Revisiting the Minsk II Agreement

The Art and Statecraft of Russian-brokered Cease-fires

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Executive Summary

A strategic pattern has emerged whereby Russia, as a perpetrator of and party to a conflict, dictates the conditions of the cease-fire, and then actively pursues the violation of the same agreement for its own political, military, and territorial gain. This serves a dual function: it undermines the international legal norm of cease-fires and provides a diplomatic “process” whereby eventually the international community loses interest and focus in resolving the conflict, allowing the freeze to be controlled by the Kremlin.

This is the pattern that Russia followed in efforts to broker and frame the outcome in South Ossetia and Abkhazia during the August 2008 Russian-Georgian conflict. Eight years after Russian forces crossed into Georgian territory, its military still occupies roughly 20 percent of Georgia’s internationally recognized territory, continues to build military infrastructure, regularly blocks international monitors from inspecting the area, and occasionally orchestrates destabilizing activities across the border. The parties involved in the Geneva process—a diplomatic process established by the international community to resolve the conflict between Georgia and Russia—has not produced comprehensive results after 36 negotiating rounds, although it is the only venue for the parties to the conflict to engage in discussion. Russia’s creeping expansion onto Georgia’s sovereign territory and the lack of consequences associated with it was further accelerated during the spring of 2016, when Leonid Tibilov, a former KGB officer and current leader of South Ossetia, announced that a referendum regarding South Ossetia’s potential accession into the Russian Federation will be held within the near future. This flawed process, drafting a cease-fire agreement on Moscow’s terms that Moscow then violates, should be seen as a valuable lesson for Europe as the armed conflict in eastern Ukraine enters its third year.

The Minsk II cease-fire—which was the second attempt to secure a cease-fire over the conflict in eastern Ukraine in February 2015 after the Minsk I cease-fire failed—has not been effective as on average, hundreds of daily violations occur with increasing attacks on Organization for Security and Cooperation in Europe (OSCE) officials who are monitoring the cease-fire. Despite initially providing significant stability on the ground and decreasing both civilian and military casualties, many of the gains are currently at risk of being rolled back due to escalated fighting on both sides but sparked mainly by the Russian-supported separatist forces inside the Donetsk People’s Republic (DPR) and Luhansk People’s Republic (LPR). After reviewing almost a year of data from the daily reports from the battlefield, provided by the OSCE Special Monitoring Mission (SMM) in Ukraine, intense shelling on both sides of the dividing line, extrajudicial killings, extensive use of heavy weaponry, frequent restrictions of and attacks on the movement of SMM personnel, as well as continued Ukrainian border violations by Russian forces—in violation of the Minsk II accords—are ongoing.

The extent and details of the cease-fire violations are compelling. From September 1, 2015, to April 20, 2016, 52,267 shots had been fired and 38,843 explosions and shellings had occurred in Donbas since the cease-fire was reaffirmed. In total, 6,334 separate instances of
observed cease-fire violations have occurred since September 1, 2015, out of a total of 9,231 since May 2015, with significant peaks of violence observed in February (1,086 instances) and March (1,500) during 2016. These levels far exceed those previously reported as dangerously high in August (971 instances) as well as November (616) last year. According to monitors at OSCE, roughly 90 percent of all breaches of the cease-fire have occurred within separatist-controlled areas.

In addition, SMM monitors have been blocked from entering and inspecting key territory in Donbas on at least 411 separate occasions, with several instances reported of shots directly fired against monitors or their vehicles. According to OSCE’s own estimations, almost all such incidents have occurred within separatist-controlled territory, despite repeated claims from Russia that it is using its leverage to pressure separatists not to fire or threaten SMM personnel. Overall, this suggests that although the accord may have prevented attempts to seize territory across the line of contact, any withdrawal remains deeply questionable.

At least 1,200 individuals have been killed due to the armed conflict during the last eight months, generating a total loss of 9,404 people killed and 21,671 injured since the conflict erupted in mid-April 2014, with an additional 1,000 still missing. Cases of torture and forced disappearances have also been reported on both sides. For civilians, the humanitarian situation remains dire, with an estimated 3.1 million people in need of humanitarian support, lacking infrastructure or access to basic services inside Luhansk and Donetsk, and with 1.7 million people having been internally displaced by the fighting and an additional 1.1 million having sought refuge inside neighboring countries.

For Ukraine, the Minsk II cease-fire accord, negotiated after the Minsk I cease-fire failed, remains the least-bad option for now. The sequencing of the 13 cease-fire provisions articulated in Minsk II is deeply flawed and remains open for contradictory interpretations by the main parties, allowing Russia to blame the lack of progress on Ukraine while continuing to destabilize it from within. At the same time, the existence of Minsk II as a blueprint for peace is far better than having no roadmap at all and it is also clear that the accords currently constitute the only diplomatic accommodation that brings the involved parties to the table.

However, it should be clear that moving from conducting full-fledged warfare to designing a medium-intensity conflict is too far away from a credible cease-fire and should not be interpreted as a stumbling first attempt to deescalate. It is merely a long-term strategy aiming to draw Ukraine back into its old sphere of influence and the implementation phase of Minsk can therefore only depart from de-escalation before decentralization.

One of the 13 cease-fire provisions, creating conditions for implementing local elections in eastern Ukraine, is currently unfeasible. The notion of conducting something close to free and fair elections in the battle-ridden Donbas area—where freedom of information in the separatist-controlled zones is as limited as the access to basic infrastructure and political diversity—is unrealistic at best; especially since about half of its electorate has been forcibly displaced by the prolonged conflict. Establishing conditions for local elections will take time and can only start once the vulnerable citizens of Luhansk and Donetsk have experienced a credible period of peace and security and once conditions meeting OSCE Office for Domestic Institutions and Human Rights (ODIHR) standards are in place. Neither Washington
nor Brussels should waste time by discussing possible ways to design local elections that seek to bypass this reality, achieving political normalization merely on paper.

The four parties to the cease-fire, Ukraine, Russia, Germany, and France—the Normandy Format—as well as the Trilateral Contact Group (Ukraine, Russia, and the OSCE) have generated some gains in terms of agreements on mine clearance in specific areas along the contact line, banning military exercises on both sides of the dividing line to avoid provocations, as well as a successful swapping (largely symbolic) of selected prisoners of war. Yet the process has largely stagnated and so have the prospects of reaching a comprehensive cease-fire. As a new Ukrainian prime minister and cabinet attempt to secure the next International Monetary Fund (IMF) bailout loan, realities on the ground are turning sour as the conflict continues to spiral out of control.

This report identifies nine actionable steps, both long term and short term, for U.S. and EU policymakers to consider in order to recognize what end-state Russian cease-fires seek and to avoid further escalation of a conflict that soon will have cost more than 10,000 lives in Europe. There is a substantial risk that Moscow will continue to bleed out Kiev under the auspices of these prolonged talks, which over time will stagnate reform efforts and consolidate conditions for a frozen conflict beyond Western influence.

Policy Recommendations

Strategic Goals

• *De-escalation enables decentralization, not the other way around.* Washington and Brussels must enforce a firm and consistent line with Moscow, underlining that a genuine and complete cessation of hostilities in Donbas is a prerequisite for moving forward with the Minsk accords. Maintaining such a position on all levels is the only instrument that can reshape the Kremlin’s long-term calculus and provide a window for a more constructive and credible implementation of the cease-fire agreement.

• *The EU must thoroughly examine its current sanctions regime against Russia in its mid-October review and consider increasing sanctions for increased cease-fire violations.* Assuming that the European Union will extend sanctions for another six months, there are numerous discussions that the sanctions are not working. Orchestrating attacks and providing military equipment on a daily basis, blocking monitors from accessing key sites inside rebel-hold territory, moving back heavy weaponry along the dividing line, banning international NGOs working to improve the humanitarian situation—these factors have all developed for the worse during the last six months because the Kremlin still sees it as a successful strategy. The EU must send a clear signal that such behavior is unacceptable and that Russia’s manufactured crisis in eastern Ukraine will bare consequences. A decision to lift existing sanctions or propose a step-by-step approach instead of full implementation would only validate Russia’s military adventurism as a successful foreign policy instrument with relatively few costs associated with it.
• Make the Ukraine-EU Deep and Comprehensive Free Trade Agreement (DCFTA) a success. Despite a palpable lack of appetite for membership expansion, the European Union must not lose sight of its articulated ambitions with regards to the financial and political integration of Ukraine, being one of the frontrunners within the Eastern Partnership framework. The DCFTA has already been provisionally applied and provides a long-term path for Kiev to diversify its exports and make the country more competitive. Ongoing steps to gradually cut tariffs, mutually open markets for goods and services, and bring Ukraine’s rules in line with the European Union’s on certain industrial and agricultural products must continue, with the aim of long-term harmonization.

Specific Policy Objectives

• Maintain financial and political support to the Ukrainian reform process. Despite being equipped with a less technocratic and more fragile cabinet, Kiev remains invested in fulfilling the International Monetary Fund’s (IMF’s) conditions and implementing key reforms. Washington and Brussels should especially press Poroshenko to deliver on privatizing and reforming the energy sector, cleaning up the general prosecutor’s office, strengthening judicial independence, and streamlining bureaucracy to improve Ukraine’s business climate. All efforts must be made to prevent this process from stagnating. In private, they should also press him to distance himself from the grey cardinals, working behind the scenes in the Verkhovna Rada (Ukraine’s Parliament), who seeks to suppress this development, no matter how painful. Public trust is rapidly eroding, so the process needs to move forward without old alliances and populistic temptations standing in the way.

• Washington and its partners within the Normandy format must realize that the conditions for implementing local elections in Donbas are currently not there and will take time to cultivate. What can only be described as a milieu formed by fear, obedience, and a complete lack of political pluralism, establishing conditions that will meet OSCE/ODIHR standards will not materialize any time soon. Given that almost half of the electorate has been forcefully displaced by the conflict, a legitimate election must also establish secure channels where Ukrainian internally displaced persons (IDPs) and refugees are allowed to participate, several months in advance. Instead of ignoring this reality, a start would be to substantially increase humanitarian aid to the United Nations High Commissioner for Refugees (UNHCR) and impose further pressure on Kremlin to allow other UN agencies to access rebel-held territory.

• Make full use of the limited momentum inside the Normandy Format to pursue more concrete deliverables. After successfully negotiating the exchange of Ukrainian pilot Nadiya Savchenko in return for two Russian Spetsnaz officers, Berlin and Paris should continue to engage the parties constructively to explore if similar confidence-building measures can be implemented in the ongoing discussions about mine clearance and swaps of prisoners. If successful, parties should encourage the negotiators in Kiev and Moscow to possibly broaden the scope of such discussions.
• The Joint Centre for Control and Coordination (JCCC) must start to assume the responsibilities assigned to it. The JCCC could play a key role in reducing attacks on OSCE monitors and to strengthen its effectiveness would provide a vital tool for all parties involved toward reaching stabilization and normalization on the ground. Discussions within the Trilateral Contact Group should focus on addressing those challenges.

• More bases for the Special Monitoring Mission are needed, especially in areas not controlled by the government. Current undertakings to beef up personnel and their surveillance capabilities provide a step in the right direction but must be accompanied by credible reassurances from the separatists in control of those locations.

• Washington and Brussels should encourage Kiev to take additional steps in facilitating the safe movement of civilians and commercial goods across the dividing line. If local security conditions allow for it, more check points must be established along rebel-held territory and existing ones should be equipped with more mine-awareness signs to avoid further civilian casualties. Recent closure of several checkpoints has forced thousands of people to make dangerous detours to access basic services.
Introduction

The first anniversary of the Minsk II cease-fire agreement, agreed to on February 12, 2015, has come and gone. The realities on the ground within the heavily disputed Donbas region illustrate that, while full-scale battles in eastern Ukraine have subsided, use of heavy weaponry and harassment of Organization of Security and Cooperation in Europe (OSCE) monitors have certainly not ceased. On the contrary, as the armed conflict enters its third year, the last five months have been characterized by a significant uptick in cease-fire violations in the Donetsk People’s Republic (DPR) and Luhansk People’s Republic (LNR)—indicating an increasing appetite for renewed military confrontation by separatist forces and their Russian backers.

Spiraling backwards, the modest progress described during last fall (especially after parties reaffirmed their commitment to Minsk II on September 1, 2015)—reducing the number of victims, both military and civilian, as well as withdrawing heavy weapons from the dividing line—have been rolled back significantly, with documented levels of violence not observed since August 2014. This applies additional pressure on Kiev at a particularly fraught moment for the government, fighting populist tendencies inside the Verkhovna Rada to deliver on reforms and appease the decreasing patience of its international creditors.

Although Moscow (and some European countries) hopes that EU sanctions will be lifted over time, events on the ground in eastern Ukraine, as outlined in this report, make this a difficult claim to make.

Are Russian-negotiated cease-fires really designed to end conflict or are they merely a method to freeze an optimal situation in the eyes of the Kremlin? Are there lessons from how the international community handled Russia’s military expansion after the war in Georgia during 2008? At what point does a cease-fire agreement, so frequently violated and deeply flawed, in fact become a failed one? Is this diplomatic process allowing for Donbas to move toward a phase marked by increased stability on the ground or is the Russian-led aggression simply preparing to lurch into the next phase of its diplomatic Maskirovka (a deceptive military technique used to confuse the enemy and thereby gain the upper hand in controlling the situation)?

As discussions on Donbas within the UN Security Council as well as within the Normandy Format or the Trilateral Contact Group often end up addressing only how the conflict has developed on a monthly and weekly basis, this report provides a longer-ranging picture, studying the fluctuations of violence over time to assess long-term trends. The data could add value to policymakers and scholars trying to determine whether the Minsk accords have succeeded in decreasing violence and suffering caused by the armed conflict, or if the accords merely have allowed the violations to continue on unacceptably high levels due to the lack of a comprehensive reading of Russian intentions.
Either way, studying the access of OSCE SMM monitors, civilian and military casualties, shots fired, and the number of shellings occurring on the ground during almost a year should provide more evidence to make informed decisions about the current situation in eastern Ukraine. And more importantly, the study points to the challenges and solutions ahead.

Map 1. Assessment of current battlefield positions in eastern Ukraine (as of July 24, 2016)

Source: Ministry of Defense of Ukraine, OSCE SMM reports.
Is Minsk II Really Holding?

Mapping Out Cease-fire Violations in Donbas over Time

Representatives of Ukraine, Russia, the DPR, and the LPR signed the First Minsk Protocol on September 5, 2014. A few weeks after the signing, the conflict deepened, leading to the eventual collapse of the agreement by January 2015. A second cease-fire agreement, Minsk II, was reached. Before the cease-fire agreement came into force, the pro-Russian separatists engaged in intense artillery shelling of the town of Debaltseve, leading to a significant gain in territory of the main railroad that connects Donetsk and Luhansk before agreeing to the new package of measures meant to stop the fighting in Donbas. ¹ Although the parties to the Minsk accords through the Normandy Format (consisting of Ukraine, Russia, Germany, and France) have repeatedly confirmed their commitment to implementing the cease-fire, fighting across the line of contact between the Ukrainian government and Kremlin-backed separatists has continued and the humanitarian situation in Donbas remains as grave as ever.²

After a review of the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission (SMM) daily reports on observed violations of the Minsk accords (from September 1, 2015, to April 20, 2016), observations suggest that 52,267 shots had been fired and 38,843 explosions and shellings had occurred in Donbas since the cease-fire was reaffirmed eight months ago.³ In total, 6,334 separate instances of cease-fire violations have been observed between September 2015 and April 2016, out of a total of 9,231 since May 2015, with clear peaks of violence observed in February (1,086 instances) and March (1,521) during 2016. Other peaks were previously noted in August (971 instances) and November (616) last year. However, it is important to highlight that February 2016 (with 1,086 reported instances and 15,000 direct violations) was more violent in comparison to any of the most-intense months of fighting during the summer of 2015. As stated by Victoria Nuland during a hearing at the Senate Foreign Relations Committee on March 15, 2016, “there were more recorded cease-fire violations in the first week of March than at any time since August 2015.”⁴

³ See the daily reports published by the OSCE’s SMM to Ukraine, all available at http://www.osce.org/ukraine-smm/reports.
This development escalated even more during April and May 2016. As a telling example, SMM personnel recorded as many as 4,000 direct cease-fire violations in its April 14–15 daily report this year, noting that many of them involved heavy weapons, prohibited by the Minsk agreements. During the second week of April, nearly 1,000 rounds of mortar fire were recorded, the most so far this year.

The fighting varies in intensity over time, with frequent reports about explosions and shooting in the cities of Zaitseve, Svitlodarsk, Horlivka, and Debeltseve, whereas places like Avdiivka and Yasnuvata have seen more disparate levels of violence, shifting between complete calm and intense shelling during recent weeks. The area around and within the city of Donetsk has clearly been struck by some of the most disruptive levels of fighting, experiencing an average of 131 targeted explosions and 170 shots per day since September 1, 2015. The corresponding numbers for Luhansk is 18 explosions and 41 shots, while the area of Mariupol has experienced an average of 10 explosions and 12 shots. Analysis and crosschecking of OSCE data suggests that approximately 79 percent of all documented shellings and shootings occurred in and around Donbas, while Luhansk experienced 15 percent and Mariupol only 6 percent.

According to the deputy chief monitor of the OSCE mission to Ukraine, Alexander Hug, an overwhelming majority of the incidents have occurred in areas not controlled by the government, and several SMM reports indicate that most cases of mortar and artillery shelling were launched from separatist-controlled territory, often using ammunition and equipment made in Russia.

Regular meetings of the Trilateral Contact Group and its four working groups on security, political affairs, humanitarian, and economic matters have recently made modest progress in keeping the focus on concrete goals with regards to Minsk. The implementation of additional sectorial agreements on demining in priority areas, discussions on the swap of prisoners, and banning military training in the proximity of the contact line has helped deescalate tensions and all provide constructive steps forward (although limited in their reach).

Withdrawal of All Heavy Weapons, Foreign Armed Groups, and Extent to Which Unfettered Access Given to OSCE Monitors

While small arms and light weapons were most common during these attacks, the OSCE Special Monitoring Mission continues to report about the presence of heavy weapons, tanks, and artillery systems under 100-mm caliber on either side of the contact line. According to the chief monitor of the OSSE SMM, Ambassador Ertugrul Apakan, the monitors are finding an increasing number of weapons missing from permanent storage sites and from well-known weapon-holding areas, stating that “our observations suggest that many of those

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5 See the daily reports made by the OSCE’s SMM on February 14–15, http://www.osce.org/ukraine-smm/234141.
weapons are in use at the contact line." He has also underlined the fact that only the Ukrainian side has provided a complete and comprehensive weapons inventory so far.

Source: OSSE SMM daily reports (May 1, 2015–April 20, 2016). Please note that the dashed curve for May to September 2015 indicates monthly totals and therefore are less exact in displaying weekly variations (as the regular curve measuring violations from September onwards.

TRANSCRIPT FROM UN SECURITY COUNCIL MEETING ON THE CONFLICT IN EASTERN UKRAINE, MEETING 7683, APRIL 28, 2016, HTTP://WWW.SECURITYCOUNCILREPORT.ORG/ATF/CTF/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96F9%7D/S_PV_7683.PDF.
According to Ukrainian officials, the separatists are heavily armed, currently possessing at least 470 tanks, 870 armored combat vehicles, 450 tube artillery systems, and 190 multiple-launch rocket systems. There is also reports from both U.S. officials as well as SMM monitors that the separatists have regular access to unmanned aerial vehicles (UAVs) and jamming.
devices that can disengage SMM UAVs, used to access and monitor dangerous terrain.\textsuperscript{8} Ukraine’s deputy foreign minister, Vadym Prystaiko, also claims that Russia has organized and deployed a 34,000-strong hybrid military force consisting of regular Russian troops as well as local militants.\textsuperscript{9} However, that number remains uncertain as several experts instead believe that Russian troop levels in Ukraine are significantly lower, suggesting that the main bulk of the Russian servicemen are intelligence officers serving a command and control function.\textsuperscript{10}

Ukraine’s Ministry of Defense publishes monthly updates on collected intelligence, where it suggests that rebels have carried out 5,985 attacks against army positions and that these groups have received 187 new tanks, 286 armored infantry combat vehicles (AICVs), 6,400 tons of ammunition, and 16,042 tons of fuel from Russia since January 1, 2016.\textsuperscript{11} Repudiating such claims, Russia has insisted that all Russian nationals who have been participating in armed clashes with the Ukrainian army have traveled to Donbas in a voluntary capacity and not as formal servicemen. President Putin was recently asked to comment on such matters and stated that these soldiers “are following their hearts and are fulfilling their duty by voluntarily taking part in hostilities, including in southeast Ukraine.”\textsuperscript{12}

One somewhat more impartial observation of this development can be seen in a daily update report from OSCE monitors during February 14, where the presence of 88 tanks and several BM-21 Grad multiple launch rocket systems on the rebel side of the dividing line was observed within a 24-hour cycle.\textsuperscript{13} It is also worth noting that the SMM observed 874 weapons withdrawal violations between April 20 and July 22 in areas controlled by rebels—three times the number observed on government-held territory.

Although the bulk of Russia’s military presence in the area is located on the Russian side of the border, several rapid-reaction teams have been deployed on Ukraine territory to back up separatist forces, and GRU (Russia’s military intelligence) units are still moving in and out of Luhansk on a frequent basis.\textsuperscript{14} Similar to their critical role during the first weeks of the initial invasion in 2014, their actions continue to center around blurring the distinction between internal and interstate conflict, adding overall confusion about facts on the ground.\textsuperscript{15} Large-scale formations of full combat-ready troops have also been strategically positioned close to the Russian-Ukrainian border on several occasions during the most intense periods of

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\textsuperscript{9} Transcript from UN Security Council meeting on the conflict in eastern Ukraine.


fighting.\textsuperscript{16} In this regard, it is worth noting that President Putin’s mandate to use the armed forces in Ukraine, secured on March 1, 2014, covers the whole of Ukraine and is not limited to a timeline, other than “until the socio-political situation has been normalized.”\textsuperscript{17}

The reports also include some observations of Russian-registered “assistance convoys,” which are not subject to OSCE inspections nor the consent of the Ukrainian government, traveling in and out of rebel-held territory from the Russian border and thus violating the Minsk agreement.

Furthermore, the SMM teams have been denied access to key sites on at least 411 occasions during the last eight months, which suggests that although the accord may have prevented attempts to seize territory across the line of contact, any withdrawal remains deeply questionable. According to SMM Chief Monitor Apakan, separatists instigated at least 95 percent of all the freedom-of-movement incidents during last year.\textsuperscript{18}

The SMM is currently operating out of 13 bases, on both sides of the contact line. Limited to a pool of 700 monitors, the teams possess several technical capabilities for improved surveillance such as UAVs and satellite imagery. Steps to enhance both capabilities in manpower and geophysical reach have been limited by the lack of safety reassurances from those in effective control inside nongovernment-controlled areas.

In several cases, monitors have reportedly been threatened or temporarily detained by rebels, with a few instances resulting in monitoring-mission vehicles being hit by bullets or shrapnel. Although denying having instructed their units to shoot against or provoke monitors, the rhetoric from several local commanders within the DPR and the LPR has often been hostile toward SMM personnel, which could be seen as inflammatory and encouraging of such acts. A recent example was observed on 25 April, when Aleksandr Zakharchenko, alleged leader of the DPR, made a public appearance where he directly threatened to shoot OSCE observers if a police mission were to be deployed inside the Donetsk and Luhansk regions (as suggested on several occasions by Ukrainian president Poroshenko).\textsuperscript{19} Several OSCE-controlled UAVs have also been shot down or jammed during recognition missions inside rebel-held territory. In addition, the unpredictable situation in Donbas restrains the SMM in fulfilling its monitoring functions, as many of the main roads have been mined by both the separatists and the Ukrainian government, which continues to impede access to key sites.

Casualties and Forced Disappearances

The UN Human Rights Monitoring Mission in Ukraine (HRMMU) that was deployed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) two years ago assessed in mid-July 2016 that there have been at least 9,404 deaths, of which up to 2,000


\[18\] Transcript from UN Security Council meeting on the conflict in eastern Ukraine.


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are civilians, and 21,671 injuries since violence broke out in eastern Ukraine in mid-April 2014. A similar assessment from the battlefield was also suggested during the latest session on Ukraine in the UN Security Council on April 28, in a testimony from the UN assistant secretary general for political affairs, Tayé-Brook Zerihoun.

More than 1,200 people have been killed since the cease-fire was reinforced in September, with a majority of civilian casualties attributed to explosive remnants of war (ERW) and improvised explosive devices (IEDs). This underscores the need for mine clearance and enhanced mine-awareness procedures on both sides on the contact line. In addition, the shelling of populated areas controlled by armed groups or by the Ukrainian government with mortars, canons, howitzers, tanks, and multiple launch rocket systems continues to generate civilian casualties in both urban and rural environments.

The death rate over the past five months has drastically diminished from the peak of the fighting, but remains at a high level—at least 200 to 400 civilians killed since February 15, 2015, using the OHCHR’s conservative figures. However, it remains unclear whether such trends can be attributed to the cease-fire itself or if they are simply a result of widespread evacuations of civilians and efficient work by nongovernmental organizations (NGOs) trying to mitigate casualties and confrontation.

With regards to military casualties, the Ukrainian Armed Forces reported that 20 servicemen were killed in March and a spokeswoman for Ukraine’s envoy to OSCE claimed that an additional 26 soldiers were killed in April. As of July 19 this year, 30 Ukrainian servicemen have already been killed in one month, which is the highest number reported since August 2015. By early June 2016, the number of noncombat fatalities among Ukrainian servicemen had reached 1,294, according to the chief military prosecutor, including 259 suicides and 121 cases of “intentional homicide.” When it comes to documenting casualties among the separatists, no comprehensive or reliable dataset on casualties is available on neither the Russian nor the Ukrainian side. In fact, disclosure of combat casualties within Russia’s Armed Forces is punishable by law according to a presidential decree issued on May 28, 2015. The Ukrainian Ministry of Defense claims that 42 servicemen of the Russian Armed Forces have been killed since the beginning of 2016, mostly through mine and blast injuries. However,

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21 Transcript from UN Security Council meeting on the conflict in eastern Ukraine.
such claims have been denied by Russia and much uncertainty remains regarding the identity of several of the corpses encountered on the battlefield as well as the validity of such statistics provided by either party of the conflict.

Extrajudicial killings and torture have also been reported by OHCHR, with the bulk of cases occurring within separatist-controlled territories but with a few linked to the Security Service of Ukraine (SBU).\textsuperscript{28} Several of these incidents involve summary executions of members of the Ukrainian Armed Forces and elements of armed groups who had surrendered as well as arbitrary killings of civilians who were not taking part in the hostilities, with little or no accountability being the common denominator characterizing the aftermath of such actions. A recent example of forced disappearances and arbitrary detentions conducted by the separatist took place in January 2016, when the Ministry of State Security carried out a wave of arrests and detention of civil society actors in the Donetsk People’s Republic. Although several hundred releases of prisoners have taken place (most famously thorough the exchange of the Ukrainian helicopter pilot Nadiya Savchenko and two Russian Spetsnaz officers), the occurrence of such actions mentioned above on both sides has significantly undermined attempts to release all hostages and illegally detained persons, as clearly stated in the Minsk agreement.\textsuperscript{29}

According to the International Committee of the Red Cross (ICRC), over 1,000 people are still missing or unaccounted for in connection with the armed conflict.\textsuperscript{30} Although still not fully implemented, the human rights action plan, published by the Cabinet of Ministers of Ukraine on December 29, 2015, should be seen as a step in the right direction to address the need for comprehensive cooperation to establish the whereabouts of those who have gone missing in the conflict zone.

A Humanitarian Crisis on the Brink of Collapse

With fighting on the ground continuing, the humanitarian situation in Donbas remains dire. According to UNHCR, more than 1.7 million people are internally displaced persons (IDPs) as a result of the armed conflict, with an additional 1.1 million refugees having fled to neighboring countries such as Belarus or Russia.\textsuperscript{31} About half of the IDPs are currently located around Donetsk as well as Luhansk and humanitarian access is particularly difficult in many of the so-called gray areas along the 500-km line of separation. In many of these villages, public services are nonexistent and restrictions on movement make it increasingly challenging to access food and basic needs.


\textsuperscript{29}Neil Buckley, "Russia releases Ukrainian pilot Nadiya Savchenko," Financial Times, May 25, 2016, http://www.ft.com/intl/cms/s/0/889df226-227a-11e6-aa98-db1e0fabc0c.html#axzz49aZWFCC.


Approximately 800,000 IDPs are living within government-controlled areas, where the situation remains significantly more stable but recently imposed bureaucratic procedures to verify a person’s IDP status has caused great levels of concerns among international observers. A telling example is the recent decision by the Ministry for Social Policy (MoSP) to suspend social assistance and pension payments for an estimated 600,000 IDPs from five eastern Ukrainian oblasts, pending a slow and sometimes illogical verification process of residential addresses in order to avoid fraud. Such practices have made life more difficult for vulnerable people such as elderly or disabled groups, especially since many NGOs have reported on the lack of individual notifications prior to suspending the payments.

Overall, UNHCR and the Office for the Coordination of Humanitarian Affairs (OCHA) estimate that around 3.1 million people are in direct need of humanitarian aid and that approximately 4.3 million are affected, in one way or the other, by insecurity generated by the conflict. A majority of these people are living in nongovernment-controlled areas or in regions bordering conflict-affected areas, such as the government-controlled areas of Donetsk, Luhansk, Dnipropetrovsk, Kharkiv, and Zaporizhia provinces.

The current suspension by the de facto authorities in Donetsk and Luhansk of almost all operations conducted by the United Nations in these areas since July 2015 is therefore of great concern. Other crucial NGOs, like Médecins Sans Frontières, have been banned by separatists after groundless allegations of espionage and illegal activities, despite repeated promises from Russia on convincing the separatists to allow humanitarian organizations to access communities at risk. These realities on the ground constitute a clear violation of the Minsk agreements provisions on “unimpeded delivery of humanitarian aid” to those in need.

Additional obstacles to address humanitarian needs have been generated by the recent closure of frequently populated checkpoints and the failure to open new ones to facilitate the flow, as thousands of civilians are forced to queue for hours (often at night in unsafe environments) to access basic services or visit family members scattered on various sides of the dividing line.

The deteriorating security conditions have also prevented necessary repairs of damaged facilities, resulting in vital community resources such as water pipelines and gas supply being abandoned. The International Committee of the Red Cross have documented several cases of repeated attacks against infrastructure in eastern Ukraine, which stands in clear violation of the Minsk agreement’s articulated ambition to “restore full social and economic links with affected areas.” An example of such security incidents was recently reported in Marinka, where technicians working on an underground pipe came under fire for the second time in

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two weeks on 31 March.\textsuperscript{36} Such elaborate sabotages have blocked places like Marinka from receiving gas (and thereby heating) for months and sometimes even years.

The conflict has also widened, with Ukraine recently subjected to an advanced cyber-attack on its infrastructure, one of the first known to generate an electric power outage.\textsuperscript{37} This followed an attack on the power transmission line into Crimea, conducted by Ukrainian nationalists, which generated a major power outage for almost 1.2 million people. The Kremlin has raised the temperature on other fronts, imposing a painful ban on Ukrainian food and threatening to cut off coal shipments needed in various Ukrainian power plants.\textsuperscript{38} Furthermore, Gazprom recently decided to cut off its vital gas supply, and other transits of goods to China and Central Asian States have repeatedly been blocked. In a parallel development, Russian engineering troops halted almost all of the country’s vital transportation of coal from Donbas by blowing up railroads and vital infrastructure in 2014. Once constituting Ukraine’s main hub for industrial activity, the economic output in Donbas has declined by more than two-thirds between 2014 and 2015.\textsuperscript{39}

Overall, the war and its toll on infrastructure have drained Ukraine of its fiscal resources. According to the latest assessment from the International Monetary Fund (IMF), public debt has gone up from 70.3 percent of GDP in 2014 to 92.8 in 2016, representing an unprecedented increase among other Central, Eastern, and Southeastern Europe (CESEE) countries.\textsuperscript{40}

In this regard, it is also valuable to observe how the growing humanitarian crisis in Donbas has been used to legitimize the Kremlin’s Novorossia project as well as to provide an off-ramp for Russia in case a beneficial settlement of the disputed area should emerge. On the one hand, humanitarian concerns have been the main argument underlining Russia’s frequent use of “assistance convoys," moving uninspected cargo into eastern Ukraine through the Ukraine-Russia border—despite repeated claims from the international community as well as the Ukrainian government to allow for inspections. On the other hand, the humanitarian disaster in Donbas has become associated with heavy costs for the Kremlin in a time of increasing economic stagnation: reluctantly paying out pensions to inhabitants of Donbas, receiving over half a million Ukrainian asylum seekers in less than 24 months, and having to finance expensive maintenance and repairing of damaged infrastructure. Initially showing little interest in providing social benefits for the entrapped population and salaries to


local officials, Moscow has begun to assume administrative control over several parts of Donbas, likely to generate a cost of over $1 billion a year.\textsuperscript{41}

After the release of the Ukrainian pilot Nadiya Savchenko in late May, Dmitry Peskov, the Kremlin’s spokesman, mentioned that "the Kremlin can support President Poroshenko’s desire to have Donbas back, should such an urge be driven by humanitarian concerns."\textsuperscript{42} Generating further confusion, DPR’s self-proclaimed leader, Alexander Zachartjenko, called for a press conference on the same day, underscoring that "a precondition for a potential reintegration with Ukraine would be that the coup d’état in 2014 would be strongly condemned." Clearly, the humanitarian situation in Donbas is a vital drive for both parties to stay engaged in the conflict while constituting a massive financial burden for whoever ends up receiving it.


\textsuperscript{42} Winiarski, “Putin is not ready for concessions- despite EU sanctions.”
Lessons from Previous Russian-negotiated Cease-fire Agreements: Georgia in Retrospect

When studying stagnated conflicts and Russia’s tactics dictating the conditions of a cease-fire agreement, similarities could be drawn to the Russian-Georgian conflict in August 2008 as well as the creeping Russian annexation of Abkhazia dating back to the early 1990s. Like the Minsk accords, the sequencing is almost entirely set on Moscow’s terms and rewards Russia for restarting hostilities whenever it sees fits. A third common denominator is also the lack of long-term consequences for such flagrant violations, convincing the Kremlin that Europe is not willing or able to stand up for its principles and thereby inviting further steps toward breaking previous agreements by military force.

Eight years after the cease-fire was signed and lawful, Russia continues to gradually expand its borders and subversively apply pressure on the central government in Tbilisi, now occupying almost 20 percent of Georgia’s internationally recognized territory. In further violation of the cease-fire agreements, Russia is subsequently blocking the access of international monitors into the contested South Ossetia and Abkhazia as well as refusing to withdraw its troops to prewar positions. In additional attempts to sideline Tbilisi’s efforts to regain its territorial integrity, Russia unilaterally recognized the two enclaves as independent, consolidating its political and military gains by hosting around 7,600 soldiers in the area. The presence of Russian military personnel and equipment represents a clear violation of point five of the cease-fire agreement.

While this unfortunate outcome should be largely attributed to the Kremlin’s adventurist strategy to exert its influence in the region, part of it should also be linked to the ambiguity anchored in the transatlantic response to such actions. The French-led negotiation in 2008, spearheaded by former president Sarkozy on behalf of the European Union, has been widely criticized in retrospect for lacking to secure an agreement where Russia genuinely respects Georgia’s territorial integrity and where future violations would impose credible costs on the Kremlin. But the 2008 agreement does not stand in isolation and similarities could be drawn to the conditions formulated during the cease-fire agreement between Georgia and

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South Ossetia (1992) as well as Georgia and Abkhazia (1993). In similar fashion, these two Russian-brokered cease-fires did little to deescalate tensions on the ground, leading to international monitors being refused entry on various occasions, the safe return of refugees being stalled, and ending up with Abkhazia violating the agreement in a successful attempt to establish more favorable terms.

The EU Monitoring Mission in Georgia (EUMM) regularly reports on Moscow’s “borderization” policy and was created by the European Union, following the August 2008 conflict, in order to stabilize the situation on the ground and along the so-called Administrative Boundary Line (ABL). Overall, they monitor compliance by all sides with the EU-brokered Six-Point Agreement of August 12, 2008, signed by both Georgia and Russia, and with the Agreement on Implementing Measures of September 8.47

Despite overall stability along the ABL, unlawful detentions, explosions, and other provocations are reported on a regular basis.48 The EUMM has also observed increasing military activity in these areas, with Moscow conducting numerous military exercises with South Ossetia troops as well as building several large bases and observation towers. The strategic objective is clear: Moscow will do anything necessary to undermine Georgian attempts to establish closer ties with the European Union and aims to create permanent tensions inside Tbilisi’s political spectrum.

With Russian support, newly erected border markings have appeared in the disputed South Ossetia region, which includes the seizure of a one-mile section of the BP-operated Baku-Supsa pipeline (carrying up to 145,000 barrels of oil a day from Azerbaijan’s Caspian oil fields). The expansion also led to the erection of fences within 500 meters of Georgia’s E60 highway, potentially threatening to block off the country’s main transportation route between the Black Sea and Azerbaijan.49 Troops have also been paving the roads along the ABL, marking a clear intention to stay for the foreseeable future.

The Geneva International Discussions constitutes the only platform between Georgia and Russia mediated by international organizations, cochaired by representatives from the European Union, United Nations, OSCE, and the United States. And in similar fashion to the Normandy format, this forum allows Russia to effectively alternate between the roles of a direct party to the conflict and a “concerned” third-party mediator claiming to be able to smooth the process with the outbreak regions. The parties having recently met for a 36th round of discussions, the process is as necessary as it is weak. Although the presence of OSCE monitors in Georgia has muffled violence and kept the international community involved, it has not prevented the Kremlin from pursuing its illegal expansion and violating international law in broad daylight. Only last year, Georgian officials noted that Russia

attempted to sign an Alliance and Strategic Partnership treaty with the two breakaway regions as well as further displacing communities on the Georgian side of the ABL due to its expansion policy.\(^{50}\)

More fuel was added to the flames during the spring of 2016, when Leonid Tibilov, a former KGB officer and current leader of South Ossetia, announced that a referendum regarding the potential accession into the Russian Federation will be held within the near future.\(^{51}\) When later asked about this issue during a question-and-answer session with journalists, President Putin responded that “we are currently not looking at such an option” but later added that “we cannot oppose it if the decision is rooted in the interests of the South Ossetian people.”\(^{52}\)

Displaying further similarities to the Normandy format, Russia frequently derails the process by obstructing technicalities necessary to move the negotiations forward and refuses to abide by its basic obligations with regards to security conditions and free access to international monitors, all while displaying the optics of good will.

Overall, Russia’s aggressive actions and flouting of international norms with regards to the Russia-Georgia war in 2008 and its intervention in Ukraine should make it clear that the Kremlin views international security agreements as expendable: violating, reinterpreting, or redrafting conditions when it is in its interest to do so. In its view, fundamental principles of the international order enshrined in documents such as the United Nations Charter, the Helsinki Declaration’s Final Act, the Charter of Paris for a New Europe, and the Budapest Memorandum are underpinned by a Western world order and can be reinterpreted in a more favorable light when necessary.\(^{53}\) By annexing Crimea, Russia not only broke international law but also bilateral agreements such as the Partnership and Cooperation between Russia and Ukraine and the Black Sea Fleet Agreement. Such legal obstacles did little to alter the Kremlin’s calculus and the expectation that an internationally brokered cease-fire agreement would have a deterring effect from further actions, unless backed up with strength and clear consequences, is deeply flawed.


\(^{52}\) Transcripts from the Presidential Executive Office. Q&A session with journalists, “Ответы на вопросы журналистов по итогам Прямой линии,” April 14, 2016. For transcript in English, see http://kremlin.ru/events/president/transcripts/51718.

Almost eight years into this frozen conflict and the stagnated diplomatic process that surrounds it, there are lessons on how to interpret a Russian-brokered cease-fire and perhaps more importantly, how to avoid repeating the same mistakes in our response to it. With regards to Ukraine, the following section discusses recommendations regarding what must happen.
De-escalation enables decentralization, not the other way around. The expectation that Ukraine can be pushed further on delivering constitutional amendments and political reforms before the Kremlin adheres to its basic obligations with regards to a genuine cease-fire follows a false logic. Every shot fired in Donbas undermines the political leverage of President Poroshenko’s fragile coalition and its flexibility on delivering pragmatic outcomes in the Verkhovna Rada, as a stalling conflict will generate more hardliners on both sides of the spectrum—especially the provisions in Minsk II on amnesty laws for separatist fighters. Washington should not chase short-term progress on the Minsk agreements in hopes of obtaining some symbolic results on Ukraine before the U.S. administration leaves office. Instead, it should exert further pressure on Russia, together with allies within the Normandy format, for a comprehensive withdrawal of troops and a halt to further shelling. Meanwhile, it cannot expect any further steps on decentralization in the Rada, as this will be extremely difficult under current conditions. Washington and its European partners should continue to send strong signals that the Kremlin will not be able to wriggle its way out of sanctions while retaining the ability to destabilize Ukraine, seeking to extract further concessions out of Kiev by raising the temperature along the line of contact at will.

Sanctions must remain in place over the foreseeable future. President Putin’s recent appointment of Boris Gryzlov, an influential member of Russia’s Security Council, as the Kremlin’s point person for the Trilateral Contact Group might provide a modest opening in negotiations. Although such internal changes in management of the conflict—including violent removal of separatist commanders gone rogue as well as Deputy Prime Minister Dmitry Kozak replacing Surkov’s role in overseeing Donbas—might indicate a gradual shift in tactics, this does not appear to alter the Kremlin’s overall strategy of continuing to destabilize Kiev. Instead, Russian military commanders leading separatist units within DNR and LNR continue to orchestrate multiple violations of the cease-fire in the shadow of Minsk. Chancellor Angela Merkel must therefore do everything in her power to preserve support for maintaining the EU sanctions that must be reviewed by October and beyond. However costly for European companies, the West should continue to press for this collective position until the territorial integrity of eastern Ukraine is fully restored. Whatever possible cooperation is agreed upon with Russia over Syria, the European Union and United States must demonstrate that they are capable of handling two crises at the same time. The European Union’s collective position should not be allowed to be eroded by individual member states such as Greece, Hungary, or Italy that seek a more critical approach to sanctions (for their self-interest) or by increasingly influential Eurosceptic parties in France or the United Kingdom. A failure to uphold this unity will validate Russia’s military adventurism as a successful foreign policy instrument with relatively limited costs associated with it, generating more turbulence in other frontline states where Russia seeks to impose its will by using the barrel of a gun.
Establishing conditions for local elections will take time as well as considerable resources and can only start once the vulnerable citizens of Luhansk and Donetsk have experienced a credible period of peace, institutional predictability, and security. Neither Washington nor Brussels should waste time by discussing possible ways to design local elections that seek to bypass this reality, achieving political normalization merely on paper. Such a conversation must instead insist that elections can occur only once conditions meeting OSCE/ODIHR standards are in place, including a comprehensive set of opportunities for displaced populations to participate. Such facts on the ground are not likely to materialize any time soon; in the meantime, Washington should focus on increasing its efforts to facilitate improvements in humanitarian conditions around Donbas. Last year, the UNHCR received contributions from international donors that covered only 69 percent of the total financial requirements. The $112 million contribution from the United States for humanitarian assistance since the inception of the crisis is commendable, but it should lead the international community in stepping up its efforts.

Efforts to root out corruption must continue and Poroshenko’s cabinet is facing many painful decisions with regards to reforming the judiciary and the public administration. This process recently gained momentum with the sacking of tainted officials like the obstructive prosecutor general, Viktor Shokin, whose half-hearted actions have eroded public patience. To maintain its international credibility and possibly galvanize further steps on amendments to the constitution, the governing coalition must remain united and resist populist temptations generated by increasing tensions in the parliament. Such a course will enable the leadership to seek broader alliances in the search for a two-thirds majority in the Rada, blocking the obstructive efforts of Yulia Tymoshenko and other troublemakers who seek to roll back the cabinet’s recent gains and underpin public discontent. Washington should take a tough line on Kiev’s fully meeting its IMF obligations. Informally, the United States should continue to convey the message to Poroshenko that Shokin’s cadres as well as the influential party whip Igor Kononenko must leave office, underscoring the conditionality of the $3–4 billion that will be provided together with the European Union. Additional financial assistance to Ukraine will likely be needed later, and should follow a more-for-more principle.

The Eastern Partnership (EaP) remains a vital strategy for encompassing the long-term aspirations of the Ukrainian people. Even if the European Union is currently splintered in its approach to its Eastern Neighborhood Policy and Jean-Claude Juncker’s presidency in the Commission has taken a wet-blanket approach to the enlargement process, flagging the prospect of membership down the road will be necessary for Kiev to show its domestic audience progress on its European ambitions while enduring harsh and unpopular reforms. Last year’s Riga Summit made an important distinction between frontrunners (Ukraine, Georgia, and Moldova) and countries with a more multivectored approach to political integration with the West. With key chapters now in place for Ukraine, the process toward financial and political association with the European Union must continue and its members must remain vigilant of internal attempts by individual member states to change course due to external influence. The Dutch referendum was a concrete reminder of how Eurosceptic parties are challenging the foundation of the EaP policy. However, 27 EU member states have already ratified the Associational Agreement (AA) and it’s now up to the Dutch government to deliver a suggestion on how to move forward. Most of the AAs have already been
provisionally applied since November 2014. Also, the vote did not interfere with the Deep and Comprehensive Free Trade Agreements (DCFTA’s), between the European Union and Ukraine, which entered into force on January 1, 2016, and should not block progress on visa liberalization.

Make full use of the limited momentum inside the Normandy Format to pursue more concrete deliverables. After successfully negotiating the exchange of Ukrainian pilot Nadiya Savchenko in return for two Russian Spetsnaz officers, Berlin and Paris should continue to engage the parties constructively to explore if similar confidence-building measures can be implemented in the ongoing discussions about mine clearance and swaps of prisoners. If successful, parties should engage the negotiators in Kiev and Moscow to broaden the scope of such discussions. In a bilateral setting, Ukrainian authorities should be asked to do more to facilitate the safe movement of civilians and commercial goods across the dividing line. To the extent possible, Ukraine’s armed forces should keep checkpoints around separatist-controlled territory open or establish new ones as others are shut down, to reduce casualties generated by civilians crossing minefields in order to avoid long lines along the limited checkpoints.

Make the Joint Centre for Control and Coordination (JCCC) more effective and operational, or don’t use it at all. The JCCC could and should play an instrumental role in providing confidence-building measures to generate normalization and stability on the ground. However, SMM reports clearly indicate that the JCCC has so far been unable to act upon those responsibilities assigned to it. The Trilateral Contact Group should focus its upcoming discussions on accommodating a more operational role for the JCCC. Although the enhanced operability of the joint center is likely to be imperfect with minimal implications for the parties’ ability to wage war and advance their positions along the line of contact, it could play a key role in reducing attacks on OSCE monitors.

Support the ongoing efforts to establish more bases and observation spots for the Special Monitoring Missions, especially in areas not controlled by the Ukrainian government. This will increase the ability to document and report current violations of the cease-fire agreement, although clearly unable to prevent them from happening in the first place. Plans to increase the inflow of personnel and technical surveillance equipment with regards to UAVs and satellite imagery should be strongly supported by European and U.S. officials, pressuring Russia to provide credible and comprehensive security reassurances within separatist-controlled territory.
Conclusion

It is central to U.S. and EU national interests to strive for a Europe whole, free, and at peace. For Ukraine, the Minsk accords remain the least-bad option and are worth preserving. But for the 13 points agreed in Belarus to serve a meaningful purpose during the negotiations, Washington (and Brussels) should avoid rewarding half-measures by the Kremlin since only a firm and consistent line will eventually reshape Moscow’s calculus. Moving from conducting full-fledged warfare to designing a medium-intensity conflict is too far away from a credible cease-fire and should not be interpreted as a stumbling first attempt to deescalate. It is a long-term strategy aiming to draw Ukraine back into its old sphere of influence and the implementation phase of Minsk can therefore only depart from the notion of guns falling silent. Otherwise, there is a substantial risk that Moscow will continue to bleed out Kiev under the auspices of prolonged talks, which over time will stagnate reform efforts and consolidate conditions for a frozen conflict beyond Western influence.
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