



CREATING 'ISLANDS OF AGREEMENT AND CIVILITY' THROUGH HUMANITARIAN NEGOTIATIONS

A Conflict Management and Disaster-Mitigation Strategy in Russia's War against Ukraine

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Executive Summary

This report focuses on humanitarian negotiations and the potential for creating 'islands of civility' or 'islands of agreement' as tools for conflict and disaster management. It discusses their significance for enabling complex multi-dimensional negotiations and settlements on the local, regional, and international levels while the protracted war between Russia and Ukraine continues. The report tests and adapts concepts of humanitarian negotiations, 'islands of civility' and 'islands of agreement' by connecting them to five specific points of Ukraine's 10-point peace plan presented by President Volodymyr Zelensky at the G20 summit in November 2022. It will analyse the short-term advantages and long-term pitfalls of turning to a conflict management approach leading to temporary and issue-specific conflict management agreements when a comprehensive peace process and deal are out of sight. It concludes with recommendations to third parties whose goal it is to prevent processes of political and legal destabilization and fragmentation and to sustain Ukraine's statehood. Overall, the report highlights the multi-dimensional nature of these issues of fragmentation risk caused by the international armed conflict, and how they transcend the local, regional, and global levels.

A ‘War of Attrition’ leading to ‘Negotiations of Attrition’?

Four days after Russia’s full-scale invasion of Ukraine a first round of negotiations took place in the border region with Belarus. Numerous rounds of negotiations have passed since this first meeting between a Russian and a Ukrainian delegation on 28 February 2022.¹ Every meeting, every presented peace plan and announced micro-step towards the formulated position of the rival has been nourishing hopes that a continuous political dialogue between Ukraine and Russia in parallel to the ongoing international armed conflict – with or without third party mediation – could lead to a roadmap to a negotiated peace agreement. It is often claimed, in this context, that wars are fought out on the battlefield, but the underlying conflicts are settled, and lasting peace is created at the negotiation table. One year into Russia’s war of aggression against Ukraine the question is what can be expected from enduring political dialogue at the given moment. Conducting high-level peace negotiations in good faith with Russia’s current leadership – especially given its officially postulated war objectives² – is not a realistic option. Moreover, pressuring Ukraine to concessions at the negotiation table would even put its sovereignty and statehood at risk and could lead to a long-term political fragmentation of Ukraine.³

Departing from these context conditions, this report turns the focus to conflict management and develops scenarios for **humanitarian negotiations**⁴ and the creation of **‘islands of civility’**⁵ that seek to avoid that Russia’s ‘war of attrition’ against Ukraine will be accompanied by ‘negotiations of attrition.’ The report puts the focus on multi-level negotiation scenarios while a lasting conflict settlement through political dialogue between the conflict parties is not in sight. It introduces and discusses potential scenarios for humanitarian negotiations and the creation of ‘islands of civility’. It also builds on an earlier developed concept of **‘islands of agreement’** relating to enduring armed conflicts between India and Pakistan, Greece and Turkey as well as Israel and Lebanon.⁶ The report discusses international humanitarian negotiations, the creation of ‘islands of civility’ and formalized agreements as conflict management tools for dealing with pressing challenges of humanitarian crisis, for limiting human suffering on the local level, and for dealing with trans-boundary issues such as nuclear security and environmental damages that make multi-level interaction between the conflict parties as well as third parties necessary.

¹ For a narrative chronology of negotiations between Russia and Ukraine, see Ukraine Peace Settlement Project: <https://www.lcil.cam.ac.uk/researchcollaborative-projects-housed-icilukraine-peace-settlement-project/negotiation-news-positions-sides>

² Address by the President of the Russian Federation, 21 February 2022, <http://en.kremlin.ru/events/president/news/67828>; Address by the President of the Russian Federation, 24 February 2022, <http://en.kremlin.ru/events/president/news/67843>; Presidential Address to Federal Assembly, 21 February 2023, <http://en.kremlin.ru/events/president/news/70565>.

³ Wittke, Cindy: *Peace and Security for Ukraine and Europe are not Created on the Drawing Board of the West*, *VerfBlog*, 2022/4/13, <https://verfassungsblog.de/peace-and-security-for-ukraine-and-europe-are-not-created-on-the-drawing-board-of-the-west/>

⁴ The report adapts concepts and definition originally used for humanitarian negotiations and international humanitarian aid in non-international armed conflicts, e.g. McHugh, G., & Bessler, M.: *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners*. UN OHCA 2006, <https://www.unocha.org/sites/unocha/files/HumanitarianNegotiationswArmedGroupsManual.pdf>; Mancini-Griffoli, Deborah, & Picot André: *Humanitarian Negotiation. A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict*, Centre for Humanitarian Dialogue 2004, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/188humanitarian_negotiation.pdf.

⁵ Klador, Mary: *New and Old Wars. Organized Violence in a Global Era*. 3rd ed., Stanford: Stanford University Press 2012.

⁶ Blum, Gabriela: *Islands of Agreement. Managing Enduring Armed Rivalries*, Cambridge Mass. & London: Harvard University Press 2007.

The goal of developing such scenarios is to effectively support Ukraine's sovereignty and to avoid fragmentation during an ongoing 'war of attrition' that will also see a long period of 'negotiations of attrition' before first steps on the road to a ceasefire and/or comprehensive peace settlement will become possible. Yet, it is highly important to stress that discussing scenarios for conflict and disaster management agreements presented here and developing strategies for lasting conflict resolution and settlement do not exclude one another. Instead, their parallel existence pays tribute to a dilemma of synchronicity in one of the most complex and enduring international armed conflicts on the European Continent since the end of the Second World War. They also pay tribute to a changing global conflict environment and to multiscale processes of unmaking and fragmenting local, regional, and global orders.

Between 2014 and 2022 conflict management on the contact lines in Eastern Ukraine or at the *de facto* border to the illegally annexed Crimea was shaped by official hurdles and micromanagement and informal local practices at the same time.⁷ The Ukrainian side would have considered formalized arrangements as a sign of political and even legal recognition of the status quo and thus, of being further trapped in Russia's strategies of hybrid warfare. With Russia's full-scale invasion of Ukraine since 24 February 2022 the legal nature of the conflict is clear: it is an international armed conflict resulting from Russia's aggression against the entire territory of Ukraine that also sheds a different light on the period between 2014 and 2022.

As a negotiated end of Russia's war against Ukraine is currently out of sight, the complexity of the challenges will only grow with the duration of the international armed conflict, e.g. in terms of human suffering, environmental damages, issues of local, regional and global food security and a constant threat of fragmentation of Ukraine's statehood by Russia's continued strategies of asymmetric warfare in Ukraine (e.g. their employment of the infamous Wagner Group⁸). In the context of the ongoing war humanitarian negotiations and agreements – especially with third party support – could be one way of addressing these threats by creating leverage for identifying specific issues, limited spaces, and time frames of cooperation for conflict management and the containment of humanitarian disasters.

⁷ For snapshots see Baumann, Gabriele & Junginger, Moritz: New "Borders" in Eastern Europe, Ukraine since the Annexation of Crimea and the Outbreak of the Conflict in the Donbass, Konrad Adenauer Stiftung, International Reports, 12 April 2017, <https://www.kas.de/en/web/auslandsinformationen/artikel/detail/-/content/new-borders-in-eastern-europe>; International Crisis Group: Ukraine: The Line, Crisis Group Europe Briefing N°81, Kyiv/Brussels, 18 July 2016, <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/ukraine-line>; Aruntunyan, Anna: Getting Aid to Separatist-held Ukraine, Commentary, International Crisis Group, 13 May 2019, <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/getting-aid-separatist-held-ukraine>; Lambroschini, Sophie: Winter War in Eastern Ukraine: The Everyday Drama of Water and Heating Infrastructure Collapse, *Focus Ukraine*(blog), 7 February 2019, <https://www.wilsoncenter.org/blog-post/winter-war-eastern-ukraine-the-everyday-drama-water-and-heating-infrastructure-collapse>; Lambroschini, Sophie: In the Borderlands of War of Eastern Ukraine. Making Borders by Mapping Needs and Social Practices, TRAFO – Blog for Transregional Research(blog), 7 February, <https://trafo.hypotheses.org/8928>.

⁸ U.S. Department of the Treasury: Treasury Sanctions Russian Proxy Wagner Group as a Transnational Criminal Organization, Press Release 26 January 2023, <https://home.treasury.gov/news/press-releases/jy1220>

Setting the Stage: Negotiating Peace for Ukraine since 2014

For identifying the strategies and options for humanitarian negotiations, we need to take stock of three decades of post-Cold War peace agreements and lessons learned of Russia's conduct in international negotiation formats addressing territorial conflicts in the so-called post-Soviet space.

Starting from the bird's eye perspective it is undeniable that since the end of the Cold War the focus in research and practice has turned from inter-state armed conflicts to the statistically higher number of protracted asymmetric intra-state conflicts between state and non-state actors. Regarding international armed conflicts the focus had been on questions of self-defence in accordance with Art. 51 of the United Nations (UN) Charter and conditions of the legality and illegality of (humanitarian) interventions with or without international mandate and a Responsibility to Protect. The same focus applied to the conditions for peace negotiations and lasting peace agreements that had a strong focus of negotiations and settlements with non-state actors.⁹

Furthermore, in the past decade practice and analysis shifted from comprehensive peace processes and agreements (e.g. the Dayton Accords or the Comprehensive Peace Agreement for Sudan/South Sudan)¹⁰ to ceasefire-based accords that often included, in parallel to an agreed end of violence, transitional arrangements and even laid out the path for changing the state's constitutional order.¹¹ Russia's hybrid and full-scale warfare against Ukraine starting with 2014 puts a spotlight on the problems of internationalized and formalized peace processes and the management of enduring transitions in protracted conflicts. The Normandy Format and the Minsk Agreements¹² and Process are an example of such strategic dissonances.¹³

Focusing on strategic dissonances and 'lessons learned' leads to new perspectives and the adaptation of conflict management to current multi-dimensional conflict constellations in Russia's war against Ukraine, including the challenges of local, regional, and global processes of conflict, cooperation, and fragmentation. In other words, Russia's full-scale invasion of Ukraine since 24 February 2022, but effectively already the eight years of so-called hybrid warfare (2014-2021), have raised a multitude of challenges also for external actors as global interdependence of and with the conflict parties creates – alongside cooperation – vulnerabilities, e.g. global food security, regional energy security, and the risk of large-scale environmental damages. The outlined challenges have created conditions and contexts that bring up new external actors that offer themselves as 'honest brokers', e.g., Turkey, and new places and formats of dialogue, e.g. official and closed-door negotiations in Istanbul and Ankara.¹⁴

Current debates on the framing, timing, and scope of negotiations and formal as well as informal settlements between parties to armed conflicts highlight the changing nature of complex conflicts and the lack of a common normative approach for ending them that

⁹ Bell, Christine: *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*, Oxford: Oxford University Press 2007; Wittke, Cindy: *Law in the Twilight. International Courts and Tribunals, the Security Council and the Internationalisation of Peace Agreements between State and Non-State Parties*, Cambridge: Cambridge University Press 2018.

¹⁰ For texts of formalized political settlements see Peace Agreements Database (PA-X): <https://www.peaceagreements.org/search>.

¹¹ Wittke, Cindy: *Between War and Peace: Negotiating and Implementing Legitimate Ceasefire Agreements*, in: Krieger, Heike (ed.), Püschmann, Jonas (assistant editor), *Law-making and Legitimacy in International Humanitarian Law*, Cheltenham UK: Edward Elgar Publishing, 2021, 335-356.

¹² For texts of formalized political settlements see Peace Agreements Database (PA-X): <https://www.peaceagreements.org/search>.

¹³ Wittke, Cindy: *The Minsk Agreements: More than "Scraps of Paper"?*, in: *East European Politics* 35/3, (2019) 264-290.

¹⁴ For more information see: Peter, M. & Rice, H. (2022). *Non-Western approaches to peacemaking and peacebuilding: State-of-the-art and an agenda for research.* (PeaceRep Report: Global Transitions Series). PeaceRep: The Peace and Conflict Resolution Evidence Platform, University of Edinburgh, <https://peacerep.org/publication/non-western-approaches-to-peacemaking-and-peacebuilding-state-of-the-art-and-an-agenda-for-research/>.

transcends the local, regional, and global dimensions.¹⁵ Still, the desire for conflict resolution remains at the centre of internationally supported negotiations. Correspondingly, the focus on options of external involvement also remains on conflict prevention or conflict resolution.¹⁶ However, especially in the so-called post-Soviet region, peace and war have been existing within states that (re)emerged from the collapse of the Soviet Union for more than three decades now, e.g., in Georgia (Abkhazia and South Ossetia), and Moldova (Transnistria). Russia has played a particular role in these and other post-Soviet (frozen) conflict constellations in and about so-called *de facto* or non-recognized state entities. No solution of (frozen) territorial status conflicts seemed feasible without Russia's involvement in the various multilateral negotiation and conflict settlement mechanisms – often on paper as a 'mediator' or 'facilitator' who sends 'peacekeeping troops'.¹⁷ At the same time, Russia often played the role of a kin or parent state for the putative internal stabilization of post-Soviet *de facto* state entities and the perpetuation of their external limbo thereby effectively contesting parent states', i.e., *de jure* states', sovereignty, e.g. by supporting status referendums or through passportization.¹⁸ Hence, over the past thirty years, post-Soviet 'frozen' and grey-zone conflicts have enabled Russia to create scripts and practices of creating politico-legal ambiguities in negotiation settings of territorial conflicts. Russia has been applying and extending these tools and strategies in Ukraine since 2014. The illegal annexation of Crimea and the conflict in and about eastern Ukraine between 2014 and 2022 created a new dimension for the application of these scripts. Russia's actions since February 2022 demonstrate that the conflict has 'transformed' from hybrid warfare to open international armed conflict with the stated aim of deleting Ukraine from the political map.¹⁹

When looking at scenarios for conflict management and even more for conflict resolution, we need to accept that the conflict over Ukraine's statehood has already been an enduring rivalry and protracted conflict since 2014. In addition, the Minsk Agreement failed long before 24 February 2022.²⁰ In fact, while lack of implementation of the Minsk II Agreement led to its failure, the process of how it was created and managed, i.e., through the Normandy Format and the Trilateral Contact Group, repeated the earlier stagnating international negotiation formats for unsettled secessionist conflicts in the post-Soviet region. Hence, the Minsk II Agreement was not the 'good agreement' that failed due to lacking readiness or commitment of the parties. The Normandy Format and the Minsk Agreements rather created lasting political *unsettlements* for Ukraine by coding the conflict between Russia and Ukraine into the deal.²¹ In contrast to other failed peace agreements that have become points of reference for future negotiations, the Minsk Agreements for these reasons are unlikely to be the starting point at any new negotiation table. Looking back to the Minsk Agreements' negotiation and hampered implementation one conclusion is, that the Normandy Format in making Russia a sort of 'conflict-party-mediator' in a sense set the

¹⁵ Bell, Christine: Ukraine Options Paper Multilevel Peace Agreement Design: Dealing with Geopolitical Support, n.d. https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/bell_multilevel_peace_agreement_design.pdf.

¹⁶ See e.g. Ukraine Peace Settlement Project, <https://www.lcil.cam.ac.uk/researchcollaborative-projects-housed-lcil/ukraine-peace-settlement-project>.

¹⁷ Wittke, Cindy: "Test the West": Reimagining Sovereignties in the Post-Soviet Space, in: Review of Central and East European Law 43/1 (2018), 1-22.

¹⁸ Burkhardt, Fabian/Rabinovych, Maryna/Wittke, Cindy: Passportization, Diminished Citizenship Rights, and the Donbas Vote in Russia's 2021 Duma Elections. In: TCUP Report Temerty Contemporary Ukraine Program Ukrainian Research Institute Harvard University 2022. <https://nbn-resolving.org/urn:nbn:de:0168-ssoa-76864-5>.

¹⁹ See earlier reference to Speeches of the President of the Russian Federation, see additionally: Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians", <http://en.kremlin.ru/events/president/news/66181>; Сергейцев, Тимофей: Что Россия должна сделать с Украиной, РИА Новости 03 April 2022, <https://ria.ru/20220403/ukraina-1781469605.html>.

²⁰ See also Brentler, Alexander: Diplomat: Why the Minsk Agreements Failed in Ukraine, an interview with Wolfgang Sporrer, Jacobin 13 February 2023, <https://jacobin.com/2023/02/wolfgang-sporrer-interview-ukraine-war-diplomacy-minsk-agreements>.

²¹ Wittke (2019).

frame for a failed peace negotiation and implementation – even if a full-scale invasion of Ukraine by Russia was not foreseeable or actors like France and Germany hoped to prevent it. The Minsk approach ignored that over the previous three decades Russia had developed tools and scripts for strategic ambiguity in internationalized negotiation formats. The Normandy Format as an internationalized negotiation format repeated almost exactly the basic settings of post-Soviet internationalized negotiation formats, e.g., by involving a set of European states supported by international organizations, providing a facilitator or host of the negotiations or providing monitoring mechanisms, like the Organization for Security and Co-operation in Europe (OSCE) did with its Special Monitoring Mission to Ukraine till 2022.²²

Moreover, ‘freezing’ East Ukraine’s territorial status was discussed as a strategy by the international community as well as in scholarship – often with reference to Moldova and Transnistria – that would enable the separation of the issues relating to the contested territories from those related to the political transformation and democratization of the rest of Ukraine with limited options for interaction.²³ The overall lesson learned is that neither these (standardized) formats of internationalized mediation, nor the scripts of the Minsk Agreements, nor ‘freezing’ or sequencing the settlement of a territorial conflict, can be convincing steps toward a sustainable conflict resolution between Russia and Ukraine.

Based on these lessons learned from the past nine years and the looming war of attrition one year on from Russia’s full-scale invasion of Ukraine, I suggest broadening the focus from conflict resolution aiming at peace agreements by negotiations to limited, but at the same time multi-dimensional conflict management. The assumption is that conflict management in protracted international armed conflicts – like Russia’s war against Ukraine – is not only a second-best option to wait out the time before the ‘real’ negotiations of peace can start. From the perspective of humanitarian negotiations and agreements, ‘islands of civility’ and ‘islands of agreement’ this report will suggest potential areas and *modi operandi* of (conflict) relationship management between (and around) the parties. Thus, this assumes that there is a relational world around and between conflict parties despite their enduring armed conflict.²⁴ It is important to stress that taking these perspectives does not anticipate or seek to frame broader accords or indicate ‘sell-outs’ of Ukraine’s interests.²⁵

The next section will introduce the concepts of humanitarian negotiations, ‘islands of civility’ and ‘islands of agreement’. The following section will then adapt and apply them to five selected issues of Ukraine’s 10-point peace plan.²⁶

²² OSCE Special Monitoring Mission to Ukraine (SMM), <https://www.osce.org/special-monitoring-mission-to-ukraine-closed>; see also 5+2 negotiations on the Transdnistriian settlement process, <https://www.osce.org/mission-to-moldova/119488>; OSCE Minsk Group, <https://www.osce.org/mg>; Geneva International Discussions, <https://smr.gov.ge/en/page/26/geneva-international-discussions>.

²³ See for an overview: Malyarenko, T., & Wolff, S. (2019). *The Dynamics of Emerging De-Facto States: Eastern Ukraine in the Post-Soviet Space* (1st ed.). Routledge; Malyarenko, Tetyana: *Transnistria Writ Large for Donbas? Several Battlefields mark Ukraine’s Challenges*, PONARS Eurasia Policy Memo No. 735 January 2022, https://www.ponarseurasia.org/wp-content/uploads/2022/01/Pepm735_Malyarenko_Jan2022.pdf.

²⁴ Blum suggests that even in the most entrenched conflict settings adversaries can carve out limited areas of cooperation amidst the tide of war, see e.g. Blum, p. 10.

²⁵ For a broader perspective on the potentials and pitfalls of linking for instance humanitarian ceasefires to goals of overarching settlement, see Wise, Laura., Badanjak, Sanja, Bell, Christine, and Knäussel, Fiona: *Pandemic Pauses: Understanding Ceasefires in a Time of Covid-19* (PSRP Research Report) 2021. Edinburgh: Global Justice Academy, University of Edinburgh. Pages 21-22, <https://www.politicalsettlements.org/wp-content/uploads/2021/03/Ceasefires-Covid-19-Report-Digital-002-compressed.pdf>.

²⁶ Ukraine has always been a leader in peacemaking efforts; if Russia wants to end this war, let it prove it with actions – speech by the President of Ukraine at the G20 Summit, 15 November 2022; <https://www.president.gov.ua/en/news/ukrayina-zavzhdi-bula-liderom-mirotvorchih-zusil-yaksho-rosi-79141> (referred to as 10-point peace plan).

What's in a Name? - Humanitarian Negotiations, 'Islands of Civility' and 'Islands of Agreement'

Turning the focus to humanitarian negotiations and agreements, and the creation of 'islands of civility' and 'islands of agreements', leads to a multi-dimensional perspective on conflict management in the ongoing war against Ukraine. Looking at the war of attrition from a 'management perspective' enables conflict parties but also external actors to put spotlights on what can be managed, on which level(s); which actors are involved in each level; and in what appropriate time frame.

For this report **humanitarian negotiations** are defined as multi-dimensional high-level political dialogues aiming to prevent humanitarian, environmental, and nuclear disaster caused by Russia's ongoing war against Ukraine on the local, regional, and international levels.²⁷ **Humanitarian agreements** are formalized political settlements negotiated directly or indirectly – with the support of third parties – by the conflict parties resulting from these negotiations. These agreements are usually of a temporary nature aiming to regulate specific issues relating to preventing humanitarian, environmental, and nuclear disaster caused by the parallel still ongoing war. Hence, humanitarian negotiations and humanitarian agreements focus on conflict management. They help to create what can be called '**islands of agreement**' or '**islands of civility**'. Creating '**islands of civility**' includes formal and informal negotiations, arrangements and settlements between local, domestic, international, and transnational state and non-state actors.²⁸ The concept of '**islands of agreement**' focusses on the idea of multi-dimensional high-level negotiations between the conflict parties and third parties leading to formalized agreements between them. The term was introduced by Gabriella Blum, in her book *Islands of Agreement: Managing Enduring Armed Rivalries*.²⁹ Blum argues that protracted international armed conflict may be better managed rather than resolved, at least where attempts at resolution themselves become counter-productive. She points out that the search for a comprehensive settlement through long-lasting political negotiations could lead to frustration by the unattainable objective to end the armed conflict. Trapped in such a process conflict parties as well as third parties could overlook opportunities for limited agreements, i.e., what Blum calls 'islands of agreement'. The book offers detailed case studies on the ways in which governments are willing to enter issue-specific temporary formalized arrangements while the overall conflict continues.³⁰

²⁷ "The four key characteristics of humanitarian negotiations are thus that they are conducted:

- 1) by humanitarian actors, such as members of appropriately mandated and impartial organisations like UN agencies, NGOs or the International Committee of the Red Cross (ICRC);
- 2) or humanitarian objectives, including humanitarian access, protection, assessment and assistance, as set out in international humanitarian law;
- 3) in countries affected by armed conflict, either of an international or non-international character; and
- 4) with the parties to the conflict, that is, those with power and responsibility for the conduct of war, for the humane treatment of civilians and those hors de combat and for the distribution of assistance."

See: Mancini-Griffoli, Deborah, & Picot André: Humanitarian Negotiation. A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict, Centre for Humanitarian Dialogue 2004, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/188humanitarian_negotiation.pdf

²⁸ Kaldor (2012).

²⁹ Blum, Gabriela: *Islands of Agreement. Managing Enduring Armed Rivalries*, Cambridge Mass. & London: Harvard University Press 2007.

³⁰ See also Ikenberry, G. John: *Islands of Agreement: Managing Enduring Armed Rivalries*, Review, Foreign Affairs, 1 September 2007, <https://www.foreignaffairs.com/reviews/capsule-review/2007-09-01/islands-agreement-managing-enduring-armed-rivalries>.

What would a turn to such conflict management perspectives imply for Russia's ongoing war against Ukraine?

- First, it could open issues and scenarios of direct or indirect interaction between Russia and Ukraine which go beyond the battlefield.
- Second, in these negotiations, Ukraine would not be urged to enter enduring international negotiations by external actors with the pressure to compromise and enter into an agreement that could risk the (re- and de-) fragmentation of Ukraine's statehood.
- Third, creating 'islands of civility' or 'islands of agreement' through humanitarian negotiations could resonate with the resilience of Ukrainians and Ukrainian civil society. For at least the past three decades, Ukrainians have been used to a permanent process of transformation in political and violent conflicts, and also in revolutionary moments such as the Orange Revolution or the Euromaidan, and thus, enduring processes of institutionalization, de-institutionalization, and re-institutionalization, as a context of daily life on all levels. Recent corruption scandals underline Ukraine's continuous struggle for and with democratization. Ukraine seems united not by resilient state structures, but by the resilience and engagement of Ukrainian citizens pursuing democracy. Strategies of resilience and improvising as daily routine and civil cooperation have become part of the political culture, especially since 2014. Yet, these strengths of Ukraine and Ukrainians also come with the risk of fragmentation at the flipside of the coin, e.g., should Ukrainian leadership agree to make territorial concessions at the negotiation table. Such concessions could lead to a ferocious political debate and conflict in Ukraine, in a context that combines severe socioeconomic hardship and the widespread availability of weapons in the population due to the war.³¹
- Fourth, Russia would be involved in management arrangements addressing clearly defined issues without winning further concessions on the local, regional, and international level. Building humanitarian negotiations and agreements would thereby avoid being dragged back to Russia's strategy of ambiguities in long-term negotiation formats and long-term formalized agreements.
- Fifth, if we do not (only) measure conflict management efforts' effectiveness or contribution with reference to comprehensive conflict resolution we could add value to a (temporary and parallel) turn to humanitarian negotiations and the creation of 'islands of civility' or 'islands of agreement'. They could function as limited relationship management tools facing complex challenges of Russia's war against Ukraine.

³¹ Ukrainian law regulates the use of firearms by civilians during martial law and the handover of weapons to state authorities after its termination: Ministry of Defence of Ukraine: The Use of firearms by civilians during martial law has been regulated - Government adopts a relevant resolution, Ministry of Defence 16 April 2022, <https://www.kmu.gov.ua/en/news/unormovano-zastosuvannya-vognepalnoyi-zbroyi-civilnimi-osobami-u-period-diyivoennogo-stanu-uryad-prijnyav-vidpovidnu-postanovu>; Про забезпечення участі цивільних осіб у захисті України, Law of Ukraine on March 3, 2022 № 2114-IX, <https://zakon.rada.gov.ua/laws/show/en/2114-20#n10>; Про затвердження Порядку застосування цивільними особами вогнепальної зброї під час участі у відсічі та стримуванні збройної агресії Російської Федерації та/або інших держав проти України у період дії воєнного стану, Resolution of the Cabinet of Ministers of Ukraine; Procedure on April 15, 2022 № 448, <https://zakon.rada.gov.ua/laws/show/en/448-2022-п#Text>.

Admittedly, while from a rational perspective 'islands of agreement' could help manage and limit the (humanitarian) costs of war, it could appear equally rational for one party to prefer an 'all or nothing' approach and to refuse to interact in any way other than combat. In the context of Russia's war of aggression against Ukraine a key-challenge is the potential view that there are no issues between the conflict parties that would be 'outside' or could exist parallel to the ongoing war of attrition. Additionally, parties' expectations of the management arrangement may also affect their levels of commitment and compliance.³² Undeniably, in a such constellation it is extremely difficult to create 'islands of civility and agreement' and the process will need the involvement of third parties.

The 10-point peace plan presented by Ukraine's President Volodymyr Zelensky at the G20 Summit in November 2022, includes the following five issue areas that could indicate potential leverage for defining issues and spaces for humanitarian negotiations and agreements:

- 1) Radiation and nuclear safety
- 2) Food security
- 3) Energy security
- 4) Ecocide and the need for immediate protection of the environment
- 5) Exchange of prisoners and release of deportees.

Zelensky stressed that all issue areas of the 10-point peace plan could be addressed in an internationalized and speedy manner, which altogether could lead to a momentum of agreeing on a 'confirmation regarding the end of the armed conflict' which seems to indicate a minimum or 'negative' peace (agreement). Currently, only some of these five issues are already objects of humanitarian negotiations and arrangements, others remain in limbo.

a) **The Black Sea Grain Initiative as sample humanitarian agreement?**

(Global) Food Security is the multi-dimensional challenge of Russia's ongoing war of aggression against Ukraine that has led to negotiations mediated by the UN and Turkey and to the Black Sea Grain Initiative (BSGI) on 22 July 2022.³³ Until now this is the only example of a formalized and legalized 'island of agreement' regulating the (conflict)relations between Russia and Ukraine. The BSGI has one specific purpose, namely "...to facilitate the safe navigation for the export of grain and related foodstuffs and fertilizers, including ammonia from the Ports of Odesa, Chernomorsk and Yuzhny - 'the Ukrainian ports.' The operative part of the agreement also addresses its duration: "This initiative will remain in effect for 120 days from the date of signature by all Parties and can be extended automatically for the same period, unless one of the Parties notifies the other of the intent to terminate the initiative, or to modify it".

The 10-point peace plan of President Zelensky explicitly stresses the need for the continued implementation of the BSGI, independently from the ongoing international armed conflict: "I believe that our export grain initiative deserves an indefinite extension - no matter when the war ends." Moreover, Zelensky even highlights the BSGI as an example for bringing the parties to internationalized arrangements facilitated by third parties, in this case between the UN, Turkey and Ukraine on the one side and between UN, Turkey and Russia on the other.

³² Blum, p. 18 et seq.

³³ <https://www.un.org/en/black-sea-grain-initiative>

It is also noteworthy that “...in exchange for its participation in the BSGI, Russia was given certain political commitments in a 3-year Memorandum of Understanding (MoU), an instrument separate from but linked to the BSGI. The MoU commits the UN Secretariat to continue ‘efforts to facilitate the transparent unimpeded access of food and fertilizers’ from Russia (para. 2) and envisages regular information exchange between Russia and the UN (para. 3). The MoU also commits Russia ‘to facilitate the unimpeded export of food, sunflower oil and fertilizers from’ unoccupied Ukrainian ports in the Black Sea (para. 1)”.³⁴ Aust and Novak have discussed the BSGI as an example of how the Law of Treaties works in times of war.³⁵

They highlight the interesting politico-legal features of the BSGI:

- The UN has signed the BSGI but is not named as ‘party’ to the agreement pursuant to (preambular) para. 1 that specifies the three states involved: Turkey, Russia, and Ukraine as parties;³⁶
- The UN’s particular role in the context of the negotiation and implementation is underlined by the MoU between Russia and the UN Secretariat;
- The BSGI is linked to established treaty regimes on the international level (para. 2) by making reference to existing international treaties to which the parties are member, i.e., the SOLAS Convention (the 1974 International Convention for the Safety of Life at Sea) and the International Ship and Port Facility Security (ISPS) Code;
- The BSGI includes a time limit of 120 days, with the possibility of automatic extensions but it does not include mechanisms for early termination or suspension;
- The BSGI does not contain any dispute settlement provisions, though it indicates a special role for the UN Secretary General “in securing the discussions for this initiative” and requests “his further assistance in its implementation.”

Aust and Novak conclude that “... the high-stakes BSGI was adopted in the form of a legally binding agreement. While this choice may have been prompted by ‘technical’ considerations deriving from the SOLAS context, it nonetheless had more far-reaching legal implications. Following Russia’s purported suspension of its implementation of the BSGI, the formal legal constraints of the law of treaties, coupled with the distinctive design of the ‘package deal,’ [the MoU] may have played a role in helping resolve this temporary crisis. At the same time, the absence of a formal dispute settlement clause placed the burden of mediation on the UNSG and Turkey.”³⁷

The political fragility of the architecture of this formalized and legalized ‘islands of agreement’ can be underlined by Russia’s recently announced suspension of the New START Treaty. On the other hand, China published its position “on the political settlement of the Ukraine Crisis” only a few days later on 24 February 2023, one year after Russia’s full-scale invasion of Ukraine. Para. 9 of the position paper addresses the facilitation of grain exports by stating that: “All parties need to implement the Black Sea Grain Initiative signed by Russia, Türkiye, Ukraine and the UN fully and effectively in a balanced manner, and support the UN in playing an important role in this regard. The cooperation initiative on global food security proposed by China provides a feasible solution to the global food crisis.” It remains to be seen whether China takes on a more

³⁴ Novak, Gregor & Aust, Helmut: The Law of Treaties in Wartime: The Case of the Black Sea Grain Initiative, Just Security, 10 November 2022, <https://www.justsecurity.org/84051/the-law-of-treaties-in-wartime-the-case-of-the-black-sea-grain-initiative/>; Memorandum of Understanding between the Russian Federation and the Secretariat of the United Nations on promoting Russian food products and fertilizers to the world markets, https://news.un.org/pages/wp-content/uploads/2022/09/MOU_21_July_UN-Secretariat86.pdf

³⁵ Novak & Aust.

³⁶ It is noteworthy to add here that Russia and Ukraine are parties to the VCTL while Turkey is not, see Novak & Aust.

³⁷ Ibid.

openly active role in the global political dialogues relating to conflict management in the ongoing war – which China still does not even address as such.³⁸

b) Other Issues for Humanitarian Negotiations and Arrangements

The **release of prisoners and deportees** and their treatment during international armed conflict is regulated by International Humanitarian Law that also envisions special agreements (Common Article 3) that can specify or extend arrangements between the conflict parties (without changing the status quo of war). Yet, in the case of Russia's war against Ukraine, President Zelensky expressed his disappointment with the International Committee of Red Cross (ICRC) in terms of its role in mediating the arrangements and practices for the release and exchange of prisoners and deportees. As was demonstrated with the repeated collapse of safe corridors for civilians during the siege of Mariupol facilitating such special arrangements are fragile and limited in temporal and spatial aspects. Nevertheless, Russia and Ukraine have repetitively exchanged prisoners and the most constant dialogue format is again facilitated in and by Turkey. Moreover, recently Ukraine pointed to the potential role that the OSCE could play regarding monitoring the situation of Ukrainians in Russia and facilitating the release of deportees.³⁹

In addition, **radiation and nuclear safety** are multi-dimensional challenges for humanitarian negotiations and arrangements that transcend the local, domestic, regional, and global levels. President Zelensky's peace plan underlines that the International Atomic Energy Agency (IAEA) as international organization had already provided clear recommendations on how to deal with nuclear safety and especially nuclear power stations in the international armed conflict between Russia and Ukraine and especially regarding safety issues in areas occupied by Russia.⁴⁰ Ukraine proposes to send an IAEA oversight and verification mission to all operating Ukrainian nuclear power plants, plus Chernobyl, and the withdrawal of Russian troops from Zaporizhzhia NPP and the transfer of it to the oversight of the IAEA. The IAEA also reported that the Director General had meetings with the Ukrainian President in Kyiv on 6 October 2022 and the Russian President Vladimir Putin in Saint Petersburg on 11 October 2022 to discuss the situation at the ZNPP and the Agency's proposal to set up a nuclear safety and security protection zone around the facility.⁴¹ The IAEA Board Report of November 2022 states that "These meetings were followed by extensive technical dialogue and consultations with both parties. Progress was made in these consultations on the establishment and implementation of the nuclear safety and security protection zone; however, further efforts and commitment from all involved in these consultations is still needed before an agreement is reached."⁴²

Within the UN-system the IAEA actively conducts shuttle mediation between the conflict parties and seeks to facilitate arrangements based on its mandate and the Convention on Nuclear Safety that both Russia and Ukraine are parties of. There is a high probability that the IAEA with the overall support of the UN and the UN Secretary General will continue their efforts to come to conflict management agreements on the safety of nuclear power plants in Ukraine with each of the conflict parties under its institutional umbrella.

³⁸ China's position on the political settlement of the Ukraine Crisis, 24 February 2023, https://www.fmprc.gov.cn/mfa_eng/zxxx/662805/202302/t20230224_11030713.html.

³⁹ However, recent "walk outs" of delegates from OSCE parliamentary session in Vienna due to the attendance of a Russian delegation underline the complications of any form of interaction and exchange on the open stage, see OSCE delegates stage walkout during Russian address, DW 23 February 2023, <https://www.dw.com/en/osce-delegates-stage-walkout-during-russian-address/a-64794329>.

⁴⁰ The IAEA provided recommendations for dealing with the safety of the nuclear power stations in Ukraine in its 2nd Summary Report by the Director General, 28 April-5 September 2022, https://www.iaea.org/sites/default/files/22/09/ukraine-2ndsummaryreport_sept2022.pdf.

⁴¹ The IAEA Board Report: Nuclear Safety, Security and Safeguards in Ukraine, 10 November 2022.

⁴² Ibid.

More in limbo are the two remaining issues: ecocide and protection of the environment, and non-nuclear energy security. **Ecocide and the protection of the environment** underline both the local dimensions of destruction and the wider domestic, regional, and global aspects (and have a deep, of course, interconnection with the issue of food security). Zelensky points to Ukraine's initiative during the Climate Summit in Egypt to create a platform that assesses the damages of the war, the need for equipment and necessary strategies of dealing with such destruction, such as the contamination of soil, the spread of landmines, pollution of rivers and the Black Sea, the killing of animals, and the burning of forests.

Energy Security has been a key issue – infrastructural but also humanitarian – for Ukraine in autumn and winter 2022/23 and a key target for Russia in its military campaign. In his 10-point peace plan President Zelensky underlined once again the multi-dimensional nature of the issue and the potential measures a) by proposing a mission of UN experts to assess – on the ground – the extent of the damage, the needs for repairs and measures to prevent further destruction and b) by stressing that stabilizing energy security in Ukraine with international assistance also means stabilizing energy security in the region (Europe) to stop Russia's speculation with energy security and thus, energy prices on the regional and global markets. Effectively, Ukraine suggests raising Russia's costs for its behaviour – i.e., destroying Ukraine's energy infrastructure – with sanctions. The call for stronger sanctions against Russia by Ukraine is in the direct opposite of China's position that unilateral sanctions only lead to the aggravation of the impacts of the conflict on a global level and not toward its settlement.⁴³

What becomes visible for all five issues of Ukraine's 10-point peace plan from food security to energy security is their interconnectedness and multiscale embeddedness in local, domestic, regional, and global contexts. Ukraine, thus, pursues an active strategy of fostering the triads of local-regional-global regarding all issues by involving third parties and international organizations and formats. The question is whether putting the focus on these five issues for high-level humanitarian negotiations and agreements could help in containing and limiting the severe humanitarian impacts of the ongoing war.

⁴³ China's position on the political settlement of the Ukraine Crisis, 24 February 2023, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202302/t20230224_11030713.html.

Containing and Limiting the War with Formalized 'Islands of Agreement'

The ninth point of Ukraine's peace plan addresses the 'prevention of an escalation' of the ongoing war. Strategically it is designed to demonstrate Ukraine's reasonable course of action during the armed conflict to the international community, differently to Russia's. Turning the focus to conflict management agreements we could also raise the question of whether and with which positive or negative effect they could be related to containing or limiting the ongoing war?

In his 10-point peace plan President Zelensky highlighted a step by step-approach when framing what he has called "anti-war measures". Regarding the strategic vision for these measures, he argued: "When all the anti-war measures are implemented, when security and justice begin to be restored, a document confirming the end of the war should be signed by the parties."

He furthermore underlined "...that none of the steps above can take long. A month for one step at the most. For some steps, a couple of days are enough. [...] We already have a positive experience with the grain export initiative. How does it work? There is the UN – and two other parties to the agreements: on one side Ukraine, Türkiye and the UN, and on the other side Russia, Türkiye and the UN. [...] Implementation of each of the points I have just presented can be worked out in a similar fashion. States ready to take the lead in this or that decision can become parties to the arrangement."⁴⁴

Ukraine's current strategy appears to be to stress the multi-dimensional nature of all enumerated conflict resolution issues and to create temporal and spatial 'pressures' not only on the Russian aggressor, but also on external actors, i.e., third parties, to engage in the construction of these 'anti-war measures'. An interesting notion is that the goal of the 10-point peace plan does not seem to be comprehensive peace talks in the sense of repeated internationalized summits that would pave the road to a ceasefire or comprehensive peace agreement. Its framing rather leads to a humanitarian conflict managing perspective on the conflict and striving to end the fighting by a 'confirmation of the end of the war.'

It is important to note that the 10-point peace plan was received with mixed reactions. Unsurprisingly, Russia emphasised that it could not follow Ukraine's entire peace plan because it is not willing to give up annexed and occupied territory. Ukraine's Allies expressed support for Ukraine's ambition to restore the effective implementation of the UN Charter, i.e., the prohibition of the use of force and/or the territorial integrity of states (however, they stayed vague), without explicitly pointing to the sequence and connection of the 10-point peace plan.

The current challenge seems to be to come up with formats and characteristics that do not seek to have immediate effect on the ongoing dynamics of the war (and other conflicts) between Russia and Ukraine. The overall goal for third parties when facilitating such management agreements should be to support Ukraine's statehood during a war of attrition.

⁴⁴ Ukraine has always been a leader in peacemaking efforts; if Russia wants to end this war, let it prove it with actions – speech by the President of Ukraine at the G20 Summit, 15 November 2022; <https://www.president.gov.ua/en/news/ukrayina-zavzhdi-bula-liderom-mirotvorchih-zusil-yaksho-rosi-79141> (referred to as 10-point peace plan).

Format follows Content – Framing ‘Islands of Civility’ and ‘Islands of Agreement’

Concepts of conflict management agreements as humanitarian agreements, ‘islands of civility’ or ‘islands of agreement’ are different to negotiation strategies that strive to lock conflict parties step by step into a road map to a comprehensive peace agreement, as for instance pursued by third parties for reaching the Dayton Accords or Oslo Accords.⁴⁵ Formal arrangements reached during humanitarian negotiations would be rather based on a current understanding that a comprehensive negotiated solution and formal peace agreement is not in sight. As status quo or *modus operandi* agreements they do not need pre-conditions like a temporary ceasefire. But they may also serve to reinforce norms, regarding for example, the protection of civilians, which may serve to develop a security culture favourable to transitional justice and accountability in the longer-term.

Conflict management and humanitarian agreements during the ongoing war against Ukraine could work parallel to attempts for lasting conflict resolution. These contextual considerations help to manage expectations regarding their regulative, temporal, and spatial reach. Hence, the success of humanitarian agreements or ‘islands of civility’ cannot only be evaluated in terms of their impact on sustainable peace-building. Rather than being a problem, this creates additional leverage for the design of such agreements. How they are formed, what makes them sustainable, and what their potential impact on the relationship is shaped by the very specific conditions and issues addressed. Moreover, such agreements can be (but do not have to be) based on international legal standards. While they may be international or domestic agreements, they can also form a type of hybrid (international) obligation based on relationships between the parties on different levels at the same time which address specific issues of human suffering. This necessarily turns the focus to the potential formal design elements of these agreements.

Divisibility⁴⁶ could be one of these design elements of humanitarian agreements or ‘islands of civility and agreement’. As the framing of these agreements depends on their subject of regulation, these agreements do not interfere either with each other, and do not refer to each other. The purpose of divisibility is to prevent the ongoing war from spilling over to the different ‘islands of civility and agreement’. At the same it prevents them from interfering with the ongoing international armed conflict, i.e., they do not interfere with the war objectives of the conflict parties. **Practicality and dealing with uncertainty**⁴⁷ are related to divisibility. Formalized ‘islands of agreement’ should be designed in a practical fashion and they should only be as politically ambitious as the (conflict)relationship between the parties permits. Over-ambitious agreements would run the risk of being constantly violated without any effective tools of enforcement during the ongoing war, which would lead to counter-productive effects.

Furthermore, parties will strive to **create a symmetry of costs and benefits of compliance**⁴⁸ in a situation of ongoing international armed conflict. Imbalances in the cost-benefit-compliance balance could lead to non-compliance by any of the sides, while it is safe to assume that each party not only has an interest to minimize their own costs but also to raise costs of compliance by the other side at the same time. Hence, ‘islands of agreement’ must be **perceived** as entailing equal costs and benefits for both parties

⁴⁵ For texts of formalized political settlements see Peace Agreements Database (PA-X): <https://www.peaceagreements.org/search>.

⁴⁶ Blum, pp. 28-30.

⁴⁷ Blum, pp. 31-32.

⁴⁸ Blum, pp. 30-31.

more than they must formally and substantively obtain them formally.⁴⁹ In protracted international armed conflicts like between Russia and Ukraine it might be even possible to think about arrangements under which the obligations of the parties are neither identical nor even in the same sphere, in other enduring international armed conflicts it was the use of airspace granted in exchange for the removal of certain trade barriers. In such cases, the difficulty would be to translate the costs between the parties and measure them – a typical task for third parties.⁵⁰ In the case of Russia's ongoing war against Ukraine such challenges could especially arise in the field of energy security.

Once again it is important to stress that the basic relationship between warring parties is one of conflict, distrust, and suspicion. Hence, re-negotiating and/re-interpreting of agreements will usually be challenging or not an option at all as we have seen with the BSGI. Moreover, formalized arrangements that collapsed are unlikely to be quickly replaced.⁵¹ In the end, assessing the appropriate level of ambition of a conflict management agreement is a difficult task; learning the lessons from previous arrangements – like the BSGI – could be helpful. In the end, when striving for divisibility, balancing costs and benefits as well as practicality, uncertainty remains at the core during humanitarian negotiations and creating 'islands of civility and agreement'. Consequently, any actions or measures taken by the conflict parties as well as third parties – even when unrelated to a particular conflict management agreement – can lead to an unforeseeable line of consequences.⁵² For instance, even despite the 10-point peace plan stresses the enduring nature of the BSGI for Ukraine independently of which course the war takes, Russia's actions and interactions with external actors like the USA or China could either support the continuation of the BSGI or even lead to its violation or termination.

Formality, clarity, and ambiguity could be tools to meet the challenges of uncertainty and they have been in the centre of long-standing debates regarding formality and informality of agreements and the implications of compliance.⁵³ In the context of humanitarian negotiations and creating 'islands of civility and agreement' strategic ambiguities that could, for instance, leave open spaces for future developments in long-term peace processes, may hamper their sustainability and implementation. When the international armed conflict goes on, the conflict management agreement should be clear and concise. When it comes to formalized 'islands of agreement' in the ongoing war of Russia against Ukraine formality and clarity seems essential for compliance and monitoring compliance. Hence, **enforcement, representation, and accountability** are additional challenges because most formalized 'islands of agreement' will unlikely include any real enforcement or dispute settlement mechanisms to ensure compliance, like the BSGI.⁵⁴

These considerations lead to the question of which role **International Law** could play for humanitarian negotiations, and the formulation and implementation of 'islands of agreement'. The issues addressed in conflict management agreements will rarely concern spheres that are unregulated by existing international law, in the opposite as we see in the five identified issues areas from Ukraine's 10-point peace plan.

Yet, with Russia – a permanent member of the UN Security Council and a nuclear power – being a warring party and considering Russia's conduct in and against Ukraine since 2014 and its most recent conduct since 24 February 2022, there is no certainty anymore

⁴⁹ Blum, pp. 30-31.

⁵⁰ Blum, pp. 30-31.

⁵¹ Blum, p. 31

⁵² Blum, p. 32

⁵³ Blum, pp. 33-34; Lipson, C. (1991). Why are some international agreements informal? *International Organization*, 45(4), 495-538.

⁵⁴ Blum, pp. 37 et seq.

how Russia approaches international law.⁵⁵ This impression is underlined by the recent speech to the Nation of Vladimir Putin in which he announced that Russia would suspend the New START Treaty.⁵⁶ Russia's strategic ambiguities and its international law discourses and practice increasingly form the pre-text for political, legal, and eventually military escalation.⁵⁷

Still, international law – in operational and coding practice – could potentially regulate how an *ad hoc* arrangement between the conflict parties could be framed. Even when the validity of the norm is acknowledged, its interpretation and/or application in certain circumstances may be open to competing claims. Indeed, in Russia's war against Ukraine, it is important to recognise that international law has seldom been useful in effectively settling disputes between the conflict parties.

Conflict management agreements can be potentially more or less restrictive than rules of international law in certain issue areas. They can determine the interpretation and application of rules and disregard others as well as design verification or monitoring mechanisms that do not exist under the applicable international norms, or even design a new cooperative regime beyond existing international instruments.⁵⁸

In the end, all these tools cannot change that formalized 'islands of agreement' and the creation of any 'islands of civility' in the ongoing war between Russia and Ukraine will be very prone to failure, also due to the current lack of compliance, accountability and enforcement mechanisms.⁵⁹ The involvement of third parties in the implementation of a formalized agreement by making any defection from it no longer a strictly bilateral matter – e.g. the BSGI – between the warring parties but also a defiance of the relationship with the third party is of strong importance. This finding turns the focus of the role of third parties.

⁵⁵See e.g. Justice Info In-Depth Interview with Frédéric Mégret, Professor and co-director of the William Dawson Chair in Human Rights and Legal Pluralism at the Law faculty of McGill University in Canada, https://www.justiceinfo.net/en/112886-frederic-megret-justice-for-ukraine-depends-outcome-fighting.html?mc_cid=6fc507bc94&mc_eid=2e65a72852.

⁵⁶ Presidential Address to Federal Assembly, 21 February 2023, <http://en.kremlin.ru/events/president/news/70565>.

⁵⁷ See e.g. Riepl, Michael: Russian Contributions to International Humanitarian Law. A contrastive analysis of Russia's historical role and its current practice, Baden-Baden: Nomos 2022; Mälksoo, Lauri: Review of Michael Riepl, Russian Contributions to International Humanitarian Law: A Contrastive Analysis of Russia's Historical Role and Its Current Practice, *European Journal of International Law* (2022) 33/3, pp. 1025–1031; von Gall, Caroline: Russia's Approaches to International Humanitarian Law, *Völkerrechtsblog*, 13.04.2022.

⁵⁸ Blum, pp. 42-45

⁵⁹ Blum, p. 34.

The Role of Third Parties

The most obvious role for external or third parties is that of intermediaries or facilitators, opening channels of communication in situations in which mere dialogue with the opposite parties runs the risk of being perceived – by the constituency as well as international community – as some form of recognition of the opposite's claims, as conferring a sort of legitimacy, and in the end, as making concessions.⁶⁰

Third parties will play an essential role for creating and sustaining 'islands of civility' between Russia and Ukraine parallel to the ongoing war. Especially these two parties will rely on external assurance that the negotiation and implementation of negotiated conflict management agreements are indeed balanced in terms of the costs and benefits. Moreover, while the war parties may not be eager to substitute their own assessment for that of the third party, the latter's judgement might compensate for their deficiency of information on what is happening on the other side.⁶¹ When they have earned the privileged position of well-informed confidants, third parties can potentially go further and identify additional areas of containment or cooperation in the ongoing international armed conflict.⁶² This way third parties could answer to both psychological and political needs of the conflict parties. The UN seems to pursue such a strategy from the BSGI to nuclear safety. The involvement of international organisations and institutions, like of the IAEA for nuclear safety, is of a particular importance. Blum also stresses for instance that common ground is not necessarily intentional while creating 'islands of agreement'.⁶³ Yet, common ground could exist though in being part of the same international organization or part of an internationalized and facilitated dialogue format.

The **UN**, the **OSCE**, **Israel**, and **Turkey** have all been identified as would-be-mediators between Ukraine and Russia at some point. It is hard to identify third parties/mediators who do not have interests in this conflict and its settlements. Some third parties, as I have suggested, could be interested in their engagement to create formalized 'islands of agreement' to keep Ukraine from territorial fragmentation. As pointed out such a strategy could resonate to some extent with the five issues extracted from Ukraine's 10-point peace plan that stressed the multi-dimensional or multi-layered nature of the conflict and thus, of conflict management challenges. And while such 'multi-layered' perspectives and approaches are full of design-complexity, third parties could still navigate around the disadvantages of options during humanitarian negotiations and when creating formalized 'islands of agreement' and 'islands of civility'. They could understand humanitarian negotiations striving to create 'islands of civility' as opportunity for bringing together international, bilateral, and geopolitical arrangements. Such an understanding also points to the ways in which creative forms of layered consent to agreement can connect Ukrainian domestic legal commitments to settlement terms with Russia, to geopolitical commitments.

Moreover, future humanitarian as well as conflict resolution negotiations will be shaped by China's position and the role(s) in high-level political dialogues and during the implementation of agreements reached. "China's Position on the Political Settlement of the Ukraine Crisis"⁶⁴ sends ambiguous signals. China's position paper starts with stressing the respect for the sovereignty of all countries. One could read this as a call for respecting Ukraine's sovereignty or even that of Belarus. Yet, one could also read it in

⁶⁰ Blum, pp. 41-42.

⁶¹ Blum, p. 42.

⁶² Blum, p. 42.

⁶³ Blum, p. 5.

⁶⁴ China's Position on the Political Settlement of the Ukraine Crisis, 24 February 2023, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202302/t20230224_11030713.html.

light of China's "One-China"-policy and China's and Russia's joint declaration on the "promotion of international law" of 2016, which emphasises an exclusive take on state sovereignty and challenge of "Western hegemony in the interpretation of international law".⁶⁵ Promising to play a constructive role (para. 4) China asks for resuming international peace talks. China additionally addresses issues that overlap with Ukraine's 10-point peace plan, i.e., resolving the humanitarian crisis (para. 5), protecting civilians and prisoners of war (para. 6), keeping nuclear power plants safe (para. 7), highlighting the role of the IAEA, reducing strategic risks (para. 8), and facilitating grain exports (para. 9). Yet, China also stresses the necessity of stopping unilateral sanctions (para. 10) as it does not consider this form of pressure as contributing to political dialogues and solutions, and keeping industrial and supply chains stable (para. 11). One of the most interesting parts of the position statement is para. 2 in which China stresses the need for "abandoning the Cold War mentality" and argues that "there is no simple solution to a complex issue". Altogether, "China's Position on the Political Settlement of the Ukraine Crisis" leads to question of whether and to which extent we see common ground for conflict management and conflict resolution.

In terms of conflict management, it is encouraging that China highlights issue areas also addressed in Ukraine's 10-point peace plan. In this regard we can read the statement of President Zelensky who said: "It seems to me that it was not China's peace plan, not a resolution, not a declaration... I believe China has shown its thoughts on this. And the fact that China started talking about Ukraine is very good." Zelensky further argued that the subject and initiator of peace proposals can only be the state on whose territory the war is taking place and that Ukraine had already proposed a Peace Formula.⁶⁶ This position of Ukraine underlines a defensive modus against enforced negotiations and solutions based on external blueprints. This position, however, is not in contradiction to Ukraine's peace plan strategy of multi-dimensional involvement: "Our task is to involve absolutely everyone and show the world: this is it, respect for territorial integrity, the UN Charter, life, people's right to live. And I believe that the more countries we involve from all continents, the greater our powerful support will be," Zelensky added that the international community of states could support certain points of Ukraine's peace plan, especially relating to nuclear safety and environmental problems.⁶⁷

All constellations, challenges and concerns raised till here lead to the question of whether by employing a conflict management instead of a conflict-resolution perspective we are not merely creating a more bearable status quo that allows the parties to maintain the conflict? In other words, we may be deferring a final settlement by searching for sustainable formalized 'islands agreement' in Russia's ongoing war of attrition against Ukraine. We turn to address that in the next section.

⁶⁵ The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law, Ministry of Foreign Affairs of the Russian Federation, 25 June 2016, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201608/t20160801_679466.html; Mälksoo, Lauri: Russia and China Challenge the Western Hegemony in the Interpretation of International Law, EJIL:Talk! 15 July 2016, <https://www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law/>.

⁶⁶ Ukraine would like China to be on the side of a just peace – Volodymyr Zelenskyy, 24 February 2023, <https://www.president.gov.ua/en/news/ukrayina-duzhe-hotila-b-shob-kitaj-buv-na-boci-spravedlivogo-81269>.

⁶⁷ Implementation of Ukrainian Peace Formula to make it possible to proceed to diplomatic fixation of end of war – President, 24 February 2023, <https://www.president.gov.ua/en/news/vikonannya-ukrayivskoyi-formuli-miru-dast-zmogu-perejiti-do-d-81245>.

Problems and Potential Long-Term Perils of Creating Formalized 'Islands of Agreement' in an Enduring International Armed Conflict

Formalized 'islands of agreement' can be useful for demonstrating what parties to international armed conflict can negotiate, agree on, and comply with. Yet, the potential problems and perils of turning the focus to conflict management arrangements must be considered because formalized 'islands of agreement' and 'islands of civility' can potentially alter relationships between the conflict parties (but also third parties) for the better or the worse. For instance, the stability of 'islands of agreement' could be considered a litmus test for the trustworthiness of either or both sides of the ongoing armed conflict.

On the other hand, formalized 'islands of agreement' are created based on the assessment that no comprehensive resolution of the conflict can be reached at a given moment or in the foreseeable future. Another concern could be that 'islands of agreement' create what Blum calls a "pressed balloon effect".⁶⁸ The conflict containment through 'islands of agreement' could work in a way that if the rivals are prevented from carrying out certain belligerent operations under the management agreement, those actions that remain permitted may be exacerbated. This poses one of the main risks of Russia's war against Ukraine.

Moreover, especially formalized conflict management agreements could run the risk of 'freezing' or at least affirming a status quo between the conflict parties of not being able to end the conflict. This could lead to a process of failure as the underlying conflict between the parties arrives again at the point of the departure to an international armed conflict. In the end, if long-lasting, such arrangements could even impede dispute and conflict resolution. On the other hand, any agreement short of a comprehensive agreement is deemed unstable to some degree.

Consequently, evaluating the success or failure of humanitarian negotiations and the creation of 'islands of civility and agreement' demands changing views and perspective on evaluation criteria for the success and failure of (conflict) management agreements. Changing these perspectives also raises the question of how to weigh success or failure of 'islands of civility and agreement' against alternatives such as comprehensive peace processes and settlements. Another challenge is to determine when an 'islands of civility and agreement' terminates because it is violated or even replaced by another one, most importantly leaving room for interpretation and strategic manoeuvring.

The question for the evaluation of success or failure of formalized 'islands of agreement' points us to the architecture of contemporary conflict as "variable geometries"⁶⁹ of forces which promote fragmentation and cooperation, e.g. like 'islands of civility'. They turn our focus away from searching for the 'good' elite pact and set of institutions towards a better understanding on how these forces work across multiple dimensions and constellations of actors involved.

⁶⁸ Blum, pp. 46-47.

⁶⁹ Also defining different formats and categories of 'islands' or 'zones' of 'civility and agreement', see Bell, Christine & Wise, Laura: The Spaces of Local Agreements: Towards a New Imaginary of the Peace Process, *Journal of Intervention and Statebuilding* 2022, 16:5, 563-583, p. 579.

Recommendations

- **Defining** the goals of containing human suffering and preventing Ukraine from fragmentation as a state and society during the ongoing war and when a negotiated ceasefire and peace deal is not in sight.
- **Creating** multi-dimensional architectures of political dialogues and formalized agreements addressing the issues identified for potential conflict management arrangements between Russia and Ukraine.
- **Involving** third parties in all levels of negotiations and especially in the framing and implementation of formalized 'islands of agreement'.
- **Embedding and contextualising** the search for formalized 'islands of agreement' and 'islands of civility' between Russia and Ukraine with responses to multi-dimensional risks and frameworks for addressing them involving local, regional, and global actors.
- **Unleashing** 'islands of agreement' and conflict management from evaluation of immediate impact on comprehensive peace process and agreement.

About PeaceRep

PeaceRep is a research consortium based at The University of Edinburgh. Our research is re-thinking peace and transition processes in the light of changing conflict dynamics, changing demands of inclusion, and changes in patterns of global intervention in conflict and peace/mediation/transition management processes.

PeaceRep: The Peace and Conflict Resolution Evidence Platform

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