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## The War in Ukraine and Europe: A Situational Analysis and Negotiation Perspectives

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## I. Introduction

For many, Russia's brutal war of aggression on Ukraine came as a surprise, either because the likelihood of an attack was dismissed fundamentally or because it was not expected on this scale. The shock – even after several months of open hostilities – still runs deep and the respect for the Ukrainian people, the military and the government, who have presented a resolute and united front against the aggressor since the beginning of the war remains high. It is probably not least due to this spirit of resistance that Ukraine – contrary to Putin's initial expectations – has been able to hold its ground so far. However, given the ongoing duration of the war, the large-scale destruction of the country and the increasing number of casualties, it is worth considering ways out of this situation. This requires deliberation and the weighing of strategies and outcomes.

## II. Game Theoretical Analysis

### 1. Chicken Game

To outline these underlying processes, we begin with a game-theoretical analysis based on the so-called *Chicken Game*. Such an analysis enables a thorough examination of the situation and in doing so provides insights into the conflict. In the Chicken Game, two cars are racing towards each other on a narrow road. Each driver can either swerve or keep racing. Both strategies are undesirable however: (i) swerving first results in being labeled a coward (or "chicken") or (ii) to keep racing – hoping, the other one swerves first – means both will end up dying. Consequently, it does not pay off for either party to even enter this game.

However, what to do if the game has already started and the cars are bumper to bumper? Such a situation requires a modification of the Chicken Game. We consider three strategies for each of the two drivers: (i) continue to push, (ii) swerve, or (iii) stop pushing to find a way out together. In the following section, we will apply this starting point to the war in Ukraine. We call the newly designed game "*Salgina Game*" in reference to the Salginatobel bridge in the Prättigau in Eastern Switzerland.<sup>1</sup> It is a single-lane bridge, where crossing is also not possible but where swerving – in contrast to the Chicken Game – ends deadly, namely in a fatal fall of 90 meters into the canyon.

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<sup>1</sup> It is 90 m high and 133 m long and was designed by Swiss civil engineer Robert Maillart, built between 1929 and 1930. Due to its unique design, the «American Society of Civil Engineers» declared the Salginatobel bridge an «International Historic Civil Engineering Landmark» in 1991. < <https://www.salginatobelbridge.com/> >

## 2. Salgina Game

The two drivers – representing Russia and Ukraine – face each other in the middle of the single-lane bridge. In analogy to the above three strategies, both can either: (i) *fight* (continue to push), (ii) *surrender* (swerve) or (iii) *negotiate* (stop pushing to find a way out together). This results in a matrix of a total of nine ( $3^2$ ) possible combinations of strategies or outcomes. For both countries, each of the nine combinations is evaluated independently on a scale of 1-9. The combination that represents the worst outcome for a state receives 1 point (lowest individual pay-off). The best outcome is assigned 9 points (highest individual pay-off). The analysis leads to the following:

Ukraine achieves the highest individual payoff (9) if it continues to fight while Russia surrenders (AB). The opposite is true for Russia (BA). In both cases however, one wins only if the other suffers a complete defeat (1). In reality, these two cases (AB and BA) represent the achievement of the maximum goals declared by the two parties. For Ukraine, this is the expulsion of Russian troops from its entire territory (AB) and for Russia, it is the occupation of all of Ukraine (BA). In our opinion, neither of these maximum goals seems feasible, at least not in the near future. For one, regardless of what international law says, Russia is likely not willing to give up Crimea. In addition to its higher strategic importance, Crimea has been more strongly integrated into the Russian Federation than, for instance, the Donbass. And at the same time, we believe that Ukraine cannot rely on endless, unconditional support of the West in establishing the pre-2014 borders as Russia's nuclear arsenal ultimately prevents the Western supply of heavy weaponry needed for this purpose.<sup>2</sup> For the other, Russia lacks the military, political and

|                |           | <b>Russia</b>  |                                 |   |
|----------------|-----------|--|---------------------------------|---|
|                |           | fight  | surrender                       | negotiate   |
| <b>Ukraine</b> | fight     | $\underline{5} \quad \underline{5}$<br>[Nash 1]<br>(AA)<br>[Pareto inferior] | $\underline{9} \quad 1$<br>(AB) | $7 \quad 4$<br>(AC)                                     |
|                | surrender | $1 \quad \underline{9}$<br>(BA)  | $3 \quad 3$<br>(BB)             | $2 \quad 6$<br>(BC)                                     |
|                | negotiate | $4 \quad 7$<br>(CA)  | $6 \quad 2$<br>(CB)             | $8 \quad \underline{8}$<br>[Nash 2]<br>(CC)<br>[Pareto] |

Figure 1: Salgina game analysis

<sup>2</sup> Hence, ironically enough, here nuclear weapons have become “enablers” rather than “preventers” as was their original goal. A NATO membership of Ukraine – and thus a direct involvement of the West due to the mutual defense clause – does not seem to be a possible scenario in the near future.

economic capacity to fully invade Ukraine. Thus – our hypothesis – in reality, AB and BA do not seem probable outcomes.

If both continue to fight (AA, 5 each), it results in what is known as a *Nash equilibrium*, meaning that neither Ukraine nor Russia can gain anything if it alone changed its strategy.<sup>3</sup> We call the equilibrium in (AA) *Nash equilibrium 1 [Nash 1]*. AA is not a so-called *Pareto optimum* (in which neither party can improve their outcome *without* worsening the outcome for the other); it is *Pareto inferior*. AA can only be improved for both, if Ukraine and Russia started to negotiate (CC, 8 each). The strategy combination CC is also a Nash equilibrium – *Nash equilibrium 2 [Nash 2]*. However, on the contrary to AA, this is a *Pareto optimum*.<sup>4</sup> As we argue that neither Ukraine nor Russia will achieve their maximum goals (9), joint negotiations (CC) thus have the highest realistic individual (8) as well as highest collective pay-off (16). From that perspective, negotiations would therefore be in the interest of both parties. The game theoretical analysis shows nicely the “Salgina Dilemma”. Both parties are currently in AA, a Nash equilibrium. No one wants to leave *unilaterally* such an equilibrium situation as they would worsen their respective situation (going down from 5 to 1 or to 4). They can both improve their situation only by *jointly* moving to CC. By doing so, they would benefit from a Pareto improvement. This in contrast to the so-called *Prisoner’s Dilemma*, in which the departure from the Nash equilibrium also constitutes a Pareto improvement, but in which the new situation is not a (stable) Nash equilibrium. So much for the game-theoretical analysis. The more practical considerations follow below.

### III. Conflict Ripeness

When is it time to negotiate? According to William Zartman, this is a question of conflict ripeness.<sup>5</sup> The latter is not given until the parties find it more effective to pursue their goals through negotiations than through other means. Before a conflict is ripe, military enforcement is often used to achieve a certain goal. Conflict ripeness can be influenced externally and internally.

We argue that in the context of the war in Ukraine, the willingness of both to negotiate (CC) must be preceded by the recognition that achieving their maximum goals (AB, BA) might not be possible in the short term and that pursuing them against better judgement comes at too high a price (civilly, politically, and economically).<sup>6</sup> Comes this recognition, the parties will start to negotiate. If it does not, negotiations will not take place. The West, too, can influence this readiness from the outside. By means of (i) maintaining and tightening sanctions against Russia, (ii) continuing with arms supply for Ukraine to improve their negotiation position and prevent a Russian annexation. However, it should also (iii) create opportunities to prepare the ground for negotiations.

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<sup>3</sup> The Nash equilibrium is named after mathematician John Nash. Osborne Martin J./ Rubinstein Ariel, *A Course in Game Theory*, Cambridge/London 1994.

<sup>4</sup> Osborne/Rubinstein, pp. 14-29.

<sup>5</sup> Zartman I. William, *Ripeness: The Hurting Stalemate and Beyond*, in: Stern/Druckman (eds.), *International Conflict Resolution after the Cold War*, Washington 2000, pp. 225-245.

<sup>6</sup> The assessment of when a price is too high is a difficult consideration. Depending on the party, the individual aspects are also weighted differently.

After horrific incidents and illegal acts of war (such as Bucha, Isjum, and the annexations of the four Ukrainian territories), it is often argued that negotiations are no longer possible. Three reasons in particular are frequently put forward as justification for this, which will be invalidated below. (i) It is suggested that negotiations cannot be conducted with parties who act in violation of international law or are untrustworthy. However, in difficult situations, a party should consider to negotiate even with the devil.<sup>7</sup> A postponement of actually opportune negotiations due to some (albeit blatant) misconduct on the part of the other party, may be detrimental to one's own interests. And if the other side cannot be trusted, appropriate countermeasures must be formulated in the event of non-compliance with the negotiated agreement. The less trust there is, the more severe these countermeasures must be designed. (ii) Furthermore, it is often argued that engaging in negotiations after such events is too weak a reaction vis-à-vis a violation of international law. However, from a general point of view, negotiations do not need to be seen as "already a first concession". In cleverly prepared and skillfully conducted negotiations accompanied with flanking measures, better results can be achieved than on the battlefield. (iii) Finally, a decision to negotiate is often presented as irreversible. This is not the case. In particular the stronger party has the option of returning to the battlefield at any time – even during negotiations, should no satisfactory compromise emerge. Thus, nothing seems lost by attempting to negotiate; on the contrary, it is an opportunity to limit the damage of war, at least temporarily.

To this end, the United Nations (UN) would theoretically provide a framework for dialogue. However, its core body, the UN Security Council (UNSC) – responsible for ensuring international peace and security – is blocked by Russia's veto-right. An alternative platform to promote diplomacy is therefore necessary and should be proposed. Ideally by an international actor with high credibility and a certain authority.

#### **IV. Negotiation Content**

As soon as the parties come to the conclusion that it is no longer worthwhile for them to pursue their goals militarily, negotiations will ensue. In the following section, possible elements of such a diplomatic solution are discussed. These elements are structured around three main parts.

##### **1. Bilateral Agreements (UA – RU)**

The first part consists of two bilateral agreements between Ukraine and Russia, (i) a *ceasefire agreement* and (ii) a *political settlement*. In our view, the former should also include a definition of the line of control and the modalities of an international monitoring process to keep track of any violations. More comprehensive elements and modalities of living in the same neighborhood would then have to be negotiated in the *political settlement agreement*. The focus here would arguably be on *neutrality* and on *autonomy* of certain Ukrainian regions. As a contribution to peace and stability in the region, Ukraine

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<sup>7</sup> Mnookin H. Robert, *Bargaining with the Devil*, New York 2010.

could agree to a declaration that would provide for an *armed* but not necessarily *permanent neutrality*. In our opinion, the declaration could include a provision that would provide for the terms of reference to be periodically reviewed. This would take into account that the concept of neutrality serves a specific purpose in a particular context. It is not to be understood as an end in itself and the neutrality declaration should therefore be designed in a way that it can be adapted to changing circumstances. The advantages of such a flexible approach can be demonstrated by looking at Switzerland's 200-year history of neutrality. For instance, Switzerland opened its airspace for the overflight of a peacekeeping mission during the Bosnian war in 1995 and is currently participating in sanctions against Russia. A rigid understanding of neutrality would not have allowed for such actions. Similarly, the inclusion of monitoring would leave open the possibility for Ukraine to abandon its (previously imposed) neutrality status should Russia's position – concerning NATO's eastward expansion – change in the future.

In addition to neutrality, the question of *autonomy* of certain Ukrainian territories would likely have to be discussed in the context of a political settlement. By offering levels of autonomy with increased minority rights for Russian speaking areas (e.g., political, cultural, linguistic), Ukraine could show some flexibility without prematurely sacrificing any territory, as demanded by Russia. This would allow Ukraine to enter the negotiations in a face-saving manner, primarily vis-à-vis its own population. In our opinion, the content of an autonomy debate would particularly include questions of (i) *state structure and the division of competences*, as well as (ii) *individual degrees of autonomy and self-determination rights*.

In terms of *state structure*, there are two distinct forms: federalist and unitary systems. On one hand, *federalism* is based on the division of state tasks between different political levels (a central unit and various subunits). In addition to the vertical separation of powers, the advantage of such a system is the ability to protect minorities, which despite diversity in an overall state, allows for integration and unity. Thus, for instance, appropriate status – including territorial sovereignty – may be granted to minorities forming a majority in a subunit. On the other hand, in a *unitary state*, state power lies with a central government only. The latter delegates certain competencies to political subunits and orders the implementation of decisions made at the central level. This tends to make the consideration of specifics of the population more difficult.<sup>8</sup>

Regarding the identification of the *degrees of autonomy*, there are various existing models along the spectrum of the internal dimension of the right of self-determination that could be consulted for inspiration (e.g. Greenland and South Tyrol).<sup>9</sup> This means that none of these models violates the

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<sup>8</sup> This does not imply however, that autonomy does not exist in unitary state. Hausteiner Eva Marlene, *Föderation als Bundesstaat? Begriffliche Traditionen, politische Alternativen*, in: *Aus Politik und Zeitgeschichte (APuZ)*, bpb 2015, pp. 3-8.

<sup>9</sup> Ackrén Maria, *The Political Parties in Greenland and Their Development*, in: Hänni/Belser/Waldmann, *States Falling Apart?* Bern 2015, pp. 317-335; Alber Elisabeth, *Qualified Autonomy vs. Secessionist Discourses in Europe: The Case of South Tyrol*, in Hänni/Belser/Waldmann, *States Falling Apart?* Bern 2015, pp. 267-296.

principle of territorial integrity of the parent state. However, at the same time, they take into account the specifics of their own population and grant the minorities – based on their right to self-determination – a way to exercise their political and cultural rights. If such autonomy models were ever to include higher levels of self-determination, e.g. a secession, there might be some advantages to an implementation in a federal state structure.<sup>10</sup>

To that end, aside from its federal system and direct democratic voting devices, Switzerland has gained valuable conflict management experience with the secession of the so-called Jura region from the Canton of Berne (federal subunit). The resolution of this conflict ultimately involved the design of a three-stage process that would guarantee for a maximum number of affected individuals to exercise their right to self-determination.<sup>11</sup> Although different circumstances, comparing notes could thus be useful.

## 2. Security Guarantees (Allies – UA)

The second part of a diplomatic solution could then focus on *security guarantees* and would be adopted between Ukraine and its allies, for instance, the Ukraine Defense Contact Group<sup>12</sup> (“Ramstein Group”). Without the latter, the political settlement above would likely have little value, as was the case with previous agreements (Budapest 1994, Minsk 2015). The biggest guarantee for Ukraine would be NATO accession. However, membership in the Western military alliance is unlikely in the near future. On one hand, this is due to Russia’s strong rejection of NATO’s eastward expansion. On the other hand, following an admission of Ukraine, NATO members would be obligated to provide military assistance to Ukraine under the principle of collective security (Art. 5 of NATO Treaty) in case of an attack.<sup>13</sup> A direct confrontation between NATO and Russia – two nuclear powers – would thus no longer be inconceivable.

Therefore, we would suggest for the security guarantees to include a politico-economic (non-military) equivalent to Art. 5 of the NATO Treaty. Such a provision could assume a substitute function for a currently unfeasible NATO membership with the purpose to clearly outline the consequences of breaching the political settlement agreement. Implications would have to be severe enough to prevent future misconduct: a mechanism that would automatically lead to the re-installment or toughening of previous sanctions in the event of treaty violations (“snapback”). Inspired by the provision in the 2015 nuclear agreement with Iran (“Joint Comprehensive Plan of Action”).<sup>14</sup> Also included in the security guarantee agreement could be plans for the reconstruction of Ukraine.

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<sup>10</sup> Burgess Michael, *Divided We Stand; Autonomy or Secession in Federation?*, in: Hänni/Belser/Waldmann, *States Falling Apart?* Bern 2015, pp. 15-35.

<sup>11</sup> Maggetti-Waser Maurizio, Fang-Bär Alexandra, *The Birth of a New Canton: An Example for the Implementation of the Right to Self-Determination*, in: Hänni/Belser/Waldmann, *States Falling Apart?* Bern 2015, pp. 337-368.

<sup>12</sup> This group was established in April 2022 on the German air base in Ramstein. <<https://www.defense.gov/News/News-Stories/Article/Article/3007229/>>

<sup>13</sup> <[https://www.nato.int/cps/en/natolive/official\\_texts\\_17120.htm](https://www.nato.int/cps/en/natolive/official_texts_17120.htm)>

<sup>14</sup> <[https://www.eeas.europa.eu/sites/default/files/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](https://www.eeas.europa.eu/sites/default/files/iran_joint-comprehensive-plan-of-action_en.pdf)>

### 3. Multilateral Initiatives

Finally, in a third part, we would propose for new *multilateral initiatives* to reform two important security frameworks. First, a new European security architecture is needed – to be based on a renewed set of rules to reinforce peaceful coexistence on the European continent. Negotiations on these rules could take place at a multilateral conference, a sort of “Helsinki 2” inspired by the Helsinki Conference on security and cooperation in Europe in 1975, during which the participating states formulated ten principles governing their relations and cooperation in various areas. For a relaunch, neutral Switzerland may be considered as a potential venue, since after its recent decision to join NATO, Finland may no longer be an acceptable host country to all.

Second, as indicated above, the UNSC’s inability to act brings into focus the need for reform of the UN’s collective security system, in particular, a change of the veto right of the five permanent UNSC members (P5). Their joint lack of interest in the abolition of their own privileges has been demonstrated many times before. The difficulty of such a possible reform is therefore predictable. However, in the past, successful changes in the international system have always been implemented after wars: the end of the Thirty Years War in 1648 brought the Westphalian system, which laid the basis for the fundamental principle of “sovereign equality of states”; the end of the Napoleon wars in 1815 allowed the creation of a balance of power, the end of World War I brought the establishment of the League of Nations; and the end of World War II brought the founding of the UN. Russia’s war in Ukraine could thus also prove to be an opportunity. If not for a comprehensive reform, then at least to restart the debate. The fact that the aggressor in a war can block the very system responsible for guaranteeing international peace and security should be sufficient cause. A restriction of the use of the veto right should be reached in the minimum.,

## V. Conclusions

There is a war going on in Europe. The defense of Ukraine against Russia’s illegal attack is therefore also a European matter that requires a strong united response from the West, in particular from Europe. By means of sanctions and arms deliveries, Ukraine can be indirectly and directly supported in improving its negotiation position.

Naturally, it is not possible to anticipate future developments in this war. For one, we cannot know if Ukraine can maintain its current [early October 2022] military success. For the other, the use of nuclear weapons (although not likely) by Putin cannot be ruled out, in particular should he feel pushed to the wall and come under pressure domestically. Thus, even if these and other future developments are not foreseeable today, the analysis and reflections presented here could serve as a contribution to preparing the grounds for a dialogue and possible negotiations down the line.





