

Minsk 2 - a fragile truce

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On 12 February in Minsk, after many hours of talks, the leaders of Ukraine, Russia, Germany and France succeeded in negotiating an agreement to resolve the conflict in the Donbas. Formally, the document was only signed by the so-called contact group (made up of representatives of Ukraine, Russia, the OSCE and the separatists), and relates to measures to implement the Minsk agreements of 5 and 19 September last year. All the four leaders adopted was a declaration emphasising their support for a truce based on the sovereignty and territorial integrity of Ukraine. Among other measures, the 13-point agreement provides for a ceasefire starting on 15 February, and the withdrawal of heavy weaponry and foreign military formations. At the same time, the document requires Ukraine to commit to the adoption of a new constitution and the implementation of a law granting special status to "some regions of the Donetsk and Lugansk oblasts".

On the one hand, this agreement can be assessed as a success for President Petro Poroshenko, who has managed to avoid making clearly unfavourable geopolitical concessions on issues which Russia had tried to force through, and could have led to serious internal political conflict in Kyiv. On the other hand, in many places the document leaves much room for interpretation; it places more obligations on Ukraine, while the effectiveness of many of its provisions depends on the consent of the separatists. The document adopted in Minsk gives Russia the opportunity to saddle Kyiv with responsibility for the likely failure of the agreement, while implementing it will give the separatists full powers of agency. Given that the agreement does not anticipate Russia carrying out its strategic aims towards Ukraine, we should expect that it will prove impossible to implement the agreement in full, and that the document itself will bring only a temporary halt to the ongoing conflict in the east of Ukraine.

Negotiation process and contents of the new agreement

The signing of the new agreement in Minsk was preceded by a week of very intense negotiations. These began with visits by Chancellor Angela Merkel and President François Hollande to Kyiv and Moscow (on 5 and 6 February respectively), which was a reaction to the peace proposal made by Russia. The contents of this proposal and of all the associated conversations remain private. In Munich on 7 February, President Poroshenko held talks with Chancellor Merkel and US Vice President Joe Biden. A meeting was held in Berlin on 9 February, at the level of representatives of the foreign ministries of the 'Normandy format' states; and on 10 February in Minsk there was a meeting of the so-called contact group (representatives by Ukraine, Russia, the OSCE and the separatists).

After lengthy negotiations in Minsk, two documents were adopted. The first is a set of actions concerning the implementation of the Minsk agreements (signed by the members of the trilateral contact group); the second is a Declaration on action to implement the Minsk agreement, adopted by the leaders of Germany, France, Ukraine and Russia.

The set of actions concerning the implementation of the Minsk agreements does indeed cover similar issues to the Minsk Protocol signed on 5 September last year, but its provisions are more specific. The new document again provides for a ceasefire, although this time it will not come into force immediately, but only as of midnight on 15 February. The agreement calls for the withdrawal of heavy weaponry, although it establishes two different lines of division: for the separatists, that of the front line as of September last year; and for Ukraine, the current front line, taking into account the separatists' most recent territorial gains. The new document describes in greater detail the Ukrainian side's obligations to carry out political changes (the adoption of a new constitution by the end of 2015, based on decentralisation, and taking into account the special status of the parts of Donetsk and Lugansk oblasts now controlled by the separatists, including the right to self-determination of language, the right to create their own security organisations, and the right to establish cross-border cooperation with regions of the Russian Federation. The new document makes handing full control over the part of the Russian-Ukrainian border under separatist control to the government in Kyiv conditional on Ukraine meeting all the demands for reform of the political system. Another important element is Kyiv's obligation to restore economic ties between part of the Donbas and the rest of Ukraine (including the resumption of social welfare payments and the resumption of banking activities).

On the other hand, the document adopted by the leaders of the so-called 'Normandy four' (the document has not been signed) contains only loose political commitments, including: respecting the integrity of Ukraine; monitoring compliance with the Minsk agreements; support from Germany and France (probably technical and financial) to restore economic ties between the Donbas and the rest of Ukraine; and consultations in the Russia-EU-Ukraine format regarding Russian concerns about the Association Agreement between Kyiv and Brussels. It also provides for the establishment of a permanent mechanism for monitoring the agreements' implementation in the 'Normandy format'.

The main contentious points

Some of the agreement's provisions will be subject to different interpretations, which will lead to disputes between Kyiv on the one hand and Russia and the separatists on the other. The most important of these are:

- **the question of Kyiv regaining control of the border with Russia.** This was one of the main demands of the Ukrainian side, which has no control of a 400-kilometre stretch of its border with Russia. Kyiv managed to negotiate a provision that the process of retaking the border will begin after the local elections, and will end only after "a comprehensive political settlement" by the end of 2015, but on condition that constitutional reform will be carried out within that time, and that further arrangements are made with the separatists. We should thus assume that the separatists, and Russia behind them, will have a good opportunity to sabotage Kyiv's attempts to regain control of the border.

- **“special status” for some regions of the Donetsk and Lugansk oblasts.** Kyiv did succeed in ensuring that the separatist-controlled areas remain under Ukrainian legal jurisdiction (the names ‘DPR’ and ‘LPR’ were not used). However, the provisions concerning the actual autonomy of the region remain unclear. This applies in particular to the details of the following issues: the ‘right to self-determination of language’, the participation of local authorities in the selection of judges and prosecutors, and the rights to develop ‘cross-border cooperation’ and create a ‘people’s militia’. It may turn out that Russia and the separatists will interpret cross-border cooperation as the region’s right to conduct economic integration with Russia, while the rebel troops will formally become the ‘people’s militia’. In addition, the conduct of elections on a local basis was described very perfunctorily in the agreement (without any deadline being set).
- **rebuilding socio-economic ties between the Donbas and the rest of Ukraine, including the resumption of financial transfers.** The agreement provides for Kyiv to restore the functioning of the banking system in the areas currently controlled by separatists; this is intended to make it possible to resume payments for public sector wages and pensions, among others, but also to return the region into the Ukrainian fiscal system. However neither a date nor a safety mechanism for this process has been specified. Russia and the separatists have long been calling on Kyiv to resume financial transfers, but the Ukrainian side has consistently refused, stating that this is impossible as long as it does not control the region. This section of the document can also be regarded as imposing both an obligation and political responsibility on Kyiv to resolve the region’s deepening economic problems (unemployment, devastated factories, etc.).
- **amnesty for participants in military action in the Donbas.** By making Kyiv accept an amnesty and pass a special law prohibiting the persecution of people fighting on the separatists’ side, including the leaders of the DPR and LPR, disputes are likely to break out in parliament and society. The separatists, in particular their leaders, are seen as criminals responsible for many civilian casualties on the Ukrainian side.
- **the withdrawal of heavy weaponry from the combat zone.** This provision carries the danger for the Ukrainian side that they will have to disarm their own units in the vicinity of Debaltsevo (the so-called ‘Debaltsevo pocket’), which in recent weeks has been the main point of resistance, surrounded by rebels and Russian forces.

The consequences for Ukraine

Ukraine sees the new document as confirmation of the provisions of last September’s Minsk agreements, which at some points have now been made more specific. At the same time, this has been achieved without the need to make any significant strategic concessions towards Russia (such as neutral status or blocking European integration). Ukraine has avoided accepting the introduction of federalization and broad autonomy for the Donbas, which would have given Russia the opportunity to use it to influence Ukrainian politics. Russia and the separatists failed to make Kyiv agree to award autonomous status (and a separate constitution) to the whole of the Donetsk and Lugansk oblasts, including areas currently controlled by Kyiv. However, Ukraine’s prospects of recovering control over the 400-kilometre stretch of its border with Russia remain distant and uncertain. The

commitment to a ceasefire and the creation of a buffer zone is of considerable importance. Maintaining hostilities has been an increasingly difficult task for Kyiv in recent weeks, incurring large financial costs and creating an unfavourable environment for reforming the state. Despite the generally favourable overtones of the agreement for Ukraine, a number of its provisions are likely to be challenged by some of the parliamentary parties.

The importance of the agreement for Russia

The new Minsk agreements give Moscow tangible political benefits. On the one hand, Russia successfully put pressure on Western leaders, one result of which was the diplomatic mission undertaken by Chancellor Merkel and President Hollande. The talks in Kyiv and Moscow took place after the Kremlin decided to escalate the hostilities in the Donbas. Russia also began to scare the West with the possible exacerbation of the conflict. Another success for Moscow in this context is that it revealed the serious divisions among Western states on the possible supply of arms to Kyiv. It is also noteworthy that once again there was no US representative at the negotiating table, which is part of Russia's policy of discussing European security without the presence of Washington.

By bringing about a new agreement on the conflict in Ukraine, Russia is trying in turn to demonstrate a constructive attitude towards the West, hoping that a natural consequence of this will be to block any discussion of new sanctions, and ultimately to eliminate or at least limit the restrictions which are currently in force. Whereas after the September truce it was the separatists and Russia who were accused of violating its terms, this time it will be easier for Moscow to blame any violation of the agreements on Kyiv.

Many points in the new agreement (including aspects of constitutional reform, and the granting of special status to the regions controlled by separatists) indicate a need for direct dialogue to be held between the authorities in Kyiv and representatives of the separatists, which will give Moscow a permanent, indirect instrument to influence possible political changes in Ukraine. As a result, Russia will not lose its *de facto* control over the Donbas; the question of using the region as an instrument to put pressure on Ukraine remains open, and will be the subject of more tension.

The prospects for Minsk-2

The new agreement is not a comprehensive solution to the problem of the separatism in Donbas which has been inspired and exploited by Russia. Although Russia has not received clear geopolitical concessions, it will certainly take advantage of the provisions of the agreement and its ambiguity (the Russia-Ukraine-EU consultations on Moscow's concerns over the Association Agreement between Kyiv and Brussels) as a pretext to impose its own *de facto* political right of veto on matters concerning international agreements which fall under the sovereign competence of the Ukrainian government. The general or vague nature of many of its provisions will give rise to disputes, some of which will arise domestically in Kyiv, and will thus make it difficult, or in the case of certain cases, impossible to implement them. The absence of control over the border for the next few months will allow Russia to maintain its existing options for influencing the region. Making the effectiveness of many of the provisions dependent on the prior consent of the separatists is a signal that Russia will

use the Donetsk and Lugansk authorities to torpedo 'internal Ukrainian' political dialogue, thus increasing the burden of responsibility on the government in Kyiv. As a result, it is difficult to expect that this new document will lead to a lasting stabilisation of the situation in eastern Ukraine, and so the risk of a sudden escalation of tension has not in fact been reduced at all. In the coming months, the Ukrainian government will be under constant pressure from the separatists and Russia as they try to force further concessions on Kyiv, while in parallel threatening to resume armed hostilities.

Appendix

Minsk Agreements

Regulated issue	of 5 September	of 12 February
Ceasefire	Point 1 immediate bilateral ceasefire	Point 1 immediate and comprehensive ceasefire in individual areas of the Donetsk and Luhansk regions and its strict implementation starting from 15 February 00:00 hours

Withdrawal of heavy equipment	-	Point 2 withdrawal of heavy equipment by both sides at equal distances in order to create a security zone: - minimum 50 km wide for 100 mm and larger calibre artillery systems - 70 km wide for multiple rocket launcher systems - 140 km wide for Tornado-S, Uragan and Smerch multiple rocket launcher systems and Tochka tactical missile systems (Tochka U) Demarcation line: - for Ukrainian troops, according to the actual front line - for military formations operating in territories in Donetsk and Luhansk Oblasts, according to the line set in the memorandum of 19 September 2014 must commence not later than on the second day following the ceasefire and must be completed within 14 days the OSCE will support the withdrawal of the troops with the participation of the Trilateral Contact Group
Ceasefire monitoring mechanism	Point 2 ceasefire monitored by the OSCE	Point 3 ceasefire and the withdrawal of troops monitored by the OSCE (using all technical measures available including satellites, UAVs, radar systems etc.)

Political system issues	Point 3 decentralisation, including passing an act setting a special mode of operation for the local governments in parts of Donetsk and Luhansk Oblasts	Point 11 conducting constitutional reform in Ukraine with the new constitution coming into force by the end of 2015, providing for decentralisation as a key element (taking into account the special nature of individual areas of the Donetsk and Luhansk Oblasts, agreed with representatives of these areas) as well as the adoption of the permanent legislation on the special status of individual areas of the Donetsk and Luhansk Oblasts . adopting permanent legal regulations granting special status to parts of Donetsk and Luhansk Oblasts based <i>inter alia</i> on the following guidelines: 1) guarantee of immunity to individuals involved in the developments which took place in individual regions of Donetsk and Luhansk Oblasts 2) right of self-determination as regards language issues 3) local government's right to participate in nominating heads for prosecution authorities and courts in individual areas of Donetsk and Luhansk Oblasts 4) state support for socio-economic development of individual areas of Donetsk and Luhansk Oblasts 5) central government's support for cross-border co-operation between individual areas of Donetsk and Luhansk Oblasts and regions of the Russian Federation 6) forming local 'people's militia' units under decisions of local government authorities in order to guarantee public order in individual areas of Donetsk and Luhansk Oblasts 7) local governments' right to enter into agreements with the central government concerning economic, cultural and social development of individual areas of Donetsk and Luhansk Oblasts 8) the powers of local council deputies and other officials elected in early elections, appointed by the Verkhovna Rada according to this law, cannot be terminated
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The Russian-Ukrainian border	Point 4 constant monitoring of the Russian-Ukrainian border by the OSCE, along with setting up a security zone in the frontier regions of Russia and Ukraine	Point 9 the Ukrainian government will begin regaining full control of the state border on the first day after local elections are held, and will end once the political issues have been comprehensively regulated (local elections in individual areas of Luhansk and Donetsk Oblasts; constitutional reform) by the end of 2015, on condition that the provisions concerning the constitutional reform have been met and following consultations and in agreement with representatives of individual areas of Luhansk and Donetsk Oblasts in the framework of the Trilateral Contact Group
Hostages and detainees	Point 5 unconditional release of all prisoners of war and individuals who have been illegally detained	Point 6 release and exchange of all prisoners of war and individuals who have been illegally detained according to the rule "all for all"; this process should end within 5 days of the troops' withdrawal
Amnesty acts	Point 6 adopting an act that would prevent prosecution and punishment of individuals involved in the developments seen in individual regions of Donetsk and Luhansk Oblasts	Point 5 the amnesty and right of pardon act prohibiting the prosecution and punishment of individuals involved in the events that took place in individual areas of Donetsk and Luhansk Oblasts
Dialogue	Point 7 beginning an open dialogue covering the entire nation	-
Humanitarian aid	Point 8 taking measure to improve the humanitarian situation in Donbas	Point 7 setting up an international mechanism to guarantee secure access, supplies, storage and distribution of humanitarian aid to those in need

Elections	Point 9 holding a snap local election on the grounds of the Ukrainian act setting a special mode of operation for the local governments in parts of Donetsk and Luhansk Oblasts	Point 4 dialogue on the possibilities of holding local elections in compliance with Ukrainian law and the act setting a special mode of operation for the local governments in individual areas of Donetsk and Luhansk Oblasts and dialogue on the future status of these territories on the grounds of the aforementioned act should begin on the first day after the withdrawal of troops the <i>Verkhovna Rada</i> should promptly (within 30 days of signing this agreement) pass a decision indicating the areas to which the special status will be extended on the grounds of the Law on temporary order of local government in some areas of Donetsk and Luhansk Oblasts; the demarcation will be based on the line set in the memorandum of 19 September 2014 Point 12 on the grounds of the Ukrainian Law on temporary order of local government in some areas of Donetsk and Luhansk Oblasts, issues concerning local elections will be consulted with representatives of individual areas of Donetsk and Luhansk Oblasts; elections will be held in compliance with OSCE standards and will be monitored by the OSCE ODIHR
Withdrawal of troops	Point 10 withdrawal of all illegal military formations, military equipment, militants and mercenaries from Ukrainian territory	Point 10 withdrawal of all foreign military formations, military equipment, militants and mercenaries from Ukrainian territory under the supervision of the OSCE; disarmament of all illegal groups

Reconstruction of Donbas	Point 11 adopting a programme for economic reconstruction of Donbas and bringing back functionality to the region	Point 8 determining the possibilities of a full reconstruction of socio-economic bonds (between Donbas and the rest of Ukraine), including welfare benefits, such as payment of pensions and other payments (takings and incomes, timely payment of all bills for utility services, bringing back into operation the fiscal system within the framework of Ukrainian legal regulations) for this purpose Ukraine undertakes to reconstruct the system for managing the relevant segment of its banking sector in the areas affected by the conflict, and possibly an international mechanism facilitating bank transfers will be introduced
Security guarantees	Point 12 guarantee of personal security to all participants of the talks	-
The Trilateral Contact Group	-	Point 13 intensification of activity within the group creating working groups for carrying out individual provisions of the Minsk Agreement