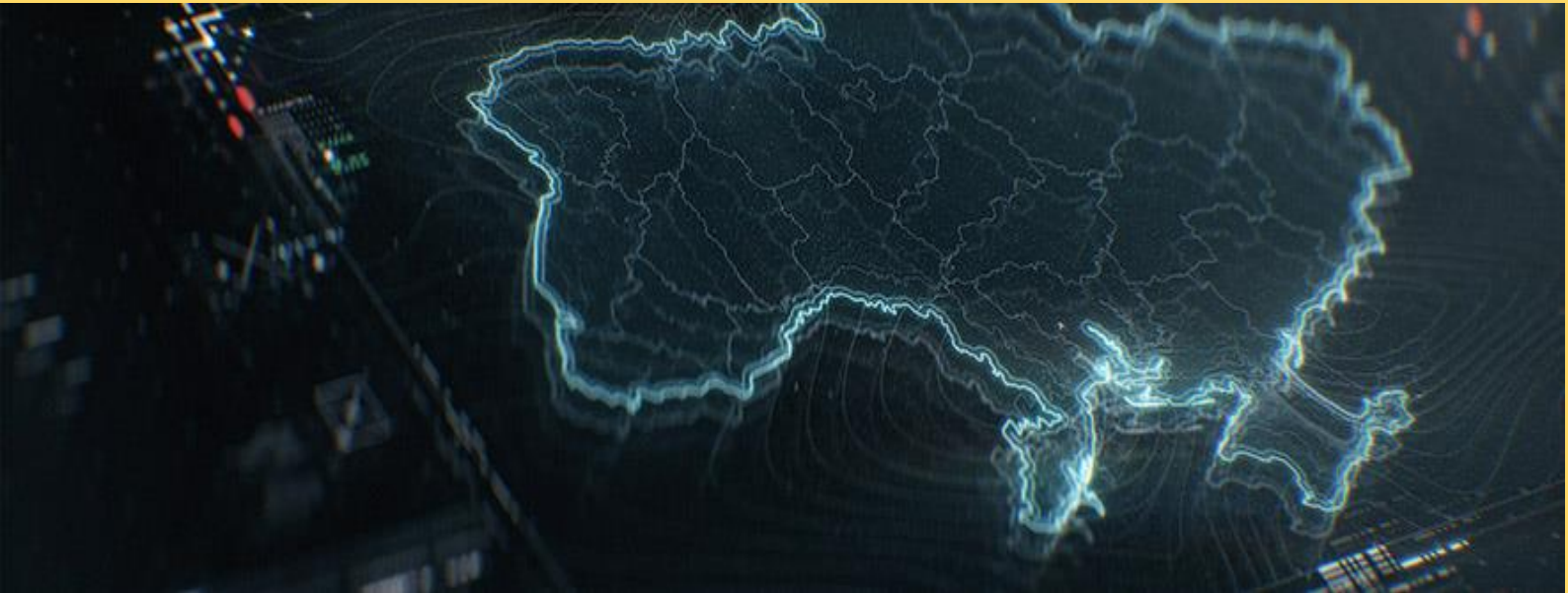




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# UKRAINE SETTLEMENT PROJECT



## UKRAINE SETTLEMENT OPTIONS: Ceasefire and Withdrawal

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# **UKRAINE SETTLEMENT OPTIONS PAPER: CONDITIONS FOR A COMPREHENSIVE CEASEFIRE AND WITHDRAWAL OF FOREIGN FORCES**

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*The views expressed in this paper are the author's alone.*

## **PRELIMINARY OBSERVATIONS**

1. It should be stated from the outset that at the time of writing (around sixty days into the war) prospects for a comprehensive ceasefire are still looking distant. The war in Ukraine has entered a second stage, in which the Russian Federation (RF) has refocused its “special military operation” on the east and south-east of Ukraine in an effort to complete whatever conquests it seeks to make to capture the whole of the Donetsk and Luhansk *oblasts* and establish a land corridor between these territories and Crimea. Ukraine will militarily resist this strategy. Pending the outcome of the battle for control of the east and south-east of Ukraine, ongoing peace negotiations are unlikely to make progress.
2. Should the RF succeed in conquering and effectively controlling these two Ukrainian provinces and the south-eastern land corridor, it may proclaim a unilateral ceasefire and perhaps invite some form of interposition presence by third parties to create another ‘frozen’ situation. Ukraine is unlikely to accept further losses of territory and Russian demands to recognize the Donetsk and Luhansk ‘republics.’ Nor would its Western backers be prepared to accept further Russian acquisition of territory by force contrary to international law. In this case, negotiations would then be likely to be limited to humanitarian issues (POW exchanges, early recovery and relief efforts, position of civilians in occupied territories) and, possibly, localized ceasefires that would temporarily freeze the situation. The likelihood of continued armed conflict would remain high.
3. Should the RF fail to make substantial gains in the east and southeast (that Ukraine may be able to reconquer some lost territory may also not be excluded), this could lead to a military stalemate and realization on both sides that further use of force serves no reasonable purpose (the ‘mutually hurting stalemate’). This would increase prospects for a more durable and comprehensive ceasefire. Scenarios of either Russia or Ukraine ‘winning’ the war are not considered here.
4. Any ceasefire may be comprehensive only if it is accompanied with the full and verifiable withdrawal of foreign forces that were not present in Ukraine on 23 February

2022. The international community (UN and/or OSCE?) should then be willing to play any needed third-party assistance role to monitor and verify the linked processes of the cessation of hostilities, disengagement of forces and the subsequent withdrawal of Russian forces. It may be possible that the sides agree some changes in the trajectory of the LoC in east-Ukraine, but the international community should not get involved in freezing a situation that would enable the RF to control large swaths of conquered territory in east and south-east Ukraine in contravention with international law.

5. A ceasefire/withdrawal agreement should be part of a larger settlement between Ukraine and RF, which reaffirms basic principles of international law and deals with (at least some of) the underlying issues of the conflict. These are addressed elsewhere in the Ukraine Peace Settlement Project and may include inter alia:
  - Status of Ukraine: permanent neutrality – no membership in military alliances
  - Security of Ukraine: commitments from guarantor states invited by Ukraine to support the protection of the territory under the control of Ukraine as of 23 February 2022 against armed attacks or acts of aggression.
  - Territory (Crimea and Luhansk/Donetsk non-government-controlled areas): at least a mutual pledge not to take military action seeking to overturn the territorial status quo between them and no deployment of Ukrainian forces into the areas that were beyond the control of the Ukrainian government as of 23 February 2022.
6. If a larger settlement covers such issues, the chances for a more durable and effective ceasefire would be increased. Of particular importance to the ceasefire arrangements would be what the sides could be agreeing with respect to a new pathway to resolving the conflict in east-Ukraine. Russia's decision to recognize the independence of the two 'republics' amounts to unilateral withdrawal from the Minsk agreements. Kyiv may be reluctant as well to return to these accords, which it views as 'imposed' during the fighting in 2014-15. No effective ceasefire was ever established along the 450 km long Line of Contact (LoC) during the 8-year long conflict in east-Ukraine. The lessons of what went wrong must be learned and third-party assistance would depend on being enabled by the sides to monitor and verify agreed ceasefire arrangements.<sup>1</sup> It would be also important if a new negotiating framework with a limited time horizon (not longer than two years?) could be agreed to resolve the political status of the non-government-controlled-areas in east-Ukraine. If a return to the unsustainable status quo ante is to be avoided, this issue needs further careful consideration.
7. Taking the above considerations into account, a first outline of steps to be taken by the parties (Ukraine and RF) and the international community to prepare for a comprehensive ceasefire and withdrawal process will be suggested below.

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<sup>1</sup> The RF blocked prolongation of the mandate of the OSCE Special Monitoring Mission (SMM) in Ukraine, which has been monitoring countless violations of the ceasefire during its existence but was never enabled to address them by verifying the parties' commitments. Of particular interest is a report published by the European Institute of Peace just before the war started, proposing a coordination and verification mechanism to strengthen the ceasefire. See <https://www.eip.org/a-sustainable-ceasefire-is-needed-to-get-talks-back-on-track/>

## A. GENERAL PRINCIPLES

As part of the suggested wider settlement, a legally binding framework should be negotiated for the termination of armed operations in Ukraine (full cessation of hostilities), for the disengagement of forces and for the withdrawal of foreign forces that were not present in Ukraine on 23 February 2022. Such a framework, to be endorsed in a binding decision of the UN Security Council under Chapters VII, should be based on the relevant principles of international law, including:

- Territorial integrity and unity of states as enshrined in the UN Charter, the Helsinki Final act, the Alma Ata protocol of 1991, the 1994 Budapest Declaration, and other applicable standards.
- The prohibition of the threat or use of force as established in Article 2 (4) of the UN Charter, including the prohibition of the acquisition of territory by force.
- The inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN, as enshrined in art. 51 of the Charter.
- The obligation not to recognize the result of the acquisition of territory by force, as stated for example in Resolution 2625 (XXV): “No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”

## B. CESSATION OF VIOLENCE

- An immediate and permanent ceasefire. All hostile military operations and all forms of armed violence to cease at a zero hour upon entry into force of the agreement. A *Protocol on Disengagement and Withdrawal* (the Protocol) annexed to the agreement should provide detailed ceasefire arrangements to be strictly applied by all regular and irregular armed forces of both Parties under their control.
- A *Mixed Commission* should be established upon entry into force of the agreement to (a) coordinate disengagement and withdrawal steps as agreed in the Protocol, (2) address allegations of ceasefire violations or other infractions of the Protocol and (3) prevent tensions and incidents between the respective armed forces. The Mixed Commission will establish as required *local sub commissions* in all regions of contact between the respective armed forces.
- Drawing lessons from the existence of the Joint Centre for Control and Coordination (JCCC) in the Donbas theatre<sup>2</sup>, Ukraine and RF will invite a third party (UN or OSCE) to render assistance, as agreed and detailed in the Protocol, by monitoring and verifying the implementation of disengagement and withdrawal steps and other commitments by both parties in accordance with their agreement. This may include that the mixed commission or local sub commissions will be chaired by senior

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<sup>2</sup> In September 2014 the RF and Ukraine decided to establish the Joint Centre for Control and Coordination (JCCC) as an ad-hoc military initiative between them to support implementation of the Minsk agreements. Headquartered near the LoC, first in Debaltsevo and later in Soledar, the JCCC was a mechanism for military communication and coordination across the LoC. However, in 2017 the Russian military officers departed Soledar, claiming obstruction of their activities by Ukraine. The JCCC turned into a dysfunctional arrangement, with Ukrainian officers still headquartered in Soledar, and members of the armed formations from non-government-controlled-territories wearing JCCC-markings on their side of the LoC.

military experts appointed by either the UN or OSCE and the conduct of joint inspections (three in a jeep formula) to investigate ceasefire violations or other incidents Security guarantees must be given by both parties to the invited third party and these should also be detailed in the Protocol.

### C. WITHDRAWAL OF FORCES

- A full and verifiable withdrawal of all armed forces that were not present in Ukraine on 23 February 2022 in accordance with a timetable established in the Protocol.
- The withdrawal could as agreed take place in stages but should be completed within a reasonable time frame (period of 3 weeks?). Both parties to cooperate fully in ensuring that the withdrawal of forces can occur safely, without further loss of life.
- As for the Donbas theatre, the parties shall reach an agreement, to be detailed in a separate annex (Annex Two), about the exact delineation of the LoC. If agreed by both parties, there may be some exchange of territory to reflect new realities on the ground. Reinforcing or replacing the Minsk agreements, new detailed agreements about the separation of forces and withdrawal of heavy weapons from both sides of the LoC should be agreed in detail in Annex Two. It would be also important to limit the presence of Russian armed forces in the non-government-controlled-territories pending a resolution of the conflict. Parties may be either relying again on enhanced OSCE monitoring and verification or be well advised to invite a UN peacekeeping force to assist them in implementing the agreed ceasefire arrangements in this theatre.
- The completion of full withdrawal of all armed forces and their equipment from the territory of Ukraine as described above should be certified by either the UN Secretary General or the OSCE Secretary if the latter organization is requested to play the third-party role. The implementation of other agreements reached as part of a wider settlement between Ukraine and Russia (see point 5 above), will be contingent on the certified completion of the withdrawal process.
- After the completion of the process of the cessation of hostilities, a continued third-party role will be at least necessary to assist the parties in implementing the agreed ceasefire arrangements in the Donbas theatre until a resolution of the conflict. However, the Parties could also consider inviting unarmed international observers to inspect in cooperation with both sides the international border regions between Ukraine and RF (and between Ukraine and Belarus?) in order to help prevent tensions from re-occurring and report any infractions of the ceasefire agreement. Such a temporary arrangement could be agreed to last until the situation in the border regions is fully normalized, including by the removal of all armed forces and return to their barracks. A similar arrangement may also be established along the administrative boundary between Ukraine and Crimea.

## **D. OTHER TRANSITION STEPS**

As soon as a full cessation of hostilities is in force, the parties should increase and fully facilitate emergency actions throughout Ukraine, including those already underway, in order to address urgent needs and stabilize the situation:

- Full and unrestricted humanitarian access, including medical assistance, as well as early recovery and relief activities. This includes unimpeded access for international humanitarian agencies operating with the consent of the Ukrainian government.
- The safe handover of nuclear facilities under RF control to the Ukrainian authorities. The IAEA to be invited to assist if deemed helpful by the Ukrainian government. This may include other critical infrastructure.
- Rapid exchange of information on prisoners of war and other detainees and their earliest repatriation (on all for all basis, within no more than 3 weeks?).
- Urgent collaboration in relation to resolving the fate of missing persons, as well as addressing the transfer of dignified burial of the remains of the fallen.
- Facilitate the voluntary and safe return of the displaced and refugees who wish to return to their homes and properties. Relevant international agencies may support this process if deemed helpful or necessary by the government of Ukraine.

## **SOME CONCLUDING OBSERVATIONS**

8. This first outline envisages an agreed process for a comprehensive ceasefire and withdrawal of forces that would be based on international law. If implemented, it could therefore be supported by the international community as required. If real conditions exist for ending the war as envisaged can only be assessed when the dust settles after the second round of heavy fighting.
9. The international community should be prepared to play a pro-active role in the envisaged scenario, if requested and enabled by the parties. This would require its early involvement in the peace negotiations so that the proper modalities and needed assurances for its involvement could be agreed. As the UN Security Council is expected to endorse an agreement ending the war, further UN involvement in implementing the agreement seems a likely way forward. Renewed OSCE involvement, possibly in cooperation with the UN, should be agreed and requested by the Security Council.
10. Finally, it is stressed again that agreement on a comprehensive ceasefire and withdrawal of forces needs to be supported and embedded in a wider settlement of the conflict between Ukraine and Russia. Real peace may not be possible for a prolonged time, given the shocking scale of destruction, human suffering, and serious allegations of war crimes. Instead of an agreement on the restoration of peaceful relations between Ukraine and Russia, an agreement on non-belligerent coexistence (or normalization) may be more realistic.

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