

Back-Channel Negotiations: Initial Steps toward Ending the Russian War in Ukraine

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Abstract

This paper outlines a proposal for opening back-channel pre-negotiations between Russian and Ukrainian officials on the margins of the OSCE in Vienna. It contends that preliminary, informal, and discreet conversations need to begin even before the violence ceases in order to lay the foundations for subsequent formal negotiations to end the Russian war in Ukraine and to negotiate a peace agreement that will prevent violent conflict from re-emerging in the future. Before the war ends and the conditions for a post-war settlement become clear, however, preliminary informal negotiations could discuss modalities for formal negotiations when conditions on the ground become ripe for a negotiated end to the war. At the outset, this would not entail any formal OSCE engagement but rather the provision of good offices by OSCE institutions or by participating States in Vienna. Any formal OSCE role would therefore depend largely on the content of an eventual agreement to end the violence, which could include a formal role for the OSCE in peacekeeping, monitoring, or other roles agreed to by the parties in conflict.

Keywords

Back channels, pre-negotiations, Russia-Ukraine war, ripeness theory, good offices

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Introduction

As things stand in 2023, the outcome of Russia’s invasion of Ukraine remains uncertain; in spite of Ukrainian gains on the ground, a long and potentially stale-

mated war seems like a realistic possibility. However, all wars eventually end, and many end through negotiations. Although formal negotiations of a peace agreement are unlikely to begin until the conflicting parties clearly acknowledge that the war has become too costly for them and/or one or both parties recognize that they cannot win militarily, it may nonetheless be valuable to open informal, back-channel pre-negotiations even before this stage is reached. The

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primary purpose of back-channel encounters is not to resolve the issues in conflict but rather to lay the foundations for more formal, open negotiations when the situation is ripe. Substantive negotiations are only likely to occur once Russian leaders recognize that their original goal of conquering the entire territory of Ukraine or establishing a pro-Russia regime in Kyiv has failed and that they cannot claim sovereignty over large portions of Ukrainian territory. Similarly, Ukraine's efforts to regain control of lost territory have proven difficult, especially in Crimea. Therefore, there is little prospect of a purely military end to the war that would provide an absolute victory for either party.

Any effort to negotiate an end to the war is also likely to be stymied by stalemate at the domestic political level, where leaders of both states have staked their political survival on realizing their desired outcome. For the government in Kyiv, this likely means the full restoration of their sovereignty over the territory of the former UkSSR up to the borders that existed prior to 1991 within the former Soviet Union, including Crimea, which were recognized by the international community and by the Russian Federation in 1991. Yet for the government in Kyiv, which has the support of much of the international community, any ceasefire or agreement based on a military status quo that gave de facto control of portions of Ukrainian territory to the Russian invaders would be unacceptable. Indeed, for Ukraine and its international supporters, this would amount to accepting the outcome of a major vi-

olation of the core principles of the United Nations Charter and the Helsinki Final Act, especially the principles of the inviolability of frontiers, the territorial integrity of states, respect for the rights inherent in sovereignty, and refraining from the threat or use of force. Even if Ukrainian forces retake most territory in the east and south of their country, regaining control of Crimea by military force represents a significant obstacle to the restoration of all sovereign Ukrainian territory in the near term. However, since the Ukrainian population has paid a very high price in the war, anything short of total victory would create the impression that many of its sacrifices were in vain.

Russia's minimum political goal appears to be international acquiescence to its claim that five former oblasts of Ukraine are legally part of the Russian Federation, including Crimea, which was illegally annexed by Russia in 2014, as well as four regions of southeastern Ukraine that Russia claimed to have become subjects of the Russian Federation in 2022, namely Donetsk, Luhansk, Zaporizhzhia, and Kherson (despite the fact that Russian forces have been able to occupy only a portion of each of these four provinces). However, much of the international community does not support Russian territorial claims in Ukraine and continues to recognize Ukraine's post-Soviet borders. Furthermore, Russian President Putin and his military advisors may not survive opposition from internal hardliners if they agree to anything less than the consolidation of the five claimed oblasts under Russian control. Tatiana Stanovaya, writing in *Foreign Affairs*, emphasizes the

challenges to Russia's leadership presented by the war in Ukraine: "The clash of hawks, old and new, will shape Russia's response to its struggles in Ukraine and at home. The more challenges the regime faces, the more quickly it will evolve into something darker. The Russian public is growing more desperate, anti-Western, and anti-Ukrainian, and Russian elites are becoming increasingly anxious and fractious."¹

Therefore, the shape of any formal negotiations will likely depend on the outcome of the military conflict, possibly after years of intense combat. Until the outlines of that military outcome become clearer in the minds of the leaders and populations of these two states, as well as their international supporters, it will be difficult to engage in substantive negotiations based on a military status quo, in spite of the high cost of the war for all parties.

However, negotiations are often preceded by an informal phase referred to as pre-negotiations, which are in fact negotiations *about* negotiations, that is, talks about the decision to eventually enter into formal negotiations. In a military stalemate that remains far from the outcome preferred by either party, as in the Russia-Ukraine war, opposing sides are usually reluctant to engage even in pre-negotiations, which could signal to domestic opponents of negotiation and to the international community that they are prepared to negotiate away their preferred outcome, especially after so many of their citizens and soldiers have died. For this reason, many pre-negotiations occur in secret through a process often described

as back-channel negotiations, away from public view.

I therefore propose that Russia and Ukraine should consider opening back-channel negotiations while the fighting continues. This process would not require a ceasefire, an insistence on which might reinforce the proposition that the current military status quo should serve as a basis for agreement, which would certainly be opposed by Ukraine and would likely be unacceptable to Russia as well. Although the parties have engaged in some informal negotiations on issues such as the exchanging of prisoners of war, my suggestion here is that informal pre-negotiations should open soon (if they have not begun already) through back-channel processes intended to establish a broad framework for more formal negotiations in the future, when the political-military conditions are ripe for opening negotiations on the fundamental issues underlying the conflict. Although these pre-negotiations would not necessarily directly address the core issues, they could generate momentum towards resolution and provide a foundation for subsequent negotiations to address such issues in the future. Of course, informal pre-negotiations do not come with a guarantee that they will lead subsequently to more substantive negotiations once both parties recognize the need to end the war. However, they would perhaps allow for a shorter and more efficient ceasefire negotiation process (ideally followed by a formal political agreement to end the war) than would be likely if there were little or no contact between the parties prior to the end of the fighting.

Pre-negotiations and back-channel negotiations

Pre-negotiations generally constitute a process in which parties to a conflict informally explore the basis for opening negotiations regarding the issues in conflict. According to Harold Saunders, they involve defining the problem that needs to be negotiated, moving towards a commitment to opening substantive negotiations, and beginning to arrange for formal negotiations.² As William Zartman's "ripeness theory" suggests, their primary goal is to ripen the conflict situation so that it becomes amenable to negotiations, even if the eventual solution seems far off in the future. The conflict may be ripened because of changes in the domestic situation (such as a leadership change) or in the regional/global environment, or because of changing perceptions on the part of the conflicting parties of the costs and benefits of continuing the conflict.³ Even a stalemate may lead one or both parties to perceive that the costs of continuing the conflict through violent means outweigh the costs of making concessions from their maximal positions. Thus, pre-negotiations may engage the parties in a joint diagnosis of the basis of the conflict and of the opportunities and threats it presents to their core values.

According to Zartman, three primary conditions facilitate a conflict becoming ripe for negotiation. The first condition is met when both parties recognize that they are trapped in a mutually hurting stalemate that has already cost them dearly or that constitutes a precipice they are likely to fall off together should one

side escalate (perhaps with tactical nuclear weapons) to try to break the stalemate. The parties must first accept that they cannot escalate their way out of the stalemate, and thus that they effectively cannot win in terms of achieving all of their goals without suffering costly consequences. Second, ripeness depends on the parties' having a sense of a way out, perhaps without having a clear picture of the specifics, in the sense of recognizing that a path to ending the violence can be found. Finally, the third condition for ripeness is met when the parties discover a "mutually enticing opportunity" to resolve the conflict.⁴

The pre-negotiation phase is an exploratory process in which the parties try to understand each other's needs, goals, and underlying motivations, thus enabling them to better understand each other's real bottom lines and essential objectives (as opposed to the demands made in rhetorical arguments intended mostly for domestic and international audiences). This should help them to learn from one another and possibly to identify bargaining space—the range within which mutually acceptable agreements might be found, on the basis of which a joint vision of a way out of the conflict can be forged. Finding overlapping bargaining space often involves trade-offs in which the parties identify which issues are most essential to each side; when different issues are prioritized by the parties, they may then seek to fashion an agreement that enables both to believe they can gain something of value from agreeing on those issues of primary concern for each, at least compared to the costs of continuing

the violent conflict.⁵ This recognition of a way out may lead to tentative decisions about an agenda for formal negotiations, their location and timeline, the set of participants, the possible engagement of a third-party facilitator or mediator, and other related features of the planned negotiation process.

In conflicts such as the Russian war in Ukraine, however, the parties hold primary values that are directly opposed to one another, at times seeming to approach zero-sum bargaining. Since the parties' political goals do not coincide, the search for mutually advantageous trade-offs may be difficult. This in turn makes formal negotiations on the basic issues in conflict premature until the military situation is clarified, whether by the victory of one party or due to a mutually recognized stalemate on the ground, when the parties either become exhausted or one or both recognize that they cannot win unilaterally. However, the search for possible solutions that transcend the warring sides' differences will most likely emerge from a lengthy process of communication between the parties, even in the face of severe and seemingly intractable conflict. Back-channel pre-negotiations can thus serve as a vehicle for opening lines of communication and discussing differences outside the glare of both the domestic and the international spotlight. It is precisely under conditions of intense hostility between the parties that the use of back channels may be most valuable, since the parties are unlikely to be willing to meet openly for fear of conveying a message of weakness to domestic and international audi-

ences, perhaps creating a concern that they are prepared to concede too much to their "enemy."

This process is complicated not only by the parties' different political goals but also by emotional baggage resulting from the conflict itself, which makes mutual trust and forming a common perception of a way out difficult. This is further compounded by the external constraints placed on the negotiators by spoilers within their own governments, their domestic political and public audience, and the way in which their behavior is perceived in the global community at large, including by allies.⁶ In order to minimize the impact of these external constraints, it is often necessary to keep pre-negotiations secret from both domestic and international audiences. For this reason, at least in their early stages, pre-negotiations frequently take place through back channels.

Anthony Wanis-St. John defines back-channel negotiations as "official negotiations among the parties to a dispute that supplement or replace open, existing front channel negotiations."⁷ This process is thus distinguished from Track II negotiations, which often involve civil society and non-governmental organizations, in that the interlocutors are in some way directly accountable to and representative of the leadership of the conflicting parties. They may include a third party as a facilitator or mediator, but this is not a necessary requirement. They may be held in parallel with open negotiations, but more often they are conducted in a preliminary process intended to pave the way for later formal negotiations.

Most importantly, they must engage individuals who are close to the high-level authorities in their governments and who are authorized to explore options for beginning substantive negotiations without making any commitments about their outcome. Back-channel negotiations should generally be conducted in secret in order to provide the parties with an opportunity to explore multiple options without committing their governments to any agreement at an early stage or closing off options that might be imposed by domestic and international actors.

The central feature, however, is that these informal contacts must take place without political pressure in situations where the parties recognize privately that they may have to depart from publicly declared commitments and goals; in these conditions, open negotiations may be met with political backlash back home that prevents them from making progress. Without resolving the conflict, back-channel negotiations should allow the situation to ripen, in Zartman's terminology, by helping the parties to recognize that there may be a way out of the conflict or even identifying the kind of "mutually enticing opportunity" that could provide the foundation for open negotiations.⁸ An important goal is frequently to create a format and an agenda for negotiations without being pressured by domestic and international opposition to engage with the perceived enemy. As Wanis-St. John observes, this does not necessarily require direct communication between the parties to the conflict but may instead involve "a third party mediator who acts as the secret conduit be-

tween noncommunicative or confrontational parties."⁹

In summary, the back-channel process offers a venue in which parties can explore possible negotiations in a preliminary way, without forcing them to commit to any specific terms of agreement that might initially be opposed by factions within their own governments or domestic political forces that favor pursuing total victory regardless of the costs. It may provide a venue for preliminary negotiations where leaders can meet without fear of losing face publicly by implicitly admitting that their proclaimed goals and rationale for the conflict cannot be realized. At the same time, it may allow tentative agreements to be struck in private, which could eventually provide a foundation for open negotiations without significant delay once the conflict becomes ripe for resolution.

A proposal for back-channel negotiations in the war in Ukraine on the margins of the OSCE

The CSCE/OSCE has long been engaged in relations between Russia and Ukraine. For example, the Budapest Memorandum was signed at the CSCE Summit in Budapest in 1994, in which Ukraine agreed to return nuclear warheads and delivery vehicles to Russia and to sign the Nuclear Nonproliferation Treaty as a non-nuclear weapons state. In exchange, Russia agreed not to threaten or use military force or economic pressure against Ukraine (as well as Belarus and Kazakhstan, which also relinquished their nuclear weapons).

However, it conferred responsibility for enforcing the agreement on the UN Security Council, where Russia holds veto power.

Between 1992 and 1996, the OSCE's High Commissioner on National Minorities, Max van der Stoep of the Netherlands, mediated a series of agreements on the status of Crimea within Ukraine, granting a substantial degree of autonomy to the oblast, where a majority of the population identified as Russian. This process also created another layer of sub-autonomy for the Tatar minority living there.¹⁰ These agreements collapsed with the Russian takeover of Crimea in 2014.

The OSCE also played a central role in the negotiation of the Minsk Protocols in 2014–2015, following the Russian occupation of Crimea and the outbreak of violent conflict in two Ukrainian oblasts in the southeast, namely Donetsk and Luhansk, whose *de facto* leaders sought to break away from Ukraine. The OSCE created and operated the Special Monitoring Mission (SMM) in the two regions and throughout Ukraine in an effort to monitor the ceasefire and other provisions of the Minsk II agreement between 2015 and the Russian invasion of Ukraine in February 2022, when it was forced to close.¹¹ However, its mandate did not permit it to enforce any of these agreements, even though they were extensively violated by all parties and eventually collapsed following the Russian overt invasion of internationally recognized Ukrainian territory.

The limitations on the OSCE's ability to enforce the implementation of the many agreements negotiated between

Russia and Ukraine under its auspices following the breakup of the Soviet Union have negatively impacted its reputation among many states in the region, even though the SMM performed remarkably well in carrying out its limited mandate. Nonetheless, the OSCE still may have a role to play in facilitating an end to the war, whether directly or indirectly, and the successful performance of that task could even help to revitalize the OSCE as a singularly important instrument of conflict management in Europe. Since any final agreement is likely to depend on the outcome of the war, however, it may be premature to negotiate the terms of an end to the conflict and of a postwar settlement before the military situation on the ground opens up space for resolution. Given that Russia failed to gain control of Kyiv in the early months of the war in order to install a pro-Russian government in Ukraine—or even to occupy more than a portion of the four oblasts other than Crimea that it claimed to be Russian territory—a settlement short of complete Russian control over these four regions will likely be perceived, especially in Russia, as a significant setback for President Putin's ambitions in Ukraine. Similarly, large segments of the Ukrainian population and their political leaders are likely to perceive any settlement (or even a ceasefire) that does not include the reclaiming of all of Ukraine's lost territory as falling short of their goal, a position that is also held by many of their international supporters, who have provided vast amounts of military and humanitarian aid.

Although both sides have suffered from the drawn-out and violent conflict, neither party is likely to begin negotiations on any final settlement based on an unstable military and political status quo. This does not mean, however, that they should avoid entering into pre-negotiations of some sort, using discreet back channels to prepare the ground for formal negotiations when the situation on the ground ripens. Such pre-negotiations could take place on the margins of the OSCE in Vienna (or of the UN offices in Geneva or Vienna).

Vienna seems to offer an attractive venue for back-channel pre-negotiations. As the home of the OSCE and of major United Nations institutions, it offers many opportunities for initiating back-channel contacts between Russia and Ukraine. Both countries have large delegations assigned to these institutions, headed by senior diplomats with the ability to communicate with the highest-level government authorities in their respective countries. Since their presence in Vienna is normal and routine, the public is unlikely to view contact between them as indicating anything beyond the performance of their normal diplomatic duties. Diplomats and other senior officials could meet, in the presence of a third party or alone, to exchange ideas about how to prepare for negotiations to bring the war to an end. In the early stages, it might be desirable for a third party to serve as a conduit for communications since tensions between the two parties remain so intense that direct face-to-face communication may be difficult and pressure from

their capitals may constrain their ability to meet, even informally.

The OSCE could offer its good offices to the parties to meet quietly at the Secretariat without necessarily sending a clear signal about the focus of the meetings. Alternatively, the delegations of one or more of the participating States, preferably neutral states such as Austria or Switzerland, could provide good offices for informal meetings between the representatives of the parties. Similarly, Turkey, a NATO member and OSCE participating State, has mediated between the parties, especially regarding the shipment of grain from Ukraine across the Black Sea, and could be an acceptable partner for facilitating further back-channel talks. Although less frequently employed, Vienna also offers numerous cafés and *Heurige* in the surrounding region, as well as remote locations in the nearby Alps, where informal conversations could take place. While there is always a risk that these private conversations could leak publicly, the Vienna setting offers a basis for plausible deniability regarding their real purpose. Although NGOs and civil society organizations located in Vienna could facilitate the initiation of back-channel negotiations, as Wanis-St. John has argued, the sensitivity and significance of the issues will require the direct participation of individuals who have access to senior officials in Moscow and Kyiv.

An additional benefit of the Vienna location is that the proximity of the OSCE institutions could provide a locus for more formal negotiations when and if the stage is reached to begin talking about substantive issues underlying the

conflict. The OSCE's considerable experience with the conflict in Ukraine means that deep knowledge about the issues already exists within its institutional structures, especially in the Conflict Prevention Centre. OSCE engagement, even on the margins of the negotiations, would increase the likelihood that any eventual agreement would conform to the principles of international law and the norms of the Helsinki Final Act and the Charter of Paris, as well as the UN Charter, all of which were violated by the Russian invasion of Ukraine. The OSCE could also offer its assistance in the implementation of whatever agreement might emerge after the war, especially because of its extensive experience in mediating the Minsk Protocols and monitoring their implementation. However, it is important to emphasize that any formal engagement by the OSCE would likely emerge only after the commencement of formal negotiations, or even after the conclusion of a peace agreement. Such a long and violent conflict is likely to require some form of international peacekeeping to prevent instability and frequent violations of a peace process, as occurred prior to the Russian invasion in 2022. Therefore, measures to implement and enforce an agreement could also be organized by the OSCE or the United Nations.

Vienna has long been the preferred location for informal discussions among diplomats and political leaders, including in the period from 1975 to 1990, when it served as the locus of East-West negotiations on confidence- and security-building and conventional arms control, which involved both formal negotia-

tions and informal, back-channel discussions among the parties. Even before the CSCE became a formal organization, the Vienna CSCE Review Conference from 1986 to 1989 provided an opportunity for numerous informal contacts across East-West lines that played a significant role in encouraging the liberalization of Eastern Europe and increased contacts across the Cold War divide in Europe, contributing to the eventual collapse of communism in Eastern Europe and the end of the Cold War. Many of the ideas advanced informally in Vienna were formalized in the Charter for a New Europe adopted at the CSCE's Paris Summit in 1990. Although the context of the war in Ukraine is different from the issues faced by the CSCE in the past, these experiences illustrate ways in which the diplomatic presence around the CSCE/OSCE has provided a context for negotiating larger issues that go beyond the specific mandate of the OSCE.¹²

The Russian-instigated war in Ukraine will eventually end, although how it ends will affect both the process and the content of formal negotiations, as well as the role that the OSCE and other institutions might play in the implementation of an eventual agreement. It may take months or even years before the military situation on the ground, as well as the political conditions in both Kyiv and Moscow, become ripe for even back-channel pre-negotiations. However, it is not too soon to begin laying the foundations for negotiations to end the war. Initiating back-channel pre-negotiations before the conditions are ripe may speed up the process of reaching agreement when the situation

becomes amenable to a negotiated peace agreement.

The consequences of this war in terms of loss of human life, the degradation of human rights, the destruction of economic infrastructure, and the denial of justice for crimes against humanity are simply too serious to delay this process any longer than necessary. Therefore, even before a structure or agenda for formal negotiations emerges, informal back-channel discussions could facilitate both the timing and the process of negotiating a peace agreement when the necessity of ending the war becomes clear to all. OSCE officials and delegations of several participating States could offer their good offices to the parties to begin informal discussions, but Russian and Ukrainian diplomats will ultimately have to set aside their intense hostility and meet privately to lay the foundations for negotiating an eventual end to their war and, thereafter, for a just peace agreement that seeks to prevent war from breaking out in the region again.

Notes

- 1 Tatiana Stanovaya, "Putin's Age of Chaos," *Foreign Affairs* 102, no. 5 (2023): 56.
- 2 Harold H. Saunders, "The Pre-Negotiation Phase," in *International Negotiation: Art and Science*, eds. Diane B. Bendahmane and John W. McDonald, Jr. (Washington, DC: Foreign Service Institute, US Department of State, 1984), 47–56.
- 3 I. William Zartman, "Ripeness Revisited: The Push and Pull of Conflict Management," in *Negotiation and Conflict Management: Essays on Theory and Practice* (London: Routledge, 2008), 232–44.
- 4 I. William Zartman and Siniša Vuković, *Rethinking Conflict Resolution and Management* (Cheltenham, UK: Edward Elgar, 2023), 68–82.
- 5 P. Terrence Hopmann, *The Negotiation Process and the Resolution of International Conflicts* (Columbia, SC: University of South Carolina Press, 1996), 54–56.
- 6 See Stephen John Stedman, "Spoiler Problems in Peace Processes," in *International Conflict Resolution after the Cold War*, eds. Paul C. Stern and Daniel Druckman (Washington, DC: National Academy Press, 2000), 178–224.
- 7 Anthony Wanis-St. John, *Back Channel Negotiation: Secrecy in the Middle East Peace Process* (Syracuse, NY: Syracuse University Press, 2011), 4.
- 8 Zartman, cited above (Note 3), 233–39.
- 9 Wanis-St. John, cited above (Note 7), 9.
- 10 P. Terrence Hopmann, "The OSCE's Contrasting Roles in Managing the Ukraine/Crimea Crises in 1992–96 and 2014–15," in *OSCE Yearbook 2015*, ed. IFSH (Baden-Baden: Nomos, 2016), <https://ifsh.de/file-CORE/documents/yearbook/english/15/Hopmann-en.pdf>
- 11 For background, see P. Terrence Hopmann, "Negotiating the Ukraine-Crimea Crisis," in *Tug of War: Negotiating Security in Eurasia*, eds. Fen Osler Hampson and Mikhail Troitskiy (Waterloo, ON: Centre for International Governance Innovation Press, 2017), 101–16.
- 12 For a review of this period in the history of the CSCE, see Andrei Zagorski, "The CSCE: Lessons from the Past," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2023), <https://doi.org/10.5771/9783748933625-06>