Destined for deadlock? Russia, Ukraine, and the unfulfilled Minsk agreements

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Bringing peace, security, and stability to the war-torn region of Donbas has proven to be a challenging—some would say near-impossible—task. The "Minsk II" agreement, signed in February 2015, was supposed to put an end to the armed hostilities, resolve the underlying political issues, and gradually restore Ukrainian government control of the country's eastern border. None of this has happened. Despite continuous Western support and pressure, progress in the implementation of the peace plan signed in Minsk has been slow, also after the much-anticipated Paris summit of the "Normandy Four" (Russia, Ukraine, Germany, and France) in December 2019. This article discusses the underlying causes of the current stalemate, emphasizing factors such as the inherently complex nature of the conflict, the process through which "Minsk II" came into being, the vague and ambiguous language of this and other agreements, practical challenges related to the timing and sequencing of agreed-upon measures, and Russia's persistent non-acknowledgement of its role in the conflict.

Keywords: Donbas; Russia; Ukraine; war; diplomacy; Minsk agreements

Introduction

Since the outbreak of armed hostilities between Russian/separatist forces and Ukrainian government forces in the east Ukrainian oblasts of Donetsk and Luhansk in the spring of 2014, numerous efforts have been made to establish a viable and lasting ceasefire and a process towards political normalization. The intensity of the diplomatic efforts to end the war in Donbas has varied over time, much like the intensity of the fighting itself. Following the signing in September 2014 of a 12-point ceasefire agreement, known as "the Minsk Protocol," the level of violence gradually subsided, but only temporarily.

In January 2015, the Russia-backed forces of the self-proclaimed "People's Republics" of Donetsk and Luhansk (hereinafter DNR and LNR) embarked on a new offensive, aimed at retaking territory lost to Ukrainian government forces in the summer of 2014. Heavy clashes followed, along several parts of the frontline, and the number of civilian and military casualties surged. Again, the belligerents were brought to the negotiating table in Minsk. There they were presented with a peace plan drafted by French President François Hollande and German Chancellor Angela Merkel, based on preceding talks with Ukrainian President Petro Poroshenko and Russian President Vladimir Putin.

The Minsk summit in February 2015 culminated in the signing of a 13-point package of measures, aimed at revitalizing the first Minsk Protocol. The new package of measures, which came to be known as "Minsk II," was signed on 12 February 2015. Signatories were Swiss diplomat and Organization for Security and Co-operation in Europe (OSCE) representative Heidi Tagliavini, former president of Ukraine and Ukrainian representative Leonid Kuchma, Russian ambassador to Ukraine and Russian representative Mikhail Zurabov, and separatist leaders Alexander Zakharchenko (DNR) and Igor Plotnitskiy (LNR).

Today—five years after the signing of the second Minsk agreement—it can be noted that none of the 13 measures listed in the agreement has been fully implemented. Some of the agreement's provisions have been partially implemented, whereas others remain wholly unimplemented, despite several rounds of follow-up meetings at the level of the Trilateral Contact Group (Ukraine, Russia, and the OSCE), established in June 2014, and the four sector-specific working groups that were created in May 2015 (on security, political, economic, and humanitarian affairs). Data gathered by the OSCE Special Monitoring Mission to Ukraine (SMM) indicate that there have been more than one million ceasefire violations in Donbas since February 2015, including 316,397 in 2016, 401,336 in 2017, and 312,554 in 2018 (OSCE SMM 2019). Local elections, under Ukrainian law, are yet to be held in the occupied areas, and more than 400 kilometers of Ukraine's eastern border are still controlled by heavily armed Russian/separatist forces. On top of this, Russia has recently initiated a "passportization" strategy aimed at simplifying the procedure for granting Russian citizenship to residents of DNR and LNR. The latter move is likely to further weaken the already dim prospects for a diplomatic-political settlement of the conflict, and may ultimately consolidate the deadlocked status of the Minsk process.

The main purpose of this article is to explore and explain why, how, and where the Minsk process failed. In order to obtain a deeper understanding of the underlying causes of the current deadlock, I will take into consideration the origin, nature, and trajectory of the Donbas conflict, the military moves and diplomatic processes that preceded and followed the signing of the Minsk agreements, and the contents and terminology of the agreements. I will also discuss significant developments in the period between 2015 and 2020 that may have contributed to the current non-implementation of the agreements. The contents of the Minsk agreements and the nature of diplomatic and political processes taking place before and after their signing need to be analyzed in the context of the military situation in the Donbas and the position and relative strength of the belligerents at different stages of the conflict.

Highly relevant in this regard is the interplay between diplomacy and military power—a topic that figures centrally in parts of the International Relations literature (see for instance Barkawi 2015). Insights from the increasingly rich "negotiation studies" literature (Schecter 1998; Odell 2013; Hampson and Troitskiy 2017; Zartman 2019a) may also add to our understanding of not only the diplomatic processes that took place prior to the signing of the Minsk agreements, but also the political and practical difficulties that the parties have been facing in the implementation phase.

Based on empirical evidence derived from a variety of Ukrainian, Russian, and Western sources (agreements and memoranda, statements by political leaders, expert analyses, news media reports, interviews, etc.), and drawing on insights from theoretically oriented works dealing related topics (the interplay between military power and diplomacy, Russian and international negotiation practices, and challenges related to the negotiation and implementation of ceasefire agreements), this study aims to advance our understanding of why the Minsk process so far has failed to bring the Donbas conflict significantly closer to a peaceful resolution.

The article is divided into five sections. In the first section, I introduce some basic ideas and concepts derived from the theoretical literature mentioned above—concepts that in the second section will inform the analysis of the Donbas conflict's nature and the parties' political objectives. The contents of the Minsk accords, and the diplomatic processes that preceded and succeeded their signing, are discussed in the third section. This is followed, in the fourth section, by a synthetizing discussion of factors that may explain the currently deadlocked status of the Minsk process. The findings are summarized in the fifth and final section.

Force, diplomacy, and interstate negotiations

As pointed out by Henry Kissinger (1956, 352), "[f]orce and diplomacy are not discrete realms; on the contrary, the ultimate pressure during negotiations has always been the possibility that recourse might be had to force." This observation is as relevant today as it was in the 1950s. As instruments of foreign policy, military force and diplomacy can mutually support each other. In armed conflicts, a militarily powerful actor may try to capitalize on battlefield gains and use them to force a militarily weaker counterpart to accept a negotiated settlement that favors the former rather than the latter.

It should be emphasized, however, that asymmetries in military power, and imbalances in the positions and needs of the conflicting parties, are not always static. As an armed conflict progresses and evolves, the *battlefield momentum* may shift, sometimes significantly. This may in turn affect the dynamics of ceasefire negotiations, the negotiators' willingness to compromise or make political concessions, and ultimately the negotiations' chances of success. Recent large-N studies (see for instance Min 2018) seem to indicate that the likelihood of war termination through negotiations decreases when battlefield momentum favors the war initiator, and increases when battlefield momentum shifts away from the war initiator. In the first case, the war initiator may be inclined to use the tool of negotiations "instrumentally," for instance to deceive the opponent, buy time, or shape the battlefield.

In his refined typology of negotiation objectives, Fred Charles Iklé described the phenomenon of *negotiations for side effects*, that is, a situation in which governments enter and carry out negotiations for purposes other than that of achieving an implementable agreement (Iklé 1964, 43–58). While creating a public perception that they are committed to negotiations, the negotiating parties may try to use the process simply to obtain information that they can benefit from, or use as a propaganda tool, for instance to influence third parties, including domestic and/or foreign audiences. Examples of such "bad faith" or "intended-to-fail" negotiations are the first phase of the US-Soviet negotiations on Intermediate-Range Nuclear Forces (INF) in Europe (1981–1983), the US-Iraqi diplomacy during the Persian Gulf War (1990–1991), and the Rambouillet negotiations between Serbs and Kosovars prior to the outbreak of the Kosovo war in 1999 (for details, see Druckman et al. 1999, 94; Hopmann 2012, 242–247; Wanis-St. John and Dupont 2012, 215–216).

Negotiations typically go through several *stages*. The length of the stages may depend on the perceived urgency of the subject matter that the negotiations are meant to resolve and the degree of pressure from outside actors. In the "diagnostic phase" (Odell 2013, 384), parties conduct separate preparations, sound out other parties, and approach their counterpart(s) to explore the possibility of formalized discussions. Once at the negotiation table, they embark on the "substance phase," during which they jointly search for common ground, with or without the help of external facilitators. The purpose of this stage of a negotiation process is to lay the formula for the "detail phase" (Odell 2013, 384), also known as the "endgame" or "closure phase" (Zartman 2019b, 3), during which negotiators try to bring the process to closure in the form of a mutually acceptable written agreement.

If and when agreement is reached and a protocol is signed, the process is by no means over. Then starts the fourth—and often most difficult—stage, which we can call "the implementation phase" (see Randolph 1966, 347). Though formally not a part of the negotiation process, the implementation phase is a critical part of the whole exercise. Ultimately, the success or failure of the implementation phase determines the success or failure of the negotiated settlement. As time goes by and conditions change, previously agreed-upon terms may come to be seen as renegotiable. The provisions of a signed agreement may be applied in a selective manner, or just ignored—partly of fully. A

potentially relevant feature of Russian (and Soviet) negotiating behavior is, as noted in previous times by US arms control negotiators, the Russian tendency to view the signing of an agreement not as the end result of a negotiation, but rather as a stage in an extended process (Schecter 1998, 108–109).

At any point during an armistice or peace negotiation, the involved parties may find it to be in their interest to opt for a *no-deal alternative*, particularly if they believe that that time is on their side, or that a military victory may be within reach in the near- to medium-term future. Warring states may also use the tool of military escalation in an effort to obtain additional concessions, or to worsen the no-deal option for the adversary (Odell 2013, 383). If one or more of the parties believe that they can obtain their objectives more effectively or rapidly by other means, this may lower the perceived costs of a non-settlement (Hampson and Troitskiy 2017, 7).

In parts of the contemporary negotiation studies literature, one will occasionally find abbreviations such as BATNA, WATNA, and RATNA, which refer, respectively, to "the best alternative to a negotiated agreement," "the worst alternative to a negotiated agreement," and "the (most) realistic alternative to a negotiated agreement" (see for instance Schonewille 2009, 137–139). These concepts may also aid our understanding of the considerations and concerns that shape the behavior of actors in armed conflicts, and the degree of their commitment to war-ending negotiation processes.

In order for a negotiation to succeed, in the sense of resulting in a mutually acceptable settlement, there must exist a "zone of possible agreement," or "ZOPA" in the negotiation analysis lingo (Zartman 2019b, 4). In an interesting study discussing the feasibility of a nuclear deal with Iran, Sebenius and Singh (2012, 53) offer the following—very precise— definition of this concept: "A ZOPA is the range of potential deals that are better in terms of each party's perceived interests than the best alternative to a negotiated agreement (or 'no-deal option') of each party." In the early stages of a negotiation, the parties may find themselves so far apart that a ZOPA is unattainable, and even unidentifiable. But as the negotiations proceed, initial "red lines" may be reconsidered, and the parties may be able to identify, create, or widen a ZOPA.
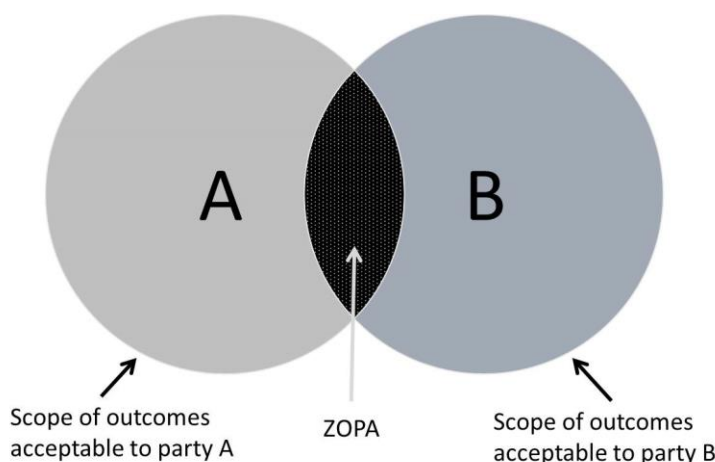

Figure 1.   Zone of possible agreement in a two-party negotiation (figure prepared by the author).

As illustrated in Figure 1, the ZOPA in a two-party negotiation encompasses outcomes that are acceptable (though usually far from ideal) for both parties, and simultaneously perceived by both parties as preferable to no-deal alternatives. Whether or not the negotiating

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parties are able to identify or generate a ZOPA depends on a number of factors, such as the complexity of the conflict, including the number of actors and issues involved, and the timing of the negotiations. Figure 2 illustrates the location of a ZOPA in a three-party negotiation.
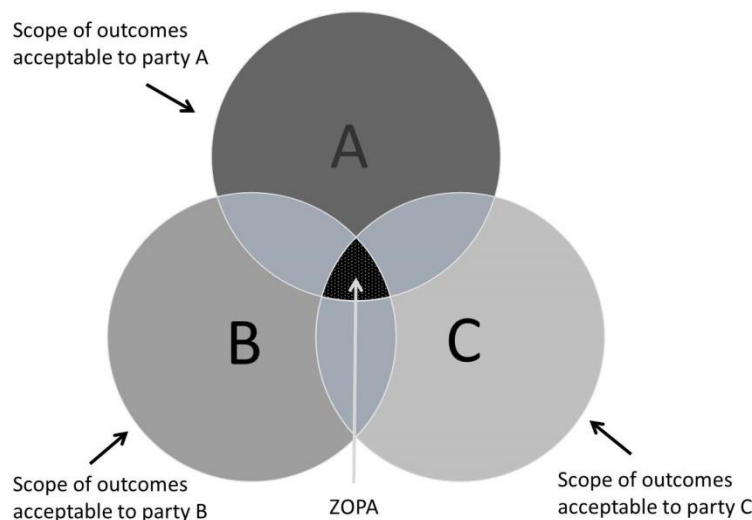

Figure 2.   Zone of possible agreement in a three-party negotiation (figure prepared by the author).

Relevant to the issue of timing is the theory of *ripeness* (for a detailed discussion, see Zartman 2000). Simply put, parties that consider themselves to be in a mutually hurting stalemate are more likely to compromise than parties that believe that they can win a decisive military victory, which they often think they can do in the early stages of a conflict. In contrast, as an armed conflict progresses and the warring parties inflict increasingly painful losses on one another, they may become less willing to compromise, due to the involved political costs. Proponents of "early intervention" negotiations and proponents of "ripe moment" negotiations seem to have at least one thing in common—a deep concern for what happens in the period between the outbreak of hostilities and the moment of "ripeness" (Jackson 2000, 337).

When the parties are in the endgame phase of a negotiation, they face the difficult task of turning their understanding of the identified ZOPA into a written agreement. All are well aware that the devil is in the details, and this stage of the process often involves intense tugs-of-war over wording and terminology. Calls may be made for the inclusion *of precise formulations* that leave little room for interpretation. At the same time, the parties know that the process as such may flounder if they insist on specific formulations that their counterpart(s) find unacceptable.

In some situations, negotiators may choose—more or less deliberately—to opt for *ambiguous formulations*, since this may aid the process towards a consensus. This phenomenon is known in the negotiation studies literature as "constructive ambiguity" (Jönsson and Aggestam 2009, 38; Mitchell 2009; Troitskiy 2019, 238). When the parties have different understandings of the meaning of words included in a negotiated agreement, their best bet may be to hope that their own interpretation will ultimately prevail over that of their counterpart(s) (Troitskiy 2019, 241).

The problem with the latter approach is, of course, that irreconcilable differences in the interpretation of a signed agreement may delay, prolong, or undermine the agreement's implementation. Formal agreement reached at the negotiating table may later turn out to have

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been what the Norwegian philosopher Arne Næss used to call "pseudo-agreement" (Næss 2005, 137–160). In layman's terms, this is a situation where two or more persons (or in this case parties) agree on certain (imprecise) formulations, while having widely diverging views of what the agreed-upon formulations mean.

Lack of clarity on the sequencing of measures (the "chicken and egg" problem) may have a similar effect and contribute to a stalemate where the parties routinely blame each other for the lack of progress. Thus, in order for an agreement to produce the desired results, sufficient attention must be paid to the "requirements for enforceability" (Randolph 1966, 344) in the pre-signature phases.

The Donbas conflict—intrastate or interstate?

Let us now turn to the problem of how to categorize the conflict in Donbas. What kind of a conflict is it? Is it a civil war or a foreign invasion? Or perhaps a combination of the two types of conflict? It should be emphasized here that the "civil war" label does not necessarily exclude the "invasion" label. In the research literature on other conflicts in the post-Soviet space (e.g., Abkhazia, South Ossetia, Transnistria, and Nagorno-Karabakh), one will find many examples of interplay between internal and external dynamics (Malyarenko and Wolff 2019, 7–8). If one concludes that that the Donbas conflict is *both* a (Ukrainian) civil war *and* a (Russian) invasion, one needs to consider which one of these two dimensions is the *primary*, and whether the character of the conflict has changed over time. In other words: did it start as one type of conflict and develop into another kind, and if so, why?

The official Russian position is that the Donbas conflict is, and has been, an internal conflict between the central authorities in Kyiv and the self-proclaimed republics of DNR and LNR, which did not recognize the country's post-Maidan leadership. This leadership allegedly came to power as the result of a "coup." Representative of this view is Russian defense commentator Viktor Litovkin's assertion in 2015 that the conflict in eastern Ukraine was "… a civil war between the nationalist power, which led the country as a result of a coup, and Donbas militias, which refuse to live in a country which deprives them of their right to speak their own language …" (*Nezavisimoe Voennoe Obozrenie*, July 10, 2015, cited in Tsyganok 2017, 510–511). Given such an interpretation, Russia is not a party to the conflict, and, as argued by Vladimir Putin in a July 2018 meeting with Ukrainian politician and Trilateral Contact Group member Viktor Medvedchuk, "the conflict can only be resolved through contacts between Kyiv and representatives of DNR and LNR" (*Rossiya 24*, July 18, 2018).

Ukrainian authorities, for their part, have on numerous occasions rejected the Russian attempts to frame the Donbas conflict as an intrastate conflict, claiming that Russia's political and military role in it is both central and undeniable. For instance, at the 2016 Munich Security Conference, President Petro Poroshenko took issue with Moscow's "civil war" rhetoric. "Mr. Putin," he said, "there is no civil war in Ukraine—that's your aggression" (*Newsader*, February 14, 2016).

These highly conflicting views of the nature and root causes of the Donbas conflict are also found in recent scholarly debates. Three interesting PONARS papers, all published in February 2019 (Brik 2019; Driscoll 2019; Gomza 2019), may shed light on the interpretation fault lines. While not explicitly denying the presence of Russian forces on Ukrainian territory at different stages of the conflict, Driscoll (2019) holds what may be described as a minority view among Western observers, namely that Western academics and policymakers should start calling the conflict a "civil war." This would, in his view, make us "better positioned to read the letter of the Minsk Accords as a pragmatic script for resolving the conflict

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peacefully," and incentivize the government in Kyiv to take a more active role in the political efforts to reintegrate the breakaway regions.

Brik (2019) argues, and convincingly so, that Kyiv has never lacked reintegration incentives. A comprehensive empirical material, including statements by all major Ukrainian politicians, surveys taken among members of the Ukrainian parliament, and general public opinion polls (Brik 2019, 1–2), indicates that Ukrainian political elites as well as a vast majority of Ukrainians are highly committed to the reintegration of Donbas, and that a compromise solution, obtained by the use of "soft power," is seen as the preferred road towards that aim. Rather than framing the conflict as a civil war, one could classify it as an "internationalized" conflict, given Russia's well documented involvement in it. As Brik (2019, 4) correctly points out, the UCDP/PRIO Armed Conflict Dataset, jointly administered by the Uppsala Conflict Data Program at the University and the Peace Research Institute in Oslo, codes the conflict as a "Type 4" conflict. According to the UCDP/PRIO definition, "[I]nternationalized internal armed conflict occurs between the government of a state and one or more internal opposition group(s) with intervention from other states (secondary parties) on one or both sides" (UCDP/PRIO 2017, 9).

Along somewhat similar lines, Gomza (2019) suggests categorizing the Donbas conflict as a "transnationalized insurgency." The concept of "civil war," understood as "armed combat within the boundaries of a recognized sovereign entity between parties subject to a common authority at the outset of hostilities" (Kalyvas 2012, 5), does, as Gomza points out, include a wide and heterogeneous range of phenomena. Employing it in the Donbas case will neither provide helpful analytical insights nor contribute to the conflict's resolution. Among the defining characteristics of an *insurgency* is that it is "territorially contained," that its instigators "mobilize resources locally," and that "the clashes and casualties occur predominantly in a given region" (Gomza 2019, 4). To the extent that the Donbas insurgents and their Russian backers intended to destabilize larger parts of Ukraine or launch a nationwide civil war, they clearly failed to achieve this objective.

The domestic sources of the Donbas insurgency have been well documented (Kudelia 2014; Malyarenko and Wolff 2019, 30–43), but this should not make us disregard or underestimate Russia's role in the conflict. As Gomza (2019, 5) argues, "[t]he transnational character of the Donbas insurgency is not a secondary issue but a fundamental matter." From the very beginning of the conflict, Donbas was heavily penetrated by Russian allies, agents, and operatives, who were either supporting or directly controlling the insurgents. The permeable Russian-Ukrainian border became a frequently used crossing point for Russian arms supplies, Russian paramilitaries, and regular Russian troops.

In the summer of 2014, when the battlefield momentum appeared to be on the side of Ukrainian government forces, there was a marked surge in Russia's military involvement in the conflict. With the support of Russian troops and arms, the Donbas insurgents were able to consolidate and expand their territorial control. The occupation went from a "nomadic" to an "entrenching" phase (Malyarenko and Wolff 2019, 44), and in the fierce battle of Ilovaisk (7 August–2 September 2014), some 1,000 Ukrainian soldiers were massacred by Russian or Russian-backed forces (*Kyiv Post*, October 16, 2014). Similarly, in February 2015, Ukrainian troops were forced to withdraw from the city of Debaltseve, located northeast of Donetsk, after a concerted Russian/separatist offensive to retake the city. According to a RUSI study (Sutyagin 2015), there were at least 10,500–11,000 Russian troops operating in eastern Ukraine by March 2015, that is, shortly after the signing of the Minsk II agreement. The presence of significant numbers of Russian troops and arms on Ukrainian sovereign territory has since then been a more or less permanent feature of the conflict.

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Thus, the *interstate* dimension of the conflict in Donbas is certainly one of its defining features. Without Russia's financial, organizational, and military support, it is highly doubtful that the Donbas militants would have been able to sustain the insurgency over time and/or to seize, expand, and retain control over significant parts of Ukraine's easternmost territory. This has also been acknowledged by current and former DNR and LNR leaders. One of them, Alexander Borodai, who held top positions in the DNR administration prior to the downing of Malaysian airliner MH17 on 17 July 2014, said the following in a recent interview (cited in Coynash 2019):

> I want to say that we are rather beholden to the President of the Russian Federation, Vladimir Putin. By "we" I mean the volunteers who arrived in 2014. We owe him that smallest of things—our lives. Everybody who arrived in the first half of 2014 remembers what the situation was like in the second half of July 2014. If not for his policy, if not for his decisions and actions, we would not be here. In the same way as that there would be no Russian Donbas, and no Donetsk and Luhansk People's Republics.

Similarly, Alexander Zhuchkovsky, a close affiliate of Igor Girkin ("Strelkov"), who arrived in Slovyansk in April 2014, leaves little doubt about Russia's role in the unleashing and sustainment of the war in Donbas. In his recent memoirs (Zhuchkovsky 2018, 260), he writes:

> Russia … had to bring in forces, albeit unofficially. Had Moscow done that at the end of June or beginning of July, Slavyansk would still be under a Russian flag.... Without Russian support, the militants would not have held out until the autumn. The long-awaited help arrived only in the middle of August.

Simply put, there are—and have been—three easily identifiable parties to the conflict in Donbas: Russia, Ukraine, and the Donbas insurgents, the latter currently represented by the leaders of the self-proclaimed "people's republics." From the very beginning of the Minsk negotiations, the identification of a "zone of possible agreement" between the three parties (see Table 1) proved notoriously difficult. Kyiv's preferred outcome (return to the pre-April 2014 situation and restoration of Ukrainian territorial integrity and border control) was clearly unacceptable for Moscow and the DNR/LNR. Similarly, their preferred outcome (federalization of Ukraine) was clearly unacceptable for Kyiv.

Despite overwhelming evidence to the contrary, Russia refused and still refuses to acknowledge its military involvement in the conflict. The Minsk accords contain no reference to Russia as a party to the conflict and place no specific obligations on Moscow as far as the agreements' implementation goes. In February 2019, Russia's UN Ambassador Vasiliy Nebenzya reacted in the following manner when questions were raised about Russia's commitment to the Minsk accords (*Nezavisimaya Gazeta*, February 14, 2019):

> Every time, I urge you: read the document thoroughly. Don't keep repeating the memorized phrase that "Russia needs to fulfill the Minsk accords." Russia is not mentioned in them. We have talked about this so many times. It's absurd: Kyiv is sabotaging "Minsk," and tries to put the blame on Moscow.

Kyiv's most desirable outcome would be a reintegration—or "de-occupation"—of ORDLO,[2] preferably achieved by peaceful means. Russia's main objective seems to have been to keep the conflict simmering in order to obtain "systemic, legitimized leverage over Kyiv through its de facto control of the Donbas" (Sushko 2017, 2). When it comes to the DNR and LNR leadership, it is appropriate to discuss whether they should be seen as autonomous actors in

their own right, or merely as Russian marionettes whose existence was and is contingent upon Moscow's goodwill and material support. There is much evidence to suggest that the latter is the case. To the extent that DNR/LNR leaders held independent views about the specific terms and terminology of the Minsk accords, these appear to have been quickly realigned with Moscow's views.

	Ukrainian Government	Russian Government	DNR/LNR
Preferred outcome	Return to pre-April 2014 situation in Donbas, restoration of territorial integrity and border control.	Federalization of Ukraine, weakening of post-Maidan regime, increased Russian leverage.	Legitimization and formal independence for DNR and LNR, or inclusion into the Russian Federation.
Acceptable outcome	Contingent decentralization, holding of local elections on Ukrainian terms.	Peace settlement on Russia's terms, decentralization, "special status" for DNR and LNR.	*De facto* regional autonomy, self-governance, pardon and amnesty for criminal acts
Unacceptable outcome	Independence for DNR and LNR, or federalization of Ukraine.	Return to pre-April 2014 situation in Donbas, restoration of Ukrainian Government control.	Return to pre-April 2014 situation in Donbas, restoration of Ukrainian Government control.
Zone of possible agreement (ZOPA)	- Ceasefire and gradual de-escalation - International monitoring and verification - Exchange of hostages and illegally held persons - Dialogue on the future status of DNR/LNR - Constitutional reform in Ukraine		

Table 1.   Schematic outline of the parties' preferred, acceptable, and unacceptable outcomes at the outset of the Minsk negotiations, and the "zone of possible agreement."

In Minsk, separatist leaders Alexander Zakharchenko (DNR) and Igor Plotnitskiy (LNR) were interested in maximizing the political autonomy of the territories they controlled. One of the many contentious issues discussed during the negotiations was the terms under which elections would be held in the areas controlled by the Russian/separatist forces. On this point, the side of the Ukrainian government prevailed, as article four of the Minsk II agreement made clear that elections in these areas were to be held "in accordance with Ukrainian legislation." This was a hard-to-swallow concession for the DNR and LNR representatives, who long refused to sign the final version of the document (International Crisis Group 2015, 3–4).

The Donbas conflict is undoubtedly a "blended conflict" (Malyarenko and Wolff 2019, 3), and it plays out in a region heavily penetrated by Russian interests and Russian power. Moscow has consistently tried to frame the war as an *intrastate* conflict, whereas Kyiv has perceived it, and continues to perceive it, as an *interstate* conflict and, increasingly, as a

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foreign occupation. The complex nature of the conflict, and the parties' widely divergent views of what a peace settlement should look like, are in many ways reflected in the terms, conditions, and wording of the Minsk II agreement.

The negotiation process: milestones in the search for a ZOPA

The agreement signed in Minsk in February 2015 was based not only on negotiations taking place in the preceding days, but also on previous interactions between Russia and Ukraine and input from outside actors, such as Germany, France, and the OSCE. Ever since the outbreak of armed hostilities in April 2014, numerous efforts had been made to reach a negotiated settlement that could bring the war to an end. None of the preceding agreements, including the first Minsk agreement, had been particularly effective in achieving that goal.

Five milestones stand out as particularly relevant to retrospective analyses of the Donbas negotiation process: (1) the "Joint Declaration" signed in Geneva on 17 April 2014; (2) President Poroshenko's peace plan, issued on 20 June 2014; (3) the first Minsk agreement ("The Minsk Protocol"), signed on 5 September 2014; (4) the second Minsk agreement ("Package of Measures for the Implementation of the Minsk Agreements"), signed on 12 February 2015; and (5) the "Steinmeier formula," which was put forward by Germany's Foreign Minister in October 2015 and formally accepted by the parties in October 2019. Each of the five documents is elaborated on below.

The Geneva declaration

At the April 2014 talks in Geneva, the leaders of the newly proclaimed "people's republics" of Donetsk and Luhansk were neither present nor officially represented. The "Geneva Group", which preceded the establishment of the "Normandy" format, consisted of the foreign ministers of Russia, Ukraine, and the United States, as well as the EU High Representative for Foreign Affairs and Security Policy. On 17 April, the four agreed on a joint statement, outlining a series of "initial steps to de-escalate tensions and restore security for all citizens" of Donbas. The document called on "all sides" to "refrain from any violence, intimidation or provocative actions" and highlighted the need for disarmament of "all illegal armed groups." The document also stated that amnesty would be granted to surrendering protesters and building occupants, "with the exception of those found guilty of capital crimes." Furthermore, the Geneva declaration provided a special role for the OSCE, whose special monitoring mission (SMM) had been deployed to Ukraine four weeks earlier (on 21 March), with the purpose of observing and reporting on the situation, and "assisting Ukrainian authorities and local communities in the immediate [implementation] of these de-escalation measures wherever they are needed most, beginning in the coming days" (US Mission 2014).

Throughout the spring of 2014, the German and French involvement in the Donbas peace talks became more pronounced, partly at the expense of that of the US. The "Normandy" format (Russia, Ukraine, Germany, and France) became a key forum, in addition to the "Trilateral Contact Group" (Ukraine, Russia, and the OSCE), which was established at the initiative of the Swiss OSCE chairmanship in early June, shortly after the May 2014 election of President Petro Poroshenko. The OSCE is not part of the Normandy format and has as such not been directly involved in the political negotiations over Donbas. However, the organization's Special Representative on Ukraine at the time, Swiss diplomat Heidi Tagliavini, was a member of the Trilateral Contact Group and participated in that capacity in

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the drawing up of the Minsk accords (Haug 2016, 344). She also signed Minsk I and II on the OSCE's behalf, along with the representatives of Ukraine, Russia, DNR, and LNR.

Poroshenko's peace plan

A frequently overlooked milestone, located halfway between the Geneva declaration (April 2014) and the first Minsk agreement (September 2014), was President Poroshenko's 15-point peace plan, which appeared in Ukrainian, Russian, and international media around 20 June 2014 (Blokhina 2014; Stern 2014). Building to some extent on the Geneva declaration, the Poroshenko plan went into the specifics of the conflict and suggested a number of concrete measures to de-escalate the situation in the region. In addition to the de-occupation of public buildings, release of hostages, and disarmament of and amnesty guarantees for militants, the newly elected president proposed the establishment of a 10-kilometer "buffer zone" along the Russian-Ukrainian border, and a "safe corridor" through which the insurgents could leave the area of conflict. The plan also included measures to decentralize power and provide for the early conduct of local and parliamentary elections (Tsyganok 2017, 475–476).

The Poroshenko plan did not gain much traction in Moscow, or among the DNR/LNR leadership. Poroshenko still refused to enter into direct dialogue with the Donbas insurgents, and the Kremlin quickly made clear that their leaders at the time, Alexander Zakharchenko and Igor Plotnitskiy, could not be presented with a Ukrainian "ultimatum." In Putin's view, a ceasefire would not be "viable and realistic" unless Kyiv started direct talks with the insurgents (Kelly and Balmforth 2014). Ukraine's diplomatic push in the subsequent weeks to "sell" the Poroshenko plan to Western leaders did little to change Moscow's uncompromising view on this issue. Meanwhile, the fighting in Donbas continued and intensified, with heavy military and civilian casualties on both sides of the line of contact. This was, simply put, the backdrop for the first round of Minsk negotiations.

Minsk I

By early September 2014, the Russian/separatist forces had made significant territorial gains. The ultimate goal of the DNR and LNR leadership was a decisive military victory, which could be achieved only with Russia's help, and to gain "independence" for their self-proclaimed republics (Zadyraka 2016). The latter objective was apparently not shared by the Kremlin. Russia had no plans to formally annex DNR and LNR (as in the case of Crimea), or recognize them as independent states (as in the cases of Abkhazia and South Ossetia). Rather, the Kremlin wanted to "shove the republics back into Ukraine on the condition of some sort of autonomy" (*Novaya Gazeta*, December 8, 2014), while simultaneously strengthening its political leverage on Kyiv. Faced with an increasingly painful Western sanctions regime, imposed after the annexation of Crimea, and the threat of further sanctions related to its role in the Donbas conflict, Russia wanted to demonstrate its commitment to the international efforts to settle the conflict by peaceful means.

The Minsk talks marked the beginning of a new chapter in the negotiation process, in the sense that LNR and DNR leaders Zakharchenko and Plotnitskiy were now allowed to participate in the talks, together with the members of the Trilateral Contact Group (Ukraine, Russia, and the OSCE). The contents of the Minsk Protocol, which later came to be known as "Minsk I," did to some extent resemble Poroshenko's June 2014 peace plan, albeit with terms that were considerably more favorable to Russia and the Donbas insurgents. In a telephone conversation on 3 September, Presidents Poroshenko and Putin had been able to reach some

form of consensus, or if you will, a "ZOPA," and the details were settled at the negotiating table in Minsk (Zadyraka 2016).

The signed version of the Protocol (Trilateral Contact Group 2014) consisted of 12 articles, which fell into four main categories:

Security measures (5):
– Establishment a bilateral ceasefire;
– Withdrawal of heavy weapons from the line of contact;
– Monitoring of the ceasefire by the OSCE;
– Withdrawal of foreign armed formations and military equipment, disarmament of illegal groups;
– Reinstatement of Ukraine's control over its border on the next day after elections in ORDLO.
Political measures (4):
– Decentralization of power in Ukraine through amending the Constitution;
– Ukraine should adopt a law on the special status of ORDLO;
– Local elections in these regions should be held by the new law;
– Ukraine should amnesty the participants of the conflict.
Economic measures (1):
– Resumption of socio-economic ties with Ukraine, including taxes and banking system.
Humanitarian measures (2):
– Enabling the distribution of humanitarian assistance;
– Carrying out an exchange of hostages and prisoners on an "all for all" basis.

The Minsk Protocol, signed on 5 September 2014, was two weeks later supplemented by a memorandum detailing the provisions for establishment of the ceasefire and the withdrawal of heavy weapons from the line of contact. Weapons with a caliber greater than 100 mm were to be withdrawn from both sides of the contact line to a distance of no less than 15 kilometers, in order to create a 30-kilometer safety zone between the belligerents. The withdrawal was to be monitored by the SMM of the OSCE.

In the subsequent months, some progress was made on the withdrawal issue, but the presence of heavy weapons in the safety zone has been a recurring issue in the SSM reports, along with frequent ceasefire violations. The parties have also often failed to provide safe and secure access for the SMM's ground patrols (Haug 2016, 345–355).

Minsk II

Following the intensification of hostilities and upswing in ceasefire violations in January 2015, a new round of negotiations was held in Minsk, resulting in the signing of the Minsk II agreement on 12 February 2015 (Trilateral Contact Group 2015). The document encompassed 13 articles, many of which were carryovers from the first Minsk agreement (ceasefire, heavy weapons withdrawal, monitoring and verification by the OSCE, release and exchange of hostages and illegally detained persons, pardon and amnesty for militants, disarmament and pullout of illegal/foreign armed groups, and measures to improve the humanitarian and economic situation in ORDLO).

But Minsk II also contained a number of new clauses and provided more detail on the "decentralization of power" issue, as well as the modalities for, and timing of, local elections and the restoration of Ukrainian border control (the latter was made contingent on the former,

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as per the document's article 9). Unlike Minsk I, Minsk II provided specific timeframes for the implementation of many of the agreed-upon measures (Zadyraka 2016). For instance, the document stated that the ceasefire should be effective from "00:00 midnight on 15 February 2015," that the pullout of heavy weapons should commence "no later than the second day after the start if the ceasefire and finish within 14 days," and that dialogue on the modalities of local elections should start "on the first day after the pullout." It also stated that the exchange of prisoners should take place "on the fifth day" after the pullout.

Furthermore, it stated that the Ukrainian parliament "within 30 days" should adopt a resolution specifying the geographic parameters of the special legislation regime mentioned in the Minsk Memorandum. The restoration of Ukrainian border control was to start "on the first day after the local elections" and end "by the end of 2015," on the condition of fulfillment of the agreement's article 11 (constitutional reform and decentralization).

The "Steinmeier formula"

By the fall of 2015, it had become clear that the deadlines set in the second Minsk agreement could not be met. Ceasefire violations were still frequent, and the security environment did not allow for the holding of local elections under Ukrainian law. In an effort to bring new momentum to the Minsk II implementation process, German Foreign Minister and OSCE Chairperson-in-Office, Frank-Walter Steinmeier, launched an initiative in the fall of 2015, which came to be known as the "Steinmeier formula." The essence of his proposal was, simply put, to provide for: (1) the swift holding of local elections in ORDLO, observed and validated by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR); (2) the subsequent entry into force of a new Ukrainian law on "special status" for said areas; and (3) the restoration of Ukrainian government control of the border with Russia.

The Steinmeier formula, which can be seen as a "a slimmer, simplified version of the Minsk agreements" (Miller 2019), was discussed at various Trilateral Contact Group meetings in Minsk as well as at the "Normandy Four" meeting in Berlin in October 2016. President Poroshenko was skeptical about the formula, and particularly about a version written by Foreign Minister Lavrov, which Putin allegedly had referred to at the Berlin meeting (*UAWire*, September 26, 2019). Serious discussions about the formula gradually subsided, but they were reinvigorated three years later, after the Ukrainian presidential elections and the coming to power of Volodymyr Zelensky.

Zelensky's election campaign had been based, in part, on a promise to end the war in Donbas. Shortly after his inauguration, he made his first moves towards this aim. In a telephone conversation with Putin in July 2019, he discussed measures to de-escalate the situation in Donbas, including prisoner exchange, and the feasibility of a new summit in the Normandy format. The two agreed to continue the dialogue at the level of experts (*Interfax*, July 11, 2019). It soon became clear that Moscow saw Ukrainian approval of the Steinmeier formula as a prerequisite for a Normandy-format summit (which had not been held since the Berlin meeting in October 2016).

When Zelensky in October 2019 announced that he had taken the controversial step of officially signing up Ukraine to the Steinmeier formula, this implied that the final obstacle to a Putin-Zelensky-Merkel-Macron summit had been squared away (Miller 2019).[3] The much-anticipated Normandy summit took place in Paris on 9 December 2019, and resulted in the signing of a two-page declaration in which the parties reconfirmed their commitment to the Minsk agreements and the Steinmeier formula (Office of the President of the French Republic 2019). Some progress was made on troop disengagement, prisoner exchange, and de-mining, but there was little or no movement on the difficult political issues that constitute the core of

the conflict (local elections, the "special status" issue, and the lack of Ukrainian border control).

Seen in a comparative perspective, the five milestones discussed above represent an increasingly pro-Russian set of provisions. This is particularly the case with the transition from Minsk I to II. As noted by former US Ambassador to Ukraine, Brookings Institution fellow Stephen Pifer (2015, 3), "[t]he terms of Minsk II are substantially worse for Kyiv than the terms of the unfulfilled September 2014 agreement." In the periods prior to the signing of the two documents, the battlefield momentum appeared to be on the side of the Russian/separatist forces, and Russia was able to capitalize on this at the negotiating table in Minsk. Rather than improving Ukraine's position, the Steinmeier formula cemented the terms agreed upon in Minsk.

Why have the Minsk agreements not been implemented?

When it comes to the underlying causes of the current stalemate in Donbas and the parties' failure to implement the Minsk agreements, the available source material allows for different interpretations. Max Bader, Ian Bond, and Hrant Kostanyan (all cited in Dempsey 2017) see the non-implementation of the Minsk agreements primarily as a result of the agreements' design. Similarly, Konstyantin Zadyraka (2016) draws attention to the complications caused by the agreements' vague and ambiguous language, the associated sequencing challenges, and the documents' unclear legal status.

While recognizing the shortcomings of the Minsk agreements, Mikhail Troitskiy (2019, 247) rejects the notion that the Minsk II agreement was "pre-destined" to fail, and argues that "considerable chances existed for the agreement to be clarified and implemented." Following the latter line of reasoning, impediments to the implementation process may be found not only in the text of the agreements, but also in political and legal measures instituted in the past five years, in Kyiv as well as in Moscow. Relevant in this regard are the Ukrainian "de-occupation" law, adopted in January 2018, and Russia's "passportization" initiative, launched in April 2019. Let us take a closer look at these factors, starting with the agreement-specific ones.

Vague and ambiguous language

The fact that the Minsk accords are "riddled with loose language" (*The Economist*, September 14, 2016) has been a recurring issue in international assessments of the documents. At the negotiating table in Minsk, the parties had been struggling to locate a "zone of possible agreement" (ZOPA), or rather, "islands of agreement" (Wittke 2019, 285) in an ocean of disagreement. As noted above, the efforts were complicated by Ukraine and Russia's widely diverging views of the conflict's nature and causes, and of who should or should not be present at the table as "parties." The Ukrainian government had, very reluctantly, accepted the conducting of direct talks with the leaders of DNR and LNR, who had not been mentioned in the Geneva declaration or Poroshenko's peace plan. Russia saw its role purely as that of an impartial third-party "mediator" and was not willing to acknowledge any responsibility for the conflict as such, or admit to the presence of Russian troops and arms on Ukrainian soil. Finding a "common language" under these circumstances proved utterly challenging.

If the parties had chosen to insist on precise and unambiguous formulations compatible with their respective views of the conflict, it is possible that the negotiations could have failed to produce a mutually acceptable agreement. Instead, the parties decided to opt for

loose formulations that allowed for more than one interpretation. Acting in this manner, the negotiators in Minsk achieved two things: (1) they created a ZOPA; and (2) they reduced the risk of being subjected to criticism by the domestic opposition. Each of the parties agreed to the Minsk accords under the expectation that their interpretation of the agreements' uncertain terms would ultimately prevail over that over their counterpart(s), and the hope that time would be on their side.

The Ukrainians would certainly say that the agreed-upon withdrawal of "all foreign armed formations, military equipment, as well as mercenaries" (article 10 of Minsk II) can and should be interpreted as a reference to Russian regular troops and paramilitaries on Ukrainian soil. The Russians, for their part, would take this as a reference to *Ukrainian* government forces and volunteers. Similarly, the parties seem to have had quite different, perhaps even incompatible, understandings of what a Ukrainian "constitutional reform" (article 11) should entail. Needless to say, the vagueness and ambiguity of the language included in the Minsk agreements did not make the implementation easy. An additional but related challenge has been the absence of a mechanism to address and sanction violations, leaving open the question of who is to ensure compliance with the agreements, and how. Thus, the Minsk agreements seem to lack "the clarity of technical[ly] solid ceasefire agreements" (Haug 2016, 351).

The "sequencing trap"

Another major obstacle to the Minsk agreements' successful implementation has been the problem of how to *sequence* the various measures listed in them, particularly the military and political measures. This has been and remains a contentious issue in the Russian-Ukrainian relationship. As noted by Boulègue (2016, 4–5), Russia's preferred roadmap to peace in the Donbas would start with political measures such as the enactment of a general amnesty law in DNR/LNR, the holding on local elections on DNR/LNR terms, validated by Kyiv, and the adoption of a "special status" law, enshrined in the Ukrainian Constitution. Without full implementation of these measures, the military provisions, including full withdrawal of illegal armed formations and restoration of Ukrainian border control, may, in Russia's view, not be achieved.

Conversely, the Ukrainian side would ideally have liked to see a full implementation of the agreements' military provisions (ceasefire, withdrawal of illegal forces, exchange of prisoners, and restoration of Ukrainian border control) *before* implementation of the political measures (including local elections and "special status" legislation). Kyiv's argument is that it is nearly impossible to conduct OSCE-observable local elections in the separatist-held regions without a functioning ceasefire, and in a situation where Ukraine's eastern border is controlled by Russian/separatist forces.[4]

This issue has also figured centrally in recent Russian-Ukrainian discussions about the Steinmeier formula, which outlined a sequence of events in which local elections and the granting of "special status" for ORDLO *precede* the restoration of Ukrainian border control. Thus, the Steinmeier formula has much in common with Russia's preferred model. The Ukrainian leadership, on its part, has on numerous occasions, also after the Paris meeting of the Normandy quartet in December 2019, made it clear that free, fair, and secure local elections may not be held in a situation where the Russian-Ukrainian border and ORDLO are controlled by Russia and their Donbas proxies (Office of the President of Ukraine 2019).

This is not to say that the unimplemented nature of these and other provisions of the Minsk agreements and the Steinmeier formula is merely a "technical" issue. The current

deadlock is to be understood in the context of the fundamental lack of trust that currently marks the Russian-Ukrainian relationship.

The agreements' legal status

A third issue relates to the Minsk agreements' legal status and authority, or lack thereof (Zadyraka 2016). Minsk I and II were not signed by the heads of state of Russia and Ukraine, or even the heads of international agencies. Nor were they signed at the level of foreign ministers. The agreements were signed by a former Ukrainian president, acting as a diplomat with the rank of ambassador, by Russia's ambassador to Ukraine, and by the unelected leaders of the two self-proclaimed "republics." The fifth signatory was the OSCE's Special Representative on Ukraine. Ambassadors Kuchma, Zurabov, and Tagliavini were all members of the Trilateral Contact Group, whereas Zakharchenko and Plotnitskiy were not. No titles were added to the signatures of the two latter.

The process leading up to the signing of the Minsk agreements did not follow any of the procedures laid out in the Ukrainian Constitution or the Law on International Treaties, and as such, they are *political* arrangements rather than international treaties. This does not necessarily mean that they are "illegal" or "non-binding." As pointed out by Wittke (2019, 265), the creation of "politico-legal documents of a hybrid nature" is actually a quite common international practice, as are semi-formalized groups and *ad hoc* frameworks for conflict resolution. This is particularly the case in conflict situations where a formalized peace settlement, for instance under Chapter VII of the UN Charter, is beyond reach.

Compared to Minsk I, the Minsk II agreement enjoys a somewhat higher degree of authority and status, stemming, in part, from the fact that it was endorsed in the form of a UN Security Council resolution, adopted shortly after its signing in February 2015. In the resolution, the Security Council "calls on all on all parties to fully implement the 'Package of measures', including a comprehensive ceasefire as provided for therein." The resolution contains two annexes—the text of the Minsk II agreement and a declaration signed by the heads of state of Russia, Ukraine, France, and Germany ("the Normandy Four"), in which they endorse the agreement and reaffirm "their full respect for the sovereignty and territorial integrity of Ukraine" (United Nations Security Council 2015).

President Putin's declaration of support for Ukraine's territorial integrity does appear somewhat ironic, given Russia's well-documented political and military involvement in the conflict. Thus, it may be argued that there is a discrepancy between the realities of the conflict in Donbas and the agreed-upon "politico-legal" framework for its resolution. In the current framework, Russia is being treated as an international mediator on a par with Germany and France, rather than as a party to the conflict.

Ukraine's "de-occupation" law

In their quest for a negotiated settlement, the Ukrainian negotiators in Minsk had agreed to terms that went beyond what the Government alone could guarantee. Article 11 of the Minsk II agreement, which deals with constitutional reform, decentralization, and the difficult "special status" issue, states that the Ukrainian parliament should adopt constitutional amendments in line with the provisions of the agreement and provide for their entering into force "by the end of 2015." Ukraine's Constitution can only be amended with the consent of a minimum two-thirds of the Verkhovna Rada's 450 members, so the negotiators must have

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known that it would be difficult, if not impossible, for Ukraine to fulfill this controversial obligation, at least within the suggested time frame.

Moreover, in January 2018, the Rada made a move to "rebrand" the conflict in Donbas (Miller 2018). In a new piece of Ukrainian legislation, popularly known as "the Donbas de-occupation law," the lawmakers made clear that Russia exercised "general effective control" in the territories outside Kyiv's control. The term "temporarily occupied" became a part of the standard vocabulary, and Russia was designated as "the aggressor state." The Ukrainian "anti-terrorist operation" (ATO), which until then had been led by the Ukrainian Security Service (SBU), came to an end on 30 April 2018, and responsibility for the new "Joint Forces Operation" was transferred to the Armed Forces of Ukraine.

Interestingly, the new law contained no explicit references to the Minsk accords. Such references occurred in earlier drafts, but were removed ahead of the second reading, after heated debates in the parliament. Some of the lawmakers, such as Mykhailo Papiyev of the Opposition Bloc, saw the move as "proof of Ukraine's withdrawal from the Minsk accords" (Wesolowsky and Polyanska 2018). Others were less inclined to go so far, and emphasized that Ukraine stood by its Minsk commitments.

Russia's "passport expansionism"

An additional obstacle to the implementation of the Minsk accords arose in the spring of 2019, when Vladimir Putin on 24 April issued a decree that introduced, with immediate effect, a simplified procedure for the granting of Russian citizenship to residents of the DNR and LNR. As noted by former Ukrainian Prime Minister Yevhen Marchuk, a member of one of the Trilateral Contact Group's subgroups, this initiative was clearly "aimed at undermining the Minsk accords" (*Den'*, May 8, 2019). Also the European guarantors of the Minsk II agreement, Germany and France, saw Putin's decree as going "against the spirit and aims" of the Minsk process (Gutterman 2019).

Shortly thereafter, on 1 May 2019, Putin followed up with an additional decree, covering citizens of Ukraine who formerly resided in the same areas of the Donbas, as well as Crimea, but who had moved and taken up residency in Russia since 2014. They, too, were made eligible for Russian citizenship via the simplified procedure. Russia's "passport expansionism" in Ukraine has many similarities with the ways in which this instrument has been used elsewhere in the post-Soviet space, most notably in Abkhazia, South Ossetia, and Transnistria. In the case of the Donbas, the move is likely to aggravate the already strained relations between Kyiv and Moscow, and further complicate the process towards peace in the region. In addition, it may give Russia a reason to maintain, and even increase, its military presence in Donetsk and Luhansk, for the purpose of "defend[ing] Russia's citizens" (Socor 2019).

Concluding remarks

The five-year anniversary of the Minsk II agreement gives little reason for celebration. None of the agreement's 13 articles has been fully implemented and only a few of them have been partially implemented. Some progress has been made on issues such as prisoner exchange (article 6) and the withdrawal of heavy weapons from the line of contact (article 2), but the ceasefire (article 1) has been broken on an almost daily basis in 2015–2020. Despite significant international pressure on the conflicting parties, and despite Western sanctions on Russia, there is little progress on the underlying political issues. A significant "zone of

possible agreement" is also unlikely to open up in the coming months, given the parties' strict adherence to their respective "red lines."

As this study has shown, the causes of the current stalemate are to be found in the complex nature of the conflict, and the discrepancy between the realities on the ground and the politico-legal framework that was designed for its resolution in 2014 and 2015. The five documents discussed in this article—the Geneva declaration, Poroshenko's peace plan, the two Minsk agreements, and the Steinmeier formula—constitute important milestones in the process toward a conflict resolution framework. The endpoints so far (Minsk II and the Steinmeier formula) are considerably more accommodating to the interests of the Donbas separatists and their Russian backers than the starting point (the Geneva declaration). This, as well as the transition from Minsk I to Minsk II, may be seen as a reflection of the "battlefield dynamics" in the periods prior to the documents' signing, specifically the military offensives of the Russian/separatist forces in August–September 2014 and January–February 2015.

Given the generally pro-Russian terms of the second Minsk agreement, it is tempting to raise the question of how Kyiv could agree to it. The answer to this question seems to be that Ukraine in February 2015 had no good alternatives to a negotiated settlement. The most realistic alternative to a negotiated agreement, or "RATNA," would have been a large-scale war with what appeared to be a militarily superior counterpart. Since then, the Ukrainian military has risen to the challenge and undertaken a comprehensive modernization, with the support of Western partners. This may in turn have had an impact on the perceived attractiveness of no-deal (or less-than-wholehearted implementation) alternatives.

On a more general level, the study has shown that there is a thin line between "constructive ambiguity" and "pseudo-agreement." One of the most striking—and academically interesting—features of the Minsk process is the apparent tension between the short-term goal of stopping the fighting and the longer-term goal of reaching a lasting political settlement, acceptable to all of the involved parties. The use of ambiguous language may have served the first purpose, but it may simultaneously have undermined the second by allowing the parties to believe that they are owed things that are, objectively speaking, incompatible.

Whether the Minsk process can be revitalized in the future, for instance in the form of a "Minsk III," is still an open question. Given the still unimplemented status of Minsk I and II, a follow-up agreement based on the same formula is likely to suffer the same fate as its predecessors. In the past five years, the diplomatic and political endeavors surrounding the Donbas conflict, including the Steinmeier formula and the Normandy talks, have mainly dealt with the issue of how to implement the Minsk agreements. In light of the efforts' enduring lack of success, it may be time to consider other approaches, including the exploration of alternative formats and formulas.

Notes

1. Lillian Randolph's four-stage model includes a pre-negotiation phase, a negotiation phase, an agreement phase, and an implementation phase (Randolph 1966, 347).
2. "ORDLO" is a Ukrainian acronym denoting the government-uncontrolled parts of the oblasts of Donetsk and Luhansk. The term first appeared in Ukrainian legislation in October 2014, shortly after the signing of the first Minsk agreement.
3. The "Steinmeier formula" had been discussed at different junctures by the Trilateral Contact Group (Russia, Ukraine, and the OSCE). As late as at the group's meeting on 18 September 2019, Ukraine's representative, Leonid Kuchma, expressed his unwillingness to endorse the document (Kaftan 2019). Two weeks later, he signed a Ukrainian letter of approval addressed to the OSCE's Special Representative in Ukraine, Martin Sajdik. Similar letters were

submitted by Russia's Contact Group representative, Boris Gryzlov, and by "DNR" representative Natalia Nikonorova and "LNR" representative Vladislav Deynogo.

4. The crucial and most difficult point is the order of implementation of articles 9 and 11 of the Minsk II agreement. Moscow insists on a "11–9" sequence (constitutional reform and "special status" before restoration of Ukrainian border control), whereas Kyiv insists on a "9–11" sequence (border control before constitutional reform and "special status").

Acknowledgements

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