



APPLYING DIFFERENT MODES OF ALTERNATE DISPUTE RESOLUTION TO CONFLICT SITUATIONS: A CASE STUDY OF RUSSIA-UKRAINE WAR

Sami Ur Rahman

Assistant Professor of Law

National University of Sciences and Technology (NUST)

Islamabad - Pakistan

same.s3h@s3h.nust.edu.pk

Ms. Anum Jarra

Advocate, District Courts Islamabad

LLM Scholar, Bahria University

Islamabad - Pakistan

anumjarra123@gmail.com

Abstract

This research article aims to analyze the recent on-going conflict between Russia and Ukraine, which has disturbed the peace of Europe after 30 years. Since, Russia is among the global powers of the world and a major exporter of oil and grains and Ukraine serves as a transit route, so if the sanctions and war is prolonged, the world will face dire consequences much more than it is experiencing at the moment. Amidst all the chaos there has to be a way out which assists in broking a peace deal between the two adversaries. And therefore, the article mentions that adapting a mode of ADR for resolving the conflict is the best bet. It also visits the course of history to highlight how mediation was successfully used in the past conflicts to resolve the issues and the same can be true for the present conflict. Though many countries by now have shown willingness to mediate between both countries but Turkey enjoys an upper hand over them due to its significance in the region. In view of all these factors and the present deadlock that has clouded the fate of peace in Europe, recommendations have been given in the end which can prove to be effective in putting an end to this fiasco.

1. Introduction



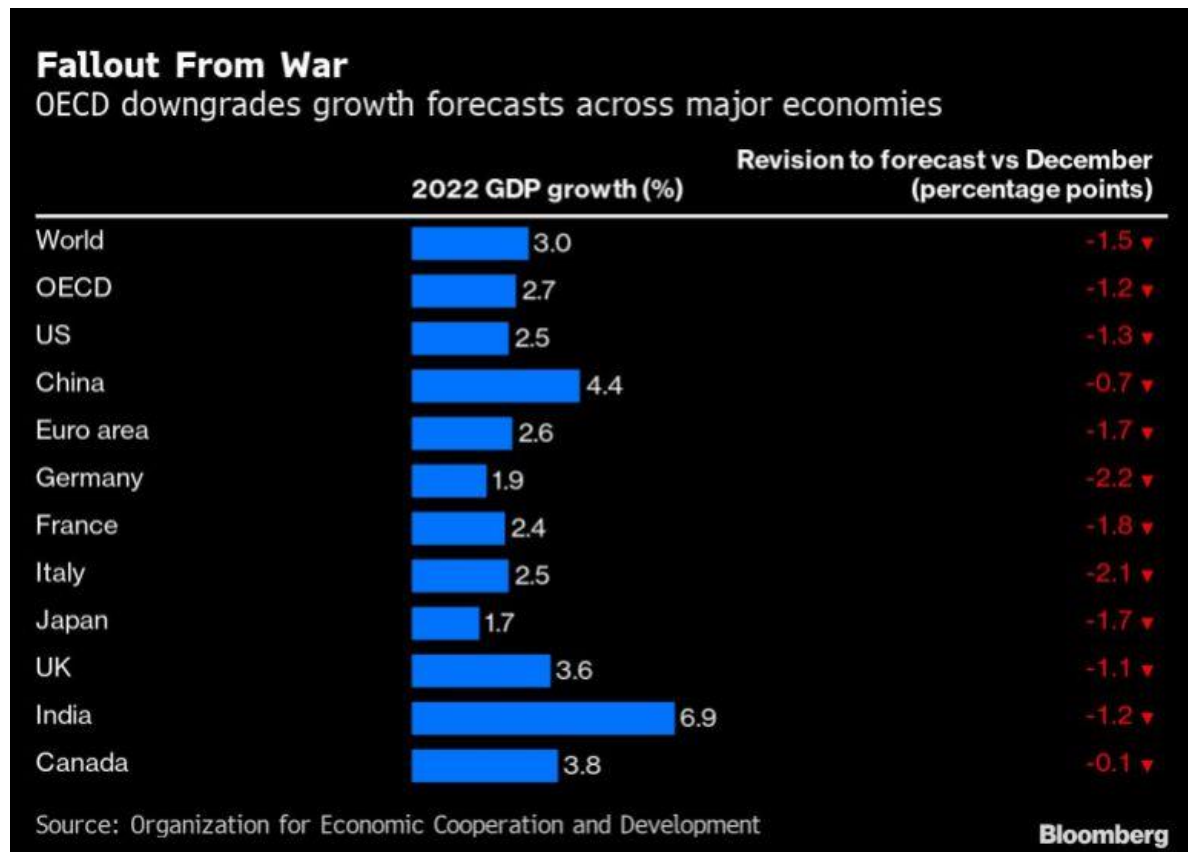
Ever since the inception of mankind war is a term not stranger to humans and with changing world order it is more likely to dominate the next centuries to come as well. Despite, the unfortunate nature of the event itself, the fortunate part is that men and countries in particular are getting intelligible by the day and therefore it won't be wrong to count on them in resolving these conflicts. The recent invasion of Russia in Ukraine has sent shockwaves around the world, as living in this increasingly interdependent world each of us depends on the other for existence here.

Global geopolitical risks have soared since Russia's invasion of Ukraine. Investors, market participants, and policymakers expect that the war will exert a drag on the global economy while pushing up inflation, with a sharp increase in uncertainty and risks of severe adverse outcomes.

The seriousness of the situation can also be determined from that fact that the April 2022 edition of the International Monetary Fund's economic outlook has mentioned the word "war" 200 times. Some economic impacts have already started to bear consequences, especially, Russia and Ukraine's economy has been shrinking ever since the inception of war (Caldara, 2022). However, the spill out is not limited to that, there's an expected energy and food crisis looming over a number of countries. For instance, Pakistan recently increased the fuel and wheat prices to an all-time high and they are expected to increase further. India also was faced with the same turmoil and therefore it decided to buy cheaper oil from Russia, before conflict India used to import 1% of its oil needs from Russia, however, after the conflict the imports are expected to clamor at 17%. How the world would be able to survive without Russia and Ukraine's resources, amidst the sanctions, remains a mainstream topic these days, as leaders are divided between the choices of choosing their own countrymen or take a higher moral standing.

The Organization for Economic Cooperation and Development (OECD) in its recent assessment has predicted unprecedented consequences of the Russia Ukraine war on global economy. In a recent statement it stated, "The world economy will pay a "hefty price" for the war in Ukraine encompassing weaker growth, stronger inflation and potentially long-lasting damage to supply chains". The organization also slashed its previous prediction of growth rate in year 2022 to 3% from 4.5% and doubled its inflation projection to 9% for its 38 member countries (Horrobin, 2022).

The figure below shows the downgrade of growth rate across the major economies contrary to what was predicted earlier.



The majority of OECD members include major economies and if that is how the developed world is being affected one can only imagine the toll it will take on the underdeveloped world. UN Secretary General Antonio Guterres recently while releasing a report on the same said that the war has been exacerbating the crises left by the *Covid 19*; be it food, energy or financial. And it is expected to hit poorer countries even more if the war is prolonged as they have already not been able to recover from the economic hit caused by the pandemic.

Therefore, amidst these chaotic times it is in the interest of everyone to resolve this conflict and in doing so the modes of Alternate Dispute Resolution can play a key role. The same has been tried to address in this research article, though the present conflict between Russia and Ukraine hasn't been resolved as yet but there is hope in resolving it through the modes of ADR. And by modes of ADR mean to choose the one which can prove to be most viable, while incorporating the ones which can prove aids to the main.



So, in view of above stated facts, this research article would aim to answer following questions.

- I. Whether the Russia-Ukraine conflict is resolvable?
- II. Whether ADR can play a role in resolution of Russia-Ukraine conflict?
- III. Whether a country can play a decisive role in resolution of the conflict and if so why?

2. Background of Russia-Ukraine Conflict

The Russia-Ukraine Conflict dates back to 2014 when Russia annexed Crimea and began arming and abetting separatists in the Donbas region in the country's southeast. After Russia's annexation of Crimea in 2014, it was kicked out of the G8 and many in the West thought that this would put an end to Putin's ambitions. However, what followed is here for us all to see. Late last year, Russia started military exercises on the border with Ukraine, thousands of soldiers with heavy were involved, and at the end of the exercises they didn't leave. A flurry of diplomatic efforts began across the Atlantic, the French and German leaders personally met with Putin.

The map below gives a clearer view of the advances that have been made by Russia in Ukraine so far, the areas with partially red lines are Crimea and Donbas which were captured in 2014 (Masters, 2022).



Russia and United States have been at logger heads with each other post World War II. During the Cold War era, Ukraine served as a cornerstone of Soviet Union as it was the

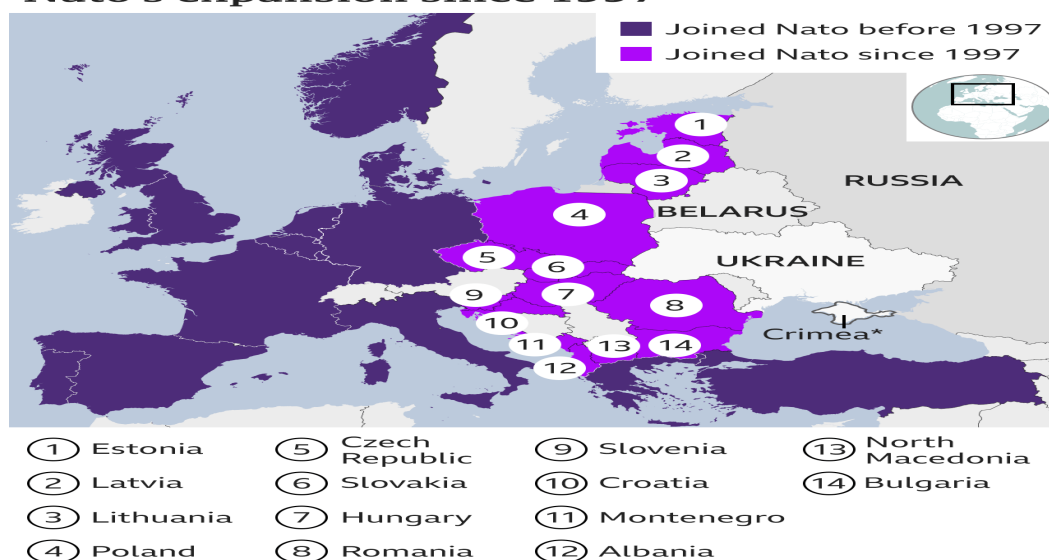


second most powerful of the fifteen soviet states- behind only Russia. The military, some of the nuclear arsenals, black sea and agricultural production are some of the assets that made it pivotal for Soviet Union's coherence. Its decision to be independent of Soviet Union in 1991, proved to be the final nail in the coffin for the Soviet Union which ultimately disintegrated.

And this explains the reason as to why it always remained important for Russia. However, what made Russia's resolve to eventually invade it accelerated from the fact that Ukraine as a sovereign state grew closer to Western powers more than it did to Russia. The post-cold war expansion of NATO brought it to the doorsteps of Russia, angering Russia even more. The Russia President Vladimir Putin maintained that not one inch to the east is what they were told in the 1990s and what happened was that they were duped, brazenly duped and there were five waves of NATO expansion.

The below map shows the expansion of NATO since 1997 and gives a greater insight as to what triggered the full-scale aggression of Russia into Ukraine (BBC, 2022).

Nato's expansion since 1997



*Russia annexed Crimea in 2014

BBC

Therefore, in 2022 amidst the speculation that Ukraine may become a member of NATO and eventually EU, sparked serious security concerns for Russia and hence it decided to invade Ukraine. The reason behind Russia's invasion in Ukraine, however, isn't exhaustive to its security concern but includes economic, political and



cultural reasons as well. For instance, Ukraine used to provide trade transit for Russia's gas and oil to Central Asia, costing Russia billions of dollars. Also, the Eastern part of Ukraine has Russian speaking community that believes in greater integration with Russia rather than Europe and therefore the apparent cultural reason is also there for Russia to invade Ukraine.

Russia's war with Ukraine has been going on for more than 3 months now and world has already started to experience the brunt of it. The record soaring of petroleum prices has sent alarm bells ringing around everyone. Therefore, it is pertinent not just for Russia, Ukraine or Europe to move towards resolution but it is in the interest of everyone inhabiting this planet. For the same reason various modes of ADR have been analyzed so as to deduce which would be best to apply in the Russia-Ukraine conflict.

3. Place of Modes of ADR in Conflict Resolution

The difference between ADR and litigation lies in the fact that ADR processes are driven by parties to the conflict unlike litigation. Legal luminaries Nancy Atlas, Stephen Huber, and Wendy Trachte in their 'Alternative Dispute Resolution: The Litigator's Handbook,' has defined ADR as being: "Anything except a bench or jury trial under the auspices of some judicial body."

As the modes of ADR provides parties more leverage over their ability to influence the closest desirable solution, so it is even more understandable why in a conflict or war like situation as that of Russia and Ukraine, parties opt for ADR. There are various modes of ADR which have been used time and again for the resolution of conflicts, let's look into the important ones and dig deeper into which one would be ideal to adapt in resolving the ongoing armed conflict between Russia and Ukraine.

Most, though not all, ADR processes can be thought of as an "assisted" negotiation. The type of assistance, however, can vary considerably. The significant distinction is whether the neutral or for that matter the third person assisting in the conflict resolution between two parties is providing "process assistance" or "outcome prediction," or is really acting as a "private judge" to render a decision. Since the process assistance is more concerned with assisting parties in achieving their interests and is not concerned with the laws or facts of the case, and the same is true for the case in point- Russia-Ukraine conflict, therefore, it would be more appropriate to look in to process assistance modes of ADR, which have been analyzed below (General Counsel of the Army, 2015).



i. Negotiation

The most obvious of the modes of ADR is negotiation as it involves the discussions only between the parties to the conflict and therefore the obviousness of this mode disregards the complications involved in the conflict. The Russian-Ukraine conflict has exceeded well beyond the negotiation point as Russia continues to go on with its invasion and Ukraine continues to voice it vehemently at international stage while trying to constrict the invasion. So, what is clear from discussing this mode is that for resolution of Russia-Ukraine conflict a third party which is neutral or middle man so as to say, has to be there. As of today, Russia believes that by the end of the war it would be able to take hold of Ukraine and therefore they shouldn't be going towards negotiation. In such a case only a pressure exerted from 3rd party who is neutral can help bring both to the table.

ii. Conciliation

Conciliation can be termed as the means espoused by the parties for resolving the dispute. Where in such conciliation, the parties to the dispute are free to appoint a person (third party) who is not biased and has zero interest in the dispute. The third party makes sure that there should be a fruitful dialogue, negotiation and exchange of idea between the parties. He/she tries to persuade them to reach a conclusion. Conciliation is considered by the deliberate will of the parties who want to conciliate the dispute. The mandatory element of the conciliation is confidentiality, whereas, the parties to dispute and the conciliator are not allowed to share or disclose any information to any other external party, related with the proceedings. Though the main purpose of conciliator is to facilitate the parties but the powers do go beyond that as the conciliator also provides with the expert opinion as to the problem of the solution. So, the facilitation and evaluation both comes hand in hand in conciliation and that is where the problem lies in the present conflict. Recently Russia has accused Ukraine of halting peace talks because of US handlers (Kaul, 2022). And if a conciliator is asked to conciliate between both parties Russia may have reservations with the final solution and same goes for Ukraine. At present, when there is deadlock between both parties what's more important is to initiate a communication between the two and later on when the initial stage of communicating effectively is surmounted then conciliation can be brought in equation.

iii. Facilitation

Facilitation is a mode of ADR which is more or less like mediation as it facilitates the parties to communicate in order to resolve the conflict. However, the process is not structured like mediation and is more like an informal sort of mediation. The highly complex issues such as that of Russia-Ukraine requires a structured process where



everything- be it facts, issues, third party or prospective line of action should all be well synchronized and structured. An already complicated conflict at worst would need an unstructured mode to make it even worse. So, facilitation as a starting point before adapting more formal approach to resolving a dispute is fine but cannot be used as a primary and only source of Alternate dispute resolution.

iv. Mediation

The most popular form of Alternate Dispute Resolution is mediation. Mediation is a dispute settlement mechanism that focuses on effectively communicating and negotiating. The role of mediator is to help the parties communicate and negotiate more effectively, thus improving their decision-making capacity. Adjudicating the issues in dispute is not the job of the mediator. Although compromise is an element of the process of mediation, it is not a process to force compromise. The limits of each party are respected, and only if it is convinced that it is fair to do so will a party be expected to change its approach to the problem. On average the success rates of mediation processes range from 80% to 85%. In an attempt to capitalize on success rates, the law is being slowly amended to include conflict resolution clauses (Das, 2019).

4. Potential Role of Mediation in resolving Russia-Ukraine War

Through the course of history many conflict situations like Russia-Ukraine have been resolved by applying mediation as one of the modes of ADR. During the course of history, international relations between various countries have been reclaimed through the process of mediation of a third party. Some of the examples would be Britain, Nigeria and Peru, who have already benefited from mediation during their disputes. During the Nigerian Civil War (1967-1970), *Quakers Adam Curle, John Volkmar and Walter Martin* mediated between leaders of the Nigerian Civil War, by working as messengers to alleviate tensions between the parties. These mediators helped cultivate a feeling of resolution at the end of the war between all those stake-holders. (Online, 2020).

The recent pullout of the US forces from Afghanistan after fighting one of its longest wars ever was also done through a series of mediations, where Qatar and Pakistan played key roles as mediatators. Such case studies sets examples for world powers to realize that military solutions are never sustainable in the long run and they only give birth to more conflicts which by the end are resolved through mediation. This Russia-Ukraine conflict has marked the end of 30 years peace in Europe, before that, war in former Yugoslavia continued from 1992 to 1995, after which the Dayton Peace Agreement, mediated by US President Bill Clinton, was reached in December 1995 (Ahmar, 2022).



This further strengthens the argument that ultimately it was mediation which brought peace in Europe and it continues to be the best bet amidst all the uncertainty.

Ever since the start of the Russo-Ukrainian war, neither side has been able to claim victory. Both sides miscalculated each other's military tactics, strategy and morale, resulting in a continued stand-off (Ahmar, 2022). Therefore, it's a favorable time to resume the process of mediation since both sides have to some extent balanced positions and if the equilibrium is disturbed, it would be difficult to bring both to the table. All the case studies stated as an example above have one thing in common and that is a mediator which assisted in sealing a peace deal. The same question continues to circulate the world these days as to who can play the part of mediator in this recent quagmire.

Earlier in March this year, Turkey invited and hosted *Ukrainian* and *Russian* Foreign Ministers for a trilateral meeting in its Southern city of Antalya. After this trilateral negotiation, the Turkish Foreign Minister paid a visit to both these countries and held some important meetings with political leadership of the warring parties. Similarly, the Prime Minister of Israel *Mr. Naftali Bennett* visited Moscow for convincing the Russian leadership to resolve the conflict with the Ukraine through table talks/ADR. China is the 3rd country after Turkey and Israel, who has signaled readiness for the mediation process between the two states. Some other countries who have the potential to mediate and conciliate, such as, the United Arab Emirates, India or South Africa, might get in line to broker some kind of resolution. But of all these countries sitting on the fence and trying to mediate, hence, as per our research, Turkey has a unique profile and position. Why we say this, because it has the following seven main reasons: (Dalay, 2022).

- i. Turkish President *Recep Tayyip Erdogan* has been very vocal against the Western-centric international system as they had faced the international bans for a century now. But on the other hand, Turkey instantaneously, as a member of many Western organizations continue to be a beneficiary, and in a sense, part of the geopolitical West. To be part of this geopolitical set up, is very important for Turkey.
- ii. Turkey has the advantage of having maritime borders with both Ukraine and Russia. Additionally, Turkey is one of the largest trade partner of Russia in the Middle Eastern region. Turkey has already the credit of assistance and cooperation with Russia through conflict zones in Syria, Libya and Nagorno-Karabakh in recent years.
- iii. The recent Russia-Ukraine conflict is ideally changing the geopolitics and balance of power in the Black Sea region, and we all know that Turkey is a major Black Sea power, hence, the importance of Turkey remains very high.
- iv. French President *Emanuel Macron* has also announced that France, Turkey and Greece will carry out a joint evacuation mission in *Mariupol*. This is an indication of a



humanitarian role that might become more salient in Erdogan's policy down the road as he is one of the most important strategic partner in the above important announcement.

- v. Moreover, Russia is dominating the Black Sea, it has a sizable Mediterranean presence where it is deeply involved in conflicts spots in Syria and Libya. If Turkey closes its sea-borders, this will put a huge pressure on Russian policy in these conflict zones if the current war is prolonged between Russia and Ukraine.
- vi. Turkey, unlike other NATO members, has played a very neutral character as it has neither joined the Western sanctions against Moscow nor it closed its airspace to Russia.
- vii. Turkey had also opposed Sweden and Finland bid to join NATO, accusing the two countries of supporting and harboring Kurdish militants and other groups that Ankara has classified as terrorists. NATO Chief in a recent statement has also maintained that Turkey's concerns are legitimate.

All these reasons put Turkey in an ideal position to mediate between Russia and Ukraine. Russia wants to give the impression it is interested in diplomacy to buy time and prevent further Western sanctions, but to no avail. No breakthrough should be expected anytime soon. In spite of this, keeping the idea of a diplomatic process alive is still important. Plus, the mediation serves Turkey's interests well. It boosts its international stature; turns Turkey into one of the major centers of diplomacy in this conflict; and delays some of the difficult decisions that it might face down the road.

5. Recent Developments

As this is an ongoing conflict where decisive outcome hasn't been tailored as yet, therefore, with every day new developments are coming to the forefront, some of the main ones have been given herein (Al-Jazeera, 2022).

- i. Recently, Turkish Customs had detained a cargo ship carrying Ukrainian wheat through the Black Sea, as it continues its efforts to mediate between Russia, UN and Ukraine. The grain diplomacy is expected to put Turkey in an even more crucial position and further raise its stake in the conflict.
- ii. Turkey has also given its assent to Finland and Sweden's NATO membership. In response, US President Joe Biden has thanked Turkish President *Recep Tayyip Erdogan*.
- iii. NATO has also agreed to strengthen its deterrents, which is being hailed as the biggest program since the Cold War.
- iv. A compromise deal is set to be brokered between the European Union and Russia to diffuse the standoff over Kaliningrad as trade through Lithuania could be restored within days.



- v. Ukraine has also secured the release of 144 of its soldiers, in what is said to be the biggest exchange of prisoners since the Russia's invasion this year.
- vi. Russia is stepping up its attacks across Ukraine with several regions beyond the Donbas targeted in previous week.

All these developments indicate towards the fact that the European Union and the United States are ramping up their efforts to put utmost pressure on Russia and Russia as a response continues its adventures in Ukraine. But, despite this tug of war diplomacy channels are open and are continuing to have positive developments. So, although at present the conflict looks far from over apparently but there is still hope for a peaceful settlement and all these recent successful mediations mentioned herein are a testimony to it.

6. Conclusion

The Russia-Ukraine conflict has to be one of the major setbacks to international peace in recent times. As it has bothered all the regions equidistantly. Be it Asia, Europe or Middle East no region has remained unaffected by the recent string of events followed by the Russia invasion of Ukraine. As, the sanctions and conflict has really affected the world economy and has the potential to make it even worse if it is prolonged. Therefore, it is desirable to count on Alternate Dispute Resolution modes for quick and expedient resolution of the conflict. And mediation in such conflicts prove to be quite beneficial as there is a room for parties to the conflict to be facilitated in a structured way by a competent third party and yet be able to have control over the results both parties want out of it. Moreover, Turkey seems to be in a best position to mediate as it has tried to maintain balance between both, despite being the member of NATO.

So, the fact that there is a deadlock at present should not demotivate the world in to not trying for talks but rather all the stakeholders should ramp up their efforts in bringing both foes to the table and the neutral states should use their leverage and try to facilitate in mediation attempts being carried out by Turkey. As only through a true resolution effort via mediation the world can move forward amicably with this conflict. Or else history would be there to repeat itself and there would be new era of cold war pretty soon.

7. Recommendations

In the light of the above discussion, there's no two ways about the fact that mediation is the best possible solution for resolving Russia-Ukraine conflict as it also has been successful



through the course of history. In view of that following recommendations can prove to be crucial in this conflict resolution.

- i. All the countries, especially those who have been neutral during this whole conflict, should ramp up their efforts to bring Russia and Ukraine on table talks.
- ii. Turkey has already tried to mediate between both the countries and given its stakes in the conflict should be given international confidence to be a mediator.
- iii. The concerns of both countries should be considered in order to reach a peaceful settlement. For example, Russia's concerns of Ukraine joining NATO should be addressed and likewise Ukraine's fear of future misadventures by Russia should also be addressed.
- iv. The other stakeholders in conflict i.e. US and EU should not be actively involved in giving dictation to Ukraine as that by now has only served for the worse of Ukraine's interests.
- v. The attempts to bring both countries to table should happen as robustly as possible or otherwise if the war is prolonged and one of the countries come in a greater position as to winning the war then it would be impossible to mediate between the two.
- vi. In addition to mediation, if either of the parties to the conflict insist on using other modes of Alternate Dispute Resolution and both parties agree to it, then that should also be considered. As, it will only increase the likelihood of reaching a peace agreement. For instance, while Turkey acts as a mediator, China or India can act as a facilitator.



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