



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
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CEASEFIRE PREPARATION FOR UKRAINE: ANALYSIS OF PAST RUSSIA-UKRAINE AGREEMENTS AND LESSONS LEARNED

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Statement of Purpose

This document provides a high-level overview and analysis of previous peace agreements, including the Budapest Memorandum, Minsk I, and Minsk II, entered into by Ukraine and Russia. These previous agreements may provide relevant learning lessons for Ukraine and its allies to consider in future negotiations.

The Budapest Memorandum

In 1994, the United States, United Kingdom, Russia, Britain, Belarus, Kazakhstan, and Ukraine met to discuss the fate of the nuclear arsenal held by the former republics of the Soviet Union.¹

In the Budapest Memorandum, Russia, the United States, and the United Kingdom committed to respect the independence and sovereignty of Ukraine and to refrain from the threat or use of force against the country.² The same countries confirmed their recognition of Ukraine becoming a party to the Treaty on the Non-Proliferation of Nuclear Weapons and effectively returning their nuclear arsenal to Russia.³ In the course of negotiations, United States officials indicated to their Ukrainian counterparts that if Russia violated the Budapest Memorandum, the United States would take a strong interest and respond, although the United States did not specify exactly what this response would look like.⁴

More precisely, the Budapest Memorandum provides six commitments for Russia, the United States, and the United Kingdom:

¹ Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>; Steven Pifer, *Why care about Ukraine and the Budapest Memorandum*, BROOKINGS, (Dec. 5, 2019) *available at* <https://www.brookings.edu/blog/order-from-chaos/2019/12/05/why-care-about-ukraine-and-the-budapest-memorandum/>.

² Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 2; Steven Pifer, *Why care about Ukraine and the Budapest Memorandum*, BROOKINGS, (Dec. 5, 2019) *available at* <https://www.brookings.edu/blog/order-from-chaos/2019/12/05/why-care-about-ukraine-and-the-budapest-memorandum/>.

³ Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clauses 4-5.

⁴ Steven Pifer, *Why care about Ukraine and the Budapest Memorandum*, BROOKINGS, (Dec. 5, 2019) *available at* <https://www.brookings.edu/blog/order-from-chaos/2019/12/05/why-care-about-ukraine-and-the-budapest-memorandum/>.

(i) The commitment to “respect the independence and sovereignty and the existing borders of Ukraine.”⁵

(ii) The commitment to “refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.”⁶

(iii) The commitment to “refrain from economic coercion designed to subordinate to their own interests the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind.”⁷

(iv) The commitment to “seek immediate United Nations Security Council action to provide assistance to Ukraine [. . .] if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.”⁸

(v) The commitment “not to use nuclear weapons against any non-nuclear-weapon state party to the Treaty on Non-Proliferation of Nuclear Weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear weapon state.”⁹

(vi) The commitment to “consult in the event a situation arises which raises a question concerning these commitments.”¹⁰

⁵ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 1.

⁶ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 2.

⁷ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 3.

⁸ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 4.

⁹ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 5.

¹⁰ Memorandum on security assurances in connection with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons, (Dec. 5, 1994), *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>, clause 6.

Although the Budapest Memorandum provided security assurances, Russia violated its commitment by invading and annexing Crimea during February and March 2014. However, Russia claims that it respected the terms of the Memorandum, on the basis that the annexation was conducted through a referendum.¹¹

As the annexation was ongoing, in early March 2014, the United States, United Kingdom, and Ukraine met in Paris pursuant to the sixth assurance to consult in the event that a question regarding the commitments arose.¹² Around the same time, the Security Council of the United Nations considered, but ultimately failed to adopt, a resolution that would reaffirm its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders.¹³ The Security Council resolution had garnered broad support, with 13 votes in favor, but was blocked from adoption due to a contrary vote by Russia and abstention by China.¹⁴ Following this outcome, the United Nations General Assembly considered and adopted a resolution condemning Russia's actions and calling upon states not to recognize Russia's attempt to change the status of Crimea.¹⁵

In 2016, acting contrary to the terms of the agreement, Russian Foreign Minister Sergey Lavrov claimed that Russia had not violated the Budapest Memorandum, stating “[the Budapest Memorandum] contains only one obligation - i.e. not to use nuclear weapons against Ukraine.”¹⁶ Subsequently, in 2022, Russia escalated its breach of the Budapest Memorandum, with its illegal invasion of

¹¹ This referendum was likely illegal and illegitimate. See John B. Bellinger, Jonathan Masters, *Why the Crimean Referendum is illegitimate*, Council on Foreign Relations, (Mar. 16, 2014), available at <https://www.cfr.org/interview/why-crimean-referendum-illegitimate>.

¹² See US Department of State, *U.S./U.K./Ukraine Press Statement on the Budapest Memorandum Meeting*, (Mar. 5, 2014), available at <https://2009-2017.state.gov/r/pa/prs/ps/2014/03/222949.htm>.

¹³ See United Nations Meetings Coverage and Press Release, *Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine's Crimea Region*, (Mar. 15, 2014), available at <https://press.un.org/en/2014/sc11319.doc.htm>.

¹⁴ See United Nations Meetings Coverage and Press Release, *Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine's Crimea Region*, (Mar. 15, 2014), available at <https://press.un.org/en/2014/sc11319.doc.htm>.

¹⁵ See United Nations Meetings Coverage and Press Releases, *General Assembly Adopts Resolution Calling Upon States Not to Recognize Changes in Status of Crimea Region*, (Mar. 27, 2014), available at <https://press.un.org/en/2014/ga11493.doc.htm>.

¹⁶ Embassy of the Russian Federation in Washington D.C., *Sergey Lavrov's remarks and answers to media questions at a news conference on Russia's diplomacy performance in 2015*, (Jan. 26, 2016), available at <https://web.archive.org/web/20160130031507/http://www.russianembassy.org/article/sergey-lavrov%E2%80%99s-remarks-and-answers-to-media-questions-at-a-news-conference-on-russia%E2%80%99s-dipl>.

Ukraine and the annexation of Donetsk, Luhansk, and parts of Zaporizhzhia, and Kherson.

Lessons Learned

The limited effect of the Budapest Memorandum can be attributed to a number of factors, one of which was the lack of enforcement mechanisms. The memorandum was not a binding treaty, and it was difficult to identify clear legal consequences for violating it. This meant that the signatories could make promises without an obligation to follow through. The lack of enforcement mechanisms was a major weakness of the memorandum, and undermined its credibility.

The Budapest Memorandum also faces difficulties in being understood and applied by its parties due to the language with which it was drafted. The Budapest Memorandum was drafted to be interpreted both as a treaty and as a political deal. In line with this approach, the drafting parties used ambiguous wording that neither specifies the nature of the agreement nor provides express language on whether the stipulated “security assurances” are a legally binding guarantee to provide military support.¹⁷

A further issue with the Budapest Memorandum was the lack of support from the international community. When Russia annexed Crimea in 2014, while signatories to the Budapest Memorandum took measures to condemn the action in line with their commitments under the agreement, the responses were arguably limited in their intent and effect.¹⁸ The lack of sufficient state action following Russia’s breach of the Budapest Memorandum illustrates the necessity for widespread support and commitment to international agreements in ensuring an agreement’s effectiveness and deterrent value.

The Minsk Accords

Minsk Protocol and Memorandum (‘Minsk I’)

¹⁷ Mykhailo Soldatenko, *Constructive Ambiguity of the Budapest Memorandum at 28*, LawFare, (Feb. 7, 2023), available at <https://www.lawfareblog.com/constructive-ambiguity-budapest-memorandum-28-making-sense-controversial-agreement>.

¹⁸ Aldo Zammit Borda, *Ukraine War: What is the Budapest Memorandum and why has Russia’s invasion torn it up*, The Conversation, (Mar. 2, 2022), available at <https://theconversation.com/ukraine-war-what-is-the-budapest-memorandum-and-why-has-russias-invasion-torn-it-up-178184>.

In the spring of 2014, international efforts commenced to prevent further escalation of Russian aggression in Ukraine.¹⁹ In June 2014, formal peace negotiations were initiated by the Presidents of France, Russia, Ukraine and the German chancellor (later described as the “Normandy Format”),²⁰ who discussed the situation in Ukraine during a meeting in Normandy.²¹

In August 2014, key Ukrainian and Russian officials held a meeting in Minsk to discuss a roadmap for peace prepared by the Ukrainian President (the “fifteen-point peace plan”).²² The meeting was attended by Ukrainian President Petro Poroshenko, Russian President Vladimir Putin, and Russian Foreign Minister Sergei Lavrov. At the time, Russia called for an immediate ceasefire in eastern Ukraine, but Ukraine expressed its desire to finish its “anti-terrorist operation” and regain lost territory in its entirety.²³ Follow-up discussions occurred in September 2014 and were also attended by representatives of the so-called Donetsk People’s Republic and the Luhansk People’s Republic.²⁴ The follow-up discussions focused on opening a dialogue, establishing a ceasefire, controlling the situation at the Ukrainian border, facilitating the release of persons detained during the conflict, and humanitarian aid.²⁵

Following the September 2014 meeting, the Ukraine, Russia, and the Organization for Security and Co-operation in Europe (often referred to as the “Trilateral Contact Group”) prepared the Minsk Protocol. The Minsk Protocol was signed on September 5, 2014, by representatives of the Organization for Security

¹⁹ Organization for Security and Co-operation, Special Monitoring Mission to Ukraine, *available at* <https://www.osce.org/special-monitoring-mission-to-ukraine-closed>.

²⁰ Notably, the United States has not been a part of the Normandy Format. However, an informal Russian American diplomatic track emerged later, in May 2015, between the American Assistant Secretary of State and the Russian Deputy Minister of Foreign Affairs. *See* Sabine Fischer, *The Donbas Conflict*, SWP, 13 (2019), *available at* https://www.swp-berlin.org/publications/products/research_papers/2019RP05_fhs.pdf.

²¹ The quadripartite relationship between France, Germany, Ukraine, and Russia has been described as “Normandy Format” or “Normandy Four.” *See, e.g.*, Institute for Peace Research and Security Policy Hamburg, *Yearbook on the Organization for Security and Co-operation in Europe (Organization for Security and Co-operation) 2014*, 31 (2015), *available at*

https://ifsh.de/file-CORE/documents/yearbook/english/14/4_DD_IFSH_OSCE_Yearbook_2014_1749-1_Freigabe.pdf. *See also* French Ministry for Europe and Foreign Affairs, *France’s position on the situation in Ukraine*, *available at* <https://www.diplomatie.gouv.fr/en/country-files/ukraine/situation-in-ukraine-what-is/>.

²² *Ukraine president Petro Poroshenko: Putin summit to decide fate of Europe*, *The Guardian*, (Aug. 26, 2014), *available at*

<https://www.theguardian.com/world/2014/aug/26/ukraine-vladimir-putin-petro-poroshenko-summit-solve-conflict>.

²³ *Ukraine president Petro Poroshenko: Putin summit to decide fate of Europe*, *The Guardian*, (Aug. 26, 2014), *available at*

<https://www.theguardian.com/world/2014/aug/26/ukraine-vladimir-putin-petro-poroshenko-summit-solve-conflict>.

²⁴ Press Release, Press statement by the Trilateral Contact Group, Organization for Security and Co-operation, (Sep. 2, 2014), *available at* <https://www.osce.org/home/123124>.

²⁵ Press Release, Press statement by the Trilateral Contact Group, Organization for Security and Co-operation, (Sep. 2, 2014), *available at* <https://www.osce.org/home/123124>.

and Co-operation, Ukraine, Russia, the Donetsk People’s Republic and the Luhansk People’s Republic.²⁶ The provisions enshrined in the Minsk Protocol sought to reach agreement between parties in regards to the cessation of hostilities, the settlement of the conflict, and security in the conflict zone and humanitarian issues.

More specifically, the Minsk Protocol called for the following measures from signatories to the agreement: (i) an Organization for Security and Co-operation-monitored ceasefire; (ii) an exchange of “all” hostages and illegally detained persons; (iii) a pullback of “armed formations,” military equipment, and mercenaries from Ukraine; (iv) the establishment of an Organization for Security and Co-operation-monitored “security zone” along the border; (v) amnesty for all persons involved in the events that happened in Donbas and Luhansk regions; and (vi) an economic reconstruction program for the Donbass region.²⁷

There were frequent violations of the terms of the Minsk Protocol by both sides in the two weeks following its signing.²⁸ These violations led the signatories to the Minsk Protocol to negotiate and sign a follow-up memorandum (the “Minsk I Memorandum”) imposing various additional conditions to the Minsk Protocol on September 19, 2014.²⁹ The Minsk I Memorandum reiterated the requirement to cease fire and withdraw heavy weapons. It banned landmines and drones, except Organization for Security and Co-operation drones, and reiterated the call for foreign troops to be withdrawn as monitored by Organization for Security and Co-operation. The Minsk I Memorandum also attempted to delineate the borderline of the conflict zone, envisaging a 30 km security zone at the borderline of the conflict zone in Eastern Ukraine. However, the Minsk I instruments failed to resolve major points of contention between Russia and Ukraine.³⁰

²⁶ Organization for Security and Co-operation in Europe, *Protocol on the outcome of consultations of the Trilateral Contact Group regarding joint steps aimed at implementation of the Peace Plan of the President of Ukraine P. Poroshenko and the initiatives by the President of the Russian Federation, V. Putin, 5 September 2014*, (Sep. 5, 2014), available at <https://www.osce.org/files/f/documents/a/a/123258.pdf>.

²⁷ Organization for Security and Co-operation in Europe, *Protocol on the outcome of consultations of the Trilateral Contact Group regarding joint steps aimed at implementation of the Peace Plan of the President of Ukraine P. Poroshenko and the initiatives by the President of the Russian Federation, V. Putin, 5 September 2014*, (Sep. 5, 2014), available at <https://www.osce.org/files/f/documents/a/a/123258.pdf>.

²⁸ *Ukraine deal with pro-Russian rebels at Minsk talks*, BBC, (Sept. 20, 2014), available at <https://www.bbc.com/news/world-europe-29290246>.

²⁹ Press Release, Memorandum on stabilizing ceasefire another important step towards de-escalation, Organization for Security and Co-operation Chairperson-in-Office says, Organization for Security and Co-operation, (Sept. 20, 2014), available at [osce.org/cio/123808](https://www.osce.org/cio/123808).

³⁰ Organization for Security and Co-operation, *Memorandum of 19 September 2014 outlining the parameters for the implementation of commitments of the Minsk Protocol of 5 September 2014*, (Sep. 19, 2014), available at <https://www.osce.org/home/123806>; See also *Ukraine crisis: Nato top general says truce ‘in name only’*, BBC News, (Sep. 21, 2014), available at <https://www.bbc.com/news/world-europe-29299092>.

Analysis

There are a number of issues with both the Minsk Protocol and the ensuing Minsk I Memorandum, centered around the cessation of hostilities, the settlement of the conflict, and security in the conflict zone and humanitarian issues.

Regarding the cessation of hostilities, the Minsk Protocol was insufficient because it did not describe how exactly the cessation of hostilities would occur. The Minsk I Memorandum sought to address these deficiencies by restating the requirement of withdrawal of heavy weapons to the maximum firing range, the creation of a 30-kilometer security zone, and the prohibition of offensive operations, combat aircraft, and new minefields.³¹ Despite these clarifications within the Minsk I Memorandum, the fighting intensified in certain areas of the Donetsk region of Ukraine at the end of 2014, with the number of regular Russian troops reportedly rising to approximately 10,000 in mid-December 2014.³²

Regarding the settlement of the conflict, Russia was able to destabilize Ukraine through provisions within the Minsk Protocol allowing for the “decentralization of power, including by enacting the law of Ukraine on the interim status of local self-government in certain areas of the Donetsk and Luhansk regions.”³³ The Minsk Protocol also provided that Ukraine was to hold local elections on the interim status of self-government in Donetsk and Luhansk. Pursuant to the Minsk Protocol, the Ukrainian Parliament adopted the “Law on the special procedure for a local self-administration in certain districts of the Donetsk and Luhansk regions” (the “Law on Special Status”) on September 16, 2014.³⁴ This law was aimed at providing a temporary framework for the governance of certain areas in the Donetsk and Luhansk regions, granting the regions a special status which would allow them to have their own elected officials and to establish their

³¹ Organization for Security and Co-operation in Europe, *Protocol on the outcome of consultations of the Trilateral Contact Group regarding joint steps aimed at implementation of the Peace Plan of the President of Ukraine P. Poroshenko and the initiatives by the President of the Russian Federation, V. Putin, 5 September 2014*, (Sep. 5, 2014), available at <https://www.osce.org/files/f/documents/a/a/123258.pdf>, arts. 3, 4, 6, and 7.

³² *Invisible army: the story of a Russian soldier sent to fight in Ukraine*, THE GUARDIAN, Mar., 25, 2015, available at <https://www.theguardian.com/world/2015/mar/25/russia-ukraine-soldier>.

³³ United Nations, *Protocol on the outcome of consultations of the Trilateral Contact Group on joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of the Russian Federation, V. Putin, Annex I to the letter dated 24 February 2015 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council*, (Sep. 19, 2014) available at

https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140905_MinskCeasfire_en.pdf.

³⁴ Law on the special procedure of local self-administration in individual districts in Ukraine's Donetsk and Luhansk provinces, (Ukraine, 2014), available in Ukrainian at <https://zakon.rada.gov.ua/laws/show/1680-18#Text>.

own local councils.³⁵ As part of the implementation of the Special Status Law, local elections were scheduled to take place in separatist parts of Donetsk and Luhansk regions on December 7, 2014.³⁶ In violation of this newly adopted Ukrainian law, the separatists groups organized their own local elections on November 2, 2014. These local elections were not recognized by the Ukrainian government or the international community, and the results were widely criticized as being illegitimate and unrepresentative.

Regarding security in the conflict zone, the Minsk I Memorandum clarified some remaining ambiguities within the provisions of the Minsk Protocol, and specified that the Organization for Security and Co-operation mission would monitor the implementation of the provisions. Specifically, the Minsk I Memorandum reiterated the requirement that signatories pull back foreign armed formations, militants and mercenaries from the territory of Ukraine. These clarifications to the provisions on security in the conflict zone resulted in a significant decrease in the numbers of military and civilian deaths in the conflict zone.³⁷ The broader success of the Minsk I Memorandum, however, remained inconclusive.

Lessons Learned

By January 2015, the Minsk Protocol and Minsk I Memorandum had failed, with both sides blaming each other for continued fighting in the disputed regions.³⁸ One of the main failures of the Minsk Protocol and Minsk I Memorandum was that they provided no clarity on the modalities of the elections, the status of the regions at issue within the Ukraine and the timing for returning full control of the border between Eastern Ukraine and Russia to Kyiv. Ukraine argued that it could not fulfill the political conditions until the ceasefire was permanent, while Russia and the separatists called for the political and security provisions to be implemented in parallel. Russia took advantage of this ambiguity to push forward the separatist agenda in an effort to further destabilize Ukraine.

³⁵ See Press Release, *So-called elections not in line with Minsk Protocol, says OSCE Chair, calling for enhanced efforts and dialogue to implement all commitments*, OSCE, (Oct. 31, 2014), available at <https://www.osce.org/cio/126242>.

³⁶ *Ukraine's parliament passes a special act for Donbas*, Center for Eastern Studies, (Sept. 17, 2014), available at <https://www.osw.waw.pl/en/publikacje/analyses/2014-09-17/ukraines-parliament-passes-a-special-act-donbas>.

³⁷ Konstantin Zadiraka, *Minsk Agreements: history, interests, prospects*, Commons, (Feb. 11, 2016), <https://commons.com.ua/ru/minski-ugodi-istoriya-interesi-perspektivi/>.

³⁸ The Guardian, *Ukraine forces admit loss of Donetsk airport to rebels*, (Jan. 21, 2015), available at <https://www.theguardian.com/world/2015/jan/21/russia-ukraine-war-fighting-east>.

The legitimacy of the Minsk I instruments was also challenged by the reality that the documents were not signed by the leaders of states, and not even by the heads of government agencies. For Ukraine, it was the former president (although the Ukrainian Foreign Ministry confirmed his rights as an official envoy). For Russia, it was one of the Russian ambassadors. For the Eastern Ukraine regions, they were the self-proclaimed leaders of the so-called Donetsk People's Republic and the Luhansk People's Republic.

The Minsk I instruments ultimately failed to resolve major points of contention between Russia and Ukraine. Initially, the Minsk Protocol contained no clarity as to how or when monitoring by the Organization for Security and Co-operation would take place, the definition of an unlawful armed group and who applied, and in what sequence the provisions it outlined would take effect. While the Minsk I Memorandum clarified some of these ambiguities, security issues persisted in the conflict zone regardless following the implementation of both the Minsk Protocol and the Minsk I Memorandum.³⁹

'Minsk II'

The World Economic Forum in Davos held in January 2015 provided an opportunity to reopen dialogue following Minsk I between Ukraine, Russia, and the other international stakeholders involved. At this forum, the Ukrainian President Petro Poroshenko highlighted that a large number of Russian troops were in Ukraine and that it was up to Russia to end the war.⁴⁰ Another round of meetings was scheduled and the Trilateral Contact Group met in Minsk. However, meetings were adjourned with no result when the so-called Donetsk People's Republic and the Luhansk People's Republic representatives indicated that they were no longer interested in discussing a ceasefire and asked for a revision of the Minsk Protocol and the Minsk I Memorandum.⁴¹

In February 2015, the so-called Normandy Four (Russia, Ukraine, Germany and France) met to discuss a new peace plan put forward by the French President and the German Chancellor.⁴² After extensive negotiations overseen by the

³⁹ Konstantin Zadiraka, *Minsk Agreements: history, interests, prospects*, Commons, (Feb. 11, 2016), available at <https://commons.com.ua/ru/minski-ugodi-istoriya-interesi-perspektivi/>.

⁴⁰ The Guardian, *Ukraine forces admit loss of Donetsk airport to rebels*, (Jan. 21, 2015), available at <https://www.theguardian.com/world/2015/jan/21/russia-ukraine-war-fighting-east>.

⁴¹ Press Release, *Statement by the Chairmanship on the Trilateral Contact Group consultations in Minsk on Jan. 31, 2015*, OSCE, (Feb. 1, 2015), available at <https://www.osce.org/cio/138331>.

⁴² *Ukraine crisis: 'Last chance' for peace says Hollande*, BBC News, (Feb. 7, 2015), available at <https://www.bbc.com/news/world-europe-31185027>.

Organization for Security and Co-operation, the Minsk II agreement was signed by the Normandy Four on February 12, 2015.⁴³ The agreement mandated an immediate ceasefire and the withdrawal of all heavy weaponry starting from February, 15 2015 in order to create a “security zone.”⁴⁴ The Minsk II agreement built upon the provisions of the Minsk Protocol, outlining the necessary steps to implement those provisions in detail and indicating a clear time frame and sequence for their implementation. One of the primary substantive differences between the Minsk II agreement and the Minsk I agreement related to the security provisions. Minsk II included several new security-related measures and clarifications on constitutional amendment, including:

(i) *The withdrawal of heavy weapons:* The Minsk II agreement considered further and in greater detail the types of weapons that needed to be withdrawn and when the withdrawal should occur. This included tanks, artillery, and multiple types of rocket launchers. The withdrawal was stipulated to begin no later than two days after the agreement was signed and be completed within two weeks.

(ii) *The creation of a security zone:* The Minsk II agreement established a security zone of at least 50 kilometers wide on each side of the contact line. The security zone was required to be free of heavy weapons and other military equipment.

(iii) *Monitoring and verification:* Minsk II more clearly defined the Organization for Security and Co-operation supervision, and the Organization for Security and Co-operation was tasked with monitoring and verifying the implementation of the security measures. This included monitoring the requirements relating to the withdrawal of heavy weapons and ensuring the security zone remained free of military equipment.

(iv) *Ceasefire:* The Minsk II agreement called for an immediate and comprehensive ceasefire to be implemented by all parties. The ceasefire was supposed to begin no later than on February 15, 2014.

⁴³ *Ukraine crisis: Leaders agree peace roadmap*, BBC News, (Feb. 12, 2015), available at <https://www.bbc.com/news/world-europe-31435812>.

⁴⁴ Andrew Lohsen and Pierre Morcos, *Understanding the Normandy Format and Its Relation to the Current Standoff with Russia*, Center for Strategic & International Studies, (Feb. 9, 2022), available at <https://www.csis.org/analysis/understanding-normandy-format-and-its-relation-current-standoff-russia>.

(v) *Constitutional Amendments*: Ukraine committed to carrying out a series of constitutional amendments that would provide for decentralization of power and greater autonomy for the Donetsk and Luhansk regions. The agreement stated that the Ukrainian government should adopt a new law on local self-government, which would provide for the establishment of elected councils and mayors in the Donetsk and Luhansk regions. This stipulation expanded and provided greater detail to the relevant requirements relating to the Donetsk and Luhansk regions under Minsk I. Under Minsk I, Ukraine committed to adopting a new law on the special status of certain areas of Donetsk and Luhansk regions which would provide for greater autonomy for these areas. The Minsk I agreement did not, however, specify the nature of the constitutional amendments that Ukraine should carry out.

(vi) *General amnesty*: Ukraine committed to enact a law that forbade persecution and punishment of persons in relation to events that took place in Donbas and Luhansk regions (with the exception of person who had committed war crimes).

Lessons Learned

Despite the more precise nature of the Minsk II agreement that followed Minsk I, this agreement similarly failed to ensure either side upheld the requirements of a ceasefire or the withdrawal of all heavy weapons. Representatives of each side have accused the other of violations, and Organization for Security and Co-operation observers published regular summaries of violations.⁴⁵

Minsk II included far-reaching legislative change in Ukraine. This included changes to the constitution itself and measures giving the Donetsk People's Republic and the Luhansk People's Republic special status, which are viewed by certain parties as violating Ukraine's sovereignty and granting Russia a lasting presence in Ukraine's political system.⁴⁶ It also required Ukraine to enact a new law, granting general amnesty to militants who did not commit war crimes but were involved in the events that took place in Donbas and Luhansk regions, which

⁴⁵ See, e.g., OSCE, *July – September 2021 Trends and observations from the Special Monitoring Mission to Ukraine*, (Nov. 17, 2021), available at <https://www.osce.org/files/f/documents/d/2/504538.pdf>.

⁴⁶ Russia would potentially have the ability to establish military bases in the regions of Ukraine controlled by the Donetsk People's Republic and the Luhansk People's Republic without any agreement by Ukraine's central government. See Olexsij Haran and Petro Burkovsky, *Ukraine After the Minsk Agreements*, in *What Does Ukraine Think* 17, 23 (Andrew Wilson ed., 2015), available at https://ecfr.eu/wp-content/uploads/WHAT_DOES_UKRAINE_THINK_pdf.pdf.

took the lives of at least 14,000 Ukrainian citizens between 2014 and 2022.⁴⁷ Thus, a key issue of the Minsk II agreement was the unpopularity of its terms among the Ukrainian population. Many Ukrainian people see the Minsk Accords as a “Russian imposition that the Ukrainian leadership was forced to accept in a moment of military weakness,” whose implementation would deeply affect the stability and integrity of Ukraine.⁴⁸ On August 31, 2015, when President Poroshenko put to the Ukrainian Parliament a draft law amending the constitution in favor of more decentralization, rioting in Kyiv led to the deaths of four law enforcement officers, despite the fact that the draft did not refer to the special status for the so-called Donetsk People's Republic and the Luhansk People's Republic.⁴⁹

More generally, in regard to the Minsk Accords, it is worth highlighting that they have no express language specifying which actors should implement their provisions. Specifically, although the Minsk Accords were signed by Russia's representative, Russia treats the accords as if they are of an unclear international legal status and as though it is not a party to the agreements.⁵⁰ On this basis, it has been argued the agreements are political accords designed to facilitate a political process for resolving the dispute.

Follow-on Efforts

To address the challenges and failures in the implementation of the Minsk Accords, France and Germany put forward alternative plans which proposed a different approach to sequencing and implementation of the Accords – all without success.

Morel Plan

One plan – the “Morel Plan” – was proposed by France in October 2015.⁵¹ The Morel Plan envisioned the passage of a special law by the Ukrainian

⁴⁷ *Kyiv's Mixed Messaging Is Rooted in Domestic Worries*, Foreign Policy, (Feb. 8, 2022), available at <https://foreignpolicy.com/2022/02/08/ukraine-russia-mixed-messaging/>.

⁴⁸ Sabine Fischer, *The Donbas Conflict*, SWP Berlin, 13, (2019), available at https://www.swp-berlin.org/publications/products/research_papers/2019RP05_fhs.pdf.

⁴⁹ OHCHR, *Accountability for killings in Ukraine from January 2014 to May 2016*, 3, (May 2, 2014), available at https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf.

⁵⁰ Center for European Policy Analysis, *Don't Let Russia Fool You About the Minsk Agreements*, (Dec. 16, 2021), available at <https://cepa.org/article/dont-let-russia-fool-you-about-the-minsk-agreements/>.

⁵¹ Mathieu Boulègue, *Les perspectives politiques et militaires des accords de Minsk 2*, Fondation Pour La Recherche Strategique, available at https://www-frstrategie-org.translate.goog/publications/notes/perspectives-politiques-militaires-accords-minsk-2016?_x_tr_sl=fr&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc.

Parliament in Kyiv, allowing elections to take place in the so-called Donetsk People's Republic and the Luhansk People's Republic in accordance with Ukrainian law. However, the plan offered the possibility for the so-called Donetsk People's Republic and the Luhansk People's Republic to stage these elections according to their own local rules, and without withdrawal of heavy weapons and foreign troops from the separatist regions, and was therefore criticized by Kyiv.⁵²

Steinmeier Formula

In October 2015, Frank-Walter Steinmeier, former Minister for Foreign Affairs of Germany, proposed a mechanism for implementing the Minsk Accords, commonly known as the “Steinmeier Formula.”⁵³ While not a legal act, the Steinmeier Formula called for elections to be held in the temporarily occupied territories of Luhansk and Donetsk under Ukrainian legislation and with supervision by the Organization for Security and Co-operation in Europe. After the holding of free and fair elections, a special self-governing status for the territories would be initiated. Ukraine signed onto the Steinmeier Formula, but maintained that elections would only be held: (i) under Ukrainian legislation and (ii) after Russian forces withdrew and Ukraine regained control of the border.

On October 1, 2019, it was announced that a modified version of the Steinmeier formula had been agreed upon by members of the Trilateral Contact Group (Ukraine, Russia and the Organization for Security and Co-operation in Europe).⁵⁴ Under this modified approach, elections would be held in the territories prior to their reintegration into Ukraine (rather than after, as was proposed under the original formula) and that such elections would take place under the observation of the Organization for Security and Co-operation in Europe.⁵⁵ After the agreement was signed, Ukrainian and separatist troops began withdrawing and the sides exchanged hostages.⁵⁶

⁵² UNIAN Information Agency, *Ukraine views Morel's plan as his personal opinion - Poroshenko*, (Sept. 9, 2015), available at

<https://www.unian.info/politics/1129284-ukraine-considers-morels-plan-as-his-personal-opinion-poroshenko.html>.

⁵³ Vladimir Socor, *Steinmeier's Formula: Its Background and Development in the Normandy and Minsk Processes*, *The Jamestown Foundation*, (Sept. 24, 2019), available at

<https://jamestown.org/program/steinmeiers-formula-its-background-and-development-in-the-normandy-and-minsk-processes-part-one/>.

⁵⁴ *Members of the Trilateral Contact Group (TCG) on Ukraine have signed the document containing the Steinmeier Formula*, OSCE, (Oct. 1, 2019), available at <https://www.osce.org/chairmanship/434384>.

⁵⁵ Par Luc de Barochez, *Percée dans les pourparlers de paix en Ukraine*, LE POINT INTERNATIONAL, (Oct. 2, 2019), available at https://www.lepoint.fr/monde/percee-dans-les-pourparlers-de-paix-en-ukraine-02-10-2019-2339038_24.php.

⁵⁶ Euronews, *Ukraine and Russian-backed rebels begin troop withdrawal in eastern regions*, (Nov. 9, 2019), available at

Peace talks resumed and a Normandy Format summit took place on December 9, 2019. However, the negotiations have failed to generate any peace agreement. In February 2022, prior to Russia's invasion of Ukraine, President Putin sent his envoy, Dmitry Kozak, to Ukraine to negotiate a potential peace agreement. However, the draft agreement did not go far enough to appease President Putin, as it did not include the annexation of the disputed territories.⁵⁷ Ukrainian officials have voiced that they perceived this negotiation attempt as a sham to prepare for the imminent invasion.⁵⁸

Recent Proposals for Peace

Since the 2022 invasion, there have been various unsuccessful attempts to reestablish peace between the two countries. In 2022, Ukraine has proposed several plans for peace, including a ten-step peace plan put forward by President Zelensky at the G20 Summit in November 2022.⁵⁹ In light of the legal ambiguities in the Budapest Memorandum and Minsk Accords, the ten-step plan calls for a more clearly legally binding agreement in the form of the Kyiv Security Compact.⁶⁰

Throughout 2022, the Turkish President, Recep Tayyip Erdogan, has also attempted to facilitate negotiations between Russia and Ukraine, attempting to use its relatively neutral position given Turkey's political and economic ties with both Ukraine and Russia.⁶¹

In late February 2023, China released a position paper that called for a ceasefire and the reignition of peace negotiations between Russia and Ukraine

<https://www.euronews.com/my-europe/2019/11/09/ukraine-and-russian-backed-rebels-begin-troop-withdrawal-in-eastern-regions>.

⁵⁷ *Exclusive: As war began, Putin rejected a Ukraine peace deal recommended by aide*, Reuters, (Sept. 14, 2022), available at

<https://www.reuters.com/world/asia-pacific/exclusive-war-began-putin-rejected-ukraine-peace-deal-recommended-by-his-aide-2022-09-14/>.

⁵⁸ *Exclusive: As war began, Putin rejected a Ukraine peace deal recommended by aide*, Reuters, (Sept. 14, 2022) available at

<https://www.reuters.com/world/asia-pacific/exclusive-war-began-putin-rejected-ukraine-peace-deal-recommended-by-his-aide-2022-09-14/>.

⁵⁹ *The 10-point Peace Plan Proposed by Ukraine*, Straits Times, (Nov. 16, 2022), available at

<https://www.straitstimes.com/world/europe/the-10-point-peace-plan-for-ukraine-proposed-by-zelensky>.

⁶⁰ *Co-Chairs of the Working Group on International Security Guarantees for Ukraine*, The Kyiv Security Compact, (Sept. 13, 2022), available at

https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf.

⁶¹ Fatma Tanis, *Turkey is friendly with both Russia and Ukraine. Now it wants them to talk peace*, NPR, (Nov. 16, 2022), available at <https://www.npr.org/2022/11/16/1136473400/turkey-russia-ukraine-peace>.

which outlines a twelve-point approach to peace negotiations.⁶² China's position paper has faced criticism from Western commentators, who believe that there are discrepancies between China's relationship with Russia and its relationship with Ukraine, including a relative lack of communication with Ukrainian officials, despite clear communication with Russia.⁶³

Conclusion

Past agreements and efforts to establish peace between Ukraine and Russia provide important insights and words of warning for future attempts to develop an effective peace agreement. This document outlines the substance, and several key failings of, recent past agreements, including the Budapest Memorandum, Minsk I and II. This document also outlines follow-up efforts to implement these agreements via the Morel Plan and Steinmeier Formula, as well as introducing several of the attempts to establish peace since Russia's invasion of Ukraine in February 2022.

⁶² Ministry of Foreign Affairs of the People's Republic of China, *China's Position on the Political Settlement of the Ukraine Crisis*, (Feb. 24, 2023), available at https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202302/t20230224_11030713.html.

⁶³ Frank Ching, *China says its neutral on the Russia-Ukraine war; but is it?*, Japan Times, (Mar. 8, 2023), available at <https://www.japantimes.co.jp/opinion/2023/03/08/commentary/world-commentary/china-ukraine-war-2/>.

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