

The Minsk Agreement – A Political Roadmap

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Before the Normandy Format Meeting on 2 October the prospects for the Minsk process did not look good. The insistence of the rebel ‘republics’ to hold their own elections unilaterally - although the Minsk Agreement requires they be held under Ukrainian law and OSCE supervision- threatened to undermine the agreement. President Poroshenko said explicitly that such “fake, illegal elections” would destroy the whole process. That threat was averted with a promise to delay elections until next year. This postponement in effect extended the Minsk agreement deadline beyond 31 December 2015.

1. Kyiv’s Concerns

Ever since the signing of the agreement, Kyiv has expressed concern with the whole process. First is what Kyiv sees as an unfair but persistent focus on ‘**Ukraine’s obligations**’ instead of the obligations that fell on Russia and its proxies in the Donbas. There was a strong sense that the EU had failed to insist that Russia should be an equal party to the Minsk Agreements.

Secondly, there was the agreement itself and its inherent ambiguities. There are thirteen Articles in the second Minsk Agreement, but **sequencing** is rarely defined (save Articles 3 and 9), and so it is subject to unilateral interpretation. Kyiv constantly complains that constitutional change and Donbas elections should come after security stabilisation and not before. Kyiv fears that if it is pushed to implement the political parts of the Agreement before the security parts, then they will effectively be **decoupled**.

Kyiv therefore also fears that the whole process is almost **designed to be uncompleted**; and crucially will never get as far as Article 9 which calls for the ‘restoration of full control over the state border of Ukraine by Ukraine’s government throughout the whole conflict area’, and Article 10, on the ‘withdrawal of all foreign armed forces’; but the EU might be satisfied with such a partial implementation.

Kyiv’s final fear is the premature lifting of **sanctions** on Russia. It sees many EU countries pressing for ‘engagement’ and normalising relations with Russia – with sanctions coming off when only parts of the Agreement are fulfilled, or in a phased, incentive-based process. Kyiv wants all sanctions to stay on to ensure the whole process is completed. This is the official EU position: sectoral sanctions are conditional on the “complete” implementation of the Minsk agreement.

2. Decentralisation

The most important of ‘Ukraine’s obligations’ are the constitutional changes on the status of the occupied areas. These are highly controversial in Ukraine. Kyiv has always been reluctant to make these changes before the security parts of the Agreement are fulfilled; though some made the opposite argument that Kyiv could be relaxed about the changes because they might never be implemented (assuming there was no progress on Articles 9 and 10). When parliament passed the changes at the first reading on 31 August the first fear prevailed – with nationalists protesting against premature concessions when Russian withdrawal was far from guaranteed. Riots outside parliament left three dead.

The first part of the proposed changes is a general decentralisation reform throughout Ukraine, with a long overdue redistribution of powers from central to local government. This follows Article 11 which calls for 'decentralisation' to be the 'key element' of constitutional reform, '(taking into account peculiarities of particular districts of Donetsk and Luhansk oblasts, agreed with representatives of these districts)'.

Article 11 also calls for the 'approval of permanent legislation on the special status of particular districts of Donetsk and Luhansk oblasts in accordance with the measures spelt out in the attached footnote by the end of 2015'. The most important of the eight points elaborated in the 'footnote' are 'language self-determination', independent appointment of prosecutors (the key legal officials in Ukraine) and 'freedom to create people's militias'.

The separatists interpret this as full autonomy, with at least as much power as the Crimean Republic enjoyed under the old Ukrainian system of 'asymmetric federalism' before 2014 (Crimea had its own government and constitution – other regions did not). More radical separatists would like as much power as the Republika Srpska, which means having veto power over essential decision-making at the central level.

But the proposed constitutional changes passed on 31 August only talk more vaguely of a 'special manner of operation for the local governments in some counties of Donetsk and Luhansk oblasts', and do not address the details discussed in the 'footnote'. Moreover, Kyiv has conditioned the devolution of powers to the Donbas on legitimate representatives having been elected. And it is unclear how the process is affected by the resolution passed by the Ukrainian parliament in March 2015 declaring that the region is 'temporarily occupied'.

Besides the struggle over what powers the Donbas will have, there is a tug of war over who will pay its bills. No one wants to pay for the war-torn regions' reconstruction or social benefits, despite Article 8 calling for the restoration of economic ties. In Kyiv there is talk of a 'healthy Transnistrian option' – meaning isolate the situation, don't pay the bills and get on with reform in the rest of Ukraine.¹

But constitutional reform may go nowhere if it does not pass the second reading in parliament. The first reading was passed with a simple majority, with 265 votes. But the second reading needs a two-thirds' majority. The Ukrainian parliament has 450 members, so that is 300. Twenty seven seats are empty, but the target is still set at 300. This will be difficult. The governing coalition has only 249 solid votes, as Tymoshenko's party cannot be relied on. So insisting on the constitutional change pushes Poroshenko towards doing deals with oligarch-controlled factions and even the pro-Russian Opposition Bloc to get the necessary votes, making it all the harder to push through necessary socio-economic reforms. It will also make it more difficult to reformat the government after the local elections in October.

Moreover, according to the Ukrainian constitution, a second vote on the constitutional changes should only be held in a subsequent session of parliament, that is, after the New Year. The constitution also bans amendments during time of war, though that is not formally declared at the moment.

¹ Interview with Olexiy Haran, 9 September 2015.

3. Donbas Elections

Although local elections in the rebel 'Republics' have been put off till next year, there are still many stumbling blocks. According to Minsk, the elections have to be based on Ukrainian law, comply with OSCE standards, and be monitored by OSCE/ODIHR. At the Normandy meeting in Paris, it was agreed that elections will be held 90 days after the Ukrainian parliament has adopted an electoral law, which has first to be discussed with the separatists.

There are also key questions that have to be resolved. Will the millions of IDPs be allowed to vote? Who will be allowed to stand? Kyiv will object to certain odious individuals (despite the amnesty provision in Article 5), but de facto may stand back from running mainstream Kyiv parties, as there is rumoured to be a plan to allow representatives of leading local oligarch Rinat Akhmetov to take control. Russia may acquiesce in this scenario and ditch its proxies, or seek the alternative of 'moderate' members of the Opposition Bloc (which is likely to split soon) linked to Viktor Medvedchuk taking over from the current rebel leaders. (Medvedchuk is one of the Minsk negotiators: he was former President Kuchma's chief-of-staff, and Putin is godfather to his daughter).

Another stumbling block in the details to be negotiated is whether Russians will remain in key leadership position in the 'Republics', as is the situation now - that is, whether the occupied areas will be exempt from normal residency and citizenship requirements.

4. Amnesties

Article 5 of the Agreement talks of 'pardon and amnesty'. Article 6 talks of 'release and exchange of all hostages and illegally held persons, based on the principle of "all for all"'. Trilateral talks at the end of October promised some release of prisoners. But up to 300 Ukrainians are feared detained by the rebels. Some may be held on Russian soil. More than 2 000 Ukrainians are 'missing in action'. And Russia continues to press ahead with show trials against the hostages Nadiya Savchenko, Oleksander Kolchenko, and Oleh Sentsov.

A law on 'exemption from criminal and administrative responsibility for the events in Donetsk and Luhansk regions' was also approved back in September 2014. But blanket amnesty will be problematic. Ukraine has a very strong lobby of war veterans. There are allegations of torture against Ukrainian soldiers and civilian detainees. The Ukrainian parliament has called on the ICC to investigate crimes committed in Crimea and the occupied parts of the Donbas since February 2014. And there is still the need to bring to justice those who shot down MH17.