

UKRAINE SETTLEMENT OPTIONS: NEUTRALITY AND RELATED CONCEPTS

By Marc Weller

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INTRODUCTION: THE ISSUE OF NEUTRALITY IN THE NEGOTIATIONS

In a much-noted speech at the Munich Security Conference of 2007, the President of the Russian Federation, Vladimir Putin, protested against the positioning by NATO of its ‘frontline forces on our borders.’ He considered this act a ‘serious provocation.’ [https://is.muni.cz/th/xlghl/DP_Fillinger_Speeches.pdf]

Nevertheless, in April of 2008, the Bucharest NATO summit opened the prospect of NATO membership for Ukraine (and Georgia):

NATO welcomes Ukraine’s and Georgia’s Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO. Both nations have made valuable contributions to Alliance operations. [https://www.nato.int/cps/en/natolive/official_texts_8443.htm , para 24]

In the wake of Russia’s 2008 military operation in South Ossetia and also Abkhazia, then President of Russia, Dmitry Medvedev, put forward a proposal for a new European security order, which sought to exclude NATO expansion. That proposal was later supplemented by a draft treaty presented by the Russian Federation of November 2009, which would have put an ‘end to NATO’s eastward enlargement.’ [<http://connections-qj.org/article/medvedevs-proposals-new-european-security-order-starting-point-or-end-story>, p. 8.]

On 17 December 2021, as its armed forces started to assemble on the borders of Ukraine, the Russian Federation re-issued a proposal for a European Security Order. Article 4 of the proposal provided:

The United States of America shall undertake to prevent further eastward expansion of the North Atlantic Treaty Organization and deny accession to the Alliance to the States of the former Union of Soviet Socialist Republics.

The United States of America shall not establish military bases in the territory of the States of the former Union of Soviet Socialist Republics that are not members of the North Atlantic Treaty Organization, use their infrastructure for any military activities or develop bilateral military cooperation with them. [<https://mid.ru/print/?id=1790818&lang=en>.]

A second draft agreement accompanying the first, provided, also in its Article 4:

The Russian Federation and all the Parties that were member States of the North Atlantic Treaty Organization as of 27 May 1997, respectively, shall not deploy military forces and weaponry on the territory of any of the other States in Europe in addition to the forces stationed on that territory as of 27 May 1997. With the consent of all the Parties such deployments can take place in exceptional cases to eliminate a threat to security of one or more Parties. [<https://mid.ru/print/?id=1790803&lang=en>.]

The US and NATO rejected these proposals, confirming that the ‘open door policy’ of the alliance would remain. As the present conflict erupted, the Russian Federation repeatedly alluded to NATO’s failures to address Russian security concerns relating to NATO expansion as one of the reasons for its ‘special military operation.’

When President Putin expressed his conditions for a peace settlement, neutrality for Ukraine was reportedly the first requirement he raised. [<https://www.bbc.co.uk/news/world-europe-60785754>] By that time, President Volodymyr Zelensky had already hinted at the willingness of Ukraine to consider neutrality, if balanced by security guarantees and supported in a referendum:

1. Ukraine proclaims itself a neutral state, promising to remain nonaligned with any blocs and refrain from developing nuclear weapons — in exchange for international legal guarantees. Possible guarantor states include Russia, Great Britain, China, the United States, France, Turkey, Germany, Canada, Italy, Poland, and Israel, and other states would also be welcome to join the treaty.
2. These international security guarantees for Ukraine would not extend to Crimea, Sevastopol, or certain areas of the Donbas. The parties to the agreement would need to define the boundaries of these regions or agree that each party understands these boundaries differently.
3. Ukraine vows not to join any military coalitions or host any foreign military bases or troop contingents. Any international military exercises would be possible only with the consent of the guarantor-states. For their part, these guarantors confirm their intention to promote Ukraine’s membership in the European Union.

... [<https://meduza.io/en/slides/ukraine-s-10-point-plan>]

The Russian Federation indicated its willingness to address this proposal in direct negotiations, initially taking place in Turkey on 29 March 2020.

[https://tass.com/world/1410599?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com]

Indeed, Russia announced a reduction in its armed activities in Western Ukraine in view of this perceived concession. However, since then, the sides appear to have gone cold on this apparently emerging agreement, with the discovery of grave war crimes in areas formerly occupied by Russian Forces in Ukraine, and the shifting of the military campaign towards an intensified conflict in the Donbas region. Nevertheless, it is likely that the issue of neutrality will remain a central element of any broader political settlement that may emerge.

This Options Paper will consider

- Option 1: Permanent Neutrality
- Option 2: An Undertaking not to join NATO
- Option 3: Non-aligned Status
- Option 4: The issue of the EU

OPTION 1: PERMANENT NEUTRALITY

A. Meaning of Neutrality

Permanent neutrality consists of an undertaking in advance by a state not to assist any side in a present or future armed conflict (or traditionally, war). This includes several elements.

First, and most obviously, the neutralized state must not participate in an armed action prosecuted by another state. It must not offer military assistance, basing rights, refuelling of communication facilities, or other support.

In that sense, *permanent* neutrality is the undertaking to apply neutrality in relation to any future conflict—whereas neutrality describes merely the position taken by a state in relation to a particular conflict that is occurring or about to occur.

A neutral state may provide humanitarian assistance, offered to both sides in the conflict and delivered according to need alone. It is perhaps no accident that the International Committee of the Red Cross, while in principle a private association, is nevertheless based in neutral Switzerland.

Second, a neutral state cannot participate in a defensive alliance. An alliance would bind the neutral state to the defence of other participants in the defensive arrangement in case of an armed attack (e.g., the famous Article 5 commitment of the NATO Treaty). The neutral state may also not offer military bases or other facilities to foreign states or alliances.

For instance, the constitutional act of Austria of 1955 establishes that ‘in all future times Austria will not join any military alliances and will not permit the establishment of any foreign military bases on her territory.’ [Constitutional Law on Neutrality, 26 October 1955, Article 1 (ii).]

It is not necessarily clear that permanent neutrality would exclude partnership arrangements between NATO and Ukraine, although it is likely that the Russian Federation might insist on such a provision.

In any event, neutrality does not exclude external support in developing the defensive capacity of the state concerned, whether provided by individual states or by organizations. This includes provisions of arms and training, but might exclude participation in integrated defensive arrangements and possibly joint manoeuvres.

At the round of talks between the sides in the Ukraine conflict in Turkey of 29 March, Ukraine appears to have accepted that there would be no joint training exercises with other forces in Ukraine other than with the specific consent of the Russian Federation

While a neutral state cannot be a member of an alliance, dedicated to the collective defence of whichever state suffers an armed attack, it can nevertheless benefit from security arrangements. After all, neutrality can be guaranteed by third states. That is to say, the third states pledge to defend the permanently neutral state should it become subject to an aggression in disregard of its neutral status. The United Kingdom entered World War I in fulfilment of its assumed guarantee of Belgian neutrality under the Treaty of London of 1839—assumed because there was no formal security guarantee contained in the treaty. Instead, the UK took the view that having participated in an agreement establishing neutrality, it would also be bound to assist in upholding it in case of war.

Permanent neutrality can apply to the state as a whole, or it may apply to certain parts of territory (Congo Basin, San Juan del Norte, Melilla), islands (Aaland, Samoa and Ionian Islands), canals (Panama, Suez and Kiel Canals) or even sea areas (Black Sea).

B. Gradations of Neutrality

There are two types of neutrality. First there is conditional neutrality. A new state was established, or was allowed to come into existence by others, provided its existence would not affect the balance of power among the great powers in the classical state system. Statehood is therefore in that case conditional on permanent neutrality for the emerging entity.

Arrangements of this kind were often made in epoch-making peace settlements among major powers in Europe. For instance, the decision to separate Belgium from the Netherlands of 1831 involving Belgium, France, Austria, Prussia, Russia and Britain rather imposed neutrality upon the new state. [Delbrueck, ed., *Friedensdokumente aus Fuenf Jahrhunderten (1984)*, Vol. 2, 1123.] The Treaty of London of 1839 famously reflected this decision in Article 7:

Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other States. [Treaty of London 1839, <https://scottmanning.com/content/treaty-of-london-1839/>]

This effect can also be achieved through unilateral action. In 1918, Denmark adopted a law on the Union of Denmark and Iceland, in which it declared its decision to recognize Iceland as a sovereign state, and indicated at the same time that Iceland would be permanently neutral and would not carry a flag of war. [Id., p. 1125.]

There is therefore an element of imposition in the status of neutrality in this type of case. Neutrality is not simply an attribute established by the state itself which it can choose to retain or remove. Others have a say in this question of status and may undertake expressly to guarantee that status. For instance, in the Definite Peace between Britain, France, Spain and the Batavian Republic of 1802, the powers agree to establish the independence of Malta, Gozo and Comino, and placed them under permanent neutrality and guaranteed that status. [Id., p. 1118.]

The other form of neutrality lacks that element of imposition. A state unilaterally and freely declares neutrality in the exercise of its sovereign right to determine its foreign policy and foreign relations. It retains the option to change this policy unilaterally as its interests or policy preferences change. However, in classical practice, recognition of the permanently neutral status by others was required, as in the Declaration of the Congress of Vienna of 1815 on Switzerland. [Id., pp. 1119ff.]

There can also be mixed models, where a state unilaterally declared neutrality, but this is then embedded in a broader settlement concerning its status. The Declaration on the Neutrality of Laos of 1962 may serve as an example. In it, Laos solemnly declares itself neutral. However, a range of other states (Burma, PRC, France, India, Cambodia, Canada, Poland, USSR, Thailand, UK, US, DR Vietnam, R Vietnam) acknowledge this declaration and pledge to respect it. They also appeal to all other states to respect the neutrality so established and agree to consult in case of its violation. [Declaration on the Neutrality of Laos, 23 July 1962, in Delbrueck, ed., *Friedensdokumente aus Fuenf Jahrhunderten (1984)*, Vol. 2, p. 1130.]

At times, the imposed nature of the status of neutrality is not so evident. For instance, Austria declared its neutrality upon the withdrawal of Soviet forces from its territory after World War II. The unilateral nature of the declaration and its anchoring in the legal system of Austria

somewhat disguised the underlying understanding concerning the connection between the two acts.

Neutrality can be adopted by name, or it can be framed as an obligation not to join any alliance seen as hostile to a treaty party. For instance, the Soviet-Finnish Agreement on Friendship, Cooperation and Mutual Assistance of 1948 provided in Article 4:

The High Contracting Parties confirm their pledge, given under Article 3 of the Peace Treaty signed in Paris on February 10, 1947, not to conclude any alliance or join any coalition directed against the other High Contracting Party. [http://heninen.net/sopimus/1948_e.htm]

However, a clause of this kind may not necessarily amount to an undertaking of neutrality. The Russia-China Treaty on Good Neighbourliness and Friendly Relations, of 2001 provides in Article 9:

The contracting parties shall not enter into any alliance or be a party to any bloc nor shall they embark on any such action, including the conclusion of such treaty with a third country which compromises the sovereignty, security and territorial integrity of the other contracting party. Neither side of the contracting parties shall allow its territory to be used by a third country to jeopardize the national sovereignty, security and territorial integrity of the other contracting party.

There is no suggestion that this provision would render either the PRC or the Russian Federation permanently neutral. Instead, their commitment is far more limited, affecting only alliances that might be directed against one another.

C. The Obligation to Defend the Territory Effectively

The permanently neutral state must ensure that its territory is not used as a basis, or to the advantage of, a party to the conflict. That means that it needs to be able credibly to defend its neutrality against a state trying to occupy the territory, to use it as a deployment area, or to march through it when attacking a third state.

Germany occupied neutral Norway in World War II, arguing it had to do so to forestall it coming under the control of one of her enemy states. Norway refused to capitulate and attempted to assert its neutrality through armed resistance.

Similarly, in World War I, Germany demanded that Belgium should permit a German assault on France through Belgian territory. Again, Belgium attempted to defend its neutrality, also bringing the UK into the war. In more modern practice, this commitment to ‘armed’ neutrality and effective defence of the territory is reflected in Article 1 (i) of the Austrian constitutional law noted above. Famously, Switzerland is permanently prepared to defend its permanent neutrality, having a nation in arms (a rifle in every wardrobe) ready to repulse any armed attack.

Hence, permanent neutrality may not be fully consistent with a further demand put forward by the Russian Federation—that of the disarmament of Ukraine. To the contrary, under permanent neutrality Ukraine would be obliged to maintain a significant military capacity, demonstrating its capacity to preserve and defend its neutrality under all circumstances.

This fact suggests that any arms limitation provisions agreed for Ukraine would need to be fairly limited. They might be restricted to permanently removing the option of acquiring weapons of mass destruction and limiting numbers of missiles and cruise missiles above a certain range (i.e., those that might reach deeper into the Russian Federation). Other restrictions of force numbers, heavy weapons, armour and air and naval units could only be contemplated at a level that is consistent with an effective defence of the territory.

In the alternative, if permanent neutrality is to be combined with more significant disarmament, then third states would need to undertake the obligation to ensure the effective defence of the territory—an issue addressed in another Options Paper.

D. Neutrality and Collective Security

This classical view of neutrality has been challenged with the advent of the UN Charter, and in particular since the end of the Cold War. Switzerland, for instance, refused to join the United Nations for many decades. It feared that the obligation to comply with Chapter VII decisions of the Security Council under Articles 24 and 25 of the Charter might push it into an obligation to violate, either its obligations as a permanently neutral state, or its obligations under the UN Charter. Switzerland did eventually join in 2002.

This dilemma arose in a somewhat different form for Germany in the Wimbledon case before the Permanent Court of International Justice. [PCIJ, Ser. A, No. 1 (1923).] The question in that case was whether Germany could stop vessels carrying armaments, munitions and other contraband aimed for a party to a conflict, from traversing the Kiel Canal. Germany argued that it had to stop such passage in line with its position of neutrality in the conflict. The Kiel Canal connects the North Sea and the Baltic. Under the Treaty of Versailles, Germany was obliged to keep the canal open to vessels of all nations under all circumstances.

The Court ruled that Germany was obliged to comply with its obligations under the Treaty of Versailles – a treaty establishing obligations with respect to the Canal that all states of the world were entitled to rely on – even if this might potentially mean violating neutrality. Hence other legal obligations owed to the international community as a whole may trump neutrality.

With the advent of the UN Charter, the question is whether a neutral state can evade the obligation to adopt enforcement action against an aggressor so identified by the UN Security Council. If it has to adopt enforcement action, would this not constitute an unneutral act towards the transgressor?

On the other hand, if the system of collective security specifically and authoritatively identifies the aggressor state and the victim state, neutrality may lose its meaning. Assisting the victim of the aggression may be an obligation under Chapter VII of the Charter and possibly even under general international law. It may appear as an unneutral act to the transgressor, but within the modern system of collective security, if it operates as intended, there is an argument that there can be no neutrality vis-à-vis an aggressive war.

Hence, if neutrality precludes membership in a collective self-defence arrangement, or alliance like NATO, it does not exclude membership in a collective security organization like the UN. As Sweden's or Switzerland's participation in the United Nations demonstrates, neutrality and collective security are not incompatible. The same applies to membership in relation to sub-regional collective security organizations or arrangements.

In cases of supranational organizations, like the EU, neutral states have been able to negotiate special arrangements where the collective security dimension is concerned. (Article 42 (7), Treaty of the European Union, see Option 4 below).

E. Establishing Permanent Neutrality

The Russian Federation is demanding that the neutral status of Ukraine which it seeks must be anchored in legally binding undertakings. Permanent neutrality can be established in the following ways:

International Systemic Settlement: The obligation may be part of a larger, global constitutional settlement among many key states. Examples include neutral Switzerland at the Congress of Vienna 1815 and Belgium at the London Conference of 1839.

Specialist Treaty: Permanent neutrality could be anchored in a treaty among a small number of states. In that case, the treaty is likely to have been specifically concluded to address the neutral status of the entity in question and possibly to provide a guarantee of that status, or the issue may be included in a peace settlement agreement. An example, in a somewhat different context, is the four-power treaty of guarantee concerning Cyprus, concluded in 1960 between Cyprus, Greece, Turkey and the UK. That treaty was meant to guarantee the status of Cyprus as an independent state (rather than joining Greece).

Recognition of Status: The state concerned will issue a declaration concerning its future status. It is then recognized as permanently neutral by other states, confirming the obligation undertaken by the neutral state. This recognition can take the form of a collective act, for instance by means of a General Assembly Resolution, as occurred when Turkmenistan became a member of the United Nations. However, as noted above, such recognition is no longer required to bring neutrality into force.

Security Council Anchoring: The status of Ukraine could be anchored in a binding, Chapter VII resolution of the UN Security Council. Such a provision could then only be changed with the affirmative vote of the Russian Federation as a permanent member. There is however no precedent for such a solution.

More likely, the entire settlement agreement would presumably be endorsed by the Council. That endorsement could strengthen the legal commitment to permanent neutrality in a more indirect way.

Constitutional Anchoring: Neutrality can be anchored in the state constitution. This can take the form of a commitment to permanent neutrality in the state constitution itself, as in Moldova. Or it can take the form of a parliamentary declaration of constitutional standing, as was the case in Austria, immediately upon completion of the withdrawal of Soviet forces from its territory under the 1955 Austrian State Treaty. Interestingly for the present context, that declaration was clearly connected with the completion of the Soviet withdrawal from Austria, but was presented as a 'permanent neutrality of its [Austria's] own accord.'

Unilateral Declaration: The obligation to maintain neutrality becomes legally binding by virtue of a solemn declaration by the President or Head of Government directed to the world at large (Sweden in 1834). In international law, such declarations are binding *erga omnes*, and all other states can legally rely on the declaration. A more recent example of a unilateral status declaration is the Declaration of Independence of Kosovo of 2008. While not imposing neutrality, the declaration commits Kosovo in a legally binding way to full compliance with the terms of a UN Comprehensive Settlement Proposal for Kosovo.

Informal Policy: Finally, a state can announce itself to be neutral, without engaging in a binding legal obligation to that effect. The declaration concerned would be an announcement of a certain policy, and not a manifestation of an obligation in international law (Finland).

F. How Permanent is Permanent

Nothing in life is permanent. Does this also apply to permanent neutrality? Depending on the mechanisms noted above, some of the arrangements provided can be changed over time. The critical element, however, is that such a change would need to take place in accordance with international law or, as the case may be, national legislation or constitutional law.

State legislation: Starting with the latter, if permanent neutrality is anchored in state legislation, it can be changed by the same majority required for the adoption of the relevant law. For instance, in December 2014, in the wake of the initial military operation by the Russian Federation relative to Ukraine, 303 out of 450 members of the Ukrainian parliament voted to remove the provisions of the law on foreign relations that provided for non-alignment. [<https://www.rferl.org/a/ukraine-parliament-abandons-neutrality/26758725.html>.] That law had been adopted under the predecessor government of Viktor Yanukovich.

Constitution: If permanent neutrality is anchored in the state constitution, the relevant provision can only be amended or removed by the majority required for a constitutional change. At present, the Ukrainian Constitution requires a 2/3rds majority. However, additional safeguards for qualified voting might be introduced in relation to particular provisions of the constitution. For instance, there might be a double majority provision, requiring a majority within the parliament overall, plus a majority, or qualified majority, from among a nominated ethnic or linguistic or regional constituency within the parliament.

Permanence Clause in the Constitution: Another solution would be a permanence clause that removes the option of amending or removing certain provisions from a constitution (as is the case in Germany's constitution). The only way to overturn a provision thus protected would be through a revolutionary change that would abolish the existing constitution altogether.

Treaty Commitment: A neutrality undertaking can be established in a peace settlement treaty. In that case, it is evidently important to ensure that the instrument in question is actually a formal treaty eligible for registration with the UN Secretariat. A treaty obligation can only be impeached in accordance with the provisions of the Vienna Convention on the Law of Treaties (unless the other treaty parties agree to a change). These provisions are narrowly framed in favour of preserving treaty obligations even if political or other circumstances change. The principal exception concerns a fundamental and unforeseen change of circumstance relating to the essential basis of the consent to be bound by the obligation radically transforming the obligation in question, or a material breach of the treaty in question.

Unilateral Declaration: A unilateral declaration would be directed by the Head of State or Government at the international community as a whole. It is binding, just like a treaty. A state cannot be absolved from its obligation so established through agreement with other treaty parties, as the international community as a whole is the beneficiary or addressee of the obligation of neutrality. Instead, a change would only be possible in analogy to the law of treaties, for instance under the highly restrictive doctrine of fundamental change of circumstances noted above.

OPTION 2: A SPECIFIC OBLIGATION NOT TO JOIN NATO

Permanent neutrality excludes membership in any defensive arrangement. Another option is to negotiate a more narrow restraint—one that would rule out NATO membership without rendering Ukraine a neutral state altogether. The commitment could be focused on NATO alone, or it could cover association with several nominated military alliances, East and West.

Exclusion by NATO: The first option would be that NATO determines that Ukraine shall not be a member, departing from the decision taken at the Bucharest Summit of 2008. This seems very unlikely, given NATO's repeated confirmation that it will maintain in place its 'Open Door' policy. However, if Ukraine itself declares that it will not seek NATO membership, NATO could record its understanding of this commitment.

Assurances by NATO Members: Second, key NATO members could offer assurances that Ukraine will not obtain membership. This could occur, for instance in the shape of the US side letter to a settlement agreement, provided Ukraine first declares itself that it will not seek membership.

Self-Limitation: Ukraine itself could rule out NATO membership. If so, the question arises how this commitment will be anchored. As with neutrality, its commitment not to join a specific alliance could be anchored in Ukrainian legislation or its constitution, in an international agreement, or in a legally binding, unilateral declaration. Most likely, it would be a combination of the above.

If NATO membership is to be ruled out in this way, the question is whether this would be a time-limited commitment, say, for 12 years, or whether it would be permanent.

OPTION 3: NON-ALIGNED STATUS

Another option might be to commit to non-aligned status and membership in the Non-Aligned Movement. The members of the Non-Aligned Movement have committed themselves to refrain from joining the major alliances. However, there is no formal constitutional instrument of the Movement and the relevant obligations are essentially political, also relating to the common pursuit of progressive policies in relation to a range of issues, including a new economic order, defeating racism, opposing unilateral sanctions, etc. Accordingly, non-alignment would most likely give expression to a national policy preference, rather than the legally binding obligation under discussion by the sides.

OPTION 4: THE EUROPEAN UNION

The Russian Federation may insist that the neutrality it seeks for Ukraine would need to include a commitment not to join the EU. At the same time, the European Parliament, and some EU governments, are pressing for an accelerated EU accession process for Ukraine. Ukraine itself has now applied for membership and has reportedly insisted in the latest round of talks, as of end of March, that neutrality must not exclude the EU perspective.

It should be noted that EU membership is not incompatible with a commitment to refrain from joining NATO or any military alliance. Indeed, even if Ukraine were to commit itself to permanent neutrality, membership is not excluded.

As the membership of Ireland in the EC/EU demonstrated, and since then the addition of other members following a policy of neutrality, it is possible to modify participation in the EU upon accession to take account of this fact, despite the increasingly strong role of the EU in terms of common foreign and security policy. (See the safeguard clause in Article 42 (7): ‘This shall not prejudice the specific character of the security and defence policy of certain members states.’)

EU membership does include a commitment to the territorial integrity of member states, though. According to Article 42 (7) of the Treaty of the European Union, ‘if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all means in their power, in accordance with Article 51 of the UN Charter.’

An eventual EU Accession Treaty for Ukraine could perhaps delay application of this provision. On the other hand, perhaps this provision might actually assist on the issue of security guarantees for Ukraine, as noted in the options paper on security guarantees.

If a restriction on Ukraine's EU ambitions is to be contemplated for a limited period of time, it might be possible at least to clarify that Stabilization and Association, and perhaps other steps towards fulfilling membership criteria, might continue.

The present EU-Ukraine Association Agreement provides in Article 7 (2) that Ukraine and the EU are committed to their respective territorial integrity. However, there is no provision for mutual defence.

Despite the present pressure to act rapidly on Ukraine's application for membership, it may be that the candidate process will only be put in train once the terms of a settlement are available. If the EU grants candidate status, this would again not be expected to include a collective defence dimension. Hence, at least up to the point of actual membership, which may lie some time in the future, this is not actually an issue of relevance for neutrality. Rather, it seems to be a broader concern of cultural and economic orientation for Ukraine.

In conclusion, a commitment to permanent neutrality would not exclude the path towards EU membership, including an accelerated path. If this issue is really pressed by the Russian Federation (and there have been indications that this might not be the case), an undertaking to pursue membership at a more moderate pace, or according to agreed milestones, could be considered. Any commitment going beyond that option would imply a very severe restriction on the future of Ukraine and its right to determine that future as a fully sovereign state.

CONCLUSION

The narrowest concession Ukraine could make on this issue is to rule out NATO membership specifically, without accepting permanent neutrality. This could be backed up by side-assurances from prominent NATO states (the US) that there is no prospect of admitting Ukraine to NATO for a defined number of years, or permanently.

If neutrality is to be agreed, a number of issues would need to be clarified. First neutrality would operate both ways—it would not only exclude NATO membership, but also affiliation with any Eastern alliance (should there be a political change in Ukraine at some point).

Second, would it be permanent neutrality, and if so, how is such permanence going to be established. The anchoring of neutrality will likely be double or triple sown, consisting of an undertaking in the peace settlement, perhaps a restatement of such an undertaking in a guarantee document if there are to be security assurances, and possibly endorsement of the agreement in a Security Council Resolution. There could also be anchoring in domestic or constitutional law.

In case of neutrality, there also needs to be a clear confirmation for Ukraine of its right and indeed its obligation as a neutral state to arrange for an effective defence. This includes its right to receive support in acquiring armaments for this purpose from states or organizations of its choosing.

Under this reading of (armed) neutrality, arms limitations should only apply to WMD and weapons of longer range, capable of reaching deep into the Russian Federation. Permanent neutrality requires significant and effective forces able to assure other states that Ukraine is able to defend its territorial integrity. Deeper limitations relating to conventional weaponry would need to be balanced by effective international security guarantees.

Any restriction relating to participation in collective security arrangements (as opposed to collective defence and alliances) would not be consistent in international practice. This issue does not, in any event, arise during the EU stabilization and association phase, and also the

candidate process. Even eventual EU membership can be rendered consistent with full neutrality. Indeed, such membership could offer an avenue towards a ‘non-threatening’ security guarantee for Ukraine in due time.

MODEL DRAFT ARTICLE

Option 1

Ukraine declares that it will not seek nor obtain membership in NATO. This declaration shall be transmitted to NATO, which will be invited to record its understanding of this commitment.

Option 2

Ukraine shall be a permanently neutral state. Such neutrality shall be enshrined in the constitution of Ukraine, following a referendum on acceptance of this peace settlement. The permanently neutral status of Ukraine shall also be referenced in a Chapter VII Security Council Resolution endorsing this settlement.

Ukraine shall not permit the basing of foreign armed forces on its territory. This includes the holding of joint manoeuvres with other states or alliances on its territory, or visits of foreign forces beyond a period of 12 days. Exceptions may be made with the agreement of the Russian Federation. A limited presence of foreign advisors for training purposes shall be permitted, up to an overall number of 85.

Subject to the clauses on arms limitation (demilitarization) in this agreement, Ukraine shall be entitled to maintain the armed forces (land, sea and air forces) it deems necessary to ensure its effective defence. To this end, it is entitled to receive support and assistance in developing its defensive capacity from friendly states.