

Reflections on Possible Russian-Ukrainian Agreements: Tragic Dilemmas and No Cause for Optimism

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Initial Observations

As the Russian war of aggression against Ukraine drags on and talks between Russia and Ukraine continue, more attention is drawn to the parameters of a possible deal to end the fighting. Inevitably, the various parties' – Ukraine, Russia and the West – interests and prospective stakes in/ownership of such a deal will be different and partly conflicting.

The stakes are extremely high: for Ukraine, for the European and global security order, and for the West's current and future relationship with Russia. What might be perceived as (short-term) gains here and now could have detrimental long-term structural costs.

There are **two conflicting political imperatives** involved. The first is to **stop the fighting, bloodshed and humanitarian suffering** – there is a need to act here and now in the short term, not least for reasons of political expediency. The second is to **restore respect for and uphold international law, and the principles and commitments of the European security order** in the long term, most notably sovereignty, territorial integrity and the right to self-defence.

Concurrently, there is also a will to try to minimize the risk of further escalation that would mean getting involved in a direct conflict with Russia, and to manage the costs linked to the imposition of sanctions on Russia, providing support to Ukraine, assisting refugees, and so on. This analysis sheds some light on these conflicting goals and the direct costs, and opportunity costs, involved.

Any deal between Russia and Ukraine to stop the ongoing war that results in anything less than the status quo ante in February 2014 will inevitably mean that Russian military aggression against and invasion of Ukraine, as well as the other grave violations of international law and the fundamental principles that underpin the European security order, will have been rewarded. What is at stake here is not just Ukraine's sovereignty and territorial integrity. The ultimate question is whether military aggression will be perceived by the Kremlin to be a

successful tool for achieving its political goals.

Any agreement that does not nullify Russia's gains since 2014 will mean a loss for Ukraine, and will make the violations of international law and the European security order more permanent. Any negotiated deal will be one that Ukraine is forced to strike "**under duress**" because of Russian military power. It will be like the Minsk agreements after Ilovaisk and Debaltseve, but on a much larger scale. Ukraine will enter such a deal only because of the existential threat to the Ukrainian nation and the lives of Ukrainians, not of its own volition.

Among the False Assumptions and Premises that Could Risk Clouding Our Understanding and Framing of Such a Possible Deal Are:

a) A deal would be a peace agreement that is durable and sustainable, leading to a new, more or less stable and predictable, equilibrium in which Ukraine could be rebuilt, the sanctions against Russia partially lifted, and Western states return to a sense of normality, able to focus their attention on issues such as China, the economy and social welfare, as well as the green transition.

Counterargument: Russia's goal in Ukraine to gain political control of the country has been obvious since at least 2014. Even if Russia is forced into a tactical pause, it would **be neither a peace agreement, nor durable and sustainable**. The war crimes committed by Russian forces and the severe repression in the areas occupied by Russia underline the humanitarian costs of accepting a continued Russian presence in Ukraine.

b) A deal would be based on a compromise between the parties, where both sides would leave the table with some gains.

Counterargument: Any imaginable deal would entail Russian gains (territorial and political) at the expense of Ukrainian losses and would be the result of military aggression.

c) A deal can be struck with Russia in good faith or, alternatively, that Russia needs an off-ramp or to save face.

Counterargument: Russia has not respected such commitments before (e.g. in Georgia or the Minsk agreements). A country that has initiated the largest military aggression in Europe since the Second World War and committed serious war crimes cannot be seen as acting in good faith

d) Ukrainian sovereignty can somehow be saved.

Counterargument: barring a situation in which Russia leaves the entirety of Ukrainian territory and retracts demands for the demilitarization and "denazification" or enforced "neutrality" of Ukraine, any arrangement would entail further limitations on Ukrainian sovereignty. Putin and the Kremlin have effectively denied Ukraine's right to exist as a free and sovereign nation state. Enforced neutrality would be a serious infringement of Ukraine's or any other country's right to freely choose its own security arrangements. Rather than an equilibrium safeguarding Ukraine's independence, in the long run it is more likely to provide yet another step down the slippery slope towards de facto Russian political domination.

e) The consequences of such a deal could be contained to Ukraine (this being an "unfortunate" but essentially "local" or "regional" conflict).

Counterargument: Any agreement that limits Ukraine's sovereignty and territorial integrity, and its right to defend itself and choose its own security arrangement would violate the security order based on international law and the OSCE principles, as enshrined in the Helsinki Final Act and the Charter of Paris. It would undermine the existing security order and create a dangerous precedent. This is not a local conflict: it is a systemic crisis. Russia's demands to control Ukraine's foreign policy choices are just a subset of its wider ambitions to rewrite

the rules on European security.

f) The Russia crisis can be solved.

Counterargument: The Russia crisis is a long-term structural crisis that has been ongoing since at least 2007–2008. At its core, it is due to Russia having antagonistic goals and using antagonistic means (military violence and hybrid attacks) to enforce them. Its goals are not limited to Ukraine. Russia's aggressive and antagonistic behaviour cannot be resolved, only managed, at least as under its current leadership, but also most likely also beyond that. There are no quick fixes. This is a problem that can't be solved, only managed.

g) "Constructive ambiguity" could be a helpful diplomatic tool and some thorny issues could be kicked down the road for future resolution.

Counterargument: The main lesson learned from the Minsk package is that ambiguity has been destructive and deliberately abused by Russia. Any concessions risk creating even bigger problems in the future.

Policy Recommendations

- The criteria for assessing any diplomatic initiative should be based on **restoring respect for international law and the principles and commitments of the European security order**, founded on the Helsinki Final Act and the Charter of Paris.
- The mistakes of the Minsk agreements should be carefully analysed, evaluated and understood. States cannot be allowed to force constitutional changes on other states, or the holding elections or referendums through the use or threat of use of military violence. Nor can they deny other states the **right of self-defence** (article 51, UN Charter). Any lifting of sanctions should never be tied to the behaviour of the victim of aggression.
- Short-term diplomatic efforts driven by "realism" and political expediency must not compromise important principles of international law and the European security order, such as **sovereignty, territorial integrity and the right to self-defence**. "**Moral hazard**" in security policy must be avoided.
- Any potential new, illegitimate leadership of Ukraine, or of parts of the country, must not be recognized but sanctioned.
- Any deal that involves continuing violations of international law and OSCE principles should **not be welcomed or legitimized. Such violations must be held accountable. Aggression must never be rewarded.**
- Western pressure should not be put on Kyiv to enter into agreements against its will and interests, such as a Minsk 3 kind of arrangement ("Istanbul 1"). It is important to put Ukrainian agency where it belongs, with the Ukrainian people and its leadership. **Nothing about Ukraine without Ukraine.**
- Security guarantees or assurances should not be given if the state involved is not willing or able to enforce them. Strengthening Ukraine's defence capabilities and general resilience might have a deterrence effect but does not amount to a security guarantee.
- Support to Ukraine must continue and pressure on Russia be maintained. A possible return to the status quo ante as per 23 January 2022, with Russian control over Crimea and parts of Donbas, would not reverse the death and destruction caused and must not lead to a return to the sanctions situation that existed at that time.
- Arrangements that would effectively "freeze" and risk perpetuating the conflict along new conflict lines inside Ukraine should be avoided as far as possible. There are ample lessons to be learned from Georgia, Moldova and the Minsk agreements on how *not* to deal with such situations. Those arrangements have conserved

rather than solved the conflicts.

- The West should not recognize or legitimize Ukraine being forced under duress to hand over Crimea or ORDLO to Russia. The West has a responsibility to be “more Ukrainian than the Ukrainians” in such a case, since it has implications far beyond Ukraine’s borders.

As per article 41 of the Articles on State Responsibility, one of the particular consequences of such serious breaches is that “No State shall recognize as lawful a situation created by a serious breach ..., nor render aid or assistance in maintaining that situation”. The 1974 UN General Assembly Resolution on the Definition of Aggression (Resolution 3314, art. 5.3.) contains a similar clause: “No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful”.

The Law of State Responsibility, as codified first and foremost in the 1967 Vienna Convention on the Law of Treaties, has several rules that govern the invalidity of treaties, notably: article 51, on coercion of a state representative/duress; article 52, on coercion of a State by the threat or use of force; and article 53, on treaties conflicting with a peremptory norm of general international law. The position of the United States and the United Kingdom with regard to the Baltic states after 1940 should be the guiding example.

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This analysis does not propose possible solutions or ways out of these genuinely tragic dilemmas. Nor does it claim that a deal would necessarily be undesirable or is unnecessary.

It states that there will be inevitable painful structural and human costs involved regardless of the outcome, and that these need to be fully understood, and coolly and soberly analysed, without the kind of wishful thinking that has proved so detrimental to European and global security since the events of 2008 and 2014.

Short of a complete Russian withdrawal from all of Ukraine, including Crimea (and reparations for all the damage inflicted and lives lost), which must remain the long-term goal, there are no good solutions, only least bad ones. There is no possible win-win outcome.

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