

## Chapter 5: Russia's Dictated Non-Peace in the Donbas 2014–2022: Why the Minsk Agreements Were Doomed to Fail

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### Abstract

The Minsk Agreements concluded between Ukraine and Russia under mediation of the OSCE, Germany, and France were an expression of international legal nihilism and aggression obfuscation. Contrary to widespread perception, the documents Moscow imposed on Ukraine in September 2014 and February 2015 were not a solution but part of the problem. The self-contradictory Minsk Agreements were signed by Kyiv under massive Russian pressure. Their conclusion followed devastating military defeats inflicted on Ukraine by regular and irregular Russian forces shortly before. The agreements were a means for the Kremlin to reap the geopolitical and regional fruits of its initially covert military aggression against Ukraine. Western states – especially Germany and France – tacitly supported the overt Russian challenge to the European security order. Berlin and Paris pressured Kyiv to implement the inconsistent provisions of the Minsk Agreements with their questionable sequences and consequences. Moscow was not sanctioned for its violations of the agreements, subversion of basic principles of international law and democracy, and uncooperative attitude in the negotiations.

### Keywords

Minsk Agreement, Donbas, OSCE, Ukraine, Russia

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## 1 Introduction

Three days before Russia's full-scale invasion of Ukraine, on February 21, 2022, Moscow recognized as states the *de facto* "Donetsk People's Republic" and "Lugansk People's Republic" regimes created by the Kremlin in a secret operation barely eight years earlier. Until then, many observers had seen in the so-called Minsk Agreements, i.e. the Russian-Ukrainian accords signed in the capital of Belarus in 2014–2015, a way to settle the Donbas conflict.<sup>2</sup> Kyiv signed the Moscow-drafted texts in light of the covert incursion of regular Russian troops into eastern Ukraine and an acute threat of their deep inland advances in 2014–2015.

From 2015 to the present, the discussion about ending Russia's aggression against Ukraine has been dominated by the failed implementation of the Minsk Agreements.<sup>3</sup> Various actors and observers still consider these agreements, also known as *Minsk I* and *Minsk II*, as a missed opportunity.<sup>4</sup> Some want to revive them or advocate a *Minsk III*. However, the Minsk Agreements did not represent a roadmap to peace. Contrary to a widespread view, even in the West, they were an inappropriate instrument for conflict resolution from the outset. They were an integral part of the tangle of problems that eventually led to the fateful escalation in February 2022.<sup>5</sup>

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2 OSCE: Protocol on the results of consultations of the Trilateral Contact Group, signed in Minsk, 5 September 2014 (Minsk Protocol); OSCE: Package of Measures for the Implementation of the Minsk Agreements, 12 February 2015.

3 Hrant, Kostanyan/Meister, Stefan: Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process, CEPS Working Document 423, 2016; Malyarenko, Tatyana/Wolff, Stefan: The Logic of Competitive Influence-Seeking: Russia, Ukraine, and the Conflict in Donbas. In: *Post-Soviet Affairs*, Vol. 34, Issue 4, 2018, pp. 191–212; Åtland, Kristian: Destined for Deadlock? Russia, Ukraine, and the Unfulfilled Minsk Agreements. In: *Post-Soviet Affairs*, Vol. 36, Issue 2, 2020, pp. 122–139.

4 Charap, Samuel: "The U.S. Approach to Ukraine's Border War Isn't Working", Politico, 19 November 2021.

5 Grigas, Agnia: *Beyond Crimea: The New Russian Empire*. Yale University Press: New Haven (CT) 2016; D'Anieri, Paul: *Ukraine and Russia: From Civilized Divorce to Uncivil War*. Cambridge University Press: Cambridge (UK) 2019; Kuzio, Taras: *Russian Nationalism and the Russian-Ukrainian War: Autocracy-Orthodoxy-Nationality*. Routledge: London 2022.

## 2 The History of the Minsk Agreements

After years of political and economic meddling in Ukraine, Moscow moved to a covert armed attack on Russia's supposed brother nation in late winter 2014.<sup>6</sup> The Kremlin began a military occupation of Crimea with the help of unmarked regular Russian troops. In parallel with the annexation of the south Ukrainian Black Sea peninsula, Russia fomented unrest in mainland Ukraine and especially in the Donets Basin (Ukr.: Donbas).<sup>7</sup> Besides, Moscow tried to escalate local tensions in other southern and eastern parts of the country but was only successful in the Donbas.<sup>8</sup>

It also took the covert infiltration of a Russian combat force to transform some pre-existing social tensions in the Donbas into an armed conflict. From Crimea, which had already been annexed by Russia, an irregular unit led by the Russian citizen and former FSB officer Igor Girkin, known as “Strelkov”, managed to penetrate the Ukrainian mainland in April 2014 and spark a pseudo-civil war in the Donbas. Girkin later candidly explained, “I pulled the trigger on the war. If our unit had not crossed the border, everything would have turned out as [inconsequentially] as in Kharkiv and Odesa.”<sup>9</sup>

In May 2014, Moscow succeeded in establishing two unrecognized artificial mini-states, the “Donetsk People's Republic” (Russian acronym: DNR) and “Lugansk People's Republic” (Russian acronym: LNR).<sup>10</sup> The Kremlin

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6 Hurak, Ihor/D'Anieri, Paul: The Evolution of Russian Political Tactics in Ukraine. In: Problems of Post-Communism, Vol. 69, Issue 2, 2022, pp. 121–132.

7 The Donetsk Basin is not named after the city or region of Donetsk, as is sometimes assumed, but after the river *Siversky Donets*, which also flows through the Luhansk oblast. In terms of landscape, part of western Russia also belongs to the Donbas. However, the original landscape term has come to mean the easternmost part of Ukraine. In the Ukrainian context, it also carries socio-cultural connotations and is in some respects comparable to the German regional term “Ruhrpott”.

8 Umland, Andreas: “The Glazyev Tapes, Origins of the Donbas Conflict, and Minsk Agreements”, Foreign Policy Association, 13 September 2018.

9 Hans, Julian: “Russischer Geheimdienstler zur Ostukraine: ‘Den Auslöser zum Krieg habe ich gedrückt’”, Süddeutsche Zeitung, 21 November 2014.

10 Mitrokhin, Nikolay: Transnationale Provokation: Russische Nationalisten und Geheimdienstler in der Ukraine. In: Osteuropa, Vol. 64, Issue 5–6, 2014, pp. 157–174; Mitrokhin, Nikolay: Infiltration, Instruktion, Invasion: Russlands Krieg in der Ukraine. In: Osteuropa, Vol. 64, Issue 8, 2014, pp. 3–16; Mitrokhin, Nikolay: Bandenkrieg und Staatsbildung: Zur Zukunft des Donbass. In: Osteuropa, Vol. 65, Issue 1–2, 2015, pp. 5–22; Mitrokhin, Nikolay: Infiltration, Instruktion, Invasion: Russia's War in the Donbass. In: Journal of Soviet and Post-Soviet Politics and Society, Vol.

used some of the same methods and personnel it had employed earlier in the non-government-controlled areas of Moldova and Georgia since the 1990s.<sup>11</sup> These include infiltration of agents, promotion of local separatism, non-fulfillment of ceasefire deals and other agreements, spoofing of international organizations, etc.<sup>12</sup>

After some territorial gains by paramilitary units sent or supported by Russia, Ukrainian forces launched an initially successful counteroffensive in the summer of 2014. Kyiv recaptured lost territory, including the strategically important port city of Mariupol. Apart from irregular fighters with both Russian and Ukrainian citizenship, only smaller regular units of Russian troops, such as special commandos of the GRU military intelligence service or the notorious “Buk” air defense system, had been deployed in eastern Ukraine up to that point. In mid-late August 2014, Moscow intervened in the Donbas for the first time with a large force of unmarked regular ground troops in support of its eastern Ukrainian proxy militias. Due to the subsequent defeat of the Ukrainian army in Ilovaysk and fear of further losses, Kyiv agreed to negotiate with Moscow in Minsk.

The so-called “Minsk Protocol”, also known as *Minsk I*, was signed in early September 2014 by official representatives of the OSCE, the Russian Federation, and Ukraine as members of the so-called Trilateral Contact Group (TCG).<sup>13</sup> Two envoys of the so-called “people’s republics”, Oleksandr Zakharchenko (now deceased) and Ihor Plotnitsky (now missing), also signed the protocol, but no mention was made of their pseudo-state offices. This formulaic compromise was due to the fact that Russia, but not Ukraine, considered the alleged “people’s republics” to be parties to the conflict. At the end of September 2014, *Minsk I* was supplemented by a so-called “memorandum” with some clarifications.

Although the Minsk Protocol and Memorandum paid tribute to Russian interests and a fragile ceasefire was reached, the two documents did not

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1, Issue 1, 2015 pp. 219–250; Melnyk, Oleksandr: From the “Russian Spring” to the Armed Insurrection: Russia, Ukraine and Political Communities in the Donbas and Southern Ukraine. In: *The Soviet and Post-Soviet Review*, Vol. 47, Issue 1, 2020, pp. 3–38.

11 Kragh, Martin (Ed.): *Security and Human Rights in Eastern Europe: New Empirical and Conceptual Perspectives on Conflict Resolution and Accountability*. ibidem-Verlag: Stuttgart 2022.

12 Zachau, John: Russia’s Instrumentalisation of Conflict in Eastern Europe: The Anatomy of the Protracted Conflicts in Ukraine, Georgia and Moldova. In: *SCEEUS Reports on Human Rights and Security in Eastern Europe*, Issue 6, 2021.

13 Minsk Protocol, OSCE, 5 September 2014.

settle the armed conflict. Instead, the pattern of August–September 2014 was repeated in January–February 2015, with newly invading regular Russian troops inflicting another devastating defeat on Ukraine near Debaltseve. Faced with yet another threat of Russian advances inland, Kyiv signed what was called a “Package of Measures for the Implementation of the Minsk Agreements”. This accord, also called *Minsk II*, contains more detailed provisions than *Minsk I*. Immediately after its signing, the Minsk “package” was mentioned in a United Nations Security Council resolution.

On the one hand, *Minsk I* and *II* consist of various security-related measures. These include a ceasefire, withdrawal of heavy equipment from the line of contact, and disarmament of all illegal groups. On the other, they consist of political steps that Kyiv must fulfill. They include local elections in non-government-controlled areas in accordance with Ukrainian legislation and the granting of certain self-government rights to the regions. The provisions also called for restoration of full Ukrainian control over the border with Russia. The order of implementation of these provisions becomes a major point of contention.

The implementation of the agreements was to be negotiated in the Trilateral Contact Group (TCG). The negotiation process was overseen by the so-called “Normandy Format” consisting of Russia, Germany, France, and Ukraine. Positive consequences of the two agreements included a ceasefire, albeit temporary and fragile, partial troop withdrawals from the line of contact, some alleviation of humanitarian suffering, and the theoretical prospect of a future settlement of the conflict.

These or similar narratives are what many observers think of when they talk about the Minsk Agreements and their attempted implementation. Yet the “Minsk process”, the Ukrainian name for the trilateral negotiations, was paralyzed from the outset by at least three serious problems regarding the genesis, provisions, and consequences of the Minsk Agreements. Identifying these defects can help to avoid similar lapses in future agreements in Ukraine or elsewhere in the post-Soviet region.<sup>14</sup>

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14 Heinemann-Grüder, Andreas: Lehren aus dem Ukraine Konflikt: Das Stockholm-Syndrom der Putin-Versteher. In: Osteuropa, Vol. 65, Issue 4, 2015, pp. 3–24; Heinemann-Grüder, Andreas: Was lehrt der Ukraine-Konflikt? In: Zeitschrift für Außen- und Sicherheitspolitik, Vol. 11, Issue 4, 2018, pp. 521–531; Heinemann-Grüder, Andreas/Crawford, Claudia/Peters, Tim (Eds.): Lehren aus dem Ukraine Konflikt: Krisen vorbeugen, Gewalt verhindern. Verlag Barbara Budrich: Leverkusen 2021.

## 2.1 Legitimation of International Legal Nihilism

The biggest burden of the Minsk Agreements was their demonstrative disregard for Ukraine's sovereignty as a result of an inadequately denounced and only lightly punished radical breach of international law by Russia.<sup>15</sup> Ukraine complied with the agreements (if one wants to use that term at all) only under massive pressure. Moscow deliberately increased military pressure on Kyiv before the signing. This allowed the Kremlin to dictate the public definition and alleged resolution of the conflict in the signed documents.<sup>16</sup> More than seven years of futile attempts to implement the Minsk Agreements remained marked by a glaring lack of accompanying Western pressure on Russia and insufficient support for Ukraine.

The central premise of the Minsk Agreements was the allegation of a dominant and autochthonous will for separation in eastern Ukraine in 2014. However, this claim contradicted – as in the case of the Crimean secession – polling results in the ostensibly autonomist regions at the time.<sup>17</sup> The separatist proposition was nevertheless vehemently championed by Russia and underscored by the presence of “insurgents” (little more than local Kremlin stooges) in the TCG working groups.

The Russian narrative of secessions in southern and eastern Ukraine was widely accepted by Western diplomats, politicians, and observers, despite its destructive consequences for international law. In some cases, it was even seen as the most plausible interpretation of events on the ground. Most external policymakers and experts were also aware of Moscow's role in triggering and sustaining the violent conflict in the Donbas. Nevertheless, many actors and commentators treated this confrontation between Russia and Ukraine as if it were mainly a domestic issue within the latter, until February 2022.

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15 Grant, Thomas D.: *Aggression against Ukraine: Territory, Responsibility, and International Law*. Palgrave Macmillan: London 2015; Grant, Thomas D.: *International Law and the Post-Soviet Space II: Essays on Ukraine, Intervention, and Non-Proliferation*. ibidem-Verlag: Stuttgart 2019; Zadorozhnii, Oleksandr: *Hybrid War or Civil War? The Interplay of Some Methods of Russian Foreign Policy Propaganda with International Law*. In: *Kyiv-Mohyla Law and Politics Journal*, Vol. 2, 2016, pp. 117–128.

16 Schneckener, Ulrich: *Hybrider Krieg in Zeiten der Geopolitik? Zur Deutung und Charakterisierung des Donbass-Konflikts*. In: *Politische Vierteljahresschrift*, Vol. 57, Issue 4, 2016, pp. 586–613.

17 Umland, *The Glazyev Tapes*, 2018.

Instead, the 2014–2022 armed conflict in eastern Ukraine was a so-called “delegated interstate war”, in which the illegal organs and irregular troops of the so-called “people’s republics” acted as thinly veiled agents of Moscow on Ukrainian state territory.<sup>18</sup> The fundamentally international, if not geopolitical, character of the war is evident both in its antecedents and genesis as well as in the larger context and subsequent course of the Donbas conflict.<sup>19</sup> Although Russia was the initiator, controller, and beneficiary of the conflict, the Kremlin constantly denied these roles and presented itself as a mediator – albeit an admittedly partisan and not entirely uninvolved one. This obfuscation in the Kremlin’s public stance, to be sure, hardly escaped the notice of Western governments in the Normandy Format – Germany and France. However, they apparently assumed that, at the end, Moscow would nevertheless implement the agreements in more or less good faith.

Compared to similar situations in Transnistria, Abkhazia, and the Tskhinvali region (“South Ossetia”), the violent split of the Donbas was far more clearly and solely prepared, brought about, and directed by the

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18 Hauter, Jakob: Delegated Interstate War: Introducing an Addition to Armed Conflict Typologies. In: *Journal of Strategic Security*, Vol. 12, Issue 4, 2019, pp. 90–103.

19 Sapper, Manfred/Weichsel, Volker (Eds.): *Zerreiprobe Ukraine: Konflikt, Krise, Krieg*. In: *Osteuropa*, Vol. 64, Issue 5–6, BWV: Berlin 2014; Sapper, Manfred/Weichsel, Volker (Eds.): *Gefhrliche Unschrfe: Russland, die Ukraine und der Krieg im Donbass*. In: *Osteuropa*, Vol. 64, Issue 9–10, BWV: Berlin 2014; Sapper, Manfred/Weichsel, Volker (Eds.): *Zerrissen. Russland, Ukraine, Donbass*. In: *Osteuropa*, Vol. 65, Issue 1–2, BWV: Berlin 2015; Sapper, Manfred/Weichsel, Volker (Eds.): *Russlands Krieg gegen die Ukraine: Propaganda, Verbrechen, Widerstand*. In: *Osteuropa*, Vol. 72, Issue 1–3, BWV: Berlin 2022; Marples, David R./Mills, Frederick V. (Eds.): *Ukraine’s Euromaidan: Analyses of a Civil Revolution*. ibidem-Verlag: Stuttgart 2015; Yekelchik, Serhy: *The Conflict in Ukraine: What Everyone Needs to Know*. Oxford University Press: Oxford 2015; Grigas, *Beyond Crimea*, 2016; Beichelt, Timm/Worschech, Susann (Eds.): *Transnational Ukraine? Networks and Ties that Influence(d) Contemporary Ukraine*. ibidem-Verlag: Stuttgart 2017; Bertelsen, Olga (Ed.): *Revolution and War in Contemporary Ukraine: The Challenge of Change*. ibidem-Verlag: Stuttgart 2017; Marples, David R.: *Ukraine in Conflict: An Analytical Chronicle*. E-International Relations: London 2017; Soroka, George/Stepniewski, Tomasz (Eds.): *Ukraine after Maidan: Revisiting Domestic and Regional Security*. ibidem-Verlag: Stuttgart 2018; Averre, Derek/Wolczuk, Kataryna (Eds.): *The Ukraine Conflict: Security, Identity and Politics in the Wider Europe*. Routledge: Abingdon (UK) 2019; D’Anieri, *Ukraine and Russia*, 2019; Wynnyckyj, Mychailo: *Ukraine’s Maidan, Russia’s War: A Chronicle and Analysis of the Revolution of Dignity*. ibidem-Verlag: Stuttgart 2019.

Kremlin.<sup>20</sup> As illustrated first by Nikolay Mitrokhin (University of Bremen) and later by, among others, Sanshiro Hosaka (University of Tartu), Vlad Mykhnenko (University of Oxford), Oleksandr Melnyk (University of Alberta), and Jakob Hauter (University College London), the Russian state and its agents as well as Moscow-directed mercenaries in Ukraine decisively determined both the run-up to and initiation as well as the subsequent course of the war.<sup>21</sup> From April 2014 at the latest, both regular and irregular Russian military units, with more or less covert leadership from Moscow, were in charge of the alleged “popular uprising”.

While the fake “secession” of Crimea in February-March 2014 happened on even more obvious initiative from Moscow, it was supported by at least some prominent figures on the peninsula, such as the speaker of the Autonomous Republic’s Parliament, Volodymyr Konstantynov.<sup>22</sup> The alleged rebellion of the Donbas, on the other hand, was not publicly led, initiated, or welcomed by any regionally prominent figures from the Basin. No nationally or at least regionally significant representatives of the political, economic, cultural, civic and scientific elite of the Donbas ever participated in a visible role in the region’s supposedly popular uprising.<sup>23</sup>

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- 20 Coppieters, Bruno: “Statehood”, “De Facto Authorities” and “Occupation”: Contested Concepts and the EU’s Engagement in Its European Neighbourhood. In: *Ethnopolitics*, Vol. 17, Issue 4, 2018, pp. 343–361; Malyarenko, Tetyana/Wolff, Stefan: *The Dynamics of Emerging De-Facto States: Eastern Ukraine in the Post-Soviet Space*. Routledge: Abingdon (UK) 2018; Zachau, *Russia’s Instrumentalisation*, 2021; Kragh, *Security and Human Rights*, 2022.
- 21 Mitrokhin, *Transnationale Provokation*, 2014; Mitrokhin, *Infiltration*, 2014; Mitrokhin, *Bandenkrieg und Staatsbildung*, 2015; Mitrokhin, *Diktaturtransfer im Donbass*, 2017; Hosaka, Sanshiro: Welcome to Surkov’s Theater: Russian Political Technology in the Donbas War. In: *Nationalities Papers*, Vol. 47, Issue 5, 2020, pp. 750–773; Mykhnenko, Vlad: Causes and Consequences of the War in Eastern Ukraine: An Economic Geography Perspective. In: *Europe-Asia Studies*, Vol. 72, Issue 3, 2020, pp. 528–560; Melnyk, Oleksandr: From the “Russian Spring” to the Armed Insurrection: Russia, Ukraine and Political Communities in the Donbas and Southern Ukraine. In: *The Soviet and Post-Soviet Review*, Vol. 47, Issue 1, 2020, pp. 3–38; Hauter, Jakob (Ed.): *Civil War? Interstate War? Hybrid War? Dimensions and Interpretations of the Donbas Conflict in 2014–2020*. ibidem-Verlag: Stuttgart 2021; Hauter, Jakob: *Russia’s Overlooked Invasion: The Causes of the 2014 Outbreak of War in Ukraine’s Donbas*. ibidem-Verlag: Stuttgart 2023.
- 22 Umland, Andreas: Inwieweit war Russlands Anschluss der Krim historisch gerechtfertigt? Zur Problematik “realistischer” Annexionsnarrative. In: *Sirius – Zeitschrift für Strategische Analysen*, Vol. 2, Issue 2, 2018, pp. 162–169.
- 23 See the debate: Kudelia, Sergiy: Domestic Sources of the Donbas Insurgency, *PONARS Eurasia*, 29 September 2014; Umland, Andreas: In Defense of Conspiro-

Even prominent, openly pro-Russian politicians from the Donbas did not play key roles in the local uprising of Russophile Ukrainians ostensibly supported by an overwhelming majority of the population. The only known temporary Ukrainian co-leader of the supposed rebellion was Oleh Tsarev, a former deputy faction leader of the Party of Regions in Ukraine's unicameral parliament, Verkhovna Rada (Supreme Council). Tsarev, however, is from the city of Dnipro, and not the Donbas. Like his various Russian and other foreign colleagues on the ground, he was a separatist who had migrated to the Donets Basin in connection with the war.

In the early months of the alleged popular uprising in eastern Ukraine, a number of key military and political figures were simply Russian citizens, mostly without any notable biographical or family ties to the Donbas. They crossed the border into Ukraine as direct agents of the Kremlin, as mercenaries paid by Moscow, or as irregular fighters coming from Russia or the freshly occupied Crimean Peninsula. It was only a few months after the founding of the two "people's republics" that most of the leadership positions in the pseudo-states, which were not even recognized by Russia at the time, were filled by local individuals who had been socially marginal and largely unknown in their region until then.

These and other aspects of the alleged "Donbas rebellion" constituted obvious violations of the sovereignty, integrity as well as border of the Ukrainian state, the European security order and international law in general. Yet, they were punished by the West only with relatively weak sectorial and some selected individual sanctions. The scope of punitive measures against Russia was disproportionate to the geopolitical significance of Russia's annexation of Crimea and pseudo-civil war in the Donets Basin. The leniency of the Western response was a signal to Moscow that both the illegal Crimean annexation as well as the covert intervention in eastern Ukraine, and with it quite a few blatant violations of the international order, were acceptable, as had been earlier the case in Moldova and Georgia.

The EU's only sectorial sanctions announced on July 29, 2014, were paradoxically imposed at a time when the Ukrainian army was on the offensive

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ogy: A Rejoinder to Serhiy Kudelia's Anti-Political Analysis of the Hybrid War in Eastern Ukraine, PONARS Eurasia, 30 September 2014; Kudelia, Sergiy: Reply to Andreas Umland: The Donbas Insurgency Began at Home, PONARS Eurasia, 8 October 2014; Matsiyevsky, Yuriy: The Limits of Kudelia's Argument: On the Sources of the Donbas 'Insurgency', PONARS Eurasia, 31 October 2014; Kudelia, Sergiy: Getting to the Bottom on the Sources of the Donbas Insurgency, PONARS Eurasia, 6 November 2014.

in the Donbas. At the moment of the introduction of these sanctions, which remained the severest such EU measures until February 2022, it was yet not foreseeable that the Ukrainian advance against Russia-directed irregular troops in Ukraine would become repulsed a month later, as a result of large-scale deployment of Russian regular troops. There was no urgent need, at this particular point, for the EU to impose novel and relatively tough sanctions regarding the Donbas war in late July 2014. It looked then as if Kyiv would soon win in eastern Ukraine.

These circumstances illustrate that this sanctions round had an only indirect relation to Ukraine itself. Its main reason was Russia's infamous mass killing of EU citizens – mainly Dutch – on flight MH17 on July 17, 2014, and not the Russian mass terror against Ukrainian citizens during the more than three months before. As a result of the sectorial sanctions' peculiar timing, the EU's fatal signal to the Kremlin was: "We care little about your war against Ukraine and the current course of the war. What is completely inadmissible, however, is the killing of EU citizens of a West (!) European country. In such a case, we will introduce sanctions if necessary, even if they make little sense in and of themselves in the specific war situation."

Worse, later the EU's sanctions became strangely dependent on the implementation of the Minsk Agreements. Between 2015 and 2022, the punitive measures' suspension was tied not only to a number of Russian actions but oddly also to certain Ukrainian steps to implement these agreements. That was although Ukraine had not been sanctioned. Originally, the dismantling of sanctions had only been dependent on Russia's unconditional withdrawal from eastern Ukraine. From 2015 onwards, the implementation of the Minsk Agreements became the main condition for end of the sanction regime.

## 2.2 Ignoring Basic Democratic Principles

Related to this oddity was another problem with the implementation of the Minsk Agreements, that supposedly provided for a reintegration of the *de facto* Russian-controlled territories into the Ukrainian state. This was the question of who exactly Kyiv's negotiating partner within the reintegration process should be. Initially, the Ukrainian leadership was inclined to swiftly fulfill the *Minsk I* commitments, in including the political provisions,

dictated by Moscow in September 2014, notwithstanding their humiliating and illegitimate character.

In the fall of 2014, the Verkhovna Rada passed a law on a special status for the occupied territories of the Donetsk and Luhansk regions. Kyiv even scheduled local elections for December 2014 in municipalities in eastern Ukraine although they were no longer under government control. Had these elections been held in accordance with Ukrainian laws and international criteria, they would have provided an opportunity to establish legitimate negotiating partners in the occupied region. These could have replaced the *de facto* Russian-appointed representatives of the alleged insurgency. Such a procedure could have offered the chance to gradually push back Moscow's interference in the Ukrainian domestic political process.

However, this was precisely what the Kremlin did not want. A month before the scheduled elections under Ukrainian law in the occupied Donbas, the two Moscow-controlled *de facto* regimes unlawfully held their own so-called parliamentary and presidential elections of the Donetsk and Luhansk "people's republics" in early November 2014. These largely staged votes were not coordinated with Kyiv. They were presumably initiated or at least tolerated by Moscow.

All-Ukrainian parties could not participate in these pseudo-elections – not even pro-Russian ones, such as the Communist Party of Ukraine or the groupings that emerged from the Party of Regions. Also, fighters from the irregular armed forces of the two "people's republics" were omnipresent during the voting process; they were obviously meant to suppress expressions of resistance to secession. The media of the occupied regions were controlled indirectly or directly from Russia. There was no international monitoring of the voting by relevant observer organizations, such as the OSCE.

The sham poll gave the leaders of Russia's satellite entities an artificially generated legitimacy. The results of the pseudo-elections and other similarly fraudulent votes were a key element in the Kremlin's propaganda and negotiations. Sadly, the para-democratically empowered leaders of the "DNR" and the "LNR" were sometimes perceived as emissaries of the people of the Donbas not only by Russian state actors but also by Western actors or observers. In the international media, they were often portrayed as representing a genuine regional conflict party opposing Kyiv.

The early and principled violation of the 2014 Minsk Protocol and Memorandum by Moscow and its agents in the "people's republics" that accompanied the pseudo-elections overshadowed all subsequent political

and diplomatic processes. Real elections in accordance with Ukrainian law and with participation of Ukrainian (including pro-Russian) parties would have been a crucial step in the reintegration process. Instead, the rigged November 2014 votes created unrepresentative local power bodies whose ostensible legitimacy allowed Russia to claim that they spoke for the “people of the Donbas”.

This led to a consolidation of the semi-autonomous institutions of the “people’s republics” by late 2014. In the following years, they were kept alive with heavy Moscow support, for example through illegal, cross-border “humanitarian convoys” which were apparently often also loaded with weapons and ammunition. The early pseudo-democratic undermining of Ukraine’s sovereignty with various sham votes became a fundamental obstacle to the reintegration of the seceded territories and the implementation of the political parts of the Minsk agreements.<sup>24</sup>

However, it did not trigger any appropriate response from the West. Instead of additionally sanctioning these and other violations of international law, in general, and the Minsk Agreements, in particular, the EU simply left the existing sectorial sanctions, which had been imposed *before* the signing of the Minsk Agreements, in place until 2022. Only some individual sanctions were added in 2015–2021.

A similarly muted reaction concerned Moscow’s increasing distribution of Russian passports to residents of the occupied territories. The Kremlin conducted an active policy of transferring Donbas residents to Russian citizenship even before Moscow recognized the two so-called “people’s republics” on February 21, 2022.<sup>25</sup> Although the distribution of Russian passports was another blatant Russian violation of international law and the Minsk Agreements, there were no Western moves to impose relevant penalties on Moscow for these new breaches. The Russian disregard for law and agreements was, to be sure, critically assessed by the Western European participants in the negotiation process, i.e. the German and French governments. Yet, with its inaction, the EU tacitly accepted Russia’s policies.

The staged elections in 2014 and later in the occupied territories not only complicated the task of determining a legitimately empowered and representative negotiating partner for Kyiv. They also raised the future

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24 Coynash, Halya: The Facts speak for themselves re Russia’s military involvement in Donbas – OSCE Chief Monitor, Human Rights in Ukraine, 2 November 2018.

25 Burkhardt, Fabian: Russlands “Passportisierung” des Donbas. In: SWP-Aktuell 58, 30 June 2020.

question of how to disempower the pseudo-legitimate authorities should a situation arise in which freely elected local deputies could take the helm. Moscow's endorsement, organization, and recognition of the pseudo-elections undermined the *Minsk I* negotiation process already in late 2014, even before *Minsk II* was signed in February 2015. This and the subsequent distribution of Russian passports, introduction of the ruble, and other measures indicated already back then where the journey was headed – successive illegal annexation of the occupied territories by Russia.

### 2.3 Letting the Aggressor Reap the Fruits of the Aggression

As noted, *Minsk I* and *Minsk II* were negotiated – if the word “negotiate” is even appropriate – against the backdrop of large incursions by regular Russian ground forces into eastern Ukraine in August 2014 and February 2015. The agreements were reached after devastating Ukrainian defeats that left hundreds dead, wounded, and captured in Ilovaisk and Debaltseve. Kyiv signed the Minsk Agreements primarily because it would have otherwise faced even deeper advances by Russia's army into Ukrainian territory.

Kyiv's official chief negotiator, Leonid Kuchma, Ukraine's second president, and Petro Poroshenko, Ukraine's president from 2014 to 2019, saw no other way out. They had to accept the humiliating texts largely prefabricated by Putin. Kuchma and Poroshenko did so regardless of the fact that the agreements contained provisions obviously aimed at undermining Ukraine's sovereignty, integrity, and statehood. This situation was worrisome enough in itself.

Even more worrying was the fact that the West allowed Moscow, or even supported the Kremlin, to use the Minsk Agreements to exert political and diplomatic pressure on Kyiv for years. Moscow often did so by referring to UN Security Council Resolution 2202 of February 17, 2015, and the explicit mention of the *Minsk II* Agreement. This official UN document reinforced the legal weight of the controversial agreement that had been signed five days earlier and which was an expression of international legal nihilism.

In fact, absurdities such as these were abundant in Moscow's rhetoric *vis-a-vis* Kyiv in 2014–2021. For example, Russia repeatedly urged Ukraine's decentralization with reference to a respective provision of *Minsk II*.<sup>26</sup>

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26 Alim, Eray: “Decentralize or Else”: Russia's Use of Offensive Coercive Diplomacy against Ukraine. In: World Affairs, Vol. 183, Issue 2, 2020, pp. 155–182.

However, in early April 2014 before the start of the Donbas War, a deep reform of Ukrainian local self-government and deconcentration of state power had already begun. Several months before the signing of the first Minsk Agreement, Ukraine had started complying with the loudly repeated Russian demands for decentralization.<sup>27</sup> The reason for this strange situation was that the leadership of the Russian Federation, which is *de facto* a centralist rather than federal state, wanted less a real decentralization than a “balkanization” of Ukraine.<sup>28</sup>

Instead of opposing these and similar Russian tactics, Western representatives repeatedly sought to persuade Kyiv to make concessions that would undermine Ukraine’s sovereignty. They recommended that Ukraine grant special constitutional status to non-government-controlled areas and hold local elections there even before Russia’s irregular forces in the Donbas have been withdrawn or disarmed. Western politicians and diplomats insufficiently opposed Russia’s refusal to allow permanent and complete observation of the Ukrainian-Russian state border by international organizations. Russia limited the scope of the OSCE’s Special Monitoring Mission to Ukraine, established in 2014 with Moscow’s consent. The Kremlin did this both through the OSCE headquarters in Vienna and on the ground in the Donbas, within the so-called “people’s republics”.<sup>29</sup>

Not only in the above mentioned or other individual issues, but also in the basic strategic orientation, the EU and its Western European member

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27 Romanova, Valentyna/Umland, Andreas: Ukraine’s Decentralization Reforms Since 2014: Initial Achievements and Future Challenges, Chatham House Research Papers, September 2019.

28 Rjabčuk, Mykola: Dezentralisierung und Subsidiarität: Wider die Föderalisierung à la russe. In: Osteuropa, Vol. 64, Issue 5–6, 2014, pp. 217–225.

29 Adamski, Łukasz: Beobachtung der Beobachter: Die OSZE und Russlands Aggression gegen die Ukraine. In: Osteuropa, Vol. 65, Issue 1–2, 2015, pp. 43–56; Haug, Hilde Katrine: The Minsk Agreements and the OSCE Special Monitoring Mission: Providing Effective Monitoring for the Ceasefire Regime. In: Security and Human Rights, Vol. 27, Issue 3–4, 2016, pp. 342–357; von Twickel, Nikolaus: Zwischen den Fronten: Was die OSZE-Beobachter in der Ukraine leisten können, und was nicht. In: Internationale Politik, Vol. 72, Issue 2, 2017, pp. 48–53; Kemp, Walter: Civilians in a War Zone: The OSCE in Eastern Ukraine. In: OSCE Yearbook 2017, Vol. 23, 2018, pp. 113–123; Härtel, André/Pisarenko, Anton/Umland, Andreas: The OSCE’s Special Monitoring Mission to Ukraine: The SMM’s Work in the Donbas and Its Ukrainian Critique in 2014–2019. In: Security and Human Rights, Vol. 31, Issue 1–4, 2021, pp. 121–154; Kragh 2022.

states in particular remained on the wrong track for eight years.<sup>30</sup> The West ruled out the supply of even defensive heavy weapons to Ukraine until the beginning of 2022. The possibility of imposing additional relevant sectorial sanctions against Russia was not considered until the start of the major Russian troop buildup in 2021.

Instead, the already fuzzy message of the West's half-hearted initial reactions was further obfuscated. As mentioned above, the EU decided in 2015 to link the lifting of its Donbas-related punitive measures against Russia to the implementation of the Minsk Agreements in spite of their conclusion after the most important sectorial EU sanctions had been imposed in the summer of 2014. The formulation of the sanctions package had initially provided for a complete and unconditional Russian withdrawal from the Donbas as a precondition for the withdrawal of sanctions. By subsequently linking them to *Minsk I* and *II*, they were no longer tied only to the cessation of rule violations by Russia. Now the end of sanctions was also contingent on certain steps by Ukraine.

During the same period in 2015, the German government launched the infamous *Nord Stream 2* project, which – following the completion of the first *Nord Stream* project in October 2012 – would have not only further increased Germany's dependence on Russia.<sup>31</sup> Berlin also set out to further weaken Ukraine's already decreased economic leverage *vis-à-vis* Russia. Gazprom's second gas pipeline through the Baltic Sea to northeastern Germany was, like the first, presented as a private-sector project that posed no security threat to Ukraine.

The territorial “gains” Russia made during the first high-intensity phase of covert aggression against Ukraine in 2014–2015 became a new baseline not only for the Kremlin. They were also accepted in significant part by Western politicians and diplomats as new starting points for negotiations and frames of reference for a rapprochement between the two countries. Instead of being continually reminded that the novel political conditions in the Donbas and Crimea are fundamentally unacceptable, the Russian aggressor was implicitly rewarded by international mediators. The Kremlin

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30 Härtel, André: The EU Member States and the Crisis in Ukraine: Towards an Eclectic Explanation. In: Romanian Journal of European Affairs, Vol. 19, Issue 2, 2019, pp. 87–106; Barshadska, Iuliia: Brüssel zwischen Kyjiw und Moskau: Das auswärtige Handeln der Europäischen Union im ukrainisch-russischen Konflikt 2014–2019. ibidem-Verlag: Stuttgart 2022.

31 Umland, Andreas: Germany's Russia Policy in Light of the Ukraine Conflict: Interdependence Theory and Ostpolitik. In: Orbis, Vol. 66, Issue 1, 2021, pp. 78–94.

was allowed to constantly harvest the fruits of the Russian military aggression in Moscow's international negotiations and public debates with its Ukrainian victim.

An example of the dubiousness of the February 2015 *Minsk II* Agreement was its Article 9, which provided for “[...] the restoration of full control over the state border by the Government of Ukraine throughout the conflict area, beginning on Day 1 after local elections.” This sequence anticipated a return of Kyiv control over the Ukrainian-Russian border along the occupied territories not before, but following, a political settlement. This would have meant that the Ukrainian government would have had to hold elections on territory that was still under *de facto* Russian control. Such a procedure would have given Moscow the opportunity, through its agents and proxies in the occupied territories, to undermine the political process ostensibly aimed at settling the conflict.

The problem with these and other contradictory formulations in *Minsk I* and *II* was not only, and not so much, that Russia had managed to sneak these provisions into the agreements through ruthless pressure on Ukraine. More problematic was the fact that Western governments and organizations accepted and elaborated on even the most absurd points in the two Minsk Agreements. In 2015, for example, French diplomat Pierre Morel and German Foreign Minister (and now German President) Frank-Walter Steinmeier submitted plans for conflict resolution that tacitly acknowledged the Kremlin's military gains that year and took Russian terrain gains as a starting point.<sup>32</sup> Under the so-called Morel Plan and Steinmeier Formula, Kyiv was now being urged not only by Moscow but also by Paris and Berlin to hold democratic elections in a territory *de facto* controlled by an aggressive neighboring state that, judging from the course of pseudo-electoral processes inside Russia, would do anything to manipulate the outcome of the elections.

In the following years, German politicians and diplomats repeatedly advised the Ukrainian government to implement the Steinmeier Formula. They tended to focus on concessions by Ukraine regarding, for instance,

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32 Getmanchuk, Alyona/Solodky, Sergiy: German Crisis Management Efforts in the Ukraine-Russia Conflict from Kyiv's Perspective. In: German Politics, Vol. 27, Issue 4, 2018, pp. 591–608; Wittke, Cindy/Rabinovych, Maryna: Five Years After: The Role of International Actors in the “Ukraine Crisis”. In: East European Politics, Vol. 35, Issue 3, 2019, pp. 259–263; Wittke, Cindy: The Minsk Agreements – More than “Scraps of Paper”? In: East European Politics, Vol. 35, Issue 3, 2019, pp. 264–290; Åtland, Destined for Deadlock?, 2020.

local elections and a constitutionally enshrined “special status” for the occupied territories. Effective steps explicitly directed against Russia’s fundamental violations of international law and the European security order, on the other hand, were less in evidence of the German and French governments. Berlin, in particular, urged Kyiv to engage in questionable procedures, even though there it was becoming increasingly clear that Moscow was not interested in genuine conflict resolution.

Meanwhile, Russia posed on the global political stage in the role of mediator and strove steadfastly to transform the international conflict initiated by Moscow into an internal one and to profit from the violation of Ukraine’s territorial integrity. Moscow used the two “people’s republics” as instruments to undermine Ukraine’s internal stability and foreign relations. This was a strategy that the Kremlin had used, long before 2014, for over twenty years in Moldova and Georgia.

The price Moscow demanded for a partial return of the east Ukrainian acquisitions from its hybrid aggression was to get its foot back in the door of the entire Ukrainian polity. Between late 2020 and early 2021, the Kremlin concluded that it could not achieve this by merely diplomatic, political, and hybrid means. Putin began to implement Plan B to subjugate Ukraine, concentrating troops on the Russian- and Belarus-Ukraine borders as well as in Crimea for a conventional and overt military invasion.

### *3 Conclusions and Recommendations for Action*

The dictated non-peace of the Minsk Agreements was supported by initiatives such as the Normandy Format or Steinmeier Formula but should never have been accepted by the West. As we now know, the Minsk Agreements did not de-escalate the Russian-Ukrainian conflict, but rather exacerbated it. They could not prevent its violent escalation in February 2022.

France and especially Germany were involved in many rounds of negotiations, mainly for humanitarian reasons. The OSCE was also highly present.<sup>33</sup> Seen from today’s perspective, such engagement appears as an

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33 Tanner, Fred: The OSCE and the Crisis in and around Ukraine: First Lessons for Crisis Management. In: OSCE Yearbook 2015, Issue 21, 2016, pp. 241–250; Guliyev, Farid/Gawrich, Andrea: OSCE Mediation Strategies in Eastern Ukraine and Nagorno-Karabakh: A Comparative Analysis. In: European Security, Vol. 30, Issue 4, 2021, pp. 569–588.

attempt to compensate for the lack of military and economic support for Ukraine and for more decisive sanctions against Russia. The physical and media presence of international organizations in the supposed conflict resolution process functioned as a fig leaf for the West rather than as a real instrument of peace-making in eastern Ukraine.<sup>34</sup> Against the backdrop of the 2014–2022 experience, it is questionable not only on normative and ethical grounds for the West to demand compliance with unjust and manipulative ceasefire agreements such as the Minsk Agreements. As the disastrous finale of the negotiations demonstrated, it is also strategically unwise to engage in implementation of such deals.

The frequent repetition of well-meant recipes and melodious concepts cannot alleviate the fundamental problem of gagging agreements imposed by force and threats. Formulas such as “peaceful conflict resolution”, “confidence-building”, “promoting dialogue”, etc. may be subjectively taken seriously by many Western politicians and negotiators. Objectively, the pursuit of such approaches in the post-Soviet space serves the function of a smokescreen that obscures the bitter reality of actual ambitions, forces, and events on the ground. Instead of receiving effective assistance, the victim of aggression is left to fend for itself in the face of the aggressor, who interprets Western attempts at mediation as signs of weakness.

High mediative and political activity with the purpose of implementing initially dubious documents becomes a mere cover, in such situations, for substantive inaction and lack of results, in terms of upholding the international order. Misapplied diplomacy toward imperialist powers can prolong and escalate conflicts rather than defuse them. By allowing actors like Russia to reap the fruits of their aggression, the West sends dangerous signals to all parties involved – and possibly to leaders in other regions of the world.<sup>35</sup>

In 2014–2022, the West created a wrong impression in the Kremlin. It conveyed to Moscow that by creating a *fait accompli* on the ground, Russia can set a new frame of reference for subsequent negotiations. To be sure,

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34 Puglierin, Jana: OSZE dient Kreml als Feigenblatt, Bundeszentrale für politische Bildung, 6 September 2016.

35 Suško, Oleksandr/Umland, Andreas: Unrealistisches Szenario: Anmerkungen zum “Pluralen Frieden”. In: Osteuropa, Vol. 67, Issue 3–4, 2017, pp. 109–120; Umland, Andreas: Kein fauler Kompromiss! Der Donbass, die Ukraine und der Westen. In: Osteuropa, Vol. 71, Issue 8–9, 2021, pp. 61–68; Umland, Andreas: Should Washington Have Pressed Kyiv into a Compromise with Moscow? In: World Affairs, Vol. 185, Issue 2, 2022, pp. 319–330.

military aggression was rhetorically strongly condemned and even partly sanctioned. But the new state of affairs resulting from occupation was still accepted as the new baseline for subsequent search of compromise.

According to Russian doctrine in such affairs, the stronger side can and should use its military power, systematic violation of rules, and methodical ruthlessness to improve its negotiating position. This *message* from Brussels, Berlin, and Paris encouraged Moscow to once again shift, in February 2022, the matters on the ground in Ukraine in the direction it wanted. Let's hope that politicians and diplomats in the West and elsewhere have learned the bitter lessons from the Minsk disaster.

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