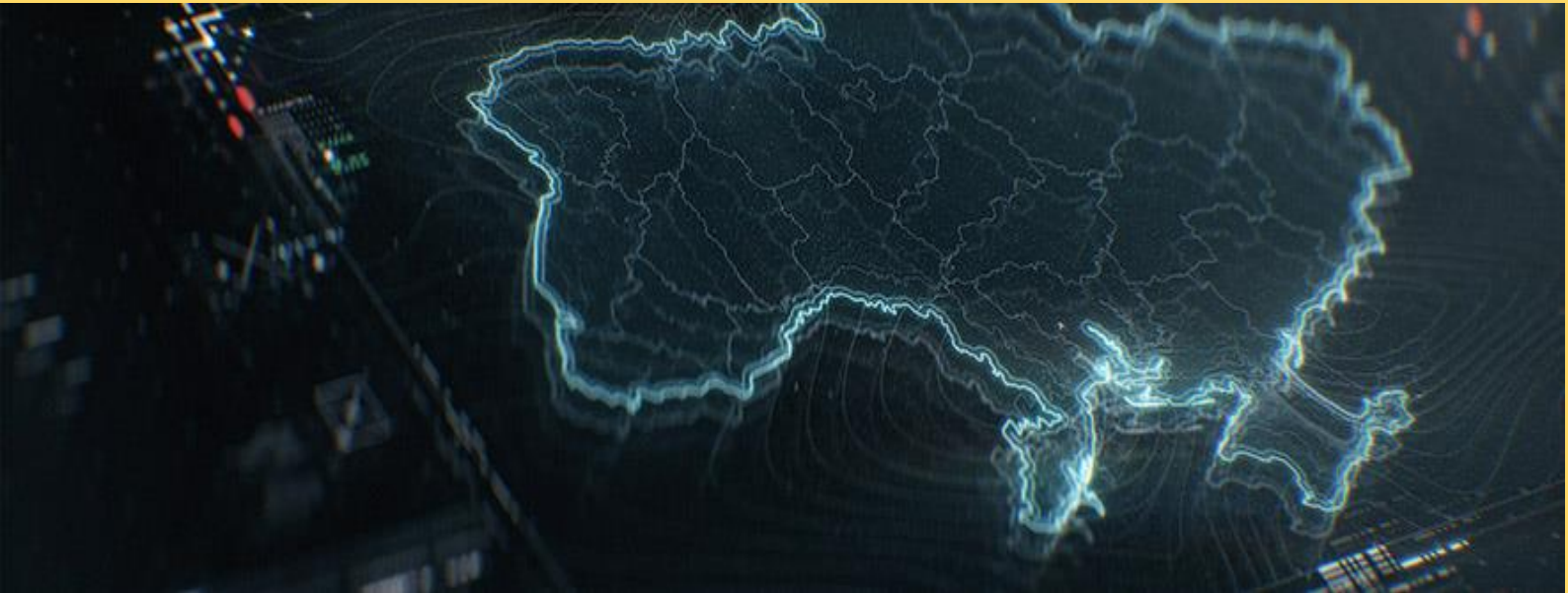




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UKRAINE SETTLEMENT PROJECT



UKRAINE SETTLEMENT OPTIONS:

Reconciliation

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UKRAINE SETTLEMENT OPTIONS PAPER

RECONCILIATION

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INTRODUCTION

Reconciliation refers to the need to transform the relationships between societies on opposing sides of an armed conflict from mutual antagonism to “mutual recognition and acceptance.” ([Bar-Tal & Bennink 2004](#)) Reconciliation processes pursue this aim by grappling with the underlying causes of the conflict and with conflict-related harms, as well as by establishing frameworks for constructive engagement between the concerned communities. While political institutions often create and implement reconciliation measures, reconciliation in this sense is ultimately a social process with a desired social outcome. The term reconciliation can also be used to refer to political reconciliation between governments or between a government and its constituents, but this paper focuses exclusively on social reconciliation.

Reconciliation provisions are included in peace agreements to increase their likelihood of long-term success. Without reconciliation, the social tensions that contributed to the armed conflict will not have changed and indeed will likely have intensified during the conflict. If the concerned societies continue to regard each other as enemies, to harbor resentment for conflict-related harms, and to perpetuate the underlying causes of the conflict, then conflict may well resurge. ([Bar-Tal & Bennink 2004](#)) Including reconciliation provisions in peace agreements has been correlated with a greater chance of those agreements enduring, particularly if the provisions result in concrete measures that are implemented by the concerned governments. ([Garson 2017](#)) Incorporating transformational language and themes in peace agreements also has been correlated with the success of those agreements. ([Ryan 2017](#))

A wide variety of mechanisms have been associated with the aim of reconciliation. This paper focuses on several types of peace agreement provisions that are directly aimed at promoting social reconciliation. Other preconditions, such as security and rights for minority communities, can also be fundamental to reconciliation, but discussing these is beyond the scope of this paper.

Specifically, this paper will discuss four options:

1. General affirmations
2. Rejecting inflammatory political statements
3. Justice processes
4. Constructive engagement

UKRAINE CONTEXT

Social reconciliation processes are focused on the societies on either side of an armed conflict. In the current conflict, and particularly from an international perspective, these societies could be defined broadly as Russian and Ukrainian. But within Ukraine, characterizing these communities and their relationships to each other is complex.

- **Community identification:** The [2001 census](#) indicates that there is a significant population within Ukraine that identifies as ethnically or linguistically Russian. However, such identifications are not necessarily exclusive, with some Russian speakers also reportedly identifying as Ukrainian both in [analysis of the 2001 census](#) and in [later studies](#). Being a native Russian speaker also [does not necessarily correlate](#) to supporting Russia in the war. These identifications also reportedly [vary by region](#), with [differences noted](#) between the Donbas, Crimea, and the rest of Ukraine.
- **Changing demographics and borders:** In addition, the ongoing conflict is changing the demographics of Ukraine. There are [millions of refugees](#) fleeing the country, as well as [millions of IDPs](#) within Ukraine. It is unknown how many of those refugees and IDPs will eventually return, especially to areas of active conflict where cities, homes, and infrastructure have been destroyed. Any changes to Ukraine's borders or the status of the Donbas would also significantly affect the status and distribution of Ukraine's communities.

Overall, there is a significant degree of uncertainty around the relationship between self-identification, community affiliation, and conflict alignment, and also around the eventual demographics and borders of Ukraine. It is impossible to anticipate exactly what these communities and their relationships will look like in Ukraine and especially in the Donbas region at the end of the conflict. Nonetheless, these characteristics may ultimately affect what kinds of reconciliation measures the parties to a peace agreement wish to pursue, and how, at the end of the conflict.

Related factors to consider in developing reconciliation provisions for a peace agreement include:

- **Domestic reconciliation:** Ukraine could pursue some reconciliation activities on its own within the country. While such reconciliation activities could be referenced in a peace agreement, they could also be identified and determined entirely by Ukraine, outside the context of a peace agreement.
- **Geographic focus:** Specific reconciliation measures could be focused on the Donbas region and its inhabitants. Alternatively, measures could also concern Crimea, or could encompass Ukraine as a whole, or even relationships across the border with Russia. Different reconciliation mechanisms might be more or less useful for different regions, particularly given the variation in community affiliations and conflict experiences among different areas.
- **Limits of reconciliation:** Reconciliation mechanisms produce their benefits only in the long-term and depend on the participants engaging in good faith. In addition, although they are intended to promote mutual respect, this social outcome is outside the control of the parties to a peace agreement and is not guaranteed. Because reconciliation

outcomes are long-term, intangible, and difficult to measure, and because there are many other factors involved in the relationships between societies, it can be difficult to determine whether reconciliation mechanisms have been effective.

RECONCILIATION OPTIONS

1. General Affirmation

The simplest type of reconciliation provision is a general affirmation of the parties' commitment to reconciliation. Such statements are often included in a prologue or preamble. These affirmations may be the only reconciliation provision in an agreement or may be combined with specific reconciliation measures in the body of the agreement. For example:

- In the 2009 [agreement](#) between the Democratic Republic of Congo and the CNDP, the prologue includes the affirmation, “wishing to promote lasting peace in the DRC and genuine reconciliation between the sons and daughters of this great country.”
- The 2003 [Accra Agreement](#) between the Government of Liberia and LURD and MODEL contains two reconciliation affirmations in the preamble: “Moved by the imperative need to respond to the ardent desire of the people of Liberia for genuine lasting peace, national unity and reconciliation” and “Determined to foster mutual trust and confidence amongst ourselves and establish mechanisms which will facilitate genuine healing and reconciliation amongst Liberians.”

Of course, such statements have limited potential effect, since they are purely rhetorical. However, exactly because such a provision is so general and aspirational, it is typically costless to both sides, unless they are so committed to their conflict positions that even suggesting the idea of reconciliation might be reputationally harmful.

General affirmations can also provide a basis for eventual action:

- Peace agreements are often not one-time events but include multiple rounds of negotiations and a series of agreements. This can be due to the failure of a previous agreement or, in contrast, can represent progress and an effort to advance the dialogue further. North Korea and South Korea, for example, have held a series of talks that have produced multiple agreements including numerous provisions aimed at reconciliation. (E.g., [Pyongyang Declaration](#)) Thus, a general commitment in an initial peace agreement could be a starting point that is followed by more specific commitments in a later agreement.
- A general affirmation could also provide an opening for the parties or non-governmental organizations to seek funding and develop specific programs aimed at reconciliation. Provisions in peace agreements can catalyze funding from international organizations, for example. (Molloy 2019) The [Belfast Agreement](#) endorsed providing financial support for reconciliation activities by non-governmental and community organizations: “The participants recognise and value the work being done by many organisations to develop reconciliation and mutual understanding and respect between and within communities and traditions, in Northern Ireland and between North and South, and they see such work as having a vital role in consolidating peace and political agreement. Accordingly, they

pledge their continuing support to such organisations and will positively examine the case for enhanced financial assistance for the work of reconciliation.” (Para. 13)

Overall, including a general affirmation will likely have little immediate effect. However, including such a provision presents no real risk and could lay the groundwork for future action, even if immediate measures are untenable.

2. Rejecting Inflammatory Political Statements

Inflammatory rhetoric from political leaders is common in the build-up to armed conflicts. Such rhetoric can serve to justify violence by intensifying, perpetuating, and authenticating existing social and political tensions. In addition, rhetoric that dehumanizes and vilifies a social group is a risk indicator for atrocity crimes like war crimes, crimes against humanity and genocide. Any continuation of such rhetoric after armed conflict has ended tends to perpetuate the causes of the conflict and the antagonism between the concerned societies, and thus to undermine efforts at social reconciliation.

Peace agreements can also incorporate provisions concerning public statements about and interactions between the parties. For example, the reconciliation chapter of the 1991 [agreement](#) between North Korea and South Korea includes promises about how the parties will speak about each other and engage with each other publicly:

- “The South and the North shall recognize and respect each other's system.” (Ch. I, Art. 1)
- “The two sides shall not slander or vilify each other.” (Ch. I, Art. 3)
- “The two sides shall cease to compete or confront each other in the international arena and shall cooperate and endeavor together to promote national prestige and interests.” (Ch. I, Art. 6)

In the Ukraine context, inflammatory statements have been an integral part of the development of the armed conflict. For example, Putin has made [public statements](#) justifying the Russian invasion by asserting that Ukraine is historically and culturally part of Russia, that the Ukrainian government is illegitimate, and that it is associated with neo-Nazis. Such claims tend to characterize the armed conflict as part of a deep, permanent, cultural framework and thus to undermine any opportunity for social reconciliation.

Including a provision concerning public statements would directly address political rhetoric that tends to construct and perpetuate a conflict-oriented cultural and historical narrative. However, such provisions can be implemented effectively only if the parties are willing to comply in good faith.

3. Justice Processes

A peace agreement could also provide for transitional justice processes, which are meant to promote reconciliation through pursuit of truth and accountability for the conflict and its harms. Transitional justice institutions can take many forms and serve many purposes, and this paper will not fully address this issue but will examine it only through the lens of reconciliation. This section briefly introduces two prominent reconciliation-oriented options that represent contrasting strategies: truth and reconciliation commissions and amnesties.

Truth and Reconciliation Commissions: TRCs promote social reconciliation by providing a process for victims to share their experiences and an opportunity to publicly explore the causes of the conflict, human rights violations committed during the conflict, and responsibility for those violations. Peace agreement provisions calling for TRCs typically require that the commissions be established and articulate broad aims, leaving the details for later enactment. For example:

- The [Accra Agreement](#) mentioned above required the establishment of a TRC: “A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation.” (Art. XIII(1)) The TRC was established in 2006 and issued its final report in 2009, identifying the root causes of the conflict, describing and attributing human rights abuses, and making recommendations. ([USIP 2006](#))
- The Sierra Leone [Lomé Agreement](#) similarly provides: “A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” The TRC was created in 2004 and issued its final report in 2005, making findings about the causes of the conflict, the human rights violations committed, and responsibility for those abuses, as well as making recommendations. ([USIP 2002](#))

In the Ukraine context, there is considerable contestation of the historical relationship between Ukraine and Russia and the causes of the conflict. This could create an opportunity for a TRC to promote social reconciliation by publicly exploring all perspectives and developing a shared historical narrative for all involved communities. However, exactly because these issues are so central to the instigation of the conflict, a TRC addressing these issues would be controversial. Any TRC would need to be carefully designed and implemented to ensure that it could operate independently, openly, and evenhandedly. And of course, there is no guarantee of a conciliatory outcome from a TRC process.

Amnesties: Both the [Minsk I](#) and [Minsk II](#) agreements included broad amnesty provisions, in which the parties agreed to “[e]nact a law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and the Lugansk regions of Ukraine” ([Minsk I](#), para. 6) and “ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Lugansk regions of Ukraine.” ([Minsk II](#), para. 5)

Amnesties are common in peace agreements as reconciliation mechanisms to allow participants in the conflict to re-integrate into society without fear of prosecution. However, from a reconciliation perspective, there is inherent tension between the aims of re-integrating combatants and of enabling social reckoning with conflict-related harms. Amnesties are contrary to international law if they include freedom from prosecution for war crimes and other serious international crimes. Amnesties also prevent the use of prosecution as a tool for ensuring public knowledge of and achieving accountability for conflict-related harms. TRCs sometimes grant amnesties in return for testimony, but broad amnesties granted in advance limit potential witnesses’ incentives to participate. ([OHCHR 2009](#))

If an amnesty provision is included in a future agreement, it could be crafted to be more targeted than the Minsk provisions and thereby mitigate some of these concerns. For example:

- The 2013 [Kampala Dialogue agreement](#) between the DRC and M23 specifically excludes serious international crimes from its amnesty: “the Amnesty does not cover crimes of genocide and crimes against humanity, including sexual violence, recruitment of child soldiers and other massive violations of human rights.” (Art. 1)
- The [Kampala Dialogue agreement](#) also conditions each individual’s amnesty on a promise not to engage in further violence: “In order to benefit from the amnesty, each member of the M23 shall be obliged to make a personal commitment in writing to refrain permanently from the use of weapons or from participating in an insurgency movement to ensure the success of any demand. Any violation of this commitment shall automatically render the amnesty thereby granted null and void and would disqualify the author of the violation from any subsequent amnesty.” (Art. 1)
- The [Accra Agreement](#) mentioned above merely requires “consideration” of an amnesty: “The NTGL shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is the subject of this Agreement.” (Art. XXXIV)

Finally, while joint transitional justice initiatives would need the agreement of both Russia and Ukraine, Ukraine could also initiate internal, domestic transitional justice initiatives on its own. Ukraine has already been carrying out [prosecutions for war crimes](#) in its domestic courts. Ukraine has also been engaging in [transitional justice planning](#) for some time.

4. Constructive Engagement

Reconciliation provisions can also create frameworks for constructive engagement between the respective societies. Unlike justice provisions, which look back at the causes of the conflict and its harms, these kinds of provisions are forward-looking and seek to promote positive relationships between the concerned groups in the future.

In protracted conflicts, societies can come to define themselves by their opposition to each other and to interact primarily in the context of the conflict. Their mutual antagonism becomes fundamental to their relationship and to their own identities and becomes difficult to abandon, even after the armed conflict ends. This can be particularly acute in situations like Ukraine, where the national identity of one of the societies is actually at stake in the conflict. ([Kelman 2004](#); [Kelman 2007](#)).

Mechanisms for constructive engagement deliberately foster cooperative interactions as a way of enabling the shift from mutual antagonism to mutual respect that is at the heart of social reconciliation. This section highlights two such strategies, which can be used individually or in concert: establishing a joint government committee and endorsing collaborative activities.

Committees: One way of creating such a framework is to establish a joint government committee to undertake reconciliation activities and promote cooperative measures. For example, a 1998 [peace agreement](#) between Peru and Ecuador that resolved a dispute over a border region established a Peru-Ecuadorian Neighborliness Committee with authority to undertake cooperative initiatives: “The Peru-Ecuadorian Neighbourliness Committee will be established as an authority and a political mechanism to encourage, support, and coordinate the programs, projects and activities that generate togetherness and common interests between

Peru and Ecuador. The Neighbourliness Committee will establish general guidelines for bilateral cooperation, implementation of the border regime, and for the smooth running of the Binational Development Plan for the Border Region.” (Art. 5, italics omitted) The agreement also included direction on the activities the Neighborliness Committee should pursue, as discussed in the following section.

By creating a government committee, the parties establish authority to undertake the kinds of initiatives that are usually implemented by the government and can also integrate these programs with other government policies. This may be particularly useful for initiatives like development projects that have substantial economic or social impacts in addition to their reconciliation purpose and that might require significant government support. It also allows for future flexibility in defining reconciliation activities while maintaining government control. The National Committees that constituted the Peru-Ecuadorian Neighborliness Committee were chaired by the states’ respective foreign ministers, signifying a considerable level of government authority, and with that, considerable power to pursue high-level programs. (Annex I, Art. 3)

Alternatively, collaborative activities are also often promoted by non-governmental organizations. For example, as noted above, the [Belfast Agreement](#) acknowledged the work done by community organizations. Community organizations may be able to leverage close, direct connections within the concerned societies, which may be particularly helpful for dialogue-oriented activities.

Authorizing and endorsing activities: There are many kinds of collaborative activities that can be leveraged to promote constructive engagement between the concerned communities, whether these activities are implemented by a government commission or through non-governmental programs. Peace agreements may also authorize or endorse such modes of engagement, either in conjunction with establishing and defining the functions of a government committee, or independently. For example:

- **Economic and social cooperation:** The Ecuador-Peru Neighborliness Committee mentioned above was [authorized](#) to promote collaborative economic and social activities, including “scientific and technological cooperative agreements,” “collaboration in prevention efforts related to health, immunological campaigns and environmental sanitation,” “educational exchanges between schools and universities,” and many other cooperative and collaborative programs. (Art. 11) Of course, if successful, such activities should produce economic and social benefits, in addition to promoting reconciliation.
- **Community dialogue:** One [study](#) found that the reconciliation activity most valued by participants was direct community dialogue between members of the concerned societies: sharing one’s own story and hearing the stories of others.
 - As noted above, the [Belfast Agreement](#) supported non-governmental organizations’ reconciliation activities in Northern Ireland, which included extensive [opportunities for dialogue](#) between community members.
 - A more recent [New Decade, New Approach agreement](#) for Northern Ireland specifically endorsed community dialogue as a reconciliation mechanism: “[The parties] also affirm the need to encourage and promote reconciliation, tolerance, and meaningful dialogue between those of different natural and cultural identities in Northern Ireland with a view to promoting parity of esteem, mutual respect, understanding and cooperation. These principles will be reflected in legislation.” (Para. 25)

- The 1998 [Oslo II agreement](#) on the West Bank and Gaza Strip contained a provision requiring “dialogue and cooperation,” (Clause 1, Article 1, Annex VII), and [direct dialogue](#) between the concerned communities was part of the joint reconciliation activities that followed the agreement.

In the Ukraine context, the [Minsk I](#) and [Minsk II](#) agreements contained provisions concerning both economic development and dialogue, but these were not aimed at reconciliation. The agreements contained provisions aimed at economic redevelopment in the Donbas for its own sake, rather than incorporating collaboration between separatist and non-separatist communities as an inherent part of those mandates. Similarly, while both agreements called for “dialogue,” these provisions seem to refer to national and political dialogue addressing self-government and elections in the Donbas, not to community dialogue.

Reconciliation activities focusing on constructive engagement could take place at several levels, including international initiatives between Russia and Ukraine, initiatives targeted at the Donbas, or initiatives within Ukraine at large. There are also other identifiable lines of division and tension within Ukraine that have developed as a result of the conflict. For example, in 2018 [UNHCR identified](#) a need for dialogue and other reconciliation activities to address relationships between IDPs and host communities.

Different kinds of measures might be useful for each of these different groups and regions. For example, both social and economic collaboration and community dialogue might be effective in the Donbas region. The identity of this region as Ukrainian or Russian is a core cause of the conflict, and a [2020 survey](#) found sharply divided views on the conflict among the region’s inhabitants. In addition, the conflict in eastern Ukraine “[ruined the area's economy and heavy industries, forced millions to relocate and turned the conflict zone into one of the world’s most mine-contaminated areas](#)” even before the 2022 invasion. Community dialogue programs allow for direct engagement between the divided communities, while collaborative development programs create opportunities for mutually beneficial interaction while also directing international funding and resources into the area.

The need for reconciliation is particularly acute when communities have to live in direct contact with each other within the same state, rather than divided by an international border. Of course, as with transitional justice, Ukraine could also pursue such measures within the country on its own initiative, without needing to include these mechanisms as provisions in a peace agreement with Russia.

CONCLUSION

To promote social reconciliation, a peace agreement can authorize specific reconciliation mechanisms, identify reconciliation as an important aim through a general affirmation, or both. There are many types of particular measures that can be leveraged to promote reconciliation, including but not limited to those addressed in this paper. Ultimately, the aim of including such provisions is to promote reconciliation between the concerned societies and thereby to prevent a revival of the conflict in the future. Any reconciliation measures included in a peace agreement should be viewed as an investment in peace in the long-term, rather than as mechanisms that might produce immediate, tangible outcomes.