



CAMBRIDGE INITIATIVE
on **PEACE SETTLEMENTS**
Making peace work through law

UKRAINE SETTLEMENT PROJECT



UKRAINE SETTLEMENT OPTIONS:
A Dynamic Political Settlement
By Simona Ross

August 2022



**UNIVERSITY OF
CAMBRIDGE**
Department of Politics and
International Studies

Harvard Negotiation Project

**HARVARD
LAW SCHOOL**



OpinioJuris

UKRAINE SETTLEMENT OPTIONS PAPER

A DYNAMIC POLITICAL SETTLEMENT: ADAPTING TO THE EVOLVING POST-AGREEMENT CONTEXT

Simona Ross is a doctoral researcher at the University of Cambridge and until recently served as an advisor for the World Bank's Fragility, Conflict and Violence Group. Previously, she worked with the United Nations in Libya and Iraq.

*A [shorter version](#) of this paper has been published on *Opinio Juris*. The views expressed in this paper are the author's alone.*

1. INTRODUCTION

Crafting a dynamic, multi-dimensional peace settlement between the Russian Federation, Ukraine, Ukrainian separatist groups, and other relevant stakeholders, is key to adapting to the evolving context of the post-agreement phase, which ultimately will determine the success of the implementation process and prevent a recurrence of conflict. It is well known that conflict recurrence can be traced to a breakdown of negotiated settlements. The proposals put forward in this paper build on theories of commitment problems ([Walter 2002](#)), spoiler behaviour ([Stedman 1997](#), [Reiter 2016](#)), power balances ([Hartzell and Hoddie 2007](#), [Toft 2010](#)), and political settlements ([Bell 2008](#)).

Changes in the post-agreement context more broadly, and shifts in power structures among conflict parties specifically, will affect the implementation of any peace settlement, as parties confident in their power status are expected to renege on their commitments if that may yield a preferred outcome. Blattman, in his recently published and critically acclaimed book '[Why We Fight](#),' finds that one of the key—but often overlooked—factors leading to war “is the way that shifting power dynamics make it hard for enemies to commit to a deal.” It is, therefore, crucial to explore settlement options that can mitigate against the risk that such dynamics can pose to the transitional process. This is particularly true in the context of Ukraine's contemporary conflict setting, which is defined by a constantly evolving context, a multiplicity of conflict parties whose alliances and compositions are fluid, and increasing internationalisation of the internal conflict, with NATO members and Russia scaling-up or withdrawing support on the basis of a complex set of geopolitical, economic, security, and ideological interests. Thus, the primary aim of formulating a dynamic political settlement between the various parties active in the Ukrainian conflict is to avoid the stalling of the implementation process and, more critically, the collapse of the political settlement process and consequent recurrence of conflict, as a result of changing power relations.

2. EVOLVING NATURE OF THE CONFLICT AND POWER STRUCTURES

Uncertainty regarding the transformative nature of the post-agreement context is particularly acute in the case of the raging conflict in Ukraine, with its complex interplay of the many parallel conflicts unfolding at the international, regional, national and local level. From an

international and geopolitical perspective on the Ukrainian conflict, the tensions between and the role of Russia on one side, and of the U.S. and NATO allies on the other side, significantly shape the conflict dynamics and power structures among the main conflict parties. A sudden withdrawal or unprecedented scale-up of (military) assistance from any of these external actors would significantly alter the power structures among local conflict parties. Russia's direct use of force on the sovereign territory of Ukraine, rather than the 'covert' support provided to separatist groups in 2014 and sporadically thereafter, constitutes an interstate conflict, and shapes *regional* conflict dynamics. At the *national* level, the context is defined by violent conflict between the central government in Kyiv and separatist groups demanding greater self-governance for the Donbas region. For instance, a change in demographics within the Oblasts of Luhansk and Donetsk between the Russian and non-Russian speaking communities would shift the balance of power between the main conflict parties active in the national level conflict. These conflict dynamics are overlaid with deepening tensions between *local* groups within the two Oblasts. The different conflicts identified above, in turn, impact the overall conflict dynamics. A change in the context of any of these overlapping conflicts will be reflected in a shift in the overall power structures and inadvertently shape the implementation process accordingly.

Since 2014, the nature of the Ukrainian conflict has been defined by constant transformation, particularly as it relates to the conflict parties' power structures. Russian aggression in 2014 eventually resulted in the annexation of Crimea and 'covert' Russian military support emboldened pro-Russian separatists in the Donbas region to launch a secessionist campaign against the central government. Although Russia faced unexpected levels of opposition to its interference from local communities in the Donbas region and the separatist groups it backed were badly organized, the Kremlin scaled-up its military assistance throughout the negotiations, enabling their local proxies to regain territory and to exert far-reaching concessions from the central government in Kyiv. Indeed, this change in power relations between the central government and separatists was reflected in the 2014 [Minsk I Agreement](#) and the 2015 [Minsk II Agreement](#), which granted the latter greater regional autonomy. However, Russian support for the separatist groups started to wane and the central government proved reluctant to implement key settlement provisions. By 2018, separatist groups found themselves abandoned by the Kremlin, harbouring grievances that both their external sponsor and the central government had left them to their own devices.

Power relations among the key conflict parties shifted again with the military build-up of Russian forces along the Ukrainian border in late 2021 and early 2022. Since the invasion by Russian forces in February 2022, the outlook for who will emerge victorious has changed frequently. At one point, it looked as if the pure resolve of Ukrainian forces to halt their invader, and external military assistance from NATO allies, would suffice in overcoming the disproportionate military power of their mighty neighbour. However, this sentiment has given way to the reality that Russia has now claimed victory over the entire Luhansk oblast, is making further advances to control additional territory in the Donetsk oblast, and has made significant territorial gains in southern Ukraine linking up to Crimea. Firming their grip on both territories will give Russia significant leverage in determining the parameters of any peace settlement and would likely result in a settlement that is even more favourable to Russian interests than the Minsk agreements. On the other hand, protracted local resistance and sustained counterattacks from Ukraine, may render Russia more amenable to compromise in the longer-term as it is unable to secure its position and acquiescence from the local population.

These shifts in the conflict parties' power structures and leverage will, however, not only shape settlement negotiations and provisions, but also its implementation. As new realities emerge in the post-agreement phase, due in part to the implementation of the peace settlement itself,

changes in power relations will alter parties' commitment to advance settlement implementation. The high degree of uncertainty relating to the various parallel conflicts playing out in the Ukraine, and their complex interplay, means that any of an infinite number of factors has potential to drastically alter the implementation landscape.

One of these factors may be sanctions, in terms of both imposition and relief. It remains to be seen what costs need to be imposed on Russia, and President Putin specifically, to secure meaningful concessions from Russia in peace negotiations, despite the guaranteed loss of face given the unrealistic demands that were issued in the first place. For the implementation phase, questions may arise whether removal of sanctions may compel Russia to renege on commitments made in the peace settlement. In addition to the implementation of economic settlement provisions, militarily, the withdrawal of Russian forces will have an enormous effect on the post-agreement context as it would undermine the leverage of separatist groups to secure concessions from the central government. Politically, if previously marginalised actors are now formally able to participate in central decision-making processes through their inclusion in power-sharing arrangements, this will be reflected in their increased political power. Similarly, the implementation of settlement provisions on merely 'humanitarian' issues can impact power structures. The return of IDPs and refugees, for instance, can fundamentally alter the demographic composition of the local population in the Donbas region and with it the support base of conflict parties. At present, many non-Russian speakers have fled territory under Russian occupation. The return of these communities would risk the position of power of the Russian-speaking community in these areas. These dynamics may also point to the need for gradual implementation of certain settlement provisions.

3. SETTLEMENT OPTIONS

The different options discussed below provide for a dynamic peace settlement that will be more adaptable to the evolving post-agreement context, with the goal of helping parties to unstuck and advance implementation of the settlement in the face of seemingly unsurmountable obstacles, and most critically, to avoid a collapse of the transitional process and a recurrence of conflict.

3.a. Re-negotiation Mechanisms and Interim Arrangements

One important way of providing for a dynamic settlement is through a platform for re-negotiating the settlement terms. Such measures allow settlement parameters to be adapted to the evolving post-agreement context, in order to forestall a potential breakdown of the political settlement process, as power relations between conflict parties change, new powerholders emerge, or other hurdles arise for implementation. This approach is reflected in the concept of a 'formalised political unsettlement' as proposed by Bell and Pospisil (2017), whereby settlements increasingly integrate provisions on a set of political and legal institutions for continuing negotiation throughout the transitional period.

Re-negotiation mechanism:

- The adoption of formal re-negotiation mechanisms allows conflict parties to reconvene throughout the implementation of the peace settlement, to review settlement provisions, and, when needed, to adjust the legal framework to reflect changing realities in the post-agreement phase. Such provisions should also give space for new actors to enter and participate in re-negotiation platforms and dispute settlement mechanisms.

- A formal platform or process for re-negotiation also paves the way for legitimised ‘transitions within transitions’ as the implementation process is deteriorating and at risk of collapse ([Forster 2020](#)). Reaching agreement in advance on a mechanism to facilitate such a process can mitigate against challenges from the constraining factors of previously agreed legal frameworks, which otherwise may limit the available options for the formulation of new arrangements that seek to address the legacies of the original agreement.
- For instance, the 2020 [Juba Agreement for Peace in Sudan](#) includes a number of mechanisms taking into account the emergence of new actors, as “additional parties may accede and join as a party to this Final Agreement” and “may incorporate additional agreements.” Though, they are bound by the existing agreement and new arrangements ought to conform with its framework, parties are able to amend the agreement if consensus has been reached. These mechanisms are further complemented with a range of negotiation forums aimed at overcoming stumbling blocks in the implementation phase (Final Provisions, Art. 8-16).
- Similarly, the 2015 [Algiers Accord for Peace and Reconciliation in Mali](#) incorporates both a Mediation Team, tasked with providing a platform for continuing negotiation—especially as obstacles arise in the implementation process (Chapter 17), and an Agreement Monitoring Committee, which may invite new parties and “where necessary, reconcile the Parties’ positions” (Chapter 19). An additional Independent Observer is responsible for “identifying any blockages (...) and making recommendations on the measures to be taken.” (Chapter 20).

(Constitutional-) amendments:

- Especially in the case where a peace settlement serves as the country’s constitutional framework, such as the 1995 [Dayton Peace Accords](#), or be legalized through its integration into the existing constitution, the inclusion of clear amendment procedures is critical. For such provisions to be truly meaningful in providing for a dynamic settlement, these procedures should be easily implementable. If the conditions for amendments are too onerous, such as a very high threshold for approval, then certain parties may be able to hold the transition process hostage. Though, a careful balance ought to be struck in maintaining some degree of ‘permanency’ for constitutional law.
- As an example, the 2015 [Libyan Political Agreement](#) (LPA) includes provisions that allow for the re-negotiation of the settlement parameters in form of an amendment to the interim constitution, which legalizes the Agreement through its adoption in form of an amendment (Additional Provisions, Art. 12).

Dispute settlement:

- Dispute settlement mechanisms are another critical tool to overcome obstacles in the implementation process. However, dispute settlement mechanisms—even more so than constitutional amendment procedures—ought to be easily implementable and not include major barriers for their activation, including by not requiring a too high threshold for decision-making. Relatedly, while offering neutrality in settling disputes, some judicial arbitration mechanisms may be too rigid and risk encouraging a backlash from parties unhappy with the judicial outcome, leaving them no alternative but to resort to the use of violence. Stefan Wolff addresses dispute settlement mechanisms in another [options paper](#) in this series.

Interim institutional arrangements:

- In addition to mechanisms to amend the settlement, formal consensus may be reached on the temporality of the settlement and on a pathway for reaching agreement between political stakeholders on a long-term political and legal framework, such as the adoption of a permanent constitution. The Minsk II agreement provided for constitutional reform (Art. 11) to enter into force by the end of 2015. However, the proposed timeline for the adoption of more permanent constitutional arrangements has been much too ambitious, and one can hardly speak of a real interim period that would have granted the requisite space to build consensus among the disparate conflict parties. The detrimental consequences of a hastened constitution-making and interim phase were also illustrated in the cases of Iraq and Libya.
- In the Philippines, where the conflict was also fought between the central government and separatist groups demanding greater regional autonomy, the 2014 [Framework Agreement on the Bangsamoro](#) includes a comprehensive annex on transitional arrangements.

3.b. Ambiguity and Deferral

Settlement provisions that provide greater flexibility and ambiguity can leave room for interpretation and for the deferral of divisive issues.

Interpretational ambiguity:

- When there is room for interpretation of certain settlement provisions, the implementation process can be unstuck, for instance, by jointly agreeing upon their meaning in a dispute settlement mechanism. Such drafting techniques may even involve conflicting provisions and statements. This is not to deny that ‘constructive ambiguity’ and similar legal strategies come with inherent trade-offs, especially with regards to the merits of precision in avoiding future disputes over interpretation. There is a need to strike an adequate balance between flexibility and precision.
- Making a peace settlement dynamic by allowing for flexibility and ambiguity can also raise issues of length. Additional provisions may be necessary to outline the various mechanisms that can, for instance, provide for a platform for re-negotiation, dispute resolution, and power-sharing arrangements. At the same time, there is merit in keeping the agreement brief to avoid a high level of detail that ought to be adhered to, and that conflict parties cannot work around, as they seek to overcome deadlocks in implementation. With 323 pages in length, the 2016 [Columbian Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace](#) comprises extensive details and leaves little room for adaptation during its implementation. At between one to two pages, neither of the Minsk agreements risk being too precise, to the contrary, they may have benefited from additional provisions that provide for mechanisms proposed here.
- The composition of forums or committees that are able to make major political decisions in the implementation process, such as a dispute settlement commission, or a newly-established constituent assembly, should allow for some degree of flexibility. The impossibility of integrating potential future spoilers and stakeholders could threaten the entire settlement process. In a number of settlements, the impact of provisions on re-negotiation platforms, dispute settlement mechanisms, or other

relevant forums, is limited due to the exclusionary nature of predetermined composition formulas—often only including signatory parties.

- In the context of Ukraine, the Normandy Format and the parallel Trilateral Contact Group (TCG), as well as its four working groups on political, security, economic, and humanitarian issues, are to varying degrees mandated with helping to overcome stumbling blocks in the implementation of the Minsk agreements. However, their composition is extremely exclusionary and in the case of the TCG is favourable to Russia as it includes representatives from aligned separatist groups. And proposals developed by these forums ought to be anchored within the existing framework of the Minsk agreements.

Deferral:

- Deferral of contentious issues, including in some instances of the constitution reform process, may help conflict parties in reaching a settlement that might otherwise be impossible as parties are currently unable to overcome and make concessions on specific issues ([Lerner 2011](#)).
- This deferral may be realized through the adoption of interim institutional arrangements, formally recognizing that certain contentious points will be momentarily put aside and addressed in the future. Similarly, consensus to refer certain issues to a future elected legislative authority may reduce the stakes for conflict parties at the negotiation table or throughout the interim period.
- Addressing contentious issues that have momentarily been deferred could be realized through the establishment of a joint forum for consensus-building, such as the Conference of National Consensus envisioned in the 2015 Algiers Accords aimed at consensus-building on outstanding issues such as the Azawad ‘question’ on the status of Northern Mali. In fact, in Article 7 of the Minsk I Agreement, the conflict parties broadly commit to “conduct an inclusive national dialogue,” but without providing any further detail on the issue.
- Deferral inadvertently hinges on the exclusion of ‘no-go’ articles that could represent key obstacles in the implementation of the entire settlement. For instance, in the case of the 2015 LPA, the inclusion of Article 8, which outlines provisions on the leadership of the armed forces (despite known opposition from some of the main conflict parties), has been identified as one of the main factors causing the breakdown of the settlement process.
- In the case of the Ukrainian conflict, contentious issues include the status of Crimea, which can neither be formally recognized due to the unlawful use of force that resulted in the Russian annexation of the territory, nor fully re-integrated as an entity of the unitary state of Ukraine, rendering it critical to not freeze its territorial lines. Rather than deferring issues on Ukraine’s sovereignty, the Minsk agreements reflect contradictory visions, including on the ‘law on special status’ for the Donbas region, which would be enshrined in constitutional law but proved unacceptable for most Ukrainians and, therefore, failed to pass parliamentary approval. The question of avoiding contentious issues becomes more complicated with regards to EU integration and NATO membership, where both options, of avoiding the issue or addressing it head on, entail inherent risks.

- That said, questions on Ukraine’s sovereignty over territory in the Donbas region, for instance, have to remain unnegotiable in the future and may be captured in an eternity clause rendering this constitutional principle immune to amendment.

3.c. Diffusion of Power

The diffusion of power can reduce the stakes and broaden space for newly emerging stakeholders to participate in political processes by increasing access points for power. This is particularly the case for enhanced subnational governance arrangements, which provide various local actors an avenue to control a small part of the state apparatus and reduce the allure of control over central state institutions as power has shifted away from the centre ([Wolff, Ross, and Wee 2020](#)).

Executive and legislative power-sharing:

- Executive and legislative power-sharing arrangements aim to distribute power between the main conflict parties at the central level.
- The most common power-sharing arrangement for the executive authority is the formation of a coalition or unity government. Putting aside questions of effective governance, it is expected that the greater the size of the governing coalition the less likely the settlement process will collapse as excluded conflict parties will become spoilers ([Joshi and Mason 2011](#)).
- Legislative power-sharing arrangements often take the form of a parliament with an upper and lower chamber, whereby seat allocation is based on regional proportionality in cases where the conflict is defined by regional divisions or marginalisation. Sometimes regional conflict parties may be awarded a disproportionate share of the seat allocation as a measure of appeasement. A higher share of parliamentary seats allocated towards members representing the Donbas region would grant Russian-speaking factions greater participation in legislative decision-making and give them a greater stake in national-level developments.

Enhanced subnational governance:

- Enhanced subnational governance can diffuse power to lower-levels of governance, away from the centre. It can thereby broaden the platform for a wide spectrum of actors to meaningfully participate in political processes and reduce the stakes of controlling central level institutions. In the Ukrainian context, any subnational governance arrangements ought to conform with the unitary state system manifested in the Ukrainian constitution.
- This option relates, in particular, to the secessionist factions of the Luhansk and Donetsk oblasts, which ought to be represented at the centre and granted greater levels of self-governance at the regional and municipal levels. Some degree of decentralization was foreseen in the Minsk agreements, but the provisions were not far-reaching enough and never implemented. Moreover, inclusion of actors from these Oblasts ought to extend to actors that favour unity and represent minorities, including Russian-speaking groups opposed to Russia’s role in the conflict or to regional autonomy.
- Subnational governance arrangements in Ukraine ought to centre around strong decentralization at the municipal level—in complementarity to a ‘weaker’ asymmetrical arrangement at the regional level—to avoid further deepening divisions

along regional lines, which would render any future unity-building more challenging and instead encourage other regions to demand similar levels of self-governance. Moreover, this approach would increase the number of entry points for various powerholders and newly emerging actors that ought to be included in the implementation process.

Military power-sharing:

- Changes in military power structures, especially if resulting from measures taken as part of the implementation process, such as the withdrawal of Russian forces, raise issues concerning the much-debated ‘security dilemma,’ requiring some form of security guarantees, including military power-sharing arrangements. Issues relating to security guarantees are addressed by Marc Weller in another [options paper](#) in this series.

4. THE WAY FORWARD

Reaching a new peace settlement will be near impossible, rendering the ability to adapt to changing contexts and to provide for a transition within the transition ever more critical. Inevitably, such a settlement will be a static manifestation of the power structures at the time of the negotiations and their conclusion, but its success is bound to be shaped by post-agreement developments. Any settlement that will be unsatisfactory to the main parties, especially on the issue of self-governance or even independence of the Oblasts of Donetsk and Luhansk, will serve as a pretense to the parties to re-ignite the conflict once their military power has been restored. Similarly, a shift in the Kremlin’s geopolitical strategy and subsequent disengagement may also change Kyiv’s calculus.

A settlement best equipped to deal with the uncertainties and transformative nature of the ever-changing conflict in the Ukraine, will be one that reflects a combination of the settlement design features outlined above. Ultimately, the more avenues conflict parties can pursue to overcome a deadlock in the implementation phase, the higher is the likelihood that a collapse of the transitional process and recurrence of conflict can be avoided. For instance, one of the major stumbling blocks in the implementation of the Minsk agreements, was parties’ competing interpretation of the sequencing of local elections, with the central government claiming that such steps can only be undertaken following a full withdrawal of foreign forces, while Russia maintained that elections ought to be held without delay. Such avenues ought to include a clear alternative pathway out of a deadlock created by an inability to adhere to settlement timelines (‘fall-back mechanism’). While such timelines are critical in holding all relevant parties accountable for implementation, they also pose risks and may undermine the legitimacy of the entire settlement as parties unhappy with its content leverage any failure to achieve certain milestones to nullify the settlement.

Any peace settlement aimed at accommodating power structures also ought to grapple with the underlying tension of rewarding and incentivizing powerholders, often representing political and military elites, while failing to secure effective participation of Ukraine’s wider constituencies.