

Gray-zone Conflict Management

Theory, Evidence, and Challenges

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In this article, we examine the involvement of state and nonstate actors in gray-zone conflict and their relationship to hybrid warfare and the implications for conflict management. The article unfolds in four parts. In the first part, we examine the concept of gray-zone conflict and how it relates to hybrid warfare and conventional interpretations and theories of conflict and war. In the second section, we outline evidence from the ongoing conflict in Eastern Ukraine with respect to how gray-zone conflict impacts both state behavior and conflict management strategies. In the concluding part, we consider implications for conflict management and directions for future research. Building on these insights, we identify several key steps for conflict resolution in Eastern Ukraine. We argue that it is important to disentangle and individually address the challenges posed by gray-zone conflict in all three security, economic, and sociopolitical domains. It is also essential to update international laws of war to account for low-intensity armed and unarmed hybrid tactics. Finally, it will be necessary to reform and upgrade contemporary international institutions to address gray-zone conflict.

The Theoretical Underpinnings of Gray-zone Conflict

The shift to kinetic diplomacy occurred during the presidency of George W. Bush after 11 September 2001, when the president declared a “war on terror.” US strategy moved from containing threats to US security to engaging them abroad preemptively.¹ This meant more special forces on the ground and fewer diplomats. Thus, the concept of hybrid warfare largely emerged from American military-strategic studies, influenced by the realization that since 9/11 and following the 2006 Israel–Hezbollah War conflicts in which the United States and its allies are involved have become increasingly complex with regard to the number and kind of belligerents and the tools available to them.² The overt use of recent violence by state-backed proxies in Syria and Ukraine is driven by such “hybrid threats.” For America’s adversaries, Cold War-era concepts became embedded in Russia’s contemporary Gerasimov Doctrine and China’s concept of unrestricted warfare.³ All three approaches assume adversaries will rely on unconventional tools and

tactics—such as propaganda campaigns, economic pressure, and use of nonstate entities—that do not cross the threshold of formalized state-level aggression.

However, contemporary multimodal hybrid threats have little in common with past examples of interstate aggression, which relied on conventional hard- and soft-power tactics to undermine opponents.⁴ Hybrid warfare is distinct from regular warfare to the extent that nonmilitary actors and stakeholders are explicitly involved in the political, informational, and economic components of war. Hybrid warfare today is societal in scope in terms of intended targets and those states that engage in it. This increased complexity is exacerbated by the fact that the ultimate goals of belligerents are frequently, and often deliberately, unknown to prevent the deployment of deterrence measures by opponents.

One of the most important debates regarding gray-zone conflict has focused on how nondemocratic states conduct hybrid operations using nonstate actors against their democratic adversaries and what democracies can do to respond to these tactics.⁵ It has been argued that nondemocracies are more readily disposed to gray-zone conflict because they are less constrained and have more centralized, procedurally flexible decision-making structures than their more democratic, consensus-building counterparts. Internationally, states such as Russia and China can use propaganda, domestic legal structures, economic pressure, and covert support for nonstate entities more readily compared to their democratic counterparts. Furthermore, the relatively unregulated international environment enables authoritarian states to “normalize” and “internalize” new practices for engagement against opponents.

In contrast, the problem for democracies is the shift to kinetic diplomacy. Consider the US deployment of special forces in more than 100 countries around the world. The United States acknowledges that its forces are involved in these missions, sometimes with foreign partner special operations forces, in an undeclared conflict zone. This is highly controversial, and many of these partnerships remain classified. In essence, special operations forces function in a dimension that shadows traditional diplomacy. There are some 70,000 US special operators worldwide, compared to fewer than 10,000 Foreign Service Officers.⁶

Complete reliance on unconventional tools, like special operations forces, is likely to be less effective at fully and rapidly compelling relatively strong opponents into specific avenues of desired action. Thus, states engaged in gray-zone conflicts are likely to utilize hybrid techniques, and more of their conventional resources, when there is a perception that the utilization of unconventional techniques will not fully achieve a desired outcome. The incorporation of conventional force against an opponent would be more likely in cases of asymmetric conflict in which the cost of applying conventional techniques against a weaker opponent is

much lower. However, in cases where opponents are in a symmetric conflict, states are likely to rely heavily on unconventional tools and covert operations.

Early military strategists note that the “fog of war,” or uncertainty at all levels of war from the tactical to the strategic are associated with incomplete information, which has been a major barrier in military campaigns throughout human history.⁷ However, with increased emphasis on this information domain, the effect of uncertainty has been declining steadily, as more sophisticated intelligence-gathering and processing and reconnaissance technology is integrated into the armed forces. Thus, with more information regarding the intentions of opponents and their nonstate proxies, parties in conflict generally have a clearer outline of their possible contract space and may negotiate a settlement while foregoing the costs of fighting.

Prior to the emergence of gray-zone conflicts, points of victory by nonstate actors could generally be identified: either capturing centers of government, localized resources, territory, and/or the people who live there—frequently under the banner of ideological superiority. In gray-zone conflicts, it is unclear whether state and nonstate actors clearly understand their own long-term goal for engagement with opponents. In gray-zone conflicts, unconventional operations, and the increasing inseparability of civilian and military spheres, facilitate “situational ambiguity,” which states utilize to their advantage. This largely reverses the trend that started in the early post–World War II period. During the Cold War, even though many conflicts incorporated substate proxies, their relatively higher intensity prevented them from migrating into a frozen state. In gray-zone conflict, low intensity is one of its key characteristics, and hostilities frequently emerge between parties that are politically and economically interdependent. Thus, gray-zone conflicts also challenge the conventional wisdom that links strong economic relations and peace.⁸

Gray-zone conflicts are significant for the debate between institutionalists and realists regarding the anarchic world order and the role of various entities in contemporary conflict management. Institutionalists contend that structures such as international organizations and norms indeed influence the behavior of conflict participants toward peace in all stages of conflict management from prevention to resolution.⁹ However, empirical evidence from gray-zone conflicts casts a more pessimistic shadow on this claim. For example, cyber and information technology offers new tools for nonstate actors to create disruption and inflict infrastructure damage. Within cyberspace, principles of conduct have started to emerge over the past decade,¹⁰ but in regard to political, economic, and many other elements of soft power, such guidelines are weak or absent. This creates a permissive environ-

ment for, and normalizes, the use of unconventional military and low-intensity nonkinetic tactics for state and nonstate actors.

The resistance of gray-zone conflicts to resolution and the consistent inability of international institutions to influence state participants' behavior, and their aid to substate actors, supports the long-standing realist claim that security can ultimately be promoted by, and for, individual states. Furthermore, gray-zone conflicts support the claim that currently the international community is ill-prepared to manage civil conflict and malicious or incompetent domestic governments, because our international and national institutional structures are set up to deal with disputes across interstate borders—not those situated *within* them.¹¹

In other words, institutions have generally been structures to mitigate Cold War-era confrontations and are not equipped to prevent and manage highly complex, low-intensity, and perpetual gray-zone conflict. This means if international institutions are to be responsive to the modern security environment, they will need new mandates, structures, tools, and procedures to effectively deal with this new format of conflict.

A key question that arises is the scope and purpose of conflict management strategies to prevent and mitigate the increasing use of hybrid warfare involving nonstate actors. For example, international law, whether through signed treaties—such as the Geneva Conventions of 1949—or customs, have generally provided sufficient guidelines to define and manage interstate conduct in conventional wars. However, within gray-zone conflicts, due to its low intensity and high degree of operational covertness, the laws of war and the means by which to manage if not resolve the conflict are few and vague. However, a key barrier for the creation of rules of engagement in gray-zone conflicts has been associated with challenges of attribution of actions.

Attribution of specific outcomes to actions of conflict participants has created a challenge for the legitimation and implementation of standardized punitive measures in gray-zone conflicts.¹² Cyberwarfare became especially elaborate, as software and hardware become increasingly sophisticated. Cyberattacks remain below the threshold of overt warfare, because they can rarely inflict immediate damage or cause casualties. Moreover, most cyberoperations can only be probabilistically attributed to specific state actors, and sponsors do not acknowledge their involvement.

For example, in December 2015, Russia was accused of attacking Ukraine's power grid through cyberspace. This event, even though attributed to Russia by the Kyiv government and some NATO officials, can only be probabilistically attributed to Russia. Cyberspace, however, is not only the sole purview of Russia. Moreover, states may provide direct material support to organized crime, militant

elements, separatist factions, and local elites within the territories of the opponent to fight on behalf of one or more of the conflicting parties. This is important, as states backing these actors desire to insulate themselves from responsibility and potential political backlash domestically and internationally. This method not only increases the overall number of actors and stakeholders in the conflict but also creates problems with attribution of actions to specific entities when attempting to reach conflict resolution.

In the next section we review the conflict management strategies in the most significant case to date. We identify entry points for action that have been used thus far to mitigate overt conflict and look to ways in which de-escalation might be achieved. There are three dimensions of the conflict that need to be considered: sociopolitical, economic, and security. As we note, disentangling the overt security dimensions from the conflict has been more readily obtained than addressing the economic and sociopolitical dimensions.

Gray-zone Conflict Management in Crimea and Eastern Ukraine

Conflict management in Ukraine has primarily been undertaken through three formats of negotiation: (1) the Trilateral Contact Group, incorporating Ukraine, Russia, the Organization for Security and Cooperation in Europe (OSCE), and on occasion, the leaders of the separatist territories; (2) the Normandy Format, involving representatives from Ukraine, Russia, Germany, and France; and (3) bilateral dialogue between representative of conflict participants and stakeholders.

A key characteristic of gray-zone conflicts is their complexity with regard to the number of actors and stakeholders, as is evident in Ukraine. Though unelected, oligarchs exercise a great deal of influence and power in Ukrainian politics. For example, the successful “marriage” between Rinat Akhmetov’s business group and Viktor Yanukovich’s Party of Regions provided for mutual control over the Donbas for at least a decade prior to the outbreak of the current conflict. However, pro-separatist rallies threatened Akhmetov’s business interests. As a result, Akhmetov adopted a relatively neutral position, calling for peaceful resolution through negotiation. As the wealthiest and most influential oligarch in Ukraine, his relative inaction was a key factor in separatist forces eventually taking over Donetsk and Luhansk. Complicating matters, Ukraine has had a number of private militias that have played a pivotal role in the conflict, each of them answerable not to Kyiv (or Russia) but to regional oligarchs. Given a Ukrainian army in decay after years of neglect, corruption, and stagnation, Kyiv’s military was given a significant boost through private volunteer Ukrainian battalions funded by public and diaspora donations together with oligarchs. Now that these private militias have become formally part of Ukraine’s military with public funding, questions remain as to

whose interests they serve. For example, Ihor Kolomoyskyi, a prominent Ukrainian oligarch, invested substantial funds in volunteer battalions that the Ukrainian authorities in Donetsk and Luhansk later used. However, these influential oligarchs were never formally incorporated into the peacemaking processes.



(Photo by US Army National Guard Sgt Fiona Berndt)

Figure 1. Enhancing the Ukrainian armed forces. Members of the Ukrainian Army pose for a photo during Combined Resolve XIII at the Joint Multinational Readiness Center, Hohenfels, Germany, 31 January 2020. Seventeen countries worked together during the exercise to increase readiness and improve interoperability between allied and partner nations.

The Trilateral Contact Group framework was developed by the OSCE to facilitate a dialogue between Russia and Ukraine through the mediation of an impartial actor. The negotiations through this format culminated in the Minsk I (September 2014) and then Minsk II (February 2015) agreements. The Minsk II agreements comprised a 13-point peace plan chief among which is an arrangement specifying support for the restoration of the Ukrainian–Russian border. While the implementation of the military portions of the Minsk II agreements were finalized within three months of signing, the sociopolitical and other security components remained unresolved. Though Russian president Vladimir Putin has declared his intent of protecting the Russian-speaking peoples of the region, he has also stated no interest in reclaiming Eastern Ukraine. Not surprisingly, since Russia’s ultimate goal is undeclared, the conflict has proved very difficult to resolve.

The Normandy Format began in 2014, when the leaders of Germany, France, Russia, and Ukraine met for memorial D-Day service in France. There they discussed the possibilities of addressing the political and security portions of the settlement. The active role of German and French parties initially produced a few rounds of negotiation that became formally recognized as part of the Minsk

agreements. This process, called the Normandy Format, did not directly involve the EU and consisted for the most part of phone conversations among the four counterparts, who at that time were Petro Poroshenko, François Hollande, Vladimir Putin, and Angela Merkel.

The early stages of the conflict in Crimea saw limited mediation in advance of formal Russian annexation. This is in part because of the limited resistance given by Kyiv, Russian forces were already present in Crimea through a basing agreement, and Crimea had experience in negotiating autonomy through previous referendums. On 14 March, just a few days before the referendum, US Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov spent six hours discussing the situation around Crimea with no results. Kerry argued that the whole of Ukraine should have been given the opportunity to vote on the issues involved. However, Lavrov countered that Moscow would respect the Crimean independence referendum. Neither Kerry nor Lavrov's positions were adequate at the time, given the lack of mechanisms for enforcing corresponding solutions on all the parties concerned.

On the ground, there were a few informal efforts. For example, Poroshenko, a Ukrainian member of parliament at that time, visited Crimea on 28 February 2014 but was escorted out of Crimea the same day. A delegation from the OSCE, including envoy Tim Guldemann and OSCE High Commissioner on National Minorities Astrid Thors, visited Crimea the following day. By the time of their arrival, pro-Russian activists and unidentified military personnel already controlled Simferopol airport, and no mediation took place.

German Chancellor Angela Merkel was actively involved in negotiations with Russia at the end of February and the beginning of March, but all her efforts had very little effect on President Putin. Kyiv declared the 2014 referendum illegal on the grounds that the Ukrainian constitution made no provision for it. The Russian framing of the conflict consisted of questioning the legitimacy of the Kyiv government's claim to Crimea, based on precedent, experience, and Crimean sentiment. The results of surveys, after annexation, showing strong Crimean support for remaining within Russia, suggest this was a strategy that found favor with the majority on the peninsula.¹³

A key reason for the lack of mediation was an unwillingness to address Russia's geopolitical security concerns. A compromise might have been possible, for example, whereby Sevastopol was annexed but Crimea resumed its 1992 constitution and remained an autonomous part of Ukraine. Even when part of Ukraine, Sevastopol was a "city with special status," and the area in which it was included was a distinct municipality, separate from Crimea. The majority (over 70 percent) of the city's residents are ethnic Russians. In addition, it is home to Russia's Black

Sea Fleet (and formerly also to the Ukrainian Naval Forces); Ukraine had previously leased the naval facilities to Russia. An independent Sevastopol might have been enough to satisfy Russia's strategic needs—and the Sevastopol city council, in fact, held a referendum of its own on accession to Russia.

Turning to the conflict in Eastern Ukraine, we have shown how it captures key elements of gray-zone conflict, given the fact that Russia and the United States are involved in supporting opposing sides. This raises the stakes obviously, but it also influences mediator techniques, the likelihood of success, and the level of commitment necessary to ensure a lasting peace from the opposing parties. The earliest and most concerted mediation attempt to facilitate a peaceful resolution to the war in Donbas was the meeting of the Trilateral Contact Group on Ukraine. The OSCE developed this framework as an attempt to facilitate a dialogue between Russia and Ukraine through the mediation of an impartial actor and eventually resulted in the Minsk I (September 2014) and then Minsk II (February 2015) agreements.¹⁴

In addition to the aforementioned Normandy Format negotiations, there have been several efforts at negotiation by the US Special Representatives for Ukraine, first Victoria Nuland and more recently Kurt Volker, and their counterpart, Russian presidential advisor Vladislav Surkov. In February 2020 Dmitry Kozak replaced Surkov. These conversations, based on private talks, has the American side ostensibly negotiating on behalf of Ukraine. In 2017 alone, there were five meetings between Volker and Surkov, showing an increasing pace compared to previous rounds.¹⁵ These diplomatic efforts facilitated the large-scale prisoner exchange that took place in December 2019. The political goodwill created by this event resulted in a second round of prisoner exchanges in April 2020.

In addition to these bilateral talks, there were several higher-level meetings, including Putin's summit with Trump in July 2018, with Macron in August 2019, and phone conversations with Ukraine's president, Volodymyr Zelensky, in 2019. However, multilateral talks have dominated. The most notable of these being the aforementioned Normandy Format and the Trilateral Contact Group on Ukraine.

The subsequent Normandy Four Summit in Paris on 9 December 2019 brought Merkel, Putin, Zelensky, and French president Emmanuel Macron together. Its purpose was to not only reinvigorate talks but also to address key differences on political and security issues. The talks built on a recent de-escalation in tensions following the implementation in fall 2019 of the "Steinmeier formula," which saw the withdrawal of belligerent forces from three key sectors in the Donbas. Ukraine's leader expressed an openness to supporting a law that would grant special status for the people of Eastern Ukraine. Given that former Ukraine leader Poroshenko

proved unwilling to grant provisions for autonomy, President Zelensky's suggestion, made before the talks began, indicated he was open to compromise.

The outcome of the one-day Normandy talks was open-ended, leaving room for further negotiation. Summit host Macron called the session "a credible re-launch—which wasn't a given."¹⁶ There never was any expectation that a one-day meeting would achieve a major breakthrough or that Russia would be relieved of sanctions simply by coming to the table. The goal was to "lock in" all parties to a process that would have economic and political momentum.

In their final communique, all parties agreed to reestablish direct ongoing communication between Ukraine and Russia through the Trilateral Contact Group. As noted, this smaller format of dialogue between Kyiv and Moscow has proven effective at de-escalating fighting by leveraging the implementation of three additional zones of demilitarization between Ukraine and the separatist territories following the Normandy Format meeting.

Zelensky's approach—if not strategy—is much different than that of his predecessor, Poroshenko. Indeed, Poroshenko and his government, more often than not, used such meetings as an opportunity to draw attention to Russian intransigence, a strategy intended to convince Washington to not lift sanctions on Russia and to justify a punishing embargo on Eastern Ukraine. However, in retrospect, neither of these objectives put Ukraine in a better negotiating position. They merely diverted attention away from Poroshenko's government's poor performance amid a number of corruption scandals and his party's failure to address the ongoing humanitarian crisis in the Donbas.

Over 13,000 people died in the first four years of the conflict, and landmines have been scattered throughout the region, remaining an unmet challenge. More importantly, Ukraine was stagnating under Poroshenko. Despite an auspicious beginning on reforms in 2014, Kyiv's post-Maidan Revolution elites proved unable to circumvent deeply entrenched oligarchic resistance to change, making it difficult to pursue real reform. Though unelected, oligarchs exercise a great deal of influence and power in Ukrainian politics.¹⁷ Zelensky is, in many ways, cut from a different cloth—an outsider who speaks fluent Russian and is open to the possibility of reform if it means bringing prosperity to all the people of Ukraine, including the Donbas.

This is a far cry from the previous Ukrainian government, which terminated social transaction to the Donbas region and, in 2017, imposed a full embargo, provoking a significant decline in the wellbeing of Eastern Ukrainians. That in turn, led to Eastern Ukraine's considerable economic dependence on Russia—a situation that Moscow is keen to reverse, while at the same time ensuring that Russia has pre-eminent influence over the region. Moscow has thus far pursued both objectives by

supporting elections for self-government in 2018 (which were not internationally recognized), increasing trade, and issuing Russian passports.

The idea is to prepare for the possibility that the people of Donbas may one day achieve Minsk II's stated goal of autonomy or, failing that, integration into Russia.¹⁸ With a view to choosing between compromise or continued low-intensity conflict, in which both sides continue to suffer, Putin and Zelensky have taken measurable steps toward de-escalation. Specifically, these include an immediate agreement to an expanded ceasefire zone and a commitment by Russia to disarm its proxy forces in the Donbas. Having a ceasefire in place means related efforts to reduce deeper tensions will follow, including a withdrawal of forces, an increase in the number of crossing points at the line of contact, and more concerted demining.

Simply put, the primary goal of normalizing relations between the breakaway region and Ukraine was being normalized, which up until the outbreak of COVID-19 allowed for increased freedom of movement of people and goods. This opening up is a fundamental prerequisite before a political plan or even boundaries can be agreed to and finalized. Without the participation of the local population in the reintegration process, the humanitarian crisis will continue to erode any confidence they might have in a negotiated settlement.

At the same time, two significant hurdles remain. These pertain to political and economic aspects of the management process. One is agreement on the fixed border between Ukraine and Russia, and the other revolves around provisions for granting autonomy to Eastern Ukraine. Zelensky's negative reaction to Putin's suggestion that autonomy should be pursued through Ukrainian constitutional reform shows there are still major gaps to be bridged. For many Ukrainians, the idea of autonomy is tantamount to surrender, even a loss of sovereignty, if not control over territory. Yet, decentralization is no stranger to Ukraine. Crimea enjoyed special autonomy status through constitutional reform while under Kyiv's control. Over time, Kyiv might be enticed to engage Eastern Ukraine in a dialogue on greater autonomy, including federalism, which would give greater authority over to its local leaders. What is not clear is if Putin will respond by making real and equally tangible concessions of his own to match those from Kyiv.

Putin's response is in part driven by US foreign policy toward Ukraine specifically and the region generally. Not only has a distracted Pres. Donald Trump not replaced his departing special representative for Ukraine, Kurt Volker, his escalating political disagreements with NATO members at the summit in London left the US-led alliance divided.

To some extent, the rift between the United States and NATO members had grown to the point that the hands of France and Germany were untied to go confidently into future negotiations without looking back at Washington. US

support for Ukraine is, thus, frozen as Trump remains preoccupied with domestic political struggles, COVID-19, a looming election, and an impeachment legacy—all of which have limited communications and coordination with President Zelensky. Russia is keen to not see the United States join the talks.

With respect to the economic dimensions, the building of Nord Stream II and TurkStream pipelines complicate further negotiations—but in a positive way. Indeed, EU relations with Russia have improved on the basis of common economic and security interests, with Germany and France abandoning much of their previous strong rhetoric against Russia in defense of Ukraine. Russia has in turn built durable relationships with influential EU members, such as Italy and Hungary. With the increasing alienation of Kyiv from its previous powerful allies and shrinking gas transit leverage, President Zelensky has a limited window of opportunity to reach a satisfactory deal on both gas transit and the conflict in Donbas. Thus, Kyiv is likely to expedite negotiations and push for a deal at later meetings.

Further still, while not a party to the negotiations, Turkey's uncertain position within NATO makes Ankara a wild card for both Russia and European powers. Turkey's strategic interests in Syria and the Black Sea region and Erdogan's deteriorating trust among EU leaders like Macron is an asset for Moscow in negotiations with European leaders. For example, as a member of NATO, Turkey can veto decisions within the alliance and undermine coordinated NATO operations in the Baltics and elsewhere. Such disruption by Turkey could cause further polarization in the alliance, a decrease in pressure and leverage over Russia, and change in the balance of power in future bargaining with Moscow.

However, France and Germany have their own strong card to play: the withholding of building permits for the TurkStream pipeline. The pipeline's launch has been delayed to mid-2020, as Bulgaria obtains compliance with EU regulations. With a stagnating economy, and continuing economic sanctions, Moscow is anxious for both Turkstream and NordStream II completion and will likely adopt a more collaborative posture in subsequent negotiations as it seeks regulatory and political cooperation from the EU. Ultimately, a cohesive Europe that is on good terms with Russia would be a significant challenge to American influence there and elsewhere.

Washington's recent imposition of sanctions on the Nord Stream II pipeline through the 2020 National Defense Authorization Act (NDAA) will further alienate Washington from global allies. The bill is intended to sanction all entities involved in the financing and construction related to the nearly completed pipeline. The measures were met with condemnation from Germany and a number of senior US officials have conceded that the act is unlikely to affect the project's completion. Such unilateral actions by Washington against European companies

signal the American readiness to employ hard power and coercion against geopolitical opponents like Russia—even if such measures come at the expense of relations with Washington’s closest European allies. Even though the act is futile in stopping the pipeline’s completion, Washington’s diplomatic relations with major European powers will bear the costs, further undermining the long-term political and economic cohesion within the US–Europe alliance. The act also incorporates sanctions against companies involved in the TurkStream pipeline project, along with a clause to block the delivery of F-35 fighters to Turkey. These NDAA provisions strain the already fragile relationship between the United States and Turkey and may further persuade Ankara to undermine NATO operations in the Baltic and elsewhere.

For Angela Merkel, the most productive and consistent Western mediator throughout the conflict, the ultimate goal, before she leaves office, must be to persuade Putin to play a constructive role in bringing stability to Ukraine through Western support and guidance. From a German perspective, if not a European one, continued confrontation with Russia remains counterproductive. Merkel famously faced down US Senator John McCain, who proposed fully arming Ukraine. She noted that no amount of arms would resolve the conflict. This is a message both Canadian and American leaders must comprehend. If Washington and Ottawa are sincere about bringing peace and stability to Ukraine, they will need to support the European initiative rather than undermine it by escalating the conflict.

Claims by Rudy Giuliani regarding Ukraine’s misuse of aid during the Obama administration have further complicated Washington’s relations with Kyiv.¹⁹ Giuliani alleged misconduct by former US Ambassador to Ukraine Marie Yovanovitch and that the US embassy instructed Ukraine’s law enforcement not to investigate corruption associated with this aid. Even though Zelensky can distance himself from the process, the political infighting in Washington will continue the paralysis of US relations with Kyiv, as Trump is preoccupied with COVID-19 amid his own political future. This creates a window of opportunity for European leaders to spearhead negotiations with Russia and uphold their commitment to the Minsk Accords and the Steinmeier Formula.

Looking ahead, the full implementation of the Minsk Accords would be a challenge for Zelensky, as he must decide between potentially painful alternatives, especially given that the border with Eastern Ukraine has been closed for now. On the one hand, recent polls indicate that Ukrainians are split on whether Kyiv should grant the separatist territories a special status within the country. However, those same polls show a majority of Ukrainians support compromise of some kind. At the Normandy Summit, Putin insisted that the Kyiv government must negotiate with the leaders of the separatist territories regarding their future rela-

tions. However few Ukrainians would see such engagement with the territories in a positive light, even though past Trilateral Contact Group meetings have involved separatist leaders. One option is the reintegration of the Donbas through the reopening of trade with the rest of Ukraine, akin to the Moldova model in relation to Transnistria. However, that idea seems unlikely, as only a minority of Ukrainians want trade fully restored with the Donbas region at this time.

This means any major steps such as constitutional reform to enable autonomy for the Donbas or the incorporation of the separatist leaders into the Trilateral Contact Group negotiations may come with high political costs for Zelensky. On the other hand, Russia has indicated its willingness to continue negotiations with Kyiv toward conflict resolution is based on Ukraine's commitment to the provisions of the Minsk Accords. However, even with growing domestic pressures, recent polls indicate a shift in Ukrainian attitudes toward Russia, with a decline in negative sentiment toward their eastern neighbor. Similar changes occurred in Russia, with more favorable media representation of Zelensky relative to Poroshenko and public opinion now favoring closer relations with Ukraine. Such a turn in public opinion may enable a more pragmatic approach by Zelensky relative to his predecessor, providing the opportunity for reciprocal concessions with Russia and the momentum necessary for more meaningful rounds of negotiations within the Trilateral Contact Group.

Key Challenges in the Three Domains of Gray-zone Conflicts

The foregoing discussion highlights several challenges for scholars and policy makers. These relate specifically to the security, sociopolitical, and economic dimensions of gray-zone conflict. A key practical problem for conflict resolution in Eastern Ukraine is that the challenges associated with these individual domains are highly intertwined. However, we believe a key step toward conflict resolution in Eastern Ukraine is to identify, disentangle, and address the challenges in the individual domains. Moreover, we observe that the likelihood of successful conflict management in Ukraine is contingent upon the development of robust, broadly accepted, legal attribution mechanisms that create clarity regarding states' actions in support of nonstate entities.

Challenges and Solution in the Security Domain of Gray-zone Conflicts

First, with respect to the security dimensions, we find that current institutional mechanisms are ill-suited to manage gray-zone conflict. Over the latter part of the twentieth century, international organizations played an important role in fragile states, including capacity building, conflict management, and postconflict

reconstruction. The United Nations (UN) has been the largest international player to facilitate conflict management by states through activities such as multilateral peacemaking and peacebuilding operations. This includes monitoring a ceasefire or addressing questions of retribution for both sides in case of noncompliance. However, the UN would be a relatively ineffective organ for conflict de-escalation in gray-zone conflicts, considering the large number of nonstate entities, often making up the majority of participants. The decision-making process regarding conflict and crisis management strategies at the UN is largely state-centric—even if the targets are ultimately nonstate militant groups, rebels, or noncombatants. This means that the ultimate victims of interethnic hostilities have a limited ability to partake in de-escalating their own conflict. This mismatch increases the risk that de-escalation efforts fail altogether.

In that regard, it is critical to adapt long-standing international legal provisions such as Articles 51 and 2(4) of the UN Charter to the context of gray-zone conflicts era. Considering that states that engage in such conflict often rely entirely on substate actors for kinetic and nonkinetic operations, these provisions raise the important question of how to regulate the behavior of nonstate groups, sponsored by third-party state interveners, across international borders. For example, the issue of offensive cyberoperations by states and nonstate entities has created a conundrum regarding their legality in relation to UN self-defense provisions, the Law of Armed Conflict, and norms regarding preemptive operations. In relation to this, attributability of actions by nonstate actors to their state sponsors has been an opaque area. Legal scholars and policy makers alike have yet to provide a consensus regarding standardized guidelines or procedures to prove attribution that would decisively warrant specific retaliatory measures.²⁰

Article 5 of the NATO Charter remains ambiguous regarding the format and intensity of an attack that would trigger a collective deterrence response. Some of the ambiguous aspects of this provision are the intensity threshold or the nature of the attack required to trigger the collective response. For example, state and nonstate actors alike engage in low-intensity cyberoperations against their opponents to an equally effective degree. A complicated issue associated with this is the virtual intrusion by nonstate groups, the composition of which may be defined, and therefore protected, as civilians under the Geneva Conventions of 1949 Article 51 (3) additional Protocol I.

Challenges and Solutions in the Sociopolitical Domain of Gray-zone Conflicts

With respect to the sociopolitical dimensions there are few international institutions that can effectively identify, and comprehensively respond to, elements of gray-zone conflict and low-intensity hybrid warfare. For example, the preoccupation of NATO with military affairs and strategies of militarization of the Baltic region has escalated tensions with Russia, while doing little to tackle the political dimensions of the conflict such as minority rights protection. This raises the question of how such structures can be adapted to the era of gray-zone conflicts.

More robust international human rights enforcement mechanisms must be created within existing alliances such as NATO. NATO and the protection of minority rights go hand in hand. After all, coming to the defense of minorities was the key reason why NATO, and the United States in particular, got involved in the conflict in Bosnia, took action in Kosovo, and gave long-term support to Europe's Stability Pact throughout Southeast Europe.²¹

Kyiv's efforts to counter Russia's gray-zone operations in Donbas overlap with the curtailment of minority language rights and increased social exclusion within Ukraine proper. The Maidan Revolution was supposed to be about uniting all Ukrainians—regardless of ethnic identity, religion, or language—within a single nation. Controversial language and memory laws have undermined that objective. These controversies have become fodder for Russia's soft-power incursion into Ukraine's media space under the guise of an anti-Nazi sentiment among Russia's diaspora. To complicate matters, Ukraine's government has risked alienating several of its minorities with the introduction of controversial laws under the guise of "Ukrainianization." For example, as part of its nation-building efforts post-Maidan, Kyiv sought to reorient its controversial wartime nationalist movements.

Ukraine's significantly low levels of institutionalization since Maidan highlights the problem. Under the circumstances, Ukraine's subordinated minority groups require protection either from state institutions or from external guarantors. When state institutions are weak or incapable of providing that support, then external security guarantees are essential for minority protection.

Furthermore, NATO could be used as a platform for multilateral coordination of human rights policy on Ukraine. To achieve that goal, NATO would need to work more closely with and provide support to the OSCE High Commission on National Minorities (HCNM) and the EU. Both the EU and the HCNM have a mandate to evaluate and advise on minority rights situations and were instrumental in removing minority rights roadblocks among current NATO members such as Romania, Hungary, the Baltics, Czechia, and Slovakia.

NATO's Comprehensive Approach to deterrence that emerged from the 2011 Lisbon Summit Declaration is a step toward countering unconventional threats, but empirical evidence from the Baltics shows that it has yet to be sufficiently effective in remedying the key areas that enable the use of diaspora-related gray-zone tactics.²²

Together with specific NATO member states, such as Poland and Hungary, oversight measures mandated by the OSCE and the UN would help guarantee Ukraine's commitment to minority rights across the country. As a regional confidence-building measure, including those neighboring states who consider their minorities to be at risk will go a long way toward ensuring that if and when Ukraine pursues accession to the EU and NATO, the process is a positive and constructive one. Only then can Ukraine become the security maker its leaders want it to be and not the security taker it currently is.



(USOSCE photo / Gower)

Figure 2. Trilateral Contact Group. Ambassador Heidi Grau (Switzerland) and Ambassador Yaşar Halit Çevik (Turkey), chief monitor of the OSCE Special Monitoring Mission to Ukraine at the Permanent Council, on 6 February 2020.

In our related research, we have argued the domain where regional international organizations such as the OSCE can be the most effective is diagnosis of causes and conflict de-escalation.²³ Regional organizations have in-depth specialized knowledge of the geographic area and actors, comparatively lower costs of operation, and are highly effective at producing outcomes in low-intensity disputes. Second, due to the perceived impartiality of such organizations, they have unmatched access to the conflict region and may monitor and disclose issues associated with spoilers, human rights, and cease-fire agreement violations. Finally, unlike large international organizations such as the UN, regional security-oriented organizations can incorporate nonstate actors into the multilateral dialogue for conflict management.²⁴ However, the resolution of gray-zone conflicts will, in our

opinion, still depend on some aspects of bilateral and small-format multilateral negotiations between great powers as the funders of the nonstate groups responsible for much of the tactical-level activities.

Threats and Opportunities in the Economic Domain of Gray-zone Conflicts

With respect to the economic dimensions, sending gray-zone conflict-related economic disputes through commerce arbitration will not provide long-lasting resolutions to conflicts; as such, institutions will be unable to formally account for the broader context of the problem—the strategic dimension. Russia's energy sector has been a key tool to leverage pro-Russian national attitudes in the post-Soviet space—frequently through special economic agreements or sanctions. Even though its effectiveness remains uncertain, economic pressure is frequently utilized by states against their opponents in gray-zone conflicts.²⁵ The inducement of economic pressure, through methods such as sanctions, is intended to erode the opponents' economy, especially in situations of asymmetric economic interdependence, and encourage a change in policy direction. It is a method of leverage that cannot be categorized as an overt declaration of war but also escapes the absolute state of peace.

In the modern interconnected world, there is an incentive to employ willful blindness in relation to potential threats emanating from geostrategic opponents such as Russia. These authoritarian states provide Western liberal democracies access to both inexpensive labor and vast energy resources required to fuel economic growth. Greed for short-term economic growth, for example through reliance on comparative advantage principles, however, may have long-term security consequences. However, economic interconnectedness may also create opportunities for conflict resolution. This means, even though foreign policy of state actors in gray-zone conflicts seems to be guided by realist thinking and pursuit of maximum relative gains, liberal institutionalism should not be outright dismissed.

As we highlight in this article, the common wisdom in recent literature on gray-zone conflicts has been to treat the economic domain as an area of threat. However, for the purpose of conflict management in Ukraine, Moscow's increasingly interconnected energy relations with the EU may also be an opportunity for peaceful conflict resolution.

Re-engagement between the EU and Russia demonstrates that complex interdependence can provide an opportunity for conflict resolution in Ukraine.²⁶ In the contemporary interconnected world, there is no clear hierarchy between economic and military issues among states. Moreover, as the cost of engagement in

conventional military operations has increased, the economic domain becomes increasingly important for exercise of power and overall interaction between states. The relationship observed is that as economic interdependence increases between nations, the cost of upsetting the mutually beneficial environment through conflict increases. Thus, states often choose to forego conflict and resolve disputes cooperatively.

This pattern of behavior can be observed among the EU, Ukraine, and Russia in their efforts to de-escalate the conflict in the Donbas and thereby eliminate barriers for energy cooperation. For example, reengagement through the Normandy Format and bilateral dialogue between Russia and European powers has paralleled the construction and launch of the Nord Stream II and TurkStream pipelines. Moreover, in December 2019, Russia and Ukraine reached a five-year gas transit deal.²⁷

The period of reengagement between Moscow and its gray-zone conflict adversaries over economic issues has correlated with a decline in fighting and exchange of prisoners—important steps in the implementation of the Minsk II agreement.²⁸ However, as we discussed in this article, the United States attempted to block the pipeline construction and the renewal of Moscow's relationship with European leaders. The argument from Washington has been that the economic reengagement with Moscow will lead Europe into a dependence trap on Moscow's energy. However, according to analysts, the energy relationship between Moscow and Europe is symbiotic—not asymmetric.²⁹ In fact, some claim Russia is more dependent on European consumption of its resources than the reverse. What remains clear, however, is if Washington succeeds in disrupting Europe's trust building with Moscow, the chances of peaceful conflict resolution among Russia, Ukraine, and European powers decreases.

Future Directions of Gray-zone Conflict Policy and Research

Looking ahead, a key challenge for the international community is that Russia and NATO are not the only actors to engage in gray-zone conflicts. For example, Beijing has mastered the art of hybrid warfare over the past 20 years and has already emerged as the main geopolitical challenger to the United States and its allies in the long term. Washington and its allies have only recently reoriented their attention to address this challenge. China is changing the rules of foreign aid, with profound consequences for the role of international institutions and standards of lending conditionality. Substantial fear exists that China's format of aid is strengthening rogue states, facilitating corruption, and increasing the debt burdens of targeted countries for political gains.³⁰ Thus, alongside the overarching need to upgrade international legal frameworks, institutions, and mechanisms of conflict

management, there will also be a demand for tailored approaches to address the individual tools and tactics employed by participants in gray-zone conflicts.

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