



Issues in Negotiations

Looking toward an End to the War in Ukraine

Edward Ifft, with an introduction by Amb. James E. Goodby

Introduction

Carl von Clausewitz must have had Ukraine in mind when he wrote that war is policy by other means. Ukraine's geography has made it throughout history the subject of interest of powerful neighbors. Among them are Russia and Germany, each of which at various times has been willing to use force to acquire the territory possessed by Ukraine.

Vladimir Putin's war against Ukraine that began in 2022 was a continuation of this age-old practice. Ukraine did not have to engage in hostile acts to persuade its neighbors to attack it. Its existence was all that was needed. Putin, for his part, has had to invent historical connections with Ukraine to justify Russia's invasion of a peaceful neighbor. Clausewitz would have been familiar with that type of diplomacy.

The West's response has been suffused with moral justifications for supplying Ukraine with the weapons needed to maintain its independence. Underlying those considerations was the balance-of-power argument that has motivated European politics for centuries.

Notably, Putin's invasion involves a nation that is nuclear-armed. And from the war's beginning, President Putin has issued threats to use nuclear weapons in connection with his decision to invade. Those threats were echoed publicly by Russian influencers, presumably to underscore that they should be understood as serious. This invasion of Ukraine is a violation of norms clearly set forth in documents such as the UN Charter and the Helsinki Accords; moreover, the threats to use nuclear weapons emanating from Russia are violations of several other documents to which Russia has also acceded.

Although Washington's reaction to nuclear threats has mostly avoided heated rhetoric, the nature of the US-NATO supply chain of vital military equipment for Ukraine that has been organized since the invasion began has no doubt been constrained by this added danger,

which needs constant attention. For example, while Ukraine and Russia fight along battle lines, Putin's nuclear threats have allowed Russia to attack Ukraine's economy and internal means of production with more effect than Western sanctions alone have done in response. This does not lead to good long-term outcomes.

Assessing the current situation, Ed Ifft in the essay that follows posits that wars that do not end in an unconditional surrender generally end with a negotiated settlement—whether permanent or with elements that are interim in nature. Dr. Ifft argues that it is time to begin to think about the complicated and difficult issues that would be involved in any settlement of the war in Ukraine. He identifies these issues, along with some of the painful compromises that might be required to resolve them.

Dr. Ifft's essay flows from a perspective that Ukraine may have reached or will soon reach a high-water mark on the battlefield, and it is therefore in its own best interests, however dissatisfying or unfair, to end that fighting through a settlement. And he argues that too much attention has been paid to the prospects for operational advances or to the delivery of this or that specific weapons system. But after all the effort that the United States and its allies have put into defending Ukraine from Russia's attack, and after the heroic defense that Ukrainian forces themselves have mounted to preserve the independence of their nation, a failure of NATO diplomacy to uphold Ukraine's sovereignty and territorial integrity in a peace settlement would be a serious defeat for the United States and for the West generally. Dr. Ifft may be right that it is time to think of the bigger picture. Yet, is there more that could be added to this story?

Hoover Institution historian Stephen Kotkin, for example, has argued that autocrats like President Putin or Chairman Xi most value their control over their party and, in turn, their party's control over their people. If that is what really matters, might fostering credible alternatives to that rule—through coordinated information and political operations, for example—therefore be a legitimate second front for Ukraine and its supporters in the West in this total war? Our colleague Philip Zelikow, meanwhile, has carefully studied how frozen Russian assets in the West—or simply the interest earned from those sizable assets—could still be used to improve Ukraine's position; it seems that European leaders may be endorsing such efforts as this essay goes to press in July 2024. Or, what about the options available to the United States or our allies for interrupting China's continued supply of weapon components to Russia's military industrial base, as recently publicly disclosed by Secretary of State Tony Blinken?

George Shultz, of course, advocated for negotiation from a position of strength. And sometimes he would get there by expanding the boundaries of the negotiation. Although a divided US Congress eventually did pass its latest Ukrainian aid bill, one could argue that the decline in US political support as the war has progressed is less about American antipathy toward Ukrainian heroics and suffering and more about the failure of our own political leadership to tell the public what our goal is in supporting Ukraine. One proposal: America's goal is to achieve the best possible position for Ukraine to settle the war with Russia—and then to deter Russia from simply starting it again.

Importantly for Dr. Ifft's essay, the diplomacy of both *ending the war* and *creating a stable peace* would have to achieve each of those two ends to be successful. Although Dr. Ifft addresses the former aim, he is also right that Russia's violation of so many negotiated treaties to launch this war makes the second one even more stark. I would argue there is likely more that we can still do to put Ukraine in the best possible position for a settlement. But following that, whatever the negotiations to end the war, these two fundamental aspects of diplomacy are one of the reasons why the United States will need to be involved in the peace-making of the current war between Russia and Ukraine even after it is settled. As Secretary Shultz would remind us, "There is no withdrawing from the world. We are a part of it whether we like it or not." A just and lasting peace will require American military might to provide the muscle to balance forces in that region of Europe.

Amb. James E. Goodby

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STATUS OF THE WAR

It has been more than two years since Russia's February 24, 2022, invasion of Ukraine.¹ After an appalling amount of death and destruction, with no end in sight, Russia has gained control of about 20 percent of Ukrainian territory. Each side speaks of "victory," but the word that best describes the current situation would be "stalemate."² Of course, leaders believe they must hold out victory as their goal for their domestic audience and their international backers. However, it feels more like the Western Front in 1916 than the prelude to a victory parade in either Kyiv or Moscow. Two astute US analysts characterized this war from its very beginning as "everyone loses," which seems an apt description.³

FUTURE OF THE WAR

Wars that do not end in an unconditional surrender generally end through a predictable process of ceasefire—negotiation—settlement. In some cases, the ceasefire itself is the first product of negotiation. We are seeing this dynamic play out in Gaza. The settlement can be a permanent, legally binding grand bargain that solves the underlying issues, or it may be an uneasy peace or even a frozen conflict, of which there are several in the world. However, the outlines of a realistic settlement to the war in Ukraine have received little attention.⁴

There is no moral equivalence here. Russia's aggression may not have been completely unprovoked, but it is completely unjustified. At the same time, attempting to understand Russia's perceptions and taking into account its legitimate security concerns are necessary if the international community is to build a better and more durable security architecture in Europe.

Putin appears to be the leader most amenable to negotiations. This was seen in his December 2023 four-hour Q&A with journalists and the public, during which he seemed both confident and uncharacteristically conciliatory.⁵ It seemed to be confirmed in his February 2024 interview with conservative US journalist Tucker Carlson, his first US interview since 2021.⁶ However, his current views may have changed. Whether he is ready to negotiate in good faith is another question and can only be discerned once serious contacts begin. Zelenskyy's mantra of "no negotiations, no compromise" does not seem to provide a path to a stable peace or a bright future for Ukraine. It is inconceivable that this war can end without negotiations and compromise.⁷ It is natural to ask why Ukraine should be obliged to negotiate, compromise, or give up an inch of territory at all. The answer is found on the battlefields of this war.

One might profit from studying the Balkan Wars of the 1990s, especially how they were resolved and made possible the relatively peaceful and normal region it is today. Both Yugoslavia and the USSR were highly diverse and perhaps somewhat unnatural countries that were held together by a strong and sometimes brutal center. When the center lost power in Yugoslavia, there was immediate violence; for the USSR, the violence we see now in Ukraine is arguably a delayed reaction in what has otherwise been an essentially peaceful process of dissolution since 1991. Obviously the two cases are different in important ways, but that does not mean there are no lessons to be learned. I recently had dinner with the mayor of a town in Serbia who had lived through the Balkan Wars. His observation was, "Three years of negotiating is better than one day of fighting."

NEGOTIATIONS

A judgment by Ukraine that negotiations would be in its best interest could result from sufficient support from the United States and NATO to halt, and perhaps push back, Russian advances and demonstrate a determination to stay the course. It would also be absolutely essential that Ukraine be convinced that Russian attacks would not resume in the future. Ukraine is unlikely to agree to negotiate only to stop the fighting, desirable as that may be, but will also insist on a guarantee of a secure future. From Russia's point of view, a decision to stop fighting and negotiate in good faith would probably need to result from a realization that the West is not trying to impose a "strategic defeat" on Russia and block it permanently from occupying what it perceives as its rightful place as a great power. The dilemma is this: Can we make Ukraine comfortable enough to negotiate without making Russia so uncomfortable that it prefers to continue fighting?

Looming over all these considerations is the possibility that former president Donald Trump might win the US election in November 2024, which would seem to favor Russia. How this affects each side's calculus now is difficult to say. Understanding each side's decision-making process from the outside is difficult, especially given the contradictions inherent in this process.

Ukraine's goals would presumably include the following, not necessarily in order of importance:

- Have regime change in Moscow to a government more friendly to Ukraine.
- Recover all lost territory.
- Join the EU and NATO.
- Bring back as many displaced Ukrainian citizens as possible.
- Build the strongest military in Europe.
- Acquire significant reparations from Russia and significant aid from others for reconstruction.
- Assure freedom of navigation in the Black Sea and Sea of Azov.
- Assure no future attacks from Russia.

Russia's primary goals would likely be the following:

- Have regime change in Kyiv to a government more friendly to Russia.
- Prevent Ukrainian membership in NATO.
- Retain control of as much captured Ukrainian territory as possible, especially Crimea.
- Assure the well-being of whatever Russian minority remains in Ukraine.
- End as much of the sanctions regime as possible.
- Assure freedom of navigation in the Black Sea and Sea of Azov.
- Minimize discussion of and punishment for war crimes.
- Restore Russia's reputation as a responsible great power.

Embedded in these goals are the key issues that will need to be addressed in any negotiation on ending the conflict. These issues will largely be the same whether this negotiation begins in the near future or only after more years of fighting. They will be the key issues regardless of where the line of control is located and whether the negotiation is bilateral, involves a small group of key countries, or is led by an impartial mediator. The issues that underlie the war

have been largely overshadowed by the military considerations. It is time to begin to consider seriously what these issues are and how to resolve them.

This list of issues could be separated into territorial issues and policy/political issues. Any attempt to discuss them will be difficult and controversial, both in terms of their origins and their possible solutions.

ISSUE: THE DONBAS

The future of the Donbas may be the most difficult territorial issue, emerging from what amounts to a civil war. What happened in the Donbas is frequently presented in the West as a simple invasion by Russia into Ukrainian territory. However, it is probably better understood as yet another separatist insurrection. These tend to be nasty and difficult to resolve. The success of the Maidan Revolution led quickly to the passage of legislation by the Verkhovna Rada banning the use of the Russian language in government offices and education. Although this did not actually become law, it led immediately to a rebellion in the predominantly Russian-speaking areas of the Donbas; after several months of fighting, the rebels requested and received military support from Russia. The problem appeared to have been solved with the Minsk agreements agreed to by Kyiv and Moscow and mediated by the Organization for Security and Cooperation in Europe (OSCE) with French and German support (the so-called Normandy format). Its terms, unanimously endorsed by the United Nations Security Council (UNSCR 2202), called for a ceasefire, the withdrawal of heavy weapons, restoration of Kyiv's control of the border with Russia, and a "special status" for the rebel areas—which was not further defined but was understood to be some sort of self-government or federalization. OSCE observers were called on to monitor the situation and received some cooperation from both sides. Ukraine, however, refused to carry out the Minsk agreements, and fighting intensified. Between 2014 and 2022, there were about fifteen thousand casualties, the majority on the separatist side. When the Russian invasion in 2022 increased the area of secessionist control in the Donbas, Russia declared the formation of the Luhansk People's Republic and the Donetsk People's Republic, which was not in accord with international law. Russia's control now extends the entire length of the northern and western side of the Sea of Azov and beyond to the Dnieper (Dnipro) River in the south.

Reporting is almost nonexistent on life in the areas of the Donbas controlled by Russia and the separatists, and this is relevant for its likely fate. Obviously, life for those still living on the front-lines is horrible for both sides. However, is life in Mariupol these days improving and returning to normal, or is it tenuous and miserable? During Putin's brief visit there, new housing construction was highlighted. It matters whether this is a Potemkin village situation or whether it represents a serious Russian investment in attempting to rebuild the city. If it is the latter, it could be very difficult to convince the Russians to abandon Mariupol to Kyiv's control in a settlement. Another complication is that thousands of Donbas residents have been given Russian passports.

Ideally, the entire Donbas should be part of Ukraine, with safeguards for Russian speakers who choose to remain there. This would seem to require the creation of some regime

resembling that agreed on in the Minsk agreements, perhaps with greater control for Kyiv. Such an arrangement would be a painful compromise for both sides but probably is the best that is possible. Clearly, the wishes of those who live there is also relevant. Perhaps the near-term solution has to be acceptance of a line of control, with an understanding that future, internationally supervised elections would decide its permanent status. Conventional wisdom is that territory that is lost on the battlefield cannot be regained at the negotiating table. An exception could be a land-for-peace deal. One example would be the agreement in which Israel gave back the Sinai to Egypt.

ISSUE: CRIMEA

The story of Crimea is a complicated one. Geographically, it makes sense for Crimea to belong to Ukraine, but history tells a different tale. After more than two centuries as part of Russia, since the time of Catherine the Great, Crimea was suddenly transferred to Ukraine by Khrushchev in 1954 with no consultation with its residents. Of course, it made little difference when both areas were part of the Soviet Union, but it makes a great deal of difference now. Crimea plays an outsize role in Russian myth and imagination, its beaches and mountains serving as a favored vacation destination for decades. The Crimean War and the World War II summit events at Yalta add to its reputation for drama. More importantly, its principal port, Sevastopol, is headquarters of Russia's Black Sea Fleet. After the dissolution of the Soviet Union, difficult negotiations between Presidents Yeltsin and Kravchuk resulted in Russia's gaining a long-term lease on the crucial naval base until at least 2042, along with a dividing up of the assets of the Black Sea Fleet between Russia and Ukraine, and sales of Russian gas to Ukraine on favorable terms for Ukraine. The Russian Duma foolishly annulled this agreement. The legal presence of up to twenty-five thousand Russian military personnel in Crimea, plus large numbers of Russian citizens there, made it easy for Russia to seize Crimea in 2014 immediately after the Maidan Revolution. An election shortly after these events showed a large majority of Crimeans favoring union with Russia. This election did not meet international standards, but probably did reflect the real views of Crimean residents. Russian aggression has subsequently secured a "land bridge" along the Sea of Azov all the way from southern Russia to Crimea. An important goal of Ukrainian forces, thus far unsuccessful, is to sever this land bridge. The \$4 billion Kerch bridge, also under attack, provides further access. The Nova Kakhovka Canal has served to divert much-needed water from the Dnieper River to thirsty Crimea. The canal was blocked by Ukraine after the 2014 events. The dam itself was partially blown up in 2023, apparently by Russia for unknown reasons, further complicating an already murky situation.

Ukraine has shown a surprising ability to target Crimea, most importantly the Russian naval base at Sevastopol. As a result, Russia has been forced to withdraw significant naval assets from Crimea to Novorossiysk, three hundred kilometers away.⁸

Of all the territory illegally seized from Ukraine and annexed by Russia, the Crimea seems the least likely to find its way back to Ukraine. The Russian worst-case nightmare would be that Crimea becomes part of Ukraine, Ukraine joins NATO, the Russian Black Sea Fleet is evicted

from Crimea after 250 years there, and Sevastopol becomes a NATO/US naval base. No Russian president could accept this. A search for a compromise might have Crimea reverting to Ukrainian control but with long-term access to Sevastopol for the Russian Navy, perhaps with Russian access to the smaller port at Feodosia farther to the east. One similar arrangement that comes to mind would be that between the United States and Cuba for Guantanamo Bay. Under any outcome, Crimea should be readily accessible to all for any peaceful activities. Even after Russia took control, Ukrainian citizens could visit Crimea prior to 2022 for up to three months without a visa.

None of the dramatic transitions in the history of Crimea—Russia capturing it from the Ottomans, Khrushchev’s giveaway in 1954, or Russia taking it back in 2014—had anything to do with democracy, but its importance to Russia is undeniable. There is a risk that Russia might even resort to the use of a few tactical nuclear weapons to stop a Ukrainian attempt to invade it.⁹

ISSUE: OTHER TERRITORIES

Russian conquests beyond the Luhansk and Donetsk regions, up to the Dnieper River in the regions of Zaporizhia (Zaporizhzhia) and Kherson where there are no majorities favoring Russia, have no legitimate rationale whatsoever beyond providing a land bridge to Crimea. The settlement of the future of these areas thus may be tied to that of Crimea. They should clearly be returned to Ukrainian control, regardless of their illegal annexation by Moscow. Of particular interest has been Russian control of the Zaporizhia nuclear-power station, whose six nuclear reactors are idled and being monitored by the International Atomic Energy Agency. Fighting around this station posed the threat of a nuclear disaster but seems to have died down. Russian claims that this station, along with the infamous formerly active station at Chernobyl, were the site of work on radiological weapons were found to be without foundation. If Crimea and the Donetsk region remain under Russian control in some interim settlement, perhaps arrangements for safe passage between the two could be found. The similarity to the situation with the Russian region of Kaliningrad might be instructive here.

ISSUE: MEMBERSHIP IN THE EUROPEAN UNION

Both EU and NATO membership will need to be addressed in any comprehensive settlement, although a ceasefire would not require any agreement on them. Both have been analyzed in detail elsewhere, and the situation changes frequently. Ukraine is on track to join the EU and Russia traditionally has not posed objections, in principle, to its close neighbors trading with the West, although, of course, it has always preferred that Ukraine be in an eastern trading bloc. Jumping the queue for EU membership ahead of Turkey and others is an issue. Integrating Ukraine’s huge agricultural sector into the EU’s Common Agricultural Policy will also pose a major hurdle.

ISSUE: MEMBERSHIP IN NATO AND SECURITY GUARANTEES

It feels inevitable that Ukraine will eventually become a member of NATO. On the one hand, Ukraine has strong support for membership, especially in Eastern Europe. On the other hand, this has been a major redline for Russia for many years and clearly was an important factor in its decision to invade in 2022. The acute phase of this dispute began in earnest with the April 2008 NATO Summit's declaration that "Ukraine and Georgia will become members of NATO," but without timelines or concrete steps to that end. This appeared to skip the whole membership qualification process and went well beyond the traditional NATO open-door policy that qualified countries were welcome to apply for membership. Ukraine has pushed strongly for expedited membership and even written this into its constitution.

It seems highly unlikely that Russia would agree to NATO membership for Ukraine in any peace document. Perhaps the real question is, Would Russia at least agree to cease fighting with this question unresolved? NATO has sensibly had a policy of not admitting any country in the midst of an active conflict and has insisted that any territorial disputes be resolved as well. This would appear to give Russia a veto over Ukrainian membership by continuing to fight or by merely refusing to settle disputes over territory. It is clearly not reasonable for Russia to have such power. At the July 11-12, 2023, NATO Summit in Vilnius, Lithuania, the alliance strengthened the NATO-Ukrainian partnership but did not specify a timeline for membership. In connection with this, President Biden stated, "I don't think [Ukraine is] ready for membership in NATO." Ukraine was not offered the traditional Membership Action Plan (MAP) that contains five key areas and serves as an accession process. Variations exist—for example, North Macedonia labored for twenty-one years under its MAP before joining in 2020, while Finland was allowed to join quickly without going through the MAP process. NATO secretary-general Jens Stoltenberg has stated that Ukraine could be exempted from the MAP requirement.¹⁰

At the other extreme of possibilities lies military neutrality for Ukraine. This seemed like a promising option years ago but is strongly out of favor now with Ukraine and its backers. Russia, however, continues to push for this conclusion. A grand bargain, which should definitely not be dismissed, would be Ukraine becoming part of the EU but not NATO. The most attractive model for this would be the Austrian State Treaty of 1955, which has been a great success. Austria is a highly secure, flourishing, and attractive country, and Vienna frequently is named the world's most livable city. It is a frequent choice for international conferences and other events and is not even in the EU. Could Ukraine, with interesting and attractive cities like Kyiv and Odessa (Odesa), aspire to be similar destinations in Eastern Europe? The answer would be "yes," but only if its security could be solidly guaranteed. Ukraine would be free to build up its own military capability to look more like Switzerland, another highly successful militarily neutral country in the heart of Europe, but Austria seems like a better model for Ukraine.

It seems essential that any settlement of the war must include security guarantees. These could be alternatives to NATO membership for Ukraine and could be acceptable to Russia (or, at least not subject to blockage by Russia). These guarantees would be absolutely essential if

the neutrality option is chosen. To be most effective, they could even include guarantees that address some of the perceived security needs of Russia. Bilateral or multilateral security guarantees are the obvious choice here, and several countries have already entered into security arrangements with Ukraine. Although these could be designed to clearly be against Russia, the most effective such guarantees would include Russia as a party. Other models exist that should be studied but need not be elaborated here. These include the Japan model, the South Korean model, and the Israeli model.¹¹ The Japan model does not include a commitment to defend the disputed Kurile Islands. The Israeli model is of particular interest. The United States has given powerful military and diplomatic support to Israel for decades, but the actual commitment is only to provide “support it deems appropriate.” Even the celebrated NATO Article 5, which considers an attack on one to be an attack on all, does not prescribe any specific course of action.

An additional point in the spirit of leaving no stone unturned is to ask, Are there any variations of NATO membership for Ukraine that would not lead Russia to continue to cause major problems? One might be a commitment by Ukraine not to seek NATO membership for a specified number of years or never to host nuclear weapons on its territory. Another might be never to host foreign military bases on its territory. Still another that would seem good for all parties might be to accept a demilitarized zone along all or part of the Ukraine-Russia border.

An interesting twist on the NATO issue is the rather mild Russian reaction to the fact that its actions have caused Sweden and Finland to join NATO. Some have claimed that this proves that NATO membership for Ukraine is not important to Russia at all and was not a primary reason for the invasion. This does not ring true. What this shows is something quite different—that Ukraine has a unique status for Russia. It is also probably the case that, for many Russians, Crimea is a special case within a special case. That does not make Russia’s actions right, of course. This conclusion is also instructive for the question of whether Russia’s actions in Ukraine means likely future invasions of western countries, including NATO members.

ISSUE: REPARATIONS

Rebuilding devastated portions of Ukraine might also be part of negotiations to end the fighting. The bill will be enormous, estimated to be on the order of \$400 billion and growing. Forcing Russia to pay at least part of this cost would be justifiable but difficult. Perhaps Russia would be more amenable if there were a joint fund established, which also included helping rebuild portions of the country that remained under Russian control. Proposals have been put forward to seize Russian assets in the West to help fund rebuilding efforts.¹² These assets are estimated to be about \$300 billion. Two-thirds of these assets are held in Belgium, and only about 2 percent in the United States.¹³ A variation would be to seize only the interest earned by these Russian assets. This is a novel issue that deserves further attention by relevant parties, including the international legal system.

ISSUE: WAR CRIMES

One of the remarkable aspects of this war is that it is probably the first one in history to spawn a cottage industry of documenting war crimes in real time. Photographs, videos, and interviews are being made on smartphones that can be powerful evidence of atrocities, most of them committed by Russian soldiers. They also include documenting severe damage done to schools, hospitals, housing, and other noncombatant facilities by missiles, bombs, and drones. Ordinary people have become experts on the Geneva Conventions. Words like “genocide” and “crimes against humanity” are being thrown about rather loosely in both the wars in Ukraine and Gaza.

In the past, gathering of evidence and legal proceedings took place only after hostilities ceased. These were generally lengthy and expensive and only involved the top leaders who were clearly responsible for truly horrendous crimes. One thinks of the Nuremberg Trials and the proceedings in The Hague following the Balkan Wars, or the Tokyo trials at the end of World War II.¹⁴ The nature of modern media has made it possible to identify individuals doing outrageous things to other individuals. The enormous numbers of acts that might qualify for punishment, together with the “fog of war,” would seem to make it unlikely that justice can be evenly applied, especially to such individual acts. One widely publicized case involved a Russian soldier shooting a Ukrainian man innocently riding by on his bicycle with his son. Although claims have been made that the individual soldier responsible has been identified, successful prosecution seems unlikely. Some legal standards will need to be clarified. One will probably be that prosecutions can only be made by a legally established international tribunal; punishments cannot be revenge imposed by the winners on the losers. Years of hunting down and punishing those suspected of war crimes after a war would not seem like the best path to healing for the countries involved. The International Court of Justice and perhaps the International Criminal Court will be tasked to sort this all out. As a minimum, that work should aim to provide something of a deterrent to committing such crimes in future conflicts.¹⁵

ISSUE: ETHNIC CLEANSING

Ethnic cleansing can be a particularly pernicious problem at the end of a war, especially if it involves a change in control over an area. One famous case was the brutal forced exodus of Armenians by Turkish forces early in the twentieth century. A more recent example would be the sudden flight of practically all ethnic Armenians (about 120,000) from Nagorno-Karabakh, their homes abandoned, after Azerbaijan seized control of the area. This was the reverse of the flight of some 700,000 Azeris from the same area during their war with Armenia in the early 1990s.¹⁶ The forced flight of large numbers of Serbs from Croatia near the end of the Balkan Wars is also relevant. Or consider the treatment of Germans who found themselves outside Germany at the end of World War II.

The application to Ukraine is clear. Any settlement is likely to involve some change in who controls territory. For example, if all or part of the Donbas reverts to Ukrainian control, which seems only just, what about the fate of citizens who supported the separatists but wish to

remain in, or return to, their homes in the Donbas and are willing to pledge their loyalty to Kyiv? The continued misery, suffering, and dislocation that frequently occur after the fighting stops seem especially tragic. A settlement should provide safeguards for such people, but it is difficult to define and prevent forms of discrimination and persecution that would make lives intolerable.

This issue is entangled with the problem of war crimes. Zelenskyy has declared that Ukrainians who participated in the killing of other Ukrainians must be held accountable. Of course, he had in mind separatists who killed loyalists, not Ukrainian military forces who killed separatists. This problem occurs after all civil wars. The South African Truth and Reconciliation process created by Nelson Mandela provided a good model for how such dilemmas might be solved. A more recent case concerns the “Troubles” in Northern Ireland. More than 3,500 people were killed in Northern Ireland during thirty years of violence. In September 2023, a British “legacy law,” passed by Parliament, provides what amounts to an amnesty to Troubles-era killers. It provides “conditional immunity” to those who cooperate with an investigatory body and ends all civil actions and inquests from the Troubles.¹⁷ Creativity and compassion will be needed to avoid a form of “justice” that would only prolong suffering and invite further conflict.

ISSUE: MAKING A SETTLEMENT DURABLE

A major objection to seeking a negotiated settlement is the poor record of Russian compliance with agreements. Frequent reference is made to the Budapest Memorandum of December 5, 1994, in which Russia, along with the United States, United Kingdom, and France, who were Nuclear Weapon States (NWS) under the Nuclear Non-Proliferation Treaty (NPT), promised to respect the independence and sovereignty of Ukraine (along with that of Belarus and Kazakhstan) within existing borders in accordance with the Final Act of the Commission on Security and Cooperation in Europe. This was a key part of the agreement under which Ukraine, Belarus, and Kazakhstan joined the NPT as Non-Nuclear Weapon States (NNWS). At the time, it was primarily seen as extending to these three states the standard so-called Negative Security Assurances accorded to NNWS. The possibility that these three NNWS might be attacked by any of the NWS was not really in anyone’s field of view.

That Russia has violated the Budapest Memorandum is beyond doubt. Putin attempted to justify Russia’s action by claiming that a new state had arisen, apparently as a result of the Maidan Revolution, and that it was holding part of the Ukrainian population in this new state against its will. This attempted justification may refer to a provision in the Vienna Convention on the Law of Treaties. Article 62 of this convention outlines the circumstances under which a state-party may terminate or withdraw from a treaty. These include “a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of the treaty, and which was not foreseen by the parties” and whose effect “is radically to transform the extent of obligations still to be performed under the treaty.” Would Russia have agreed to the Budapest Memorandum if it had been told that Ukraine joining NATO was part of the deal? The United States itself has recently used this provision in international law—“a

fundamental change of circumstances with respect to the treaty”—to justify the fact that it has “fully and indefinitely suspended the operation of all CFE [Conventional Armed Forces in Europe] Treaty between itself and every other State-Party, effective December 7, 2023.”¹⁸

Legal arguments aside, the fundamental question now is how to craft a settlement that will be robust enough to guarantee the security and territorial integrity of Ukraine. A detailed answer to this would require a separate study, although several possible models are mentioned here. The obvious general approach to this problem is to provide the robust security assurances discussed earlier, plus an effective implementation and verification regime. Several arms control agreements provide the template for how to monitor obligations related to the numbers and types of weapon systems and where they may be located. A key element of such a regime would presumably be a monitoring/peacekeeping force along all or key parts of the Ukraine-Russia border. Both the UN and the OSCE have extensive experience with this kind of operation. The OSCE had observers in the Donbas after hostilities began there. The UN has multiple peacekeeping operations at the present time, including one that has been operating since 1964 in Cyprus. More than one thousand personnel are involved in this mission, which serves to keep the peace between two NATO members—Turkey and Greece! Even now, the International Atomic Energy Agency has officials based at Ukrainian nuclear reactors to monitor their safety.

A key consideration will be whether a comprehensive security arrangement will be established primarily as a confrontational one *against* Russia or a cooperative one *with* Russia. The latter would be preferable but may require significant improvements in trust and demonstrated compliance with existing agreements. One positive factor in enforcing a ceasefire or settlement is that the fighting, at least thus far, has been carried out primarily by normal military forces controlled by governments. This is in contrast to the undisciplined paramilitary gangs that committed such atrocities in the Balkan Wars.

It is now widely recognized that the “rules-based order” in Europe has somehow failed. The collapse of much of the arms control structure that was carefully negotiated and successfully implemented over many years is a major part of this failure. Settlement of the war in Ukraine will be an important piece, and perhaps the first piece, of a new security architecture for Europe. Appropriate roles must be found for the OSCE, EU, NATO, the UN, and other organizations, and Russia must accept a responsible role in this effort. Serious study of all this is urgently needed.

NOTES

1. For an earlier article on this subject by the author, see Edward Lfft, “Ending the War in Ukraine: Practical, if Painful, Possibilities,” *Bulletin of the Atomic Scientists*, July 22, 2023.
2. For a contrary view, see Jack Watling, “The War in Ukraine Is Not a Stalemate,” *Foreign Affairs*, January 3, 2024.
3. Samuel Charap and Timothy J. Colton, *Everyone Loses: The Ukraine Crisis and the Ruinous Conflict for Post-Soviet Eurasia*, Adelphi Book (London: International Institute for Strategic Studies, 2017).

4. See "Scenario-Building Workshop: Europe after the War," European Leadership Network, February 2024; Matthew Burrows, "Ending the War in Ukraine: Harder than It Seems," Stimson Center, February 22, 2024.
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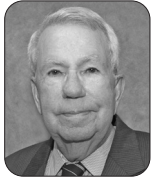
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