

FIIA 4/2016

COMMENT

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A year since Minsk-2 > Does the agreement have a future?

None of the provisions of the Minsk-2 agreement have been fully implemented. Meanwhile, the context around the peace process in Ukraine is changing. It may soon be time to start modifying the deal.

February 12, 2016 marks the sad anniversary of an agreement which, at the time of its signing a year ago, was meant to become a step-by-step plan for resolving the conflict in Ukraine's Donbas. Thus far, however, none of its provisions have been fully implemented. The document's original December 2015 deadlines have been extended, this time without set dates. And although any discussion about an alternative to Minsk-2 is still viewed as heresy by all diplomats involved, it is hardly possible to ignore the fact that the deal has been overtaken by broader developments and no longer looks adequate for the situation.

To start with, one has to face a grim reality. Despite the repeated mantra about a ceasefire (Article 1 of the agreement) that is "generally holding", the death toll continues to rise. According to Ukrainian official data, between March and December 2015, 563 Ukrainian servicemen died in the conflict zone. In December 2015 UN sources reported 9,000 dead in the conflict in Donbas, compared with a September figure of 8,000. Heavy weapons have been only partially withdrawn from the frontline, while OSCE monitors have not received full access to the area (non-compliance with Articles 2 and 3).

From the standpoint of formal logic, in these circumstances it would not make much sense to expect the Kyiv authorities to push through a constitutional reform that would establish a special status for the self-proclaimed "republics" (Article 11), or to plan holding elections in separatist-controlled territories in accordance with Ukrainian law and OSCE standards (Article 12). In principle, the analysis could well end here.

But it may still be helpful to pinpoint what is right and wrong with the Minsk framework in general as this may open the door to a new, more promising phase of the peace process.

Minsk-2 has several flaws, which explains why it has not worked. Negotiating hastily, under the accompanying cannonade of advancing separatist troops, and rewarding the escalating side by offering it better conditions than it had received in the preceding agreement of September 2014, the European architects of Minsk-2 failed to appreciate one fundamental factor. The Ukrainian military was suffering a tactical defeat, but the country as a whole was nowhere near to capitulation. The commitments that the Ukrainian leadership undertook in Minsk under duress were

disproportionately heavy, and were unsurprisingly resented by many. When President Petro Poroshenko returned to Kyiv from the talks, a typical question he faced was: "Who gave you the right to trade Ukraine's constitution"?

But a larger problem was tolerance towards non-compliance, which became the norm among the external sponsors of Minsk-2 from the outset. The agreement on establishing the ceasefire on February 15 had no bearing on the separatists until they secured the key regional town of Debaltseve three days later. Whether or not Ukraine's European partners, Germany and France, tacitly accepted the fall of Debaltseve as part of the deal is of secondary importance. What matters is that they acquiesced to a blatant violation of a newly-concluded agreement, accepted a *fait accompli* and thus lost the moral (as opposed to political and financial) right to demand compliance on other occasions that followed.

Yet, Minsk-2 brought significant achievements, too.

Above all, it prevented further escalation of the conflict. It is hard to imagine that in the event of the continuing advancement of the separatist troops, the Obama administration would have been able

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to refrain for long from providing Ukraine with lethal weapons, and that Russia's military support for the breakaway entities would not have increased. The death toll and the level of destruction would have been a lot higher.

The agreement bought Ukraine the time it needed to strengthen its defence, to man and train the military, and to build fortifications. Another attempt by the separatists to employ military instruments to reach their political goals, cannot be excluded, but this time it would be much more costly. Without aircraft and missiles, even minor tactical success could no longer be guaranteed, whereas their use would mean the end of Russia's posture of denying its direct military involvement. It would most likely also trigger new Western economic counter-measures against it.

Broadly speaking, Ukraine today is better able to insulate itself against the immediate consequences of the conflict than it was a year ago, whereas Moscow, on the contrary, has seemingly abandoned the Novorossiya project – a political entity stretching from Kharkiv to Odesa – which became unfeasible.

Crucially important, Minsk-2 created a much-needed reference point for the policy of European solidarity

with Ukraine. The EU's sanctions against Russia are now legally linked with the premise of full implementation of the agreement, including the return of Ukrainian sovereign control over its border with Russia. True, the opposition to this commitment inside the EU is significant and the pressure to at least ease the sanctions in exchange for "progress" in the implementation is growing, but simply dropping the demands would be devastating for the EU's reputation as a policy actor. This is something that is universally understood.

All in all, Minsk-2 has helped to change the context around the conflict in the East of Ukraine, but it is not likely to be implemented in its entirety and become an instrument of peace and reconciliation in its current form. "Creatively" interpreting its contents, pretending that the local militias can "temporarily" exercise control over the border with Russia on Ukraine's behalf, or dreaming about "fair and free" elections in separatist areas – all in order to declare the diplomatic mission accomplished and to seek normalization between the EU and Russia – will simply not suffice. It may soon be time to start negotiating Minsk-3.