

Multiple Organ Failure: Lessons Learned About an Oversight Mechanism in Ukraine

Martin Sajdik

Martin Sajdik, Austrian, studied law and international relations in Vienna, Moscow and Bologna (Johns Hopkins), joined Foreign Ministry in 1975, postings in Geneva and Moscow, followed by positions in private sector. Director of Economic and European Affairs (2003-07), Ambassador in China, Mongolia and North Korea (2007-11), Ambassador to UN, New York (2012-15), President of UN ECOSOC (2014/15); UN Special Representative of OSCE Chairperson in Ukraine (negotiations on peace settlement for eastern Ukraine; 2015-19), presently Senior Advisor to Centre for Humanitarian Dialogue (HD), Geneva and Member of Board of Austrian Institute for European and Security Policy.

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One of the defining activities of the OSCE in recent years was its engagement in Ukraine between 2014 and 2021, both politically and operationally. Paradoxically, both Kyiv and Moscow – for different reasons – regard the OSCE’s involvement as a failure. Some critics even blame the organisation for not preventing the outbreak of war. But as argued in this article, to single out the OSCE, ignores the involvement of other international bodies and frameworks in the conflict settlement efforts. One should therefore rather speak of a multi-organ failure of the international community.

Minsk agreements

One week after President Yanukovich had fled Ukraine from Crimea with Russian help on February 23, 2014, widespread separatist unrest broke out across eastern Ukraine’s Donbas region, with Russian flags omnipresent among the demonstrators. The developments in Ukraine raised particular concerns among OSCE Member Countries. The then Swiss OSCE Presidency reacted swiftly by proposing to set up a OSCE Special Monitoring Mission for Ukraine. On March 21, 2014, less than a month after Yanukovich’s escape, the Swiss initiative was signed off by the OSCE Permanent Council.

On June 6, 2014 Hollande, Merkel, Poroshenko and Putin met on the occasion of the 70th anniversary of the Normandy Landing, creating an informal meeting format, later known as the “Normandy Four”. Just two days later, another body saw its first light, the Trilateral Contact Group, composed of three sides, Russia, Ukraine and the “Special Representative of the OSCE Chairperson in Office for the Trilateral Contact Group and Ukraine” (OSCE SR), serving as a moderator. For the latter position the then OSCE Chairman, Didier Burkhalter, in 2014 not only Foreign Minister but also Head of State of the Swiss Confederation, nominated a compatriot, Heidi Tagliavini, a seasoned diplomat of vast experience in post-Soviet conflicts.

Thanks to her initiative that the Minsk Protocol (officially titled the: “Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the initiatives of the President of Russia, V. Putin”) was signed in Minsk on September 5, 2014, and became known as “Minsk I”. As the OSCE SR, Tagliavini was also one of the masterminds behind “Minsk II” (officially the: “Package of Measures for the Implementation of the Minsk Agreements”), signed on February 12, 2015.

However, the Package of measures was not the only political document that was adopted in the Belarus capital that day. The leaders of the so-called Normandy Format, Francois Hollande, Angela Merkel, Petro Poroshenko and Vladimir Putin, not only witnessed the signing of this agreement but passed a “Declaration ...in support of the “Package of measures for the Implementation of the Minsk Agreements” themselves, a fact often overlooked in discussions of the Minsk process.

UN Security Council Resolution 2202

The UN Security Council Resolution 2202 of 17 February, 2015 enshrines the political decisions taken in Minsk under the auspices of the host, Belarus longtime ruler, Aleksandr Lukashenko. While Lukashenko himself had posed for photographs with his prominent guests in Minsk, his name does not appear in either of the two documents adopted in his “President Hotel”.

In this resolution the UN Security Council,

“1. *Endorses* the “Package of measures for the Implementation of the Minsk Agreements”, adopted and signed

in Minsk on 12 February 2015 (Annex I);

2. *Welcomes* the Declaration by the President of the Russian Federation, the President of Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany in support of the “Package of measures for the Implementation of the Minsk Agreements”, adopted on 12 February 2015 in Minsk (Annex II), and their continuing commitment therein to the implementation of the Minsk Agreements;”

The next two of the overall four operative paragraphs of “2202” read as follows:

“3. *Calls* on all parties to fully implement the “Package of measures”, including a comprehensive ceasefire as provided for therein;

4. *Decides* to remain seized of the matter.”

These two soberly worded paragraphs contain elements of key importance for the process to follow:

- the call to fully implement the “Package of measures”, particularly highlighting a “comprehensive ceasefire” only five days after the document had been adopted reflects the – justified - concern that any future implementation attempts be overshadowed by the fact that the stipulation fixed in Art.1 of the “Package of measures” („*Immediate and comprehensive ceasefire in certain areas of the Donetsk and Luhansk regions of Ukraine and its strict implementation as of 15 February 2015, 12 a.m. local time.*”) was not met. There was in fact no such ceasefire on 15 February 2015, 12 a.m. local time. On the contrary, on that very day fierce fighting took place in the battle for the seizure of the strategic railway junction Debaltseve, continuing into 17 February, 2015 and later ended in the humiliating evacuation of the area by the Ukrainian forces.
- the commitment “*to remain seized of the matter*” was upheld by the UN SC in the months and years to follow. UN SC meetings monitored the developments in eastern Ukraine to which the OSCE SMM Chief Monitor, Ertugrul Apakan, and the author of this article were invited to present their views on the situation on the ground via video link.

The UN SC thus established reviews -avoiding the term “oversight mechanism”- on the basis of its resolution “2202”.

The term “*oversight mechanism*” features, though, in the “*Declaration by the President of the Russian Federation, the President of Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany in support of the “Package of measures for the Implementation of the Minsk Agreements”, “welcomed”,* as noted above, by the UN SR in operative para. 2 of “2202”.

The last paragraph of this Declaration reads, as follows:

“Leaders will remain committed to the implementation of the Minsk Agreements. To this end, they agree to establish an oversight mechanism in the Normandy format which will convene at regular intervals, in principle on the level of senior officials from the foreign ministries.”

The leaders’ declaration neither contained any definition of the “oversight mechanism” nor specified who will be subject to the oversight. In reality this formulation resulted in an “oversight-self-entitlement” by the Normandy Four over the deliberations of the Trilateral Contact Group (TCG) and its Working Groups – with the subsequent “de facto-benediction” of the UN SC via operative paragraph 2 of Res. 2202 of 17 February, 2015.

Unsurprisingly, the UN SC did not establish an “oversight mechanism” over the Normandy Four, as this would have meant that two Permanent Members of the UN SC might oversee themselves, while simultaneously giv-

ing also other UN SC members the right to exercise an “oversight” over them.

Dialogue despite “Debaltseve”

The aforementioned fall of Debaltseve not only violated Art.1 of the Package of Measures but also put into question its regulations of Art. 2 (disengagement of forces) and 4 (electoral area of local elections) which speak of the “line of the Minsk Memorandum of September 19, 2014” – the delineation between the sides. In reality, this line ceased to exist in view of the considerable territorial losses incurred by Kiev, some 1.600 km², to the Russia backed “separatist forces of eastern Ukraine”.

A Jamestown Foundation Article of February 27, 2015, titled “*The Normandy Format and Ukraine: Doing More Harm Than Good*”, gives an interesting account of the reaction of the members of the Normandy Four to this development:

“The Debaltseve case has particularly embarrassed German Chancellor Angela Merkel and French President Francois Hollande. They had claimed that Russian President Vladimir Putin had assured them personally that his proxy forces would not attack Debaltseve or other Ukrainian positions. Merkel and Hollande conveyed and underwrote themselves those assurances to Ukrainian President Petro Poroshenko during the Normandy group’s summit in Minsk...Under that agreement, the ceasefire was to have taken effect on February 15, to be followed by disengagement of forces along new demarcation lines. During the Minsk summit, however, Putin repeatedly and explicitly laid claim to Debaltseve on behalf of the “DPR-LPR.” On how strong a basis had Merkel and Hollande offered their assurances to Poroshenko remains unclear. Poroshenko did appeal to those two leaders to ask Putin to desist (Ukrinform, February 15). On February 14, 15 and 16, Merkel and Hollande jointly appealed to Putin by telephone to “use his influence” on “DPR-LPR” forces to stop their assault (no mention was made of Russia’s military personnel involved) (Bundeskanzlerin.de, February 14–17). On February 17, nevertheless, Putin (while visiting Hungary) publicly encouraged “DPR-LPR” forces to complete the assault (Interfax, February 18). Debaltseve fell on February 18.

Putin gloated over it several times, including on February 23 on Rossiya 1 TV. The following day in Paris, the German and French ministers kept their silence over this fiasco in the Normandy Four meeting (see above).

... it (the meeting; author) showed the limitations on German and French capacity and will to stop Russia’s aggression in Ukraine by means other than political compromises at Ukraine’s expense.”

As reflected in its title the Jamestown account conveys the uneasiness in the US with the Normandy Format in which the superpower from the other side of the Atlantic did not have a place. Yet, it also reveals another facet: despite this fundamental violation of the Package of Measures by the Russia’s proxies – with Putin’s open benediction - three days after its signing France, Germany and Ukraine did not withdraw from the Normandy Format. In the following they focused on the rapid enactment of – at least – the last article (Art. 13) of the Package of Measures concerning the further work of the Trilateral Contact Group (TCG):

“Intensify the work of the Trilateral Contact Group including through the establishment of working groups on the implementation of relevant aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.”

Normandy Four's formal "oversight"

France and Germany safeguarded their "insight" into the future process by securing that the "Political Working Group" be chaired by a Frenchman, the outstanding diplomat Pierre Morel, and the "Economic Working Group" by a German, the former economic advisor of Chancellor Gerhard Schröder and former EBRD-President, Thomas Mirow, who left this position after only three months in July 2015. He was succeeded by a former banker with ample experience in the post-Soviet area, Per Fischer. Both Morel and Fischer speak Russian.

The "Security Working Group" came under the helm of the Turkish OSCE SMM Chief Monitor, the top diplomat, Ertugrul Apakan. The "Humanitarian Working Group" went to Toni Frisch from Switzerland, former deputy head of the Swiss Directorate for Development Cooperation. Until June 2015, the TCG itself was chaired, as mentioned above, by another Swiss, Heidi Tagliavini, her official title being "Special Representative of the OSCE Chairperson in Office for the Trilateral Contact Group and Ukraine" (OSCE SR).

The Working Groups (WGs) were meant to mirror the composition of the Trilateral Contact Group (TCG). In practice, however, they diverged from the example set by the Trilateral Donbas Group (TDG) from the very beginning, as representatives of the "Donbas separatists" (referred to in the Minsk Package of Measures as "the certain areas of the Donetsk and Luhansk Oblasts") were allowed to participate in all WG deliberations from the outset.

The TCG always started its meetings in a purely trilateral format (Ukraine, Russia and the OSCE SR). Later, during the course of the meeting, the TCG would invite the representatives of the "Donbas separatists" to join them, on the basis of a respective joint oral agreement.

Despite constituting a side of the Trilateral ("latus", Latin = side) Contact Group, Russia denied its role as a side. Instead, Russia opted to regard itself as a moderator, helping the "Donbas separatist" to defend their interests in the process. This assertion however is incompatible with a clear and underlying fact: a trilateral format cannot foresee two moderators.

Germany and France were thus represented in the Minsk negotiation fabric through their respective chairs of the Economic and Political WGs. In addition to this, always dispatching one young – and able – diplomat to the "Office of the OSCE SR" in Kiev granted Germany continuous insight into all the deliberations of the Minsk negotiating framework. As the Ukrainian authorities had never extended a separate diplomatic status to the Office of the OSCE SR, its international staff – excluding the OSCE SR him-/herself who were granted an "ad personam - diplomatic status with restricted privileges" – was accredited as members of the respective Kiev embassies of their home countries/EU Mission. In addition, during the first conflict years the German "Auswärtiges Amt" kept regular telephone contact with the OSCE SR, to review the work of the TCG and its WGs as well as to discuss possible new initiatives to promote the implementation of the Minsk Package of Measures.

As the location of the Office of the OSCE SR was in Kiev, his/her personal contacts to Ukrainian authorities connected to the Minsk Negotiating Process were automatically more frequent than to the Russian participants of the TCG with whom interaction was – but for some visits to Moscow two to three times per year – maintained by telephone and email correspondence. Before the beginning of the TCG meetings in Minsk the OSCE SR as a rule held private talks with the heads of the Russian and Ukrainian delegations as well as – if need be – with the representatives of the "Donbas separatists".

Given the Ukrainian opposition against him visiting the "certain areas of the Donetsk and Lugansk Oblasts" the OSCE SR, the author of this article, was unable to travel to this part of eastern Ukraine for the first two years of

his office. With the help of the then Nunzio to Ukraine, Claudio Gugerotti, now Cardinal and Head of the Vatican Dicastery for Eastern Churches, a private visit of the catholic OSCE SR to the catholic communities in the cities of Donetsk and Lugansk could be organized. Kiev tacitly took note of this “unofficial personal activity” of the OSCE SR. The “de facto-authorities” of both Donetsk and Lugansk kept their promises of not making any announcements concerning the OSCE SR presence in the “separatist areas” which helped to build confidence and enabled further visits thereafter. Kiev’s concerns that the OSCE SR’s visits would give room to an “officialization” of the status of the “de facto-authorities” of “certain areas of the Donetsk and Lugansk Oblasts” through visits of the OSCE SR misread his desire to gain as much of an objective picture as possible of the entirety of the conflict area. It was thanks to the constructive approach of Nunzio Gugerotti that a practical and pragmatic middle ground could be found.

The Normandy Four’s formal “oversight”

In spring 2015, parallel to setting up the TCG Working Groups, the Normandy Four established “...an oversight mechanism in the Normandy format ... on the level of senior officials from the foreign ministries”, as foreseen in their Declaration of February 12, 2015.

With the progression of the events, it was solely up to the OSCE SR, without the two other TCG members from Russia and Ukraine, to report to a group of Normandy Four officials when they convened either on the level of “senior officials of the Foreign Ministries” or of the four Foreign Ministers. Neither Russia nor Ukraine was represented by its respective head of delegation at the “oversight mechanism”-meetings. There was a simple logic to this. Both heads of delegation were very prominent former politicians. Boris Gryzlov had been Speaker of the Russian Duma (2003-2011) and Minister of Internal Affairs (2001-2003) as well as Chairman of the country’s ruling party “United Russia”. Gryzlov’s counterpart was Ukraine’s former President and former Prime Minister, Leonid Kuchma (1994-2005 and 1992-1993 respectively). It would have been politically untenable to have these two at the time still leading political personalities of their countries to report to “senior officials from the foreign ministries”.

Russia and Ukraine differed in the coverage of the Minsk talks by their foreign ministries. Whereas the Russian MID was present in the TCG by the Ambassador at large, Azamat Kulmukhametov, a previous Russian Ambassador to Syria, at times together with Alexei Polishchuk, now head of MID’s 2nd Department in charge of Ukraine, Belarus and Moldova, Ukraine’s Ministerstwo zakordonnych sprav only had Andrii Plakhotniuk covering the “Minsk process”, Ukraine’s current Ambassador to Canada who had not been part of the direct TCG deliberations during the period in which the author served as the TCG moderator.

The Normandy Four “oversight mechanism” – be it on the level of Senior Officials or the Foreign Ministers – thus limited itself to the “oversight” of only a single side of the *Trilateral* Contact Group, of the work of the OSCE, through the OSCE SR and of the SMM Chief Monitor. Under these circumstances any disappointment with the overall TCG performance was directed solely at the OSCE and its representatives. Anything else could not have been expected as neither Russia nor Ukraine would have used the “oversight mechanism” as a stage for critical remarks of one’s own performance.

The OSCE SR was only invited to attend the meetings of and report to the “Senior Officials” and Foreign Ministers of the Normandy Four, not so to the Summit meetings of this Format.

“Oversight” of the OSCE Permanent Council and the UN Security Council

The same picture – only with a wider participation – characterized the quarterly reports in person of the OSCE SR and the SMM Chief Monitor to the OSCE Permanent Council. OSCE Participating Countries tended to solely evaluate the activities of the OSCE representatives, ending their interventions with at times expressions of support for the deliberations of the OSCE SR and the SMM Chief Monitor.

As already noted above the UN SR also “kept seized of the matter” in as much the same way as the OSCE PC. The Permanent Members, France and Russia—who were also part of the Normandy Format and represented in the OSCE PC—did not review their own actions as members of the Normandy Four or, in Russia’s case, as a side to the Trilateral Contact Group. Instead, together with Germany and Ukraine, they limited their discussions to commenting on the OSCE’s work and exchanging mutual criticisms between Ukraine and Russia.

Be it the Normandy Four, the OSCE PC or the UN SC the “oversight mechanisms” focused solely on the work of the OSCE and her - would be - representatives.

To use these fora for a self-reflection by the other actors of the TCG and the Normandy Four on their own performance in implementing the Minsk Agreements, was not on the agenda.

Don’t blame it all on the OSCE

This present article has concentrated on the oversight of the Normandy Four over the TCG and its Working Groups. In practice however, other parallel mechanisms were also in place to follow the developments in eastern Ukraine, namely, the OSCE Permanent Council and the UN Security Council, yet a coordinated interaction between all these august bodies to solve the conflict appeared to be missing.

In current discussions the OSCE, acting through the SMM, the OSCE SR and its Permanent Council tends to be the central focus of criticism for failing to solve the conflict in eastern Ukraine. As stated above however, in reality, other actors too had been involved: the Normandy Four and the UN SC, the latter having de facto approved the Normandy Four’s political oversight of the OSCE endeavors.

When discussing the international community’s inability to solve the conflict in eastern Ukraine, it therefore seems appropriate not to single out the OSCE alone, but rather to speak of a “multi-organ failure” as a multitude of international bodies had been involved.

In each of these bodies – and on the ground – it was Russia that held the role of a key player.

Looking forward

It will be up to the two conflicting sides to decide how and by whom they want to see their ceasefire observed and managed. It is likely that any future ceasefire-line between Russia and Ukraine will probably be at least five times longer than the approximately 420 kilometre “line of contact” that the OSCE SMM monitored in the Donbas. This would be difficult for the OSCE alone to monitor. A peace process of this magnitude may also require a number of different political, operational and technical bodies.

If the OSCE is called up to be involved in monitoring, the sheer size of the task would probably require the organ-

isation to work with others, such as the UN and/or a group of its member states, other regional organizations or sui generis arrangements. This brings the risk of repeating a situation where different actors with different mandates are engaged in a disjointed way. To avoid another “multiple organ failure” by the international community in Ukraine, the OSCE should insist on clearly structured responsibilities between all actors involved. This would contribute to cohesion among all relevant actors and increase the chances of a sustainable peace.





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Netherlands Helsinki Committee
Het Nutshuis
Riviervismarkt 4
2513 AM The Hague
The Netherlands

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