ODIHR Election Observation under Pressure

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Abstract

Although ODIHR is a global leader in international election observation, for twenty years it has sustained challenges from participating States that have sought to weaken the independence of its election observation missions. This paper outlines the nature of these challenges and documents how ODIHR has responded by adapting to some requests and holding the line against others. The result is a story of resilience and continued vitality against difficult odds. Parallel to these challenges from within, however, the paper documents the rise of alternative “shadow” election monitoring entities that counter ODIHR’s electoral assessments with judgments that seek to validate undemocratic elections. ODIHR’s continued relevance and status as Europe’s primary election observation organization depends on vigilantly guarding its credibility while seeking ways to ensure that its messages cut through an increasingly fragmented media space.

Keywords

Election observation, ODIHR, democracy promotion, institutional adaptation

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Introduction

In 1990, members of the CSCE expressed their commitment to free and fair elections by approving the Copenhagen Document.¹ This path-breaking agreement contained detailed standards for democratic elections that went beyond the mere commitments found in other legal instruments like the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). The Copenhagen Document specified standards not only for voting but also for the political, legal, and administrative context in which elections are held, including respecting the freedom to form political parties and to campaign without government intimidation and with equal access to the media.² The document also required all participating States to extend a standing invitation to CSCE (later OSCE) missions to observe national elections.

The institutional basis for election observation was further laid by the Charter of Paris (1990), which established the Office for Free Elections headquartered in Warsaw, and the Moscow Document

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(1991), which affirmed that matters relating to the human dimension are of “legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.” Over the next decade, monumental changes would take place in the region as the states of East Central Europe and the former Soviet Union transitioned away from communism. The CSCE/OSCE underwent its own transformation, bolstered by a strengthened commitment to democracy and human rights. In 1992, the Office for Free Elections was expanded, granted further responsibilities, and rechristened the Office for Democratic Institutions and Human Rights (ODIHR). ODIHR’s mandate is to support participating States in implementing their human dimension commitments, and election observation has been one of its primary activities from the start. ODIHR’s election observation methodology is globally renowned and characterized by a holistic focus that covers the entire electoral process. This methodology developed over several years, through an iterative process of ODIHR staff initiatives and participating State (Ministerial Council) decisions. Attesting to its global status and expertise, ODIHR has actively participated in developing and implementing the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers (2005). The EU has aligned its own election observation methodology with that of ODIHR, and for this reason EU missions are not sent to OSCE participating States. ODIHR is therefore the primary international election observation body in the OSCE area.

Throughout the 1990s, demand for ODIHR election observation missions (EOMs) was high, particularly among former communist states. But as tensions between Russia and the EU/United States grew in the wake of the color revolutions in the early 2000s, ODIHR election observation faced intense challenges, often led by Russia and like-minded states. The following provides an overview of these pressures, which were both internal (pressures to reform and curtail election observation from within) and external (the creation of parallel election monitoring organizations). In addition, it explores how ODIHR has adapted to internal pressures by expanding the scope and inclusiveness of its work without—crucially— forfeiting its autonomy or the credibility of its methodology. My analysis of these processes is informed by interviews with current and former ODIHR officials.

The picture that emerges is one of ingenuity and resilience in the face of sustained political pressures, an example of what Gisela Hirschmann calls a strategy of “adaptation.” This outcome was far from assured; international organizations facing drastic changes in member state politics often either dissolve or slide into “zombie” status. Viewed in this light, the survival of ODIHR election observation, with the credibility of its methodology intact, is noteworthy. Time will tell whether ODIHR will weather the unprecedented crisis and paralysis that have gripped the OSCE since Russia’s invasion of Ukraine in 2022.
The story of ODIHR election observation is also one of an organization whose de facto influence among domestic publics continues to be challenged in an era of disinformation and “alternative facts.” I outline the proliferation of shadow observer groups, particularly in the post-Soviet region, and the stark difference between these groups’ electoral statements and ODIHR’s. As a result, ODIHR’s assessments of electoral quality may matter less when consumers of non-Western news primarily read about the rosy conclusions of less credible observers. Shoring up its relevance and informational reach should therefore be a key focus of the Office going forward.

Internal challenges to ODIHR

In the wake of the Cold War, Russia had hoped that the OSCE would become the continent’s premier security organization. But as former communist states sought membership in NATO and the EU, it became clear that instead of transferring authority to the OSCE, these two organizations would extend their own reach. Russia lamented the withering of the OSCE’s politico-military dimension in favor of the human dimension of security, which it viewed as less important. Vladimir Putin’s rise to power, followed by the electoral revolutions in Georgia (2003) and Ukraine (2004), cemented Russia’s resolve to assertively combat what it perceived as growing Western interference on its turf. Putin was also offended by ODIHR’s criticism of Russia’s 2004 parliamentary election, an issue that would persist in future elections as Russia sought to place limits on the number of ODIHR observers.

In 2004–2005, Russia launched a diplomatic assault against ODIHR, whose EOMs were perceived as playing a role in the pro-Western electoral revolutions. In 2004, with the support of most Commonwealth of Independent States (CIS) partners, Russia issued an appeal to modify the OSCE’s human dimension, specifically the practice of election observation. At the 2005 ministerial council in Ljubljana, Russian foreign minister Sergei Lavrov decried ODIHR as a biased entity, an instrument for meddling in non-EU countries. The theme that ODIHR’s activities were biased against countries “east of Vienna” became a frequent talking point for Russia and its allies. In 2005, Russia vetoed the OSCE budget due to disagreements over election observation and blocked the final statement in the Ministerial Council.

Russia made three criticisms, as summarized in the 2004 “Astana Appeal” of the CIS: first, that the geographic scope of ODIHR’s election observation was imbalanced (tilting toward states east of Vienna); second, that ODIHR observers hailed disproportionately from Western Europe and North America; and third, that ODIHR’s methodology had not been approved by participating States (a misleading claim given the numerous Council decisions affirming support) and that intergovernmental oversight mechanisms were too weak. Russia wanted to make the publication of ODIHR’s election observation reports contingent on the approval of the Permanent Council—an
intergovernmental body that operates by consensus—which would effectively give it veto power.\textsuperscript{22} Relatedly, there was a demand to eliminate ODIHR’s practice of announcing its preliminary findings in the one to two days following the election\textsuperscript{23}—a consequential point because it is these reports that are covered most extensively in the media. As explored below, ODIHR made consequential adjustments related to the diversity and balance of its EOMs. With the steadfast support of key participating States, however, it held the line on fundamental questions of autonomy, recognizing that the credibility of its methodology and independence from political interference were its most crucial assets.

An additional challenge for ODIHR was its co-ordination with observers from the OSCE Parliamentary Assembly (PA), who were present in the host countries only for a short time around election day and were sometimes guided more by politics than by technocratic standards of election evaluation.\textsuperscript{24} A 1997 co-operation agreement between ODIHR and the PA aimed to ensure that they would present a unified message in their statements and reports.\textsuperscript{25} Yet there were tensions behind the scenes, particularly regarding observation missions in less democratic states such as Azerbaijan, Armenia, and Moldova.\textsuperscript{26} These challenges were sharpest when the OSCE PA was under the de facto direction of Secretary General Spencer Oliver (from 1993 to 2015), whose view was that parliamentarians, “as elected officials, […] are rightly presumed to know more about elections than anybody else.”\textsuperscript{27} Oliver, who

formally reported to the PA delegations and its elected Presidents, echoed multiple Russian positions, including that ODIHR applied double standards. Tensions reached a boiling point in 2012, when the PA announced that it was ceasing co-operation with ODIHR, and then subsided as ODIHR Director Janez Lenarčič (2008–2014) sought to work with the PA’s political leadership to restore trust. Relations became more cooperative after Roberto Montella replaced Oliver as Secretary General of the PA in 2016.

Adaptation

ODIHR would deal with these pressures by constructively responding to criticism related to diversity, representation, and bias but steadfastly resisting the erosion of the autonomy of its EOMs.\textsuperscript{28} In 2002, ODIHR began sending election-related missions to established democracies. From 2002 to 2005, this consisted of just one to two missions per year, including to the United States, the United Kingdom, and Spain. This has increased over time; between 2018 and 2022, ODIHR authorized ten to sixteen missions to EU and North American participating States per year (the numbers vary based on how many elections are held per year). Although this practice had previously been resisted by some as an inefficient use of resources,\textsuperscript{29} ODIHR officials soon came around to the idea, given that established democracies can also benefit from ODIHR expertise.\textsuperscript{30} Many missions sent to established democracies
are election assessment missions (EAMs), which leave a lighter footprint and do not deploy a full contingent of election-day observers. ODIHR staff have worked to dispel the misconception that these smaller missions are less consequential; rather, it is a matter of tailoring the mission to the particular needs of the country in question.\(^{31}\)

Second, ODIHR took concrete steps to increase the number of observers from post-Soviet countries in its missions.\(^{32}\) A milestone was the creation of a Diversification Fund in 2006 to financially support the incorporation of observers from seventeen under-represented countries into ODIHR EOMs. These efforts bore fruit: Since 2014, ODIHR election reports have listed the names and nationalities of each mission’s observers. An analysis of these reports for post-Soviet elections reveals that from 2014 to 2019, an average of 17 percent of ODIHR observers came from other post-Soviet countries, including often sizeable contingents of Russian observers, although Russia is not part of the Diversification Fund. This represents a large increase compared to earlier years. Multiple ODIHR officials mark this as a success that has improved the representativeness of EOMs, with the added benefit of training and socializing a cohort of public officials and civil society leaders in former communist states.\(^{33}\)

Third, ODIHR took steps to increase transparency and ensure the consistency of its evaluations. This has included the publication of handbooks on ODIHR’s methodology, including on the topics of media monitoring, women’s participation in elections, and long-term observation,\(^{34}\) as well as other efforts to formally respond to criticism and concerns (see for example ODIHR’s 2006 report to the Ministerial Council, titled “Common Responsibility”).\(^{35}\) ODIHR EOMs also began issuing pre-election interim reports, which filled the gap between the needs assessment report and the preliminary post-election report.\(^{36}\) In general, ODIHR staff and heads of missions have maintained a practice of carefully reviewing the language of statements and reports to ensure absolute consistency with OSCE election-related commitments, which in turn ensures consistency across countries.\(^{37}\)

**Holding the line**

Crucially, there was no compromise on ODIHR’s election evaluation standards, the autonomy of its missions, or its practice of releasing preliminary post-election statements.\(^{38}\) The United States, Canada, and EU members consistently supported ODIHR on these points. It remains the responsibility of the head of mission—a technocratic appointee who reports directly to the ODIHR Director—to approve and circulate EOM reports.

ODIHR has also assiduously defended the principle that the number and type of observers should be based on the findings of needs assessment missions (NAMs). At times, this has put ODIHR in conflict with governments. In the leadup to the 2007, 2008, and 2021 elections, the Russian government attempted to place limits on the number of ODIHR observers, and similar moves occurred in Azerbaijan.
in 2015. In the 2020 election in Belarus, by the time the government issued an invitation, it was too late for ODIHR to organize an effective EOM. In each of these instances, the ODIHR leadership took the difficult decision to decline to send an observation mission, viewing the integrity of its methodology as paramount.

In navigating these waters, ODIHR benefited from the skilled leadership of various Directors, including Christian Strohal (2003–2008), Janez Lenarčič (2008–2014), and Michael Link (2014–2017), who worked vigilantly to ensure the office’s survival, including through behind-the-scenes efforts to garner support from key participating States. The leadership was aided by the ingenuity and tenacity of ODIHR staff members, who used their expert knowledge to guide the office through recurring crises and budget shortfalls. Another asset to ODIHR election observation is the observers themselves, particularly heads of missions and core team members, who have consistently exhibited professionalism and have been “impervious to corruption.”

External challenges: Parallel election observation missions

Parallel to the internal pressures for reform has been an external challenge in the form of non-Western and Russian-directed election observation entities that do not work according to the same internationally recognized standards for election observation. Perhaps most prominent of these is the CIS, which began observing elections in 2002 after introducing its Convention on Standards of Democratic Elections. While mirroring some of the language of the Copenhagen Document, it places greater emphasis on respect for state sovereignty, as well as principles that are present even in authoritarian elections, such as universal suffrage. Beyond the CIS, other groups such as the Shanghai Cooperation Organisation (SCO) and the Organization of Turkic States (OTS) have also taken up election monitoring in the OSCE area. Autocrats also commonly invite a plethora of observers from little-known NGOs or friendly diplomats and political figures from other countries.

In Azerbaijan’s 2013 presidential election, for example, the Central Election Commission reported that more than 1,300 observers from 50 international groups were present; of these, only ODIHR criticized the clearly flawed process.

The data that I collected with Julia Gray, which tracks the presence and verdicts of different EOMs in post-communist countries from 1990 to 2018, sheds further light on the phenomenon of parallel election observers. The source materials for this data are international and domestic news reports. As the data shows, there was a clear increase in the number of EOMs in post-Soviet countries beginning in the early 2000s. By 2010, on average, at least six different missions were present in these countries’ national elections. In contrast, there has been no increase in the average number of EOMs in other Central and Eastern European states that are not CIS members, in part because these countries are
more democratic and experience less intense contestation between Russia and the West.  

In my examination of the range of EOMs that send missions to OSCE-area countries, sharp differences are apparent between ODIHR missions and other missions. ODIHR EOMs do not offer a simplistic up-or-down judgment; rather, they offer a comprehensive technical assessment of multiple aspects of the electoral process. This means, in practice, that ODIHR assessments include a range of positive and negative evaluations, matched by recommendations, related to the legal and administrative context of elections, media freedom, campaign conditions, and the casting and counting of ballots, among other dimensions. Importantly, ODIHR has not shied away from criticizing deficiencies when they are observed. In contrast, my analysis reveals that the CIS skews toward near universal approval of the elections it observes, as does the SCO. The only election ever to have been rejected by the CIS was Ukraine’s repeat second round in December 2004—the contest following the Orange Revolution that brought pro-Western Viktor Yushchenko to power.

This can be seen as part of a broader Russian-led disinformation campaign against Western institutions, the aim being to disrupt the established narrative and undermine the legitimacy of international standards for democracy and elections. In their study of the global phenomenon of shadow election monitoring, for example, Debre and Morgenbesser note that the goal is to influence citizens’ perceptions by shaping domestic media coverage. This is a pernicious goal given that one of the aims of ODIHR election observation is to provide accurate information about election quality to both the authorities and the public in the host countries. The problem is exacerbated by the growing presence of media silos. Consumers of Western media read articles in which the statements of ODIHR missions are discussed prominently, whereas consumers of Russian media read articles focused on the positive evaluations of CIS and other shadow observers.

**Recommendations**

ODIHR was created at a unique moment of optimism and ideological convergence between West and East in the aftermath of the Cold War. Its resilience is remarkable when one considers the breakdown in relations since then and the fact that ODIHR election observation touches upon one of the most sensitive nerves in these relations. Drawing on Gray’s theory of international organization vitality, it is clear that the office has benefited from its ability to attract quality staff and from its autonomy, that is, the ability of its election missions to conduct their work and publish conclusions free from political interference. Yet parallel to this story of survival and adaptation is the assault by alternative shadow election observation groups. This presents a thorny challenge to the legitimacy and influence of ODIHR EOMs, particularly in terms of whether, and how, their message gets through to citizens on the ground. This
paper offers the following recommendations:

Continue to guard the integrity of the methodology. This was widely identified as a top priority by ODIHR staff. ODIHR’s credibility as a technocratic and apolitical evaluator of elections is its most precious asset. Key features of the methodology that should be defended by both the ODIHR leadership and OSCE participating States include its insistence that the size and shape of missions be determined by ODIHR itself on the basis of a NAM and that the head of mission—rather than a political body—have final responsibility for the content of all reports. The temptation to swerve from these principles can be great when under political pressure, as policymakers face a tradeoff between adherence to the methodology and the desire to retain broad-based support for election observation activities. Russia is not alone in exerting such pressure; in 2019, for example, Ukraine requested that the ODIHR mission not allow any Russian short-term observers (STOs). Yet, as one former Deputy Director expressed, “ODIHR must consider the long-term consequences of giving in to political pressures.”

Ensure adequate and timely funding. Budget cuts and standoffs pose another longstanding challenge, with implications for ODIHR’s methodology and effectiveness; for example, ODIHR must frequently operate on monthly allotments whenever approval of the annual budget is delayed, and the practice of adhering to “zero nominal growth” in the OSCE budget has meant the de facto whittling down of funding for election observation over time. Nevertheless, ODIHR staff emphasize the importance of the existing funding model—whereby core missions are funded only through the OSCE’s main budget, as approved by all participating States—for their legitimacy and impartiality. Talk of moving toward a different model, whereby EOMs would be funded in part through extrabudgetary contributions from a subset of participating States, should be treated with caution. Moving in this direction would allow less supportive states to dismiss ODIHR EOMs as reflecting the interests of particular governments rather than the commitments of the Organization as a whole. At present, the OSCE’s Unified Budget process is paralyzed, meaning that ODIHR faces strong pressure to move toward a different funding model. At a minimum, stakeholders should work to ensure that any alternative budgetary arrangements include buy-ins from supportive CIS member states rather than relying on funding from EU or North American participating States alone.

Participating States should step up their support. It is not unusual for ODIHR EOMs to suffer a shortage of seconded observers, particularly for missions in EU member states and the United States, which may be (wrongly) perceived as less important to ODIHR’s mandate. Western participating States should respond generously to requests for seconded observers and ensure that domestic regulations allow them to fund observers even in advanced economies that do not qualify for development assistance. A positive milestone in this regard is Hungary’s 2022
election, in which a full EOM was both accepted by the Hungarian government and robustly supported by a large cohort of OSCE participating States.50

Lead by example. Another welcome step would be for all participating States to lead by example, by engaging seriously and publicly with the recommendations of the ODIHR election missions that they themselves host, a point emphasized by civil society groups.51 In 2016, ODIHR published a Handbook on the Follow-up of Electoral Recommendations,52 but practices continue to vary among governments in terms of how thoroughly they implement EOM recommendations. Improvement and greater consistency in this regard would help to counter claims of double standards among states “west of Vienna.”

Enhance the relevance of ODIHR EOMs through (informal) linkages with other international organizations and influential states. One reason for the continued willingness of less democratic governments to host ODIHR missions is that other key international players, including the EU, expect it. There may even be demand among international donors and investors, who regard the hosting of ODIHR EOMs as a signal of policy stability.53 For ODIHR, then, its continued relevance is enhanced by this broader legitimacy and the use of its reports by other international actors. ODIHR should take all possible steps to ensure that its conclusions are well publicized, that its statements are differentiated from other “shadow” observation missions, and that it continues to be widely regarded as the gold standard in election observation.

Notes

1. CSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen: June 29, 1990), https://www.osce.org/odihr/elections/14304
7. As of 2022.
10. International Crisis Group, “Seven Priorities for Preserving the OSCE in a Time
of War,” Special Briefing no. 9, November 29, 2022, https://www.crisisgroup.org/global/sb009-seven-priorities-preserving-osce-time-war


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Ghebali, cited above (Note 14), 385.

Fawn, cited above (Note 2), 1146.

Fawn, cited above (Note 2), 1140. The appeal was supported by all CIS mem-

bers except Georgia, Azerbaijan, Moldova, and Turkmenistan.


Fawn, cited above (Note 2), 1142–43; Hutcheson, cited above (Note 13), 692.

Dunay, cited above (Note 16), 58.


Interview with Nicolas Kaczorowski, November 22, 2022.


Marchesano, cited above (Note 15).

Hutcheson, cited above (Note 13), 693.

Eicher, cited above (Note 24).

Interview with ODIHR official, December 1, 2022.

Balian, cited above (Note 17), 174; Fawn, cited above (Note 2), 1136; Hutcheson, cited above (Note 13), 694.

Interviews with Douglas Wake, October 19, 2022; Nicolas Kaczorowski, cited
above (Note 26); Christian Strohal, October 25, 2022; and an ODIHR official, cited above (Note 31).

34 These handbooks can be accessed at: https://www.osce.org/odihr/elections/handbooks


36 Interview with Katarzyna Gardapkhadze, December 20, 2022.

37 Interview with Nicolas Kaczorowski, cited above (Note 26).


39 Interview with Nicolas Kaczorowski, cited above (Note 26).

40 Bader, cited above (Note 38), 14–15.


44 Although they are former Soviet republics, I consider the Baltic states EU members for the purposes of this analysis.

45 Fawn, cited above (Note 2), 1142.


47 Interview with Christian Strohal, cited above (Note 33).

48 Gray, cited above (Note 9).

49 Interview with Katarzyna Gardapkhadze, cited above (Note 36).

50 Interview with ODIHR official, cited above (Note 31).


53 Interview with ODIHR official, cited above (Note 31).
Confidence Building in the Shadow of War: Moldova, Transdniestria, and the Uncertain Future of the 5+2 Process

Nadja Douglas and Stefan Wolff*

Abstract
Prior to the start of the full-scale war in Ukraine in February 2022, the Transdniestrian conflict was stable, with no serious risk of violent escalation. Since the invasion of Ukraine, however, the situation has become more volatile, both in Moldova itself and in relations between Chisinau and Tiraspol. While it has always been important to work on maintaining confidence in this highly volatile situation, we argue that opportunities for intensified confidence building have arisen, including the exploration of new formats in the context of Moldova’s EU accession process. Crucially, the OSCE’s experience in confidence building remains relevant in this regard, and the Organization has retained its importance as a facilitator of the settlement process.

Keywords
OSCE, Moldova, Transdniestrian conflict, confidence building


Introduction

Although Moldova and Transdniestria have received an unusual amount of attention of late, the Transdniestrian conflict remains in the shadow of the war in Ukraine. However, geographical proximity alone suggests that the latter will have far-reaching implications for the former. Since February 2022, almost half a million Ukrainian refugees have crossed the Moldovan border, and some 100,000 have remained in Moldova. The Russian military presence in Transdniestria has been a source of insecurity and uncertainty for both Ukraine and Moldova. The same goes for the de facto authorities in Tiraspol, who are under increasing pressure from Russia, their belligerent patron, whose ultimate intentions remain opaque and unpredictable. What is more, Tiraspol is increasingly at odds with its direct neighbors in Chisinau and

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Kyiv, both of which have moved with great speed and determination towards the European Union since June 2022. In light of this, since July 2022 the Transdniestrian leadership has sought to obtain formal security guarantees from international partners in the OSCE-guided “5+2 format.” These efforts on the part of the de facto leader of Transdniestria, Vadim Krasnoselsky, were met with astonishment by local and international observers. Chisinau refrained from responding to Tiraspol’s approach, which reflects a general hardening of Moldova’s and its allies’ positions in the 5+2 format and raises important questions about the prospects of further confidence-building measures (CBMs) in this conflict.

While Moldovan President Maia Sandu and the government’s Bureau of Reintegration have officially stated that negotiations that touch on the status question are impossible at this stage, discussions among Moldovan stakeholders have continued behind the scenes. With a view to preventing Moldova’s and Transdniestria’s being dragged into the Russian aggression against Ukraine, the Transdniestrian dossier has been placed higher on the Moldovan agenda: the Bureau of Reintegration has been restructured, and Deputy Prime Minister for Reintegration Oleg Serebrian has publicly announced the preparation of a new reintegration plan for Transdniestria. Moreover, government officials have avoided using the term “special status,” and neither it nor the 5+2 format was mentioned in the government program presented by Prime Minister Dorin Recean on February 16, 2023. Instead, the 2005 law on Transdniestria’s special legal status, which treats Transdniestria as a sum of localities and does not oblige the government to negotiate a special status for the region in its entirety, has become a more frequent reference point. Along the same lines, in early February 2023 the Moldovan parliament passed a bill prohibiting actions aimed at separating any part of the territory of the Republic of Moldova or the distribution of information inciting such an offence. One month later, it also passed a law requiring that the country’s language be referred to as Romanian rather than Moldovan in all legislative texts. In March, in a move ostensibly meant to criticize Moldova for its hesitant implementation of policies, the secretary of the Ukrainian national Security Council revealed that the Moldovan government was pursuing a seven-year plan to reintegrate Transdniestria.

At the same time, the direct and indirect consequences of the war have meant that socio-economic aspects also remain important. Refugees, the rising cost of food and energy, energy insecurity, the potential disruption of trade with the EU (Transdniestria’s largest export destination), and uncertainty about the continuation of Russian subsidies for Transdniestria have increased fears that a worsening humanitarian crisis could further exacerbate political tensions both within Moldova and between Moldova and Transdniestria.

The 5+2 settlement process has stagnated, continuously stabilizing a status quo that was effectively established three decades ago and has served the interests

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of political and business elites, organized crime networks, and many ordinary people on both sides of the Dniester River. The Russian invasion of Ukraine has made this status quo less feasible and desirable. With two participants now openly at war with each other, the OSCE-facilitated 5+2 format (and with it the 3+2 format) is now dysfunctional. Lines of communication—and thus incident prevention and management—have mostly been reduced to informal 1+1 contacts.\(^1\)

The developments since the end of February 2022 thus highlight the risks associated with an unresolved conflict. While a permanent negotiated political settlement of the Transdniestrian conflict will remain unlikely as long as the war in Ukraine continues, this does not mean that efforts to reach a settlement cannot begin before then. Past experience has shown that agreement on numerous issues has been possible for both sides. What enabled such agreements, and why have they not led to a political status settlement? We address these two questions in the remainder of this paper, following a brief discussion of how the different stakeholders in the conflict have understood and used confidence building in the past to further their respective interests. This will help to illustrate how these divergent understandings of and approaches to CBMs have led to agreements that have stabilized the status quo, albeit without effecting a negotiated conflict settlement. We then use these “lessons learned” to consider other relevant but thus far underappreciated factors that are needed for a potential settlement.

Divergent understandings of CBMs

Although there is consensus among stakeholders in the Transdniestrian conflict that the benefits of CBMs outweigh their potential costs,\(^16\) there remains (at times significant) disagreement concerning the purposes and objectives of CBMs.\(^17\) The term CBM covers a wide range of donor activities, including many that are geared more towards development co-operation than conflict settlement. The mediators/guarantors and observers in the 5+2 format initially had long-term goals in mind, but due to a difficult negotiation climate they now view CBMs as a chance to prepare the ground for further progress towards a final status settlement.\(^18\) The EU has pursued a well-established policy of “engagement without recognition,” using CBMs to manage the situation on the ground and to improve their image vis-à-vis the conflict parties.\(^19\) What is called “confidence building” has become disconnected from the political endgame of the negotiation process: the once promising “small steps approach,”\(^20\) for example, has become a box-ticking exercise for donors.\(^21\)

Moldova’s main motivation for engaging in CBMs is to maintain political, economic, and social links with the Transdniestrian population and authorities and to keep Transdniestria “in the Moldovan reality.”\(^22\) Moldovan public opinion is generally more skeptical about CBMs, dismissing them as unwanted and unwarranted concessions\(^23\) and thus tainting the public image of those who agreed to them.\(^24\) In addition, these concessions
are perceived as a future vulnerability for Moldova.²⁵

From Transdniestria’s point of view, CBMs are an important element of maintaining a system of stability and security that includes both economic and humanitarian aspects.²⁶ While Tiraspol welcomes EU-sponsored assistance and development projects in particular, it shares the opinion that CBMs are often used for image cultivation and that certain measures are falsely labeled as CBMs. For example, the Transdniestrian authorities view many EU-supported initiatives, notably the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM),²⁷ as making economic processes and border activities more transparent rather than as CBMs.²⁸

The impact that CBMs have had on the conduct (if not necessarily the outcome) of negotiations has not been negligible.²⁹ Much of the progress achieved in the 5+2 was based on the preparatory work of the working groups,³⁰ which are considered the essence of CBMs in the Transdniestrian context.³¹

Situational autonomy: The key lesson from past CBMs

It has long been maintained that constructive and productive negotiations in the Transdniestrian settlement process depend on the state of Russian-Western relations. While tensions in these relations have prevented an actual settlement to date, they have at the same time necessitated CBMs as a means of stabilizing a potentially volatile situation. After the war in Georgia in 2008, for example, the Meseberg process,³² though ultimately unsuccessful, laid the ground for the resurfacing of CBMs in the economic arena by the mid-2010s. This occurred despite the deterioration of the relationship between Russia and the West after Moscow’s annexation of Crimea and proxy occupation of parts of the Donbas. It suggests that factors beyond the state of Russian-Western relations may play a role in determining whether negotiations will be successful in the Transdniestrian context.

Some notable albeit relative successes were achieved in the period after 2012. These include the agreement on the agenda and on the principles and procedures of the 5+2 talks in April 2012 under the Irish OSCE Chairpersonship,³³ the inclusion of Transdniestria in the Deep and Comprehensive Free Trade Agreement (DCFTA) as of January 1, 2016,³⁴ the Berlin Protocol of June 2016 under the German Chairpersonship,³⁵ and the “package of eight”/Berlin+ process that began in 2017 during the Austrian Chairpersonship.³⁶ In our view, what accounts for these successes is the degree of situational autonomy³⁷ that both sides enjoy in negotiations, as well as their will to use it. Conversely, a lack of situational autonomy (or a diminishing will to use it) accounts for the absence or non-implementation of similar agreements, especially from 2019 onwards.

To illustrate this point, the period between the resumption of formal 5+2 negotiations in June 2016 and the end of 2017 saw substantial progress. Not only was the negotiation process...
reinvigorated, but it also produced concrete outcomes. The more substantial progress in 2017 compared to 2016 suggests that both sides perceived and made use of significant situational autonomy. This change largely had to do with the fact that by the end of 2016, the political situation in both Chisinau and Tiraspol had turned in Moscow’s favor. Long-time Moscow ally Igor Dodon had defeated pro-Western Maia Sandu in Moldova’s presidential elections, and Vadim Krasnoselsky had won the de facto presidency in Transdniestria for Obnovlenie, a political party that was closely affiliated with the Sheriff business conglomerate. 38

The 2017 Austrian Chairpersonship emphasized both the full implementation of the unresolved issues of the June 2016 Berlin agreement and the inclusion of the other three issues that had long remained unresolved, 39 among them the re-opening of the Gura Bicului-Bychok Bridge after twenty-six years. 40

Despite a continuing high level of activity, progress was more modest in 2018 under the Italian OSCE Chairpersonship. Seventy-two Working Group meetings (including a revival of the Human Rights sub-Working Group, which had not met for almost five years) and a record number of direct meetings between the two Chief Negotiators reflected a new commitment to achieving viable agreements and following through on their implementation. Yet, two of the measures in the “package of eight” were still awaiting full implementation by the end of 2018. 41

The negotiation process began to stall from 2019 onwards. The constitutional crisis in Moldova in the summer of 2019 led to the appointment of Maia Sandu as prime minister and to a brief period of cohabitation between Sandu and Dodon until November 2019, when Sandu lost a confidence vote in the Moldovan parliament. Both Russia and the West supported this arrangement, but Russian support significantly cooled when then Prime Minister Sandu announced that federalization as a solution to the conflict was unacceptable to the people of Moldova and vowed to co-operate more closely with Ukraine on interrupting the flow of illicit revenues into the Transdniestrian region. Against this background, the last meeting of the 5+2 took place in Bratislava on October 9 and 10, 2019, ending without the adoption of a new protocol. 42

Not only had the situational autonomy of Transdniestria decreased as Russia was pondering the consequences of the cohabitation arrangement in Chisinau, but so had both sides’ willingness to make the compromises necessary to conclude a Bratislava protocol.

The subsequent disruption caused by the pandemic in 2020 and 2021, the changing of the presidency (and subsequently the government) in Chisinau in the same period, the escalating crisis in and around Ukraine in the course of 2021, and the Russian invasion of February 2022 caused the 5+2 process to fall back into dormancy. No further official meetings have taken place since October 2019, and the prospects of resuming the 5+2 format remain bleak. This raises the question whether alternative formats for status negotiations might find greater success.
Confidence building as a catalyst for conflict settlement?

One important lesson from the period from 2016 to 2018 was that a higher degree of situational autonomy brought more vigor to the negotiation process and allowed both sides not only to achieve negotiated outcomes but also to make progress towards their subsequent implementation.

For Transdniestria, the ability to exercise greater situational autonomy was essential to maintaining regime stability, which was at stake due to ever-decreasing Russian subsidies and the growing importance of the EU market (and the Moldovan and Ukrainian markets that were linked to it via the Association Agreements and associated DCFTAs). Russian signals that Moscow would accept a stabilization of the status quo provided an opportunity for the Transdniestrian leadership to negotiate and reach agreements on socio-economic issues while avoiding commitments on status issues.

Nonetheless, Russia’s war against Ukraine has put the Transdniestrian leadership under renewed pressure from three directions. First, Transdniestria’s patron state, Russia, is clearly in a weaker position, which raises questions regarding its ability to prop up the regime in Tiraspol. Second, some fear that Russia could use its remaining influence in the de facto state and with players in Moldova to widen the war in Ukraine. And third, the Transdniestrian leadership is also concerned that Moldova and its Western allies could enforce a violent reintegration of Transdniestria.

Ultimately, Moldova’s accession to the EU will depend on resolving the conflict, but the example of Cyprus is a vivid reminder of the weak position that de facto entities occupy in this process. Each step that Chisinau takes towards membership decreases Tiraspol’s chances of achieving a meaningful special status arrangement. All of this explains Tiraspol’s push for “official” negotiations—despite the war and, if need be, outside the 5+2 framework. This is likely to increase Transdniestria’s willingness and ability to compromise. The Moldovan government could carefully explore this in the context of the current dialogue at the 1+1 and working group levels, especially in relation to whether the red lines that both sides have drawn regarding status issues—the 2005 law and the 2006 independence referendum—have become more malleable.

For Moldova, things were and remain somewhat more complex. During the period from 2016 to 2018, the government took a largely pragmatic give-and-take approach to the Transdniestrian issue. However, domestic obstacles prevented greater and faster progress towards reasonable negotiation outcomes. Moldova is currently refusing to engage in negotiations due to the war and the impossibility of convening a 5+2 meeting. In view of current Russian setbacks in Ukraine, Chisinau feels empowered, claiming that, thanks to the war, it has come closer to the goal of reintegration than ever before, having welded together populations on the left and the right bank. Moldova’s
self-confidence can be explained by a combination of factors: 90 percent of the Transdniestrian population have supposedly attained Moldovan citizenship, its EU candidate status has provided for a new foreign policy impetus, and the need to adopt the EU’s *acquis communautaire* has given it an opportunity to pressure Transdniestria to do the same. This poses an existential threat to the survival of the current regime in Tiraspol, unless it manages to obtain some form of special status, for example something similar to the “opt-out” enjoyed by Greenland as part of the Kingdom of Denmark but not the EU.

Russia has officially adhered to its role as mediator and guarantor state in the conflict settlement process. However, it has become clear that its capacity to sustain Transdniestria, in particular in economic terms, will not last forever. Transdniestria nevertheless remains a strategic asset, especially for the projection of Russian interests in the region. In the context of the war in Ukraine, these interests appear to include the destabilization of Moldova, potentially by leveraging its influence in and over Transdniestria. By vetoing the extension of the mandate of the OSCE Mission to Moldova and limiting it to six months, the Russian Federation deliberately put the long-term work of the Mission at risk in order to secure a bargaining chip for future negotiations. By vetoing the extension of the mandate of the OSCE Mission to Moldova and limiting it to six months, the Russian Federation deliberately put the long-term work of the Mission at risk in order to secure a bargaining chip for future negotiations.

The state of Russian-Western relations partly explains the failure to reach a sustainable political status settlement thus far. However, there are other factors that made agreements and pragmatic solutions possible in the past whenever the circumstances required them and whenever the conflict parties enjoyed a reasonable degree of situational autonomy. In each case, confidence was a pivotal prerequisite. Equally important is the traditionally significant part played by Romania (often in its function as an extended arm of the EU) in Moldovan affairs, as well as the growing role played by Ukraine. As a result of the war, Moldova and Ukraine have witnessed a conflation of interests due to their common experience of Russian occupation and their shared goal of EU accession. With regard to Transdniestria and the negotiation process, Kyiv has recently become more vocal in pushing Moldova to accelerate the reintegration process. Given Ukraine’s experience in the Donbas region, Kyiv remains skeptical of any solutions that would grant a high degree of autonomy to Transdniestria and has pressed for the withdrawal of Russian troops from the common border. From Ukraine’s perspective, it is only a matter of time until Moscow uses its remaining forces in Transdniestria for further destabilization measures.

At the same time, confidence-building processes have been slow—in part due to the complexity of the issues at stake and the high degree of emotional investment on both sides. Overall progress notwithstanding, its slow pace and the significant outside assistance with which it has been achieved reflect a persistent volatility. Building confidence is a difficult undertaking that requires careful management, including of expectations. With that said, the negotiations between...
the parties, however slow and minimal in terms of their actual contribution to a settlement, have helped negotiators on both sides to build mutual respect and, arguably, a certain level of trust. A good example of this is agreement on issues of mutual interest, for example in the sphere of ecology.

Confidence-maintaining measures are needed between Chisinau and Tiraspol and between both sides and their Western partners, including planning for a likely humanitarian crisis in Transdniestria and acceptance of the need for its joint mitigation. In addition, both sides and their Western partners need to start planning for when the war in Ukraine ends. They need to consider and prepare for alternatives to the current negotiation formats and settlement plans. What both sides (and the region as a whole) need most right now is stability, but effort must also be put into ensuring that the stabilization of the current situation—politically, economically, and militarily—will not create barriers to moving beyond the current status quo, towards a long-term sustainable settlement. There is no guarantee that confidence-maintaining and confidence-building measures will be an effective catalyst for a sustainable final status settlement, but the track record of such measures over the past decade leaves little doubt that without them a negotiated settlement will be impossible.

**Recommendations: Moving towards a new phase of confidence building**

Russia’s war of aggression has opened up new possibilities for Moldova and Transdniestria. Moldova’s EU candidate status has bolstered the government’s pro-European course, giving rise to a different dynamic in the settlement process. On the Transdniestrian side, despite the public rhetoric, the interests of the region’s elites are also likely to shift further towards the EU and away from a substantially weakened Russia. Thus, Moscow’s veto power may become weaker in the long run, which could open a window of opportunity for renewed rapprochement. Even if this were to pave the way for status negotiations outside the 5+2, it would not eliminate the OSCE’s importance as a facilitator and mediator—the Organization has the experience and, crucially, the network of contacts on both sides needed to facilitate constructive and meaningful re-engagement. Above all, the OSCE’s continued efforts will be needed to prevent the destabilization of the current situation, which would only serve Russian interests. The projected EU Common Security and Defence Policy (CSDP) mission could contribute by working with Moldovan society to play a more constructive role with regard to a negotiated solution to the conflict and the ensuing reintegration process. Importantly, however, it should avoid duplicating OSCE efforts and competing with the long-standing local Mission.
To make the most of this window of opportunity, Chisinau and Tiraspol should pursue the following strategies:

**Consider alternative dialogue formats.**
Togethe...r the current 1+1 engagement, for example between private sector actors.

**Set up an additional working group.**
Both sides should participate in constructive dialogue, perhaps under the auspices of an additional working group set up within the Moldova Support Conference framework led by Germany, France, and Romania and supported by a further thirty-three countries, the EU, the European Investment Bank, the European Bank for Reconstruction and Development, the International Organization for Migration, the OSCE, the United Nations Development Programme, the United Nations High Commissioner for Refugees, and the World Bank.

**Refrain from setting preconditions.**
Moldova and Transdniestrria should avoid putting preconditions on further engagement and should instead make use of the good offices of the OSCE Mission and/or the Chairperson-in-Office’s Special Representative for the Transdniestrrian Settlement Process.

**Revive past proposals.**
The OSCE should revive past proposals concerning confidence- and security-building measures, such as the organization of joint training sessions for Moldovan and Transdniestrrian civil protection contingents in the field of civilian emergency support and relief, as well as the introduction of early warning and risk reduction measures that contain consultation, notification, and observation mechanisms with regard to emergencies in the region.

**Create a system of guarantees.**
The parties should draw on the wider experience of the OSCE region to work out a system of guarantees to assure both sides that any future settlement agreement will be implemented, including by elaborating the roles played by, and rules of engagement for, external actors. Potential examples include the Åland Islands, South Tyrol, and Northern Ireland, as well as the many bilateral minority treaties concluded since the 1990s and the 2+4 treaty on German reunification.

**Engage in technical consultations.**
Chisinau and Tiraspol should find ways to engage in more regular and productive consultations at the technical level (within and beyond the existing working groups), including regarding Moldova’s progress in the EU accession process.

**Establish communication channels.**
A further goal should be the establishment of clear and transparent communication channels through which Transdniestrrian officials can at least be kept informed of the legal and technical aspects of accession negotiations once they are underway.

**Adopt an integrated approach to EU accession and conflict settlement negotiations.**
Both parties should gradually move towards synchronized EU accession negotiations and conflict settlement negotiations to avoid mutual blockages. This should include, at the appropriate time,
direct high-level negotiations between the two sides.

Notes

1 Both authors are longtime observers of Moldova and the Transdniestrian conflict settlement process. They used standard ethnographic methods of data collection (interviews, direct and participant observation, document analysis) and process tracing as their main method of data analysis. Qualitative interviews with various stakeholders involved in the negotiation process were conducted on the ground and via email/VoIP between 2012 and 2022. The authors gratefully acknowledge the assistance provided by Iulia Cozacenco and Iulia Panici in Chisinau and Tiraspol.

2 Although “Transnistria” is a common English spelling, we use “Transdniestria,” which is the spelling used by the OSCE.


4 As of February 15, 2023, there were 109,410 Ukrainian refugees in Moldova. See the list (“Estimated Number of Refugees from Ukraine Recorded in Europe and Asia since February 2022”) provided by Statista at: https://www.statista.com/statistics/1312584/ukrainian-refugees-by-country/

5 The format consists of the two conflict parties plus the OSCE, Russia, and Ukraine as mediators and guarantors of a settlement. The EU and the United States were added as observers (+2) to the existing five-sided format in 2005. The mediators/guarantors and observers previously met separately in the so-called 3+2 format. Bilateral meetings between the chief negotiators of the two sides are commonly called 1+1 meetings.


7 For more background information on the origins of the conflict, see William H. Hill, Russia, the Near Abroad and the West: Lessons from the Moldova-Transdniestria Conflict (Washington, DC: Woodrow Wilson Center Press with Johns Hopkins University Press, 2012).

8 “Молдова рассматривает лишь мирный вариант урегулирования приднестровского конфликта – президент Майя Санду” [Moldova is considering only a peaceful settlement of the Transdniestrian conflict – President Maia Sandu] Infotag, Decem-
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9 “Biroul politici de reintegrare, restrukturat: Vor fi patru subdiviziuni” [Bureau of reintegration restructured: There will be four sub-departments] Stiri.md, December 26, 2022, https://stiri.md/article/social/biroul-politici-de-reintegrare-restructurat-vor-fi-patru-subdiviziuni


11 The Law of the Republic of Moldova of July 22, 2005, No. 173-XVI, “About basic provisions of special legal status of settlements of left bank of Dniester (Transnistria),” provides for the region’s reintegratio into Moldova following its democratization and demilitarization. The law treats the territory as the sum of its local communities rather than an entity of its own. It provides for a “special status” compatible with the Moldovan constitution, with the competences of legislative and executive structures to be established through negotiations between the two sides and guaranteed internationally. For the text of the law, see https://cis-legislation.com/document.fwx?rgn=1835

6. See also Vladimir Socor, “Moldova Extricates from Russian-Dominated Pro-
This notwithstanding, the Guide defines CBMs as “actions or processes undertaken in all phases of the conflict cycle and across the three dimensions of security in political, economic, environmental, social or cultural fields with the aim of increasing transparency and the level of trust and confidence between two or more conflicting parties to prevent inter-State and/or intra-State conflicts from emerging, or (re-) escalating and to pave the way for lasting conflict settlement.” See OSCE, OSCE Guide on Non-military Confidence-Building Measures (Vienna: 2012), 9, https://www.osce.org/files/f/documents/6/0/91082.pdf.

An initially promising approach that has been applied in the Transdniester settlement process was the idea that small steps are a necessary means of fostering an improved political climate and of leading to further steps, agreements, and ultimately co-operative relations. As small steps, CBMs are undertaken to change the climate in which more complex and fundamental issues can be negotiated. They should come both from the bottom up and from the top down, and it is commonly thought that the former can stimulate the latter. See Walter Kemp, Ian Hrovatin, and David Muckenhuber, From Confidence Tricks to Confidence Building: Resolving Conflict in the OSCE Area (Vienna: International Peace Institute, May 2011), https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_building_confidence.pdf.

The sectoral or expert working groups were established following the signing of a memorandum of understanding between Moldova and Transdniestraria on social and economic co-operation in 1997 and were confirmed by Government Decision No. 1178 of October 2007. See Marius Spechea, “The Sectoral Working Groups: Innovation and Efficiency in Transnistrian Settlement,” Studia Securitatis, no. 2 (2017): 150. The working groups consist of sectoral specialists (usually five to eight from each side) working in the Moldovan government or its agencies on one side of the table and for the Tiraspol authorities on the other.
They are usually co-chaired by deputy ministers from the Moldovan side and by “ministers” from the Transdniestrian side.

Interview with senior Moldovan foreign ministry official, Chisinau, September 2019; interview with former senior OSCE official, Vienna, July 2016; interviews with senior OSCE official, Chisinau, November 2018 and August 2019; interview with senior Austrian diplomat, Vienna, July 2018.

The Meseberg process and “Memorandum” initiated the establishment of an EU-Russian dialogue at the foreign minister level and of EU-Russian co-operation on crisis management.

In the framework of the 5+2 format, and as part of the Document on Principles and Procedures for the Conduct of Negotiations, it was agreed that issues related to the Transdniestrian conflict would be grouped into three baskets: 1) socio-economic aspects, 2) humanitarian and human rights issues, and 3) political settlement of the conflict and security issues; see OSCE, “OSCE Chairmanship Welcomes Agreement on Principles and Procedures, Agenda in Transdniestrian Settlement Talks,” April 18, 2012, https://www.osce.org/cio/89752


Situational autonomy is the degree of freedom that the sides have (granted by their respective patrons) to conclude agreements with each other. This depends on several other factors, including how patrons judge their side’s reliability with regard to refraining from concluding agreements that would be detrimental to their own interests.

Interview with senior Austrian diplomat, July 2018. The oligarchic structures in both Tiraspol and Chisinau (where the notionally pro-European government coalition was “co-ordinated” by Vlad Plahotniuc) also enabled the kinds of transactional deals that stabilized the status quo without threatening their respective regimes. Online interview with senior EU advisor, November 2022.


For more background information, see OSCE, “Confidence-Building Measures,” https://www.osce.org/mission-to-moldova/391502


On September 17, 2006, 98 percent of participants in the referendum answered “yes” to the question “Do you support the course for the independence of Transnistria and subsequent free integration/association of Transnistria with Russia?” See Marcin Kosienkowski, “The 2006 Sovereignty Referendum in Transnistria: A Device for Electoral Advantage,” Ethnopolitics 21, no. 5 (2022): 496–516.

Evgenii Cheban, “‘Мы будем говорить о статусе Приднестровья, а не о статусе Молдовы’. Интервью НМ с Олегом Серебряном” [“We will talk about the status of Transnistria, and not about the status of Moldova”: NM interview with Oleg Serebrian] NewsMaker, September 12, 2022, https://newsmaker.md/rus/mybudem-govorit-ostatuse-pridnestrovy-a-neostatuse-moldovy-intervyu-nmsolegom-serebryanom/


Vypritskikh, cited above (Note 14).

Vypritskikh, cited above (Note 14).