European Neighbourhood Watch

ON THE ROAD TO NOWHERE? THE NEED TO CREATE NEW MOMENTUM THREE YEARS AFTER MINSK II

Editorial | Peter Van Elsuwege

Three years ago, the leaders of Ukraine, Russia, France and Germany agreed to a package of measures to stop the war in the Donbas region. The deal, known as Minsk II, followed previous unsuccessful attempts to solve the conflict and listed thirteen points to be implemented under the guidance of the so-called Trilateral Contact Group for Ukraine, composed of representatives from Ukraine, the Russian Federation and the Organisation for Security and Co-operation in Europe (OSCE).

A look at the situation on the ground reveals that Minsk II did not manage to fulfil its promise of establishing an immediate and comprehensive ceasefire as the basis for dialogue that should lead to a long-lasting solution. The 2017 figures released by the OSCE Special Monitoring Mission to Ukraine are astonishing: more than 400,000 ceasefire violations were recorded and more than 4,000 heavy weapons were observed beyond the agreed withdrawal lines. Moreover, according to estimates of the Office of the UN High Commissioner for Human Rights, more than 10,000 people were killed and 24,500 injured since the outbreak of the conflict.

Recent developments

Apart from the exchange of prisoners, which is expected to continue in 2018, it appears that Minsk II is reaching a dead end. Two recent developments illustrate the current deadlock. First, on 19 December 2017, Russia decided to withdraw from the Joint Centre on Control and Coordination (JCCC), which has served as a channel of communication between the Ukrainian and Russian armed forces in the conflict zone. One of the official reasons for this decision was the entry into force on 1 January 2018 of an executive order of President Petro Poroshenko introducing strict registration requirements for foreigners entering and exiting Ukraine. In particular, the registration of personal and biometrical data, including fingerprints, was declared as unacceptable for representatives of the Russian Defence Ministry.

Second, on 18 January 2018, the Ukrainian Parliament adopted the so-called 'Donbas reintegration bill', which defines the Donetsk and Luhansk regions as temporarily occupied territories under the
control of Russia’s armed groups. Moreover, it defines Russia as an aggressor country and expands the powers of the President in relation to the security operations in the Donbas region. Whereas President Poroshenko defends the law as "an act of self-defence in accordance with Article 51 of the UN Charter", Russia’s Permanent Representative to the OSCE, Alexander Lukashevich, perceives the law as a violation of the Minsk II Agreement.

These recent developments do not come as a surprise but can be added to a longer list of events that are frustrating the Minsk peace process. Reference can be made to the introduction of the Donbas blockade at the end of 2016, the recognition by Russia of the two separatist republics’ identity documents and the ‘nationalisation’ of Ukrainian companies by the separatist republics. In light of this evolution, one may question the actual value of Minsk II as an instrument of conflict resolution in the Donbas area. One of the key issues is certainly the absence of clear sequencing with respect to the implementation of the listed commitments, which allows for a very different reading of Minsk II among the parties.

**How to break the vicious circle?**

It is noteworthy that Russia and Ukraine constantly accuse each other of not respecting the Minsk II agreement. This may be attributed to the ambiguity of the document, which is a diplomatic package deal in which each side can freely pick and choose certain points to support its own position. For the Ukrainian government, it is obvious that the implementation of the points regarding constitutional reform and the organisation of elections in the Donbas region make no sense as long as the Russian Federation does not fulfil its obligations in respecting the ceasefire and the country’s territorial integrity. Russia, on the other hand, criticises the lack of progress in relation to the preparations for local self-government of the Donetsk and Luhansk regions. The result is that Minsk II is a road to nowhere and a confirmation of the status quo.

Only a new diplomatic initiative may break the vicious circle. One of the options is the deployment of a UN-mandated peacekeeping operation. This is an old idea, proposed by Petro Poroshenko already in 2015, which gained new momentum after Vladimir Putin expressed his support for a UN peacekeeping mission in September 2017. The proposal is attractive but the precise mandate of such a peacekeeping mission will be important. One of contentious issues is certainly whether the peacekeepers can be deployed in the entire Donbas region or only at the current line of contact, as suggested by Vladimir Putin. There is a certain suspicion that this may be a Russian strategy to freeze the conflict without offering a long-term perspective on restoring Ukraine’s control over its territory.

Moreover, there is always the elephant in the room - Crimea. The recent statement by Russian Foreign Minister Sergei Lavrov that his country respects the territorial integrity of Ukraine "within the boundaries that took shape after the referendum in Crimea" may hint at a trade-off strategy. Obviously, a scenario in which a recognition of Russia’s annexation of Crimea would be used as a quid pro quo for the reintegration of the Donbas area is unacceptable from the perspective of international law. It would contradict the basic premise that no territory can be acquired as a result of the threat or use of force. In this respect, it is also noteworthy that Minsk II carefully avoided any references to Crimea, basically because this issue might block any meaningful dialogue on the Donbas region.

Hence, a well-designed plan linking the gradual deployment of a UN peacekeeping mission to the implementation of the Minsk II agreement and a potential revision of the current sanctions regime is to be put on the table. This promises to be a very delicate and difficult diplomatic exercise without
any guarantee of success but, given the current circumstances, there do not seem to be many other alternatives.

**What role for the EU?**

With the idea of a UN peacekeeping mission gaining ground, one may ask whether the EU and its member states should not be more active in promoting the reinvigoration of the Minsk peace process. Whereas France and Germany, as part of the so-called Normandy format, played a crucial role in brokering the Minsk II deal, it appears that the current discussions are essentially based on the bilateral dialogue between Russia and the United States, more specifically between their respective special representatives, Vladislav Surkov and Kurt Volker.

The EU’s passivity is striking, particularly because the implementation of a possible peacekeeping mission will require the full support of the Union and its member states. The EU’s non-NATO member states Sweden, Finland and Austria have already declared their readiness to send peacekeepers to the Donbas region.

In this context, a more proactive approach on behalf of the EU is desirable. In the margins of last month’s Munich Security Conference, German Foreign Minister Sigmar Gabriel hinted at a potential and gradual relaxation of the EU’s sanctions regime against Russia in return for the latter’s cooperation in setting up a peacekeeping mission in Eastern Ukraine. This is certainly an interesting option, which however should be further developed within the framework of the EU’s Common Foreign and Security Policy (CFSP). An initiative of High Representative Federica Mogherini, based on Article 30 TEU, to convene a Council meeting on defining the EU’s approach towards the recent developments in the Donbas area and the option of a peacekeeping mission would be more than welcome. Given the existing deadlock in the implementation of Minsk II, the EU can simply not afford to be sidelined in what is generally regarded as the gravest threat to European security since the end of the Cold War.

*Peter Van Elsuwege is Professor of EU Law and Co-Director of the Ghent European Law Institute (GELI), Ghent University.*

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**General news**

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Statement by High Representative/Vice-President Federica Mogherini and Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides on the humanitarian situation in Eastern Ghouta and Idlib, Syria, Brussels, 20 February 2018. [Link]

Declaration by the High Representative on behalf of the EU on Syria: The massacre in Eastern Ghouta must stop now, 23 February 2018. [Link]

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First EFTA Council meeting of 2018, 07 February 2018. [Link]

EEA seminar clarifies market implications of the EEA Agreement, 07 February 2018. [Link]

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Save the date: Confronting Illiberalism

Wednesday, 11 April 2018, 13:15-14:30, CEPS, Brussels

Please join us for a discussion with Nate Schenkkan, Director of Nations in Transit, Freedom House, who will present the findings of the latest edition of Freedom House's annual survey of democratic reform in the 29 formerly communist countries from Central Europe to Central Asia.

In 2017, illiberalism established itself as the new normal in many of those states and much of Europe. For the first time since the Nations in Transit project began in 1995, there are now more consolidated Authoritarian Regimes than consolidated Democracies.

Faced with this changing tide, American and European policymakers have a choice: to resign themselves to the new normal, or to confront and overcome illiberalism by exposing the corruption, inequality, and violence that sustains it in power.

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New paper: Incomplete Hegemonies, Hybrid Neighbours: Identity games and policy tools in
Eastern Partnership countries

This paper applies the concepts of hegemony and hybridity as analytical tools to help understand the structural changes taking place within the Eastern Partnership (EaP) countries and beyond. The author points to the split identities of many post-Soviet societies and the growing appeal of solutions aimed at balancing Russia’s or the EU’s dominance as important factors shaping EaP dynamics. Against this background, he explores how the post-Soviet borderlands can find their place in a still hypothetical pan-European space, and free themselves from the tensions of their competing hegemons. The EaP is divided into those countries that signed Association Agreements with the EU and those preferring to maintain their loyalty to Eurasian integration. Bringing the two groups closer together, however, is not beyond policy imagination.

The policy-oriented part of this analysis focuses on a set of ideas and schemes aimed at enhancing interaction and blurring divisions between these countries. The author proposes five scenarios that might shape the future of EaP countries’ relations with the EU and with Russia: 1) the conflictual status quo in which both hegemonic powers will seek to weaken the position of the other; 2) trilateralism (EU, Russia plus an EaP country), which has been tried and failed, but still is considered as a possible option by some policy analysts; 3) the Kazakhstan-Armenia model of diplomatic advancement towards the EU, with some potential leverage on Russia; 4) deeper engagement by the EU with the Eurasian Economic Union, which has some competences for tariffs and technical standards; and 5) the decoupling of security policies from economic projects, which is so far the most difficult option to foresee and implement in practice.

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