

Indicative Drafting Suggestion for:

THE KYIV COMPACT ON SECURITY GUARANTEES FOR UKRAINE

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Note: *On 24 May 2022, the head of the Office of the President of Ukraine, Mr Andriy Yermak, announced the creation of an international Advisory Group to develop proposals for future security guarantees for Ukraine.¹ The report of the Group, chaired jointly by Mr Yermak and Mr Anders Fogh Rasmussen, former Danish Prime Minister and former NATO Secretary-General, was published on 13 September 2022, after several rounds of consultations among the members of the group.²*

For illustrative purposes only, this document seeks to translate the recommendations contained in the report into a possible draft for the Kyiv Compact it proposes. The text draws on an earlier treatment of security guarantees for Ukraine provided by the author.³

A few features of this indicative draft may be noted. The Compact is not directed against any particular state. It applies in case of a further armed attack or act of aggression against Ukraine. It also poses no threat to any particular state. Its core provisions, going beyond preparations for defence, apply only reactively, in response to a further armed attack or aggression.

While not eligible for registration according to Article 102 of the United Nations Charter, the Compact, as its name suggests, is of high authority. It enters into force upon signature by its Core Parties and Ukraine, given at the level of head of state or government. It is supported by legally binding bilateral agreements concluded under its aegis between Ukraine and individual Parties.

As indicated by the Yermak/Rasmussen report, Ukraine carries the principal weight of securing its own defence in the future. However, the Core Parties take on the role of the key enabler for an effective defence for Ukraine, including longer-term commitments towards this end. Moreover, direct military participation in the defence of Ukraine on the part of states willing to do so is not excluded.

The Compact does not interfere with the continued exercise of the right of individual or collective self-defence of Ukraine in relation to the present conflict. Its provisions concerning a response to a further armed attack or act of aggression against Ukraine only become operative once that conflict has been concluded in fact or through agreement. However, these provisions do not apply, should Ukraine ignite the conflict afresh, for instance in order to resume its campaign to fully restore its territorial integrity.

¹ <https://www.president.gov.ua/en/news/andrij-yermak-ta-anders-fog-rasmussen-ocholyat-mizhnarodnu-k-75345>, 24 May 2022.

² https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf.

³ Marc Weller, Options Paper on Security Guarantees, Ukraine Peace Settlement Initiative: https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/weller_security_guarantee_options_paper.pdf

The Compact as drafted can continue to operate, should Ukraine and the Russian Federation come to an eventual peace settlement. It is concluded with the perspective of EU and NATO membership for Ukraine in mind. Its operation could terminate once that has been achieved.

This document is an initiative of the Cambridge Initiative on Peace Settlements. It has no official standing of any kind and has not been commissioned by any government or organization, nor has it been reviewed or approved by the Advisory Group or its co-chairs. Its purpose is merely to start the process of discussion about items that might need to be covered in a document of this kind, and to show one of several ways in which these issues could be addressed. Evidently, any final document, should it come about, will be the result of extensive further discussions among Ukraine and the other relevant states.

PREAMBLE

Ukraine has a long and illustrious national history. Ukraine served as a full member of the United Nations since 1945 and emerged as a fully sovereign state with its Declaration of Independence of 24 August 1991, approved by the national vote on 1 December 1991;

Upon achieving full independence, Ukraine remained a member of the United Nations Charter, which protects the territorial integrity and political independence of member states without any restriction or reservation;

When the USSR dissolved, the Russian Federation repeatedly acknowledged, in formal and legally binding treaties, its irrevocable recognition of the territorial integrity of Ukraine within its lawful and internationally accepted boundaries, along with the obligation to refrain from the threat or use of force and to settle all disputes peacefully;

The Russian Federation confirmed in the Budapest Memorandum of December 1994 once more the obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, adding the solemn pledge that none of its ‘weapons will ever be used against Ukraine except in self-defence;’

Nevertheless, the Russian Federation has, twice in less than a decade, mounted an aggressive war against Ukraine, occupying parts of its territory and claiming to have annexed some of it in flagrant violation of international law;

In fact, in its purported justification for its latest war against Ukraine, the Russian Federation has denied the national entitlement of Ukraine to be a sovereign state and instead asserted its ambition to conquer its territory and dominate its people;

The unprovoked armed invasion by the Russian Federation of a peaceful neighbouring territory has been strongly and universally condemned by the overwhelming majority of states, as has the attempt of the Russian Federation forcibly to annex Ukrainian territory, both in 2014 and again now;

The purported annexation by the Russian Federation, first of Crimea and now of four further provinces, is a legal nullity and without any consequence for the continued territorial definition and integrity of Ukraine. There can be no changes of borders in Europe except by virtue of the free and sovereign consent of the states and populations concerned;

Referenda held after a period of armed occupation, and after extensive demographic manipulation, and conducted under the shadow of the gun, have no standing in international law and practice;

These acts of aggression have brought untold destruction and suffering upon the people of Ukraine, who have nevertheless heroically resisted and who will continue to resist any attempt to extinguish the independent statehood of Ukraine or to diminish its territorial integrity;

Ukraine is fully entitled to recover all its territory in the exercise of its right of individual and collective self-defence;

This unwavering campaign of national resistance of Ukraine has attracted the support of a broad coalition of states, united in their determination to help defeat aggression and restore international peace and security;

NATO declared at its Bucharest summit of April 2008 that Ukraine will become a member of NATO. Ukraine fully maintains its constitutionally enshrined ambition to join NATO, along with the European Union, in an accelerated way;

In view of its repeated experience of aggression and the suffering it has brought to its people, it is the right of Ukraine to seek firm support for its future security. It lies in the interest of Europe and the world to preserve and protect Ukraine, and the principle that aggression must not pay, from further assault through armed attacks and acts of aggression:

THIS SOLEMN

KYIV COMPACT

ON LASTING AND EFFECTIVE SECURITY FOR UKRAINE

Is Hereby Adopted and Proclaimed by the Undersigned States,

as witnessed by the affixing of the signatures of their duly

authorized Representatives, meeting at the level of

Head of State or Government, to this Document,

today, the xxth xxxxxxxx 2023,

in Warsaw, Poland.

PART I: GENERAL PROVISIONS

ARTICLE 1. GENERAL PRINCIPLES.

1. The Parties to this *Compact* reaffirm that Ukraine is and remains a fully sovereign state entitled to its full territorial integrity and to the exercise of its state authority over all parts of its territory. They do not, and will never, recognize any purported act of annexation brought about by the unlawful and unprovoked use of force.
2. As a fully sovereign state, Ukraine alone determines its foreign policy, its alliances and its economic, political and social system.
3. The Parties to this *Compact* state unequivocally their commitment to the preservation and defence of the sovereignty and territorial integrity of Ukraine from any further armed attack or act of aggression.

4. Ukraine remains committed to human rights, respect for diversity and the rights of minorities, the principle and practice of genuine democracy exercised through periodic, free and fair elections, and the rule of law. In accordance with Article 2 (7) of the Charter of the United Nations, no state is entitled to intervene in the internal affairs of Ukraine.
5. Upon gaining its full independence, Ukraine pledged its continued adherence to the purposes and principles of the United Nations, including the peaceful settlement of disputes and the prohibition of the threat or use of force among states. Ukraine stands by these commitments, while retaining and reiterating its inherent right of individual and collective self-defence in accordance with Article 51 of the Charter of the United Nations.
6. This *Compact* is concluded in full recognition of the inherent right to individual and collective self-defence of states reflected in Article 51 of the Charter of the United Nations, which includes the right of states to take steps, along with allies or partners, to prepare for an adequate and effective defence and deter or defeat future armed attacks and acts of aggression.
7. Ukraine and its partner states under this *Compact* will together strive towards the evolution of the present European security architecture, to ensure genuine security for all in Europe, free from aggression and fear, while respecting, maintaining and strengthening the Transatlantic Alliance and the security umbrella it provides. Such arrangements shall be consistent with this *Compact*.

ARTICLE 2. TERMINATION OF THE PRESENT CONFLICT.

1. In the exercise of its right to individual and collective self-defence in accordance with Article 51 of the UN Charter, Ukraine is entitled to resist aggression and retain and regain full control over its state territory.
2. The undersigned states at present cooperating with Ukraine in support of its defence will steadfastly continue their support and assistance to Ukraine in resisting aggression under present arrangements.
3. While a peace settlement must always remain possible, there can be no accommodation of aggression and purported annexation of territory. In international law and practice, changes to the status of territory can only be brought about through consent freely given, and in accordance with the genuine will of the populations concerned.
4. There must be accountability for the crimes committed during the conflict, and reparation for the injuries done to Ukraine and its people.
5. Should there be any agreement with the Russian Federation bringing the present hostilities to a close, fully respecting the rights of Ukraine, such an agreement will, on the side of Ukraine, be based on the sovereign will of its people alone.
6. Such an agreement, should it come about, shall be fully consistent with this *Compact* and not derogate from the sovereign right of Ukraine to determine its own destiny, including its choice of allies and partners, and to safeguard its security by means of this *Compact*.

ARTICLE 3. PARTIES.

1. Ukraine is the Principal Party to, and beneficiary of, this *Compact*.
2. The Core Parties to this *Compact* shall be: xxxxx. [The Rasmussen/Yermak Report proposes: the ‘US, UK, Canada, Poland, Italy, Germany, France, Australia, Turkey and Nordic, Baltic, Central and Eastern European countries.’]

3. The Sustaining Parties to this *Compact* shall be: xxxxx [The Rasmussen/Yermak report proposes ‘Japan, South Korea, among others.’]
4. Additional Core Parties and Sustaining Parties may be admitted upon agreement by Ukraine and an affirmative vote of at least four/fifth of the Conference of Parties.
5. Additional states may be invited at their request, and with the agreement of Ukraine, to associate themselves with action undertaken under this *Compact*. Such invitations shall be adopted by a majority of three fifth of the Parties. Such additional states may participate in the activities of the *Compact* as Observers, except for participation in the Military Action Group and the Permanent Military Liaison Commission.

ARTICLE 4. APPLICATION.

1. This *Compact* will ensure the security of Ukraine upon conclusion of the present hostilities, whether concluded in fact or through agreement between the sides in the present conflict. The Conference of Parties will determine with a vote of four/fifth of Parties, whether this point has been reached, at a high-level special meeting to be held in Warsaw at the request of Ukraine.
2. The commitments established in this *Compact* will apply to any territory of Ukraine under the control of the authorities of Ukraine upon conclusion of the present hostilities, as determined according to paragraph 1 immediately above, or as freely determined in accordance with a peace settlement that may be agreed by the sides.
3. The application of Articles 5, 6 and 7 will be triggered by a further armed attack or act of aggression mounted against Ukraine, a request for assistance under this *Compact* from the government of Ukraine, and a determination by the Conference of Parties with a vote of fourth/fifth confirming that a further armed attack or aggression against Ukraine has occurred, as provided in Article 9 (4) below.
4. For the purposes of this *Compact* alone, an armed attack or act of aggression is a sustained use of military force against the territory of Ukraine as designated in paragraph 2 immediately above. This includes the opposed introduction of foreign armed forces into the territory of Ukraine, ground, aerial or missile attacks, or other armed operations having the destructive consequences typically associated with military operations, that are, in view of the Conference of Parties, of significant duration and severity.
5. For the purposes of this *Compact*, and without prejudice to other contexts, this does not include limited border incidents, individual cyber operations, isolated terrorist attacks or subversion, the use of hostile propaganda, or other hostile acts not reaching the level of an armed attack or act of aggression as defined in paragraph 4 immediately above, or not clearly attributable to a state.
6. The commitments contained in this *Compact* relating to a response to a future armed attack or act of aggression shall not apply if, in view of the Conference of Parties, Ukraine has initiated or significantly provoked further hostilities. This view could be evidenced by a failure to achieve a determination by the Conference of Parties that an armed attack or act of aggression against Ukraine has taken place, even if renewed hostilities have broken out. However, in case of a disproportionate response by a state to such action on the part of Ukraine, triggering its right to individual or collective self-defence of Ukraine, the Conference of Parties may decide, upon application by Ukraine, to activate the relevant provisions of Articles 5, 6 and 7 of this *Compact*.
7. The right to individual or collective self-defence ends where Ukraine, the victim of an armed attack, has securely displaced the armed forces of the author of the armed attack or associated forces from its territory, and where no further armed action emanates, or

is imminently likely to emanate, from the author of the armed attack against the victim state, Ukraine.

PART II: AN IRON-CLAD COMMITMENT TO THE SECURITY OF UKRAINE

ARTICLE 5. DECISIVE SUPPORT.

1. The Parties to this *Compact* will decisively support Ukraine in preserving and protecting its safety and security from further armed attack or acts of aggression. The specific nature and extent of such support will be agreed in individual, bilateral agreements between each of the Parties and Ukraine. These commitments shall be coordinated among the Core and Sustaining Parties using the institutions established according to Part III of this *Compact*.
2. For the Core Parties to this *Compact*, such decisive support will extend to military assistance, economic sanctions against the aggressor state and economic support for Ukraine along with other cooperative measures.
3. For the Supporting Parties of the *Compact*, such decisive support will extend at least to economic sanctions against the aggressor state, economic assistance to Ukraine and other support. However, in their bilateral agreements with Ukraine, Supporting Parties may indicate in what way, and to what extent, they are also willing to contribute to individual aspects of military support.
4. Ukraine will shoulder the principal burden of its own defence. It will maintain significant, active armed forces at least at a level of xxxxxxxx at a high state of readiness. Ukraine will extend the system of conscription and develop a well-trained and rapidly deployable reserve force of significant size.
5. Ukraine's partners under this *Compact* will shoulder a significant portion of the burden of enabling Ukraine to establish a force that can effectively deter any further armed attack or act of aggression, or to defeat such an armed attack or act of aggression should it occur. Through the institutions provided for in Part III of this *Compact*, the Parties will develop a formula to ensure appropriate burden sharing amongst themselves.

ARTICLE 6. MILITARY SUPPORT.

1. Military support will extend to a broad range of measures to support the readiness of the armed forces of Ukraine to deter any future armed attack or act of aggression, or to sustain an effective defence should a future armed attack or act of aggression occur. This support will extend to the measures noted below, but does not exclude other measures that may be agreed between Ukraine and individual Parties.
2. Military support will cover a broad spectrum of activities. This includes:
 - (a) Supporting the development of the military industrial base of Ukraine, to help over time make its forces self-sufficient in relation to a broad range of weapons and other equipment, consumables and other materiel;
 - (b) Provision of advanced weapons system, including in particular modern armour, artillery and air defence systems, along with anti-tank missiles and air-launched rockets and missiles up to a range of 120 km. This will also include a gradual programme to modernize the Ukrainian air and naval forces and improvements in C3I capacity;
 - (c) Providing training in the use of such equipment, along with advanced training for all service branches up to NATO standard, along with joint training in the field through manoeuvres and exercises, both in Ukraine and abroad;

- (d) Provision for monitoring and advance warning, and preparations for joint activities that might extend into a period of conflict, including intelligence cooperation, targeting support, cyber defence, etc.;
- (e) Should the circumstance noted in Article 4 (4) above arise, some or all of the Core Parties may decide, at the request of Ukraine, to take additional military action in accordance with the right of collective self-defence according to Article 51 of the United Nations Charter, depending on the circumstances and the position taken by respective Core Parties. Such direct military action in the exercise of the right to collective self-defence shall be immediately reported to the UN Security Council.

ARTICLE 7. SANCTIONS AND ASSOCIATED STEPS.

1. The Parties pledge not to relax existing sanctions adopted since 2014 until the present armed attack and act of aggression has ceased, or until Ukraine has freely agreed a settlement. If these conditions are fulfilled, sanction should only be lifted gradually, commensurate with the need for the aggressor state to discharge its responsibilities in terms of accountability for crimes, compensation and guarantees of non-repetition of the act of aggression. That decision should be coordinated among the Parties to this *Compact*.
2. In case of a further armed attack or act of aggression, determined to have taken place by the Conference of Parties according to Article 9 (4), the Parties agree that sanctions will be immediately re-imposed at the level applied during the present conflict (automatic sanctions snapback) as of xxx 2023. The Parties may agree to add further sanctions.
3. All Parties will collaborate in seeking to persuade other states to associate themselves with their decisions under this Article and to ensure as broad a range of participating states in the sanctions regime as may be possible.
4. The Parties will establish a Standing Working Group, tasked with investigating the efficacy of the present sanctions regime, the possibility of further sanctions that might be developed, and related issues concerning, for instance, asset seizures and freezes, the use of seized assets to cover damages suffered by Ukraine, issues concerning patents and copyright, and other practical and legal matters.
5. Based on this work, and mindful of paragraph 2 above, the Standing Working Group will, within one year of its establishment, present a report to the Conference of Parties, proposing a comprehensive plan for the rapid re-imposition of sanctions. This plan may be adopted by the Conference of Parties, or may be referred back to the Standing Working Group for further refinement and resubmission to the Conference of Parties for its consideration.

ARTICLE 8. ECONOMIC, FINANCIAL AND OTHER ASSISTANCE.

1. The Parties to this *Compact* will develop, in close cooperation with Ukraine, an integrated strategy for the recovery, reconstruction and development of the economic infrastructure of Ukraine, even while the conflict is still on-going. They shall, together, offer a major package of multi-year support, in contact with, or as part of, the other mechanisms established to encourage and coordinate such assistance.
2. In this context, the Parties to this *Compact* will seek to leverage their own commitments through cooperation with other states and the principal international financial institutions. In particular, they will support the holding of a major international pledging

conference under United Nations auspices, at the latest within three months of the conclusion of the present conflict.

3. Additional emphasis shall be placed on early action on reconstruction and rehabilitation where this is possible even while the conflict is on-going. Again, the Parties will coordinate their efforts in this respect with the government of Ukraine and other states and organizations and seek to amplify their contributions in this way.
4. Economic and financial support shall contribute to the overall recovery of Ukraine and its ability to move rapidly towards integration with the EU by enhancing Ukraine's ability to meet the accession criteria.
5. In addition, as provided in Article 6, military assistance shall be specifically aimed towards the development of the military capacity of Ukraine at NATO standard.

PART III: INSTITUTIONS

ARTICLE 9. CONFERENCE OF PARTIES.

1. The Parties to this *Compact*, including Ukraine, shall constitute the Conference of Parties. There shall be a regular annual meeting of the Conference of Parties at a high level. The Conference of Parties adopts the decisions provided for in paragraph 2 immediately below, and recommendations, along with determinations of procedure.
2. The Conference of Parties adopts the decision on the admission of additional Parties, as provided in Article 3 (4), the conclusion of the present hostilities, provided for in Article 4 (1), and the decision on the occurrence or otherwise of an armed attack or act of aggression directed against Ukraine, as provided for in paragraph 9 (4) below, by a majority vote of four/fifth of Parties. It adopts other recommendations of substance by a majority vote of three/fifth of Parties, and determinations of procedure by a simple majority of Parties.
3. The Conference of Parties will be chaired by rotation among its Core Parties, in alphabetical order, for periods of one year each.
4. In addition to its regular annual meeting, the Conference of Parties will be convened on an emergency basis within 48 hours notice or less, if Ukraine or any three other Parties to this *Compact* report that an armed attack or act of aggression against Ukraine has taken place, or appears to be imminent. The Conference of Parties will then decide within a period of a further 24 hours whether, in its view, an armed attack or act of aggression against Ukraine has occurred. This decision is independent of the determination of this question by other international bodies.
5. If the situation does not yet appear to the parties to warrant a decision that an armed attack or act of aggression has occurred, but such a development may appear likely or imminent, the Conference of Parties may adopt a recommendation to remain in session, or schedule a further session, to review developments as they occur. Moreover, the Conference of Parties may recommend the taking of steps aiming to avert the occurrence of the armed attack or act of aggression, and providing for enhanced support for the possible defence of Ukraine.
6. If the Conference of Parties has confirmed the occurrence of an armed attack or act of aggression against Ukraine, this will result in the automatic snapback of sanctions as provided in Article 7 (2) among all Core and Sustaining Parties. It may also bring into operation additional action protocols and measures that may have been adopted by the Conference of Parties over time, upon the recommendations of the Military Action Group and the Standing Working Groups.

7. The Conference of Parties will re-convene as it may determine in case of a finding of the occurrence of an armed attack or act of aggression to coordinate further action, or it may decide to remain in permanent session at the senior working level.

ARTICLE 10. MILITARY ACTION GROUP.

1. The Core Parties shall constitute the Military Action Group. Sustaining Parties offering a military contribution may be co-opted by the Military Action Group.
2. The Military Action Group will develop and review plans and activities aiming to enhance the military capacity of Ukraine, and coordinate action in support of the defence of Ukraine in case of a further armed attack or act of aggression. The Military Action Group adopts recommendations and guidance to its member states by consensus. It meets every six months at the level of senior officials, or permanently if the occurrence of an armed attack or act of aggression has been determined according to Article 9 (4), or where such a contingency appears, in view of the Conference of Parties, likely.
3. The Military Action Group shall be supported by a Permanent Military Liaison Commission composed of military representatives of all Core Parties to this *Compact*. The Commission will coordinate the offers of training, provision of military hardware and other items foreseen in Article 6.

ARTICLE 10. STANDING WORKING GROUPS.

1. The Conference of Parties shall be supported by the Standing Working Group on Sanctions, and the Standing Working Group on Recovery, Reconstruction and Economic Development. The Standing Working Groups will develop planning and prepare items for consideration by the Conference of Parties, relating to the most effective implementation of Articles 7 and 8 respectively. Both Working Groups will meet quarterly at Ambassadorial level to review staff work and prepare recommendations for the Conference of Parties.
2. The Conference of Parties may establish additional Standing Working Groups or other subsidiary bodies.

ARTICLE 11. PLACE OF MEETINGS AND SECRETARIAT.

1. Unless otherwise determined by the Conference of Parties, meetings of the Conference and of all other bodies established according to Part III of this *Compact* shall be held in Warsaw, Poland.
2. The work of the institutions established according to this Part will be supported by a small Secretariat composed of nominees of the Parties to this *Compact*.
3. Subject to agreement by Poland, the facilities of the institutions shall enjoy diplomatic status, along with their staff, who shall be considered international civil servants.

PART IV: CONCLUDING PROVISIONS

ARTICLE 12. IMPLEMENTATION AGREEMENTS.

1. The Parties to this *Compact*, whether Core Parties or Sustaining Parties, shall enter into bilateral agreements with Ukraine, establishing the nature, size and modalities of their respective commitments.
2. Such bilateral agreements shall be concluded according to the standard national practice of the states concerned (Exchange of letters, MoUs, Framework Agreements, formal treaty, etc) and shall, where constitutionally possible, take the form of legally binding agreements.
3. When concluding these sets of bilateral agreements, Ukraine and the Parties to this *Compact* shall coordinate the respective commitments and contributions through the institutions established according to Part III of this *Compact*.
4. The nature, type and scale of individual national contribution shall be commensurate with the economic standing of the state concerned, geography, any special capability, technology or competence it may possess, and other relevant factors, including the national legislative framework.

ARTICLE 16. TECHNICAL PROVISIONS.

1. Nothing in this *Compact* shall prevent or hinder any state party from rendering assistance to Ukraine beyond the actions that may be recommended by the Conference of Parties or the Military Action Group, or to furnish such assistance as it deems appropriate if these bodies are unable to reach a recommendation.
2. Nothing in this *Compact* shall be interpreted in a way that is incompatible with international obligations incumbent upon the Parties under other instruments or agreements, including the Charter of the United Nations.
3. This *Compact* shall enter into operation upon signature by all Core Parties and Ukraine at a special high level conference convened at the level of heads of state or government, to be held in Warsaw, Poland. The commitments of Articles 5, 6 and 7 will become operational as provided in Article 4 (1).
4. This *Compact* will remain in operation until the day Ukraine has become a full member of NATO or the European Union, whichever comes first. Appropriate transitory provisions and procedures will be negotiated at the time, safeguarding the security of Ukraine throughout.
5. States may withdraw from this *Compact* upon six months' notice given to the Core Parties and Ukraine.

Signature Page follows.

MW, 14 September 2022, amended 29 September.

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