow would, from now on, increasingly refer to these and other manipulated votes when portraying DNR and LNR leaders as representatives of the population of the Donbas and of the parties in conflict with Kyiv.

This early principal violation of the Minsk Protocol and Memorandum by Moscow spoiled all the following negotiations. The unrecognized elections had already precluded in November 2014 any genuine political process that could be agreed with Kyiv. Real elections according to Ukrainian law and with Ukrainian (including pro-Russian) political parties would have been a crucial step in the reintegration process. Instead, the November 2014 pseudo-elections created early on manifestly illegal and illegitimate local authorities, the alleged authenticity of which would allow Russia to claim that they spoke for the "Donbas people".

The political consolidation of the People's Republics, and their heavy support through, among other things, illegal Russian "humanitarian convoys" that undermined Ukrainian sovereignty, became the principal stumbling block to feasible reintegration. However, they never triggered adequate reaction from the West. Instead of sanctioning these and other violations of the Minsk Agreements, the sectoral sanctions that had been adopted before the signing of the Minsk Agreements were left in place, and only some minor sanctions were added before February 2022.

There was a similar story with Moscow's gradual "passportization" of the population of the occupied territories, in a policy designed to transform Donbas inhabitants from Ukrainian into Russian citizens. Despite passportization being an egregious additional violation of international law, it did not lead the international community to impose any additional costs on Russia. Further similar abuses could be added.

The 2014 and later "elections" in the occupied territories did not just complicate the task of determining a legitimate negotiation partner for Kyiv. They also raised the issue of how to disempower the republican pseudo-authorities should a situation ever emerge in which freely elected local legislators and executives could take over. Moscow's permission, organization and semi-official recognition of the pseudo-elections had already subverted the Minsk negotiation process before Minsk II was signed. The passportization, moreover, was a creeping informal Russian annexation of the occupied territories.

Problem 3: Harvesting Fruits of Aggression

As mentioned above, both Minsk I and II were negotiated – if the term applies at all – against the background of two sizable invasions by Russian regular ground forces into eastern Ukraine in August 2014 and February 2015. The agreements were concluded after devastating Ukrainian defeats left hundreds dead, wounded or captured at Ilovaisk and Debaltseve. Kyiv signed the Minsk deals in view of the prospect of even deeper Russian military incursions into Ukrainian territory.

Kyiv's chief official negotiator, Ukraine's second President Leonid Kuchma (b. 1938), and the serving 2014–2019 Ukrainian President Petro Poroshenko (b. 1965) saw no way out other than to sign the denigrating texts proposed by Putin. They did so despite the fact that the 2014 and 2015 agreements contained provisions obviously designed to subvert the sovereignty, integrity and polity of Ukraine.

This was bad enough by itself. What was worse was that Moscow would, from then on, be allowed to use the Minsk provisions to exert pressure on Kyiv, which it frequently did with reference to UN Security Council Resolution 2202 of 17 February 2015. The explicit mention of the Minsk II agreement in this official document enhanced the legal weight of the controversial deal signed five days before.

Rather than oppose these and similar Russian tactics, Western representatives repeatedly tried to talk Kyiv into concessions that undermined Ukrainian sovereignty. They suggested that Ukraine provide the non-government-controlled areas with a constitutionally fixed special status and conduct local elections before Russia's irregular proxy troops had been either withdrawn or disarmed. Western politicians and diplomats also failed to sufficiently oppose Russia's refusal to allow permanent observation of the Ukrainian–Russian state border by the OSCE Special Monitoring Mission.

While the Western supply of even defensive weapons to Ukraine was ruled out, the possibility of additional sanctions on Russia was hardly, if ever, mentioned. Strangely, the EU also linked the lifting of sanctions to implementation of the Minsk Agreements signed after imposition of the major sanctions. Instead of simply tying the abolition of sanctions to an end of Russia's transgressions, it also included in its conditions for sanctions relief steps to be taken by the victim of aggression. Meanwhile, Germany increased its dependence on Russia and further undermined Kyiv's economic leverage vis-à-vis Moscow by allowing the construction of Gazprom's Nord Stream 2 underwater pipeline, portrayed as a "purely commercial project" and of no threat to Ukraine.

As a result, the various geographical, political and legal gains made by Russia in the first high-intensity phase of its covert aggression against Ukraine in 2014–2015 became the new baselines, and not only for the Kremlin. They were largely accepted by Western politicians and diplomats as novel objective starting points or "facts on the ground" for negotiations and an accepted framework for a rapprochement between the two countries. Rather than being constantly reminded that these conditions were unacceptable in principle, the Russian aggressor was in fact often assisted by international mediators. Moscow was thus continuously allowed to harvest the fruits of its military aggression in international negotiations and in political confrontations with its Ukrainian victim.

One example of the various dubious and imposed Russian demands in the February 2015 Minsk II agreement is its article 9, which foresees: "Reinstatement of full control of the state border by the government of Ukraine throughout the conflict area, starting on day 1 after the local elections...". This peculiar sequencing anticipated re-established Ukrainian control of the Ukrainian-Russian border in the occupied territories not before but after a political solution. This would have meant the Ukrainian government conducting elections on territory that remained under informal Russian control. Obviously, Moscow wanted, through its agents and proxies in the occupied territories, to influence and manipulate the political process that was supposed to resolve the conflict.

The principal problem with this idea, as with other similar problematic provisions in Minsk I and II, was not so much that Russia managed to smuggle them into the two agreements through ruthless pressure on Ukraine. Worse than Moscow's predictable behaviour and Kyiv's coerced consent was the acceptance by and even support of Western governments and organizations for various points in the two Minsk deals. In 2015, French diplomat Pierre Morel and then German foreign minister (and now Federal President) Frank-Walter

Steinmeier each proposed conflict resolution plans that implicitly acknowledged, and were explicitly based on, the Kremlin's military achievements of the same year. Under the so-called Morel Plan and Steinmeier Formula of 2015, it was proposed not only by Moscow, but now also by Paris and Berlin, that Kyiv conduct democratic elections on a territory de facto controlled by a rapacious neighbouring state, even though Russia had officially annexed part of Ukraine only a year before.

In the following years, German politicians and diplomats, among others, continued to suggest that the Ukrainian government use the Steinmeier Formula, which the Kremlin understandably approved of. The Formula focused on concessions by Ukraine concerning local elections and a "special status" for the occupied territories, rather than confronting Russia's fundamental violations of international law and the European Security Order. Berlin kept up pressure on Kyiv to implement the dubious plan despite ever clearer indications that Moscow was not interested in a genuine settlement. Holding Russia accountable for its violations was considered detrimental to creating an atmosphere "conducive for dialogue".

The Kremlin, however, sought to transform the conflict from an international territorial into an intra-national political dispute. It wanted to use the two pseudo-republics as instruments to undermine the domestic stability, international relations and foreign policy of Ukraine – an approach the Kremlin had by 2014 already been implementing for more than two decades in Moldova and Georgia. Moscow's price for partially giving up the eastern Ukrainian fruits of its hybrid aggression was to get a foot back into the entire Ukrainian polity. Once the Kremlin, at some point in late 2020 or early 2021, concluded that this was unobtainable, it began preparing a Plan B to subjugate Ukraine, and amassing troops for a traditional military invasion.

Conclusions and Policy Recommendations

The "dictated non-peace" of the Minsk Agreements should never have been accepted by the West or supported through such initiatives as the Normandy Format or the Steinmeier Formula. As we now know, the Minsk Agreements did not sooth but fanned the Russian-Ukrainian conflict and could not prevent its stark escalation in February 2022. The engagement by France and especially Germany in the many negotiations was intense and mainly driven by humanitarian concerns. In hindsight, however, it appears to have merely provided a fig leaf to cover the glaring absence of more substantial support for Ukraine and more resolute punishment of Russia by the European Union.

Insisting on respect for and observation of half-baked deals like the Minsk Agreements is not just normatively and morally questionable. As the catastrophic finale to the negotiations of the agreements has demonstrated, it is also strategically unwise. Fine-sounding concepts used in attempts to implement such agreements such as "peaceful settlement", "confidence-building" or "promoting dialogue" might subjectively have been believed by many Western politicians and negotiators. However, they objectively function as a smokescreen behind which the victim of aggression is largely left alone vis-à-vis an aggressor that only feels encouraged in its assertiveness and perceives Western attempts at rapprochement as signs of weakness.

Dubious documents such as the Minsk Agreements serve both the mediators and the aggressor as cover for substantive inaction, if not worse. They merely postpone or even

conserve and sharpen conflicts, and do not contribute to their solution. The Agreements and their negotiation allowed Russia to draw the conclusion that it could harvest the fruits of its aggression; and sent the wrong signals to all parties involved. In 2014–2022, they created the impression in the Kremlin that establishing more new facts on the ground would further move everybody's baseline for negotiations in the direction desired by Moscow. Hopefully, lessons will be learned from the unsuitability of the Western approach in allowing such an anomalous situation.

Staff at SCEEUS made valuable comments on an earlier draft of this report. Responsibility for all remaining imprecisions lies with the authors.

Recommended Literature on the Genesis of the Two “People’s Republics:”

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