

Institute for Peace Research and Security Policy  
at the University of Hamburg [ed.]

# OSCE Insights 2020

Corona, War, Leadership Crisis



**Nomos**



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Editor-in-Chief: Cornelius Friesendorf, IFSH

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# Introduction to OSCE Insights 2020: The OSCE in Crisis Mode

*Cornelius Friesendorf\**

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This is the first volume of OSCE Insights, the new publication series of the Centre for OSCE Research (CORE), Institute for Peace Research and Security Policy at the University of Hamburg (IFSH). As the successor to the OSCE Yearbook, published by the IFSH from 1995 to 2019, OSCE Insights focuses on OSCE-relevant topics in all three dimensions, including conflict management, human rights, security sector governance and reform, arms control and military confidence-and security-building measures (CSBMs), environmental protection, and economic connectivity. We also analyse changes to the OSCE's structure and participating States' interests in, and policies towards, the organization.

OSCE Insights presents policy papers written by scholars and policy analysts and by OSCE and government officials. By making research findings more accessible to decision-makers and practitioners, and by offering actionable recommendations, the series contributes to the

OSCE's aim of promoting comprehensive, cooperative, equal, and indivisible security.

All papers are published in English, Russian, and German. They are made available online throughout the year in an open-access format in the e-library of our publisher, Nomos, and on the IFSH website. In addition, all contributions are published in an annual print edition – also in English, Russian, and German – at the beginning of each year. Double-blind peer review and stringent editing ensure that the reader receives reliable up-to-date information presented in non-bureaucratic language.

This first volume of OSCE Insights focuses on crises. Its subtitle – “Corona, War, Leadership Crisis” – highlights three crises that impacted the OSCE in 2020. First, the global coronavirus pandemic affected the day-to-day operations of the OSCE and forced it to conduct its activities online. The lack of face-to-face interaction has been detrimental to the OSCE, which relies heavily on diplomacy conducted in person, often in informal settings. Second, the conflict between Armenia and Azerbaijan once again escalated to full-blown war, fundamental-

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\* Dr habil. Cornelius Friesendorf  
Institute for Peace Research and Security  
Policy at the University of Hamburg (IFSH)  
[friesendorf@ifsh.de](mailto:friesendorf@ifsh.de)

ly changing the distribution of power around the disputed territory of Nagorno Karabakh. Meanwhile, the war in Eastern Ukraine continued to kill and maim. Third, in perhaps the most dramatic institutional crisis in OSCE history, the four leadership positions of the Secretariat, the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, and the Representative on Freedom of the Media were vacant for months after several participating States chose not to endorse the extension of the incumbents' mandates due to parochialism, misgivings about being criticized by OSCE institutions, and miscalculation.

The contributions to the 2020 edition of OSCE Insights analyse different types of crises. A first group of papers examine the difficulties of translating OSCE commitments into action and failures to make systematic use of existing OSCE instruments.

In the first contribution, I look at the challenges of providing OSCE support to democratic policing in Central Asia. Governments are keen to receive technical law enforcement aid and invite or tolerate efforts to improve local initiatives to enhance human security, but critical police oversight (such as oversight by civil society) meets continued resistance from Central Asian governments (and from Russia) as liberal models of security sector governance and reform threaten patronal logics. The adaptation of OSCE field operations to host state priorities is in line with the OSCE principle of national ownership but risks reinforcing authoritarianism.

Andrew Baker discusses another area in which the implementation of OSCE commitments has been problematic: the fight against antisemitism. Baker documents the uneven protection that governments in the OSCE area afford to Jewish communities, even though these communities face high risks. Baker points to the OSCE's mixed record with regard to adopting and implementing a comprehensive definition of antisemitism and shows how the consensus principle and personnel changes at the OSCE have compromised the organization's ability to take swift and decisive action against it.

Michael Raith demonstrates that the OSCE has a broad range of conflict management tools that are vital both to preventing and resolving violent conflict and to supporting states and societies once the fighting has ended. However, the OSCE has had difficulty making full use of these tools, not least because of funding shortages and a lack of interest on the part of participating States. Raith's findings suggest that even small additional investments, such as increasing staff in the Situation/Communications Room of the Conflict Prevention Centre, could make a difference in crucial areas, such as early warning.

Sebastian Mayer's analysis of Kazakhstan's ambitions to host an OSCE centre on connectivity reveals the extent to which states are increasingly contesting OSCE commitments, particularly in the third, human dimension. The *à la carte* approach favoured by Kazakhstan raises questions about the future of the human dimension, and thus about the concept

of comprehensive security and, by extension, the OSCE as a whole. Kazakhstan's demands indicate power shifts within the OSCE area – with many participating States no longer accepting the role of norm-taker – and the failure of teleological models of democratization.

Contributions 5, 6, and 9 also identify challenges to OSCE commitments and participating States that are not fully exploiting the potential of the OSCE. Alexander Lambert, Filip Ejodus, and Thomas Schmidt examine domestic deployments of military forces in the OSCE area in efforts to cope with the coronavirus pandemic. They use the 1994 OSCE Code of Conduct on Politico-Military Aspects of Security as a benchmark for judging the appropriateness of internal military roles during the crisis. While states have generally complied with the Code, the authors also showcase problems, including military activities that raise questions about necessity, proportionality, and non-discrimination.

The war between Armenia and Azerbaijan over Nagorno Karabakh in autumn 2020, analysed by Philip Remler, Richard Giragosian, Marina Lorenzini, and Sergej Rastoltsev, constituted a violation of a central OSCE principle: the non-use of force in settling disputes. The authors also show that before and during the war, the OSCE Minsk Group, as the main international negotiation format for reaching a peaceful resolution to the Karabakh conflict, was sidelined.

Frank Evers, André Härtel, and Marietta König discuss cooperation between the OSCE and the Council of Europe. Their overlapping and complementary

functions and the fact that they are both affected by the crisis of multilateralism make these two organizations natural partners. However, senior-level meetings take place infrequently and in a ritualized way, and the field presences of the two organizations do not cooperate with one another systematically.

Another group of papers in OSCE Insights 2020 reveals the starkly opposed positions of participating States that have stymied efforts to build trust and settle conflicts peacefully. Philip Remler and his co-authors argue that the Co-Chairs of the Minsk Group were unable to engage effectively in negotiating peace because of the intransigent and incompatible positions held by Armenia and Azerbaijan, the leaders of which had voiced maximalist demands for so long that their domestic constituents were not ready to accept compromises.

Benjamin Schaller shows that, at the working level, arms control units from different states continue to implement CSBMs effectively. Nevertheless, these positive transnational relations are insufficient for building trust between Russia and Western states at the political level.

Focusing on societal narratives on the war in Eastern Ukraine, Cécile Druey, Anna Hess, Julia Kaplan, and Valentina Cherevatenko present empirical research findings that will be sobering to those who assume that, while political leaders may seek war, societies seek peace. Their contribution shows that the positions held by interviewees in Ukraine and Russia on the Minsk Process and the key issue of how and whether to restore Ukrainian statehood in non-government-

tal controlled areas are largely identical to the official positions of the warring sides.

Of course, there is also hope among the bleakness. The OSCE has always been a club of non-likeminded states; labelling 2020 as the worst year in the organization's history glosses over the many stormy periods the OSCE has weathered since the 1990 Charter of Paris. In fact, the OSCE has shown resilience as an organization in 2020, and its commitments, though often violated, remain essential to regulating conduct within and between states. All of the authors in this volume highlight opportunities for more sustainable and equitable OSCE activities.

Regarding Central Asia, I argue that OSCE activities can bring concrete benefits to local populations even if they do not change domestic distributions of power. Baker's and Raith's reports identify further political support and resources as key conditions for improving compliance with OSCE commitments (Baker) and the OSCE's ability to manage conflict (Raith). Evers et al. make practical recommendations for closer inter-organizational relations, including by creating space for informal interaction between senior representatives of the OSCE and the Council of Europe. On Karabakh, Remler et al. argue that the Minsk Group could help to set up CSBMs, support negotiations on the future status of the disputed territory, and work towards a regional peace agreement. Schaller recommends that future CSBMs should pay more attention to multilateral verification and confidence-building (among other measures) on the political-strategic level. Applying negotiation theory, Druey

et al. move from comparing divergent positions to identifying underlying interests. The latter reveal commonalities that leave room for reaching a durable and peaceful solution to the violence in the Donbas.

Indeed, the 2020 Ministerial Council demonstrated that OSCE participating States have an interest in keeping the OSCE alive. Governments adopted decisions on issues on which there is relative consensus, such as the fight against organized crime, and even affirmed the continuing relevance of human rights norms and commitments, passing a decision on the prevention and eradication of torture. Most importantly, they filled the four top positions of the Secretariat and the institutions. At the same time, however, interpretative statements, especially those of the United States and Russia, indicate that powerful participating States hold very different views on the authority and policy priorities of the OSCE apparatus.

I am grateful to the many friends and colleagues who made it possible to produce OSCE Insights under the difficult conditions of 2020. The authors invested much time in writing the texts and revising them, sometimes enduring several rounds of revision. External reviewers responded quickly to our invitations to comment on texts and adapted their evaluation criteria to the expectations of our readers. Many thanks also go to the OSCE Insights team: Carolyn Benson, Ursula Froese, Alona Shestopalova, Caroline Taylor, and our translators and editors for the Russian and German language editions. The team also received support from other IFSH colleagues, es-

pecially Frank Evers, Britta Fisch, Alexandra Harm, Sonja Objartel, and Barbara Renne. Eva Lang and Martin Reichinger of Nomos never complained when we made adjustments to the proofs and accommodated our desire to see the papers online as soon as possible. The German Federal Foreign Office provided generous funding, as well as ideas and contacts. Special thanks go to Ursel Schlichting, who retired from the IFSH at the end of 2020. For over twenty years, she ensured that the OSCE Yearbook was a vital forum for OSCE debate. OSCE Insights will continue to build on this firm foundation.



# The OSCE in Central Asia: Debating Police-related Activities

*Cornelius Friesendorf\**

## *Abstract*

This contribution calls for a debate on the effects of OSCE police-related activities in Central Asia. Drawing on a typology of internationally-supported police aid, it outlines three questions that deserve more scrutiny by participating States and civil society: Is the OSCE able to support democratic police governance in Central Asia? To what extent can the OSCE help improve human security? What are the limitations and risks of law enforcement support? Tentative evidence suggests that the OSCE faces significant challenges in translating its commitment to democratic policing into practice in Central Asia, mainly due to resistance from Central Asian governments, but there are other significant factors, including law enforcement support from other international actors and institutional features of the OSCE such as short budget cycles that hamper strategic planning. This paper outlines how participating States that want the OSCE to support democratic policing can use opportunities, address limitations, and limit risks.

## *Keywords*

OSCE, Central Asia, police-related activities, democratic governance, human rights

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## **Introduction**

The OSCE is committed to democratic policing and has been conducting police-related activities for two decades.<sup>1</sup> Democratic policing requires accountability and oversight: police must be accountable to the law rather than to government, and outside bodies such as parliament and the media must be able to scrutinize the police. Democratic policing

also requires that police protect human rights and are responsive to the public's concerns.<sup>2</sup>

In practice, though, the OSCE is finding it increasingly difficult to strengthen police accountability. Shortly before losing his post as OSCE Secretary General in July 2020, Thomas Greminger stated that he was "concerned over the reduction of human rights and police accountability initiatives".<sup>3</sup> In Central Asia, the OSCE has faced some of its starkest challenges: Governments there seek law enforcement assistance, and welcome initiatives to make police more service-orient-

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\* Dr habil. Cornelius Friesendorf  
Institute for Peace Research and Security  
Policy at the University of Hamburg (IFSH)  
[friesendorf@ifsh.de](mailto:friesendorf@ifsh.de)

ed, but there is little appetite for democratic police governance.

This paper calls for a debate on OSCE police support to Central Asian states. The first section offers an overview of OSCE police-related activities, and the second describes policing practices and structures in Central Asia. Subsequently, the paper asks the following questions:

- Can the OSCE support democratic police governance in Central Asia?
- Can the OSCE support states in honouring their commitments in the human dimension?
- What are the limitations and risks of law enforcement support?

The analysis highlights numerous obstacles to democratic policing, and to security sector governance and reform (SSG/R) more generally. Most importantly, personalized politics in Central Asia stands in contrast to liberal democratic norms. Other obstacles include Russian opposition to democratization, Chinese and Western ‘train and equip’ programmes, and the OSCE’s scarce resources and short planning cycles. These factors limit the OSCE’s ability to implement its comprehensive security agenda, and they make foreign support to law enforcement risky for local populations.

The final section suggests how ‘liberal’ participating States can use opportunities and address the limitations and risks of police-related activities in Central Asia. These states should stimulate debate on policing, and proactively support democratic policing and civil society, as well as OSCE institutions, structures, and field operations, while limiting OSCE involve-

ment in law enforcement. Moreover, the OSCE should evaluate its practices more rigorously.

### **The OSCE and international police assistance**

The OSCE is a pioneer of democratic policing. Its 2008 Guidebook on Democratic Policing has become a reference document for police reform efforts around the world.<sup>4</sup> Numerous other documents also reflect the OSCE’s commitment on this issue.<sup>5</sup> A key agreement from 2012 states that police-related activities

shall be guided by the norms, principles and standards defined by documents of the United Nations and the OSCE, such as the Charter of the United Nations, relevant UN conventions on police-related activities, the Helsinki Final Act, the Copenhagen Document, and various OSCE decisions on police-related activities. These documents emphasize, *inter alia*, the importance of the rule of law; respect for human rights and fundamental freedoms, including gender and minority issues; police-public partnerships; [and] effective and accountable criminal justice systems.<sup>6</sup>

Police-related activities are primarily associated with the OSCE’s first (politi-co-military) dimension. However, they are also relevant for the second dimension (such as counter-corruption efforts) and the third (human rights-based polic-

ing). While the Permanent Council is the main decision-making body, activities are implemented by the OSCE executive structures: thematic units of the Secretariat, in particular the Strategic Police Matters Unit (SPMU) and the Border Security and Management Unit (BSMU), as well as the field operations. The OSCE institutions play a role, too: the Office for Democratic Institutions and Human Rights (ODIHR) aligns policing with human rights standards, while the High Commissioner on National Minorities (HCNM) has promoted multi-ethnic policing, and the Representative on Freedom of the Media (RFOM) free coverage of security affairs.

The first wave of OSCE police support activities focused on the Balkans. There, the OSCE has significantly contributed to democratizing the police since the early 2000s, benefiting from factors such as broad mandates, EU membership conditionality, and a permissive attitude towards democracy promotion among participating States.<sup>7</sup> Elsewhere in the OSCE area, conditions have been less permissive.

### Types of international police assistance

The OSCE divides its police-related activities into two pillars: “general police development and reform”, and “threats posed by criminal activity”.<sup>8</sup> But these categories do not distinguish between different degrees of support to police governance. This paper proposes an alternative typology that distinguishes between activities that emphasize:

- democratic police governance (type 1),
- better police protection of human rights (type 2), and
- stronger law enforcement (type 3).

These activity types vary in terms of their contribution to police oversight by external institutions such as parliament and civil society, which is important because internal oversight, by police superiors and the government, is often insufficient for addressing police misconduct. While external oversight is at the core of type 1 activities, it figures less prominently in type 2, and hardly plays a role in type 3.

International actors may aid *democratic police governance* by supporting changes to the police legal framework, such as when they help national lawmakers in drafting bills that give parliament a stronger role. Less ambitiously, international actors may train parliamentarians in how to use parliamentary powers, or focus on civil society, such as by training journalists. Foreign reformers may also sponsor platforms where state and civil society representatives discuss police reform.

International actors may improve *police protection of human security*, aiming to reduce police violence and corruption and thus increase protection *from* police, such as through anti-torture training. These activities also aim to improve police responses to issues such as domestic violence or human trafficking, i.e. increase protection *by* police. Type 2 activities involve pragmatic cooperation with the police, and fostering police-public interaction, through community policing

in particular. While community policing may include oversight, such as following up on how the police dealt with public complaints, it is less institutionalized than with type 1 activities.

International actors may *strengthen law enforcement* through training and material aid, aiming to bolster the coercive capacity of the state in technical areas such as criminal investigation and border management. Democratic governance does not feature prominently in these type 3 activities, which also tend to involve transnational police interaction rather than state-society interaction. The public may benefit, though, in that strengthening the state translates into better protection against third-party crime and violence.

These three types of international support all have merits, but they also have limitations and risks. The pros and cons of specific approaches depend significantly on the local context in which they are applied. Central Asia presents particular challenges in this regard.

### **Policing in Central Asia**

What constitutes democratic policing is controversial because underlying principles such as accountability require interpretation and are practised differently even across liberal democracies. Moreover, police misconduct is a problem across the OSCE area (as indicated, for example, by the Black Lives Matter protests in summer 2020). Nevertheless, democratic policing is more likely in more democratic states.

Central Asian states rank low on indices of human rights and democracy. Freedom House, measuring “global freedom scores” in terms of political rights and civil liberties, classifies Turkmenistan, Tajikistan, and Uzbekistan as “not free”, in fact ranking them among the world’s least free states; Kazakhstan is also “not free” and Kyrgyzstan “partly free”.<sup>9</sup> Methodological challenges and normative assumptions of such rankings notwithstanding, they help to understand non-democratic policing in Central Asia, which has been widely documented by international organizations, NGOs, and the media.<sup>10</sup>

Police misconduct has various causes, including institutional incentives driving the behaviour of police officers. Some Soviet-era systems remain in place, such as pressure on police to meet unrealistic crime-solving quotas, incentivizing violence against suspects and forcing confessions to achieve the numbers. Low salaries, equipment shortages, and family-unfriendly shifts for the rank and file also encourage police misconduct.<sup>11</sup> Political pressure plays a role too: governments use the police as a tool against the political opposition. While political leaders give the police some discretion to extract illicit rents in exchange for political loyalty, corruption pyramids mean the rank and file must share these rents with their superiors.

The overlapping powers of security agencies are also problematic, as indicated by the proliferation of special units. In Kyrgyzstan, the Ministry of Interior (MoI) has special units, as do the security service, the National Guard, and the bor-

der service.<sup>12</sup> In Uzbekistan, the National Guard was given roles in the fields of public order and counterterrorism.<sup>13</sup>

In this system, external oversight of the police is weak. Even when formal structures are in place, their practical role is often stymied by informal norms privileging presidential administrations, national security councils, and law enforcement agencies. Thus, Central Asian parliamentarians have, over recent years, shown little inclination to challenge the executive branch. In Kyrgyzstan, oversight by the Zhogorku Kenesh was “non-systemic, incomplete and inconsistent, while parliamentary oversight of security and law enforcement agencies is even more limited and episodic”.<sup>14</sup> MPs focused on low-level police misconduct rather than systematically improving police performance such as through post-legislative scrutiny.<sup>15</sup> There were reportedly no systemic requests for documents from the police by the Uzbek parliament, not least due to the absence of an opposition party, and human rights advocates found it difficult to interact with MPs.<sup>16</sup> The Tajik parliament largely rubber-stamped executive decisions, and MPs showed little inclination to discuss police violence, possibly because many of them were also connected to the security forces.<sup>17</sup>

Oversight by ombuds institutions was limited, too. The Kyrgyz ombuds office had significant powers and resources and investigated a large number of complaints. But there were doubts over the ombudsman’s independence, not least due to his former career in the intelligence services, and observers argued that parliament often ignored his recommen-

datations.<sup>18</sup> In addition, according to critics, the Uzbek and Tajik ombudspersons did not properly investigate complaints against the government and, in the case of Tajikistan, denied human rights violations.<sup>19</sup>

These conditions create opportunities but also limitations and risks for OSCE police-related activities. The following sections outline three questions that require debate.

### **Can the OSCE support democratic police governance in Central Asia?**

Supporting democratic police governance aims at transforming how state institutions interact with one another and with society, making it the most ambitious type of police-related activity. Because it is so ambitious, it may be too tall an order for the OSCE in Central Asia. In fact, there is little evidence of systematic OSCE support for democratic police governance in Central Asia.

In Kyrgyzstan, the government ended the OSCE Community Security Initiative (CSI) in 2016. This initiative, involving international police advisors, aimed at building trust between the police and the public and among ethnic Kyrgyz and Uzbek communities in the south, following inter-ethnic violence in 2010. During the early period of the CSI, the OSCE also provided vital support to police reform by facilitating discussions between the government and police reform experts from civil society.<sup>20</sup>

Subsequent activities have been less ambitious. The Programme Office in

Bishkek (POiB) continued to facilitate public council discussions but these produced what appeared to be rather moderate demands on the MoI. Tellingly, the POiB's main partner for discussing oversight was that ministry, with the POiB stating that it "supported the MoI with furthering the parliamentary and civilian oversight" of law enforcement reform.<sup>21</sup> The POiB also discussed SSG/R with the public administration academies of Central Asian states. But some Kyrgyz policing experts felt that the OSCE was too close to government and not sufficiently interacting with groups critical of the government, and that police reform was superficial.<sup>22</sup>

In Uzbekistan, President Shavkat Mirziyoyev sought a more active parliamentary role e.g. in budget oversight.<sup>23</sup> This opened up opportunities for ODIHR, and for the Project Co-ordinator in Uzbekistan (PCUz), who co-organized a conference on "the democratization of legislation and law enforcement practice" in Uzbekistan, among other initiatives.<sup>24</sup> But requests for technical police assistance outweighed requests for support on oversight, both from the OSCE and other international organizations.<sup>25</sup>

### Understanding the limitations of the OSCE

The preferences of the OSCE participating States' governments shape the OSCE's ability to support democratic policing. While the OSCE is more than an intergovernmental forum or instrument of states, it is a consensus-based

organization, and democratic police governance tends to run counter to the interests of Central Asian governments.

Resistance to democratic police governance is associated with domestic political logics. Henry Hale demonstrates how "patronal politics" based on personalized networks have dominated post-Soviet regimes, usually with presidents as their focal point, who are seen as being able to reward and punish individuals.<sup>26</sup> Members of dominant networks hold official positions, but these networks also reach into non-state sectors, defying the distinction between state and society upon which SSG/R is based. Oversight by state institutions such as parliament tends to be ineffective because elites do not challenge patrons as long as these elites regard the patrons as strong. Informal norms revolving around personal acquaintances dominate over beliefs in abstract principles; patronal systems thus show high levels of corruption and weak rule of law. Political dynamics, even the violent toppling of governments, should not be mistaken for democratization; rather, such dynamics mean that shifting elite expectations bring new patronal networks to power. International actors, according to Hale, lack the leverage and linkages to change patronal politics in the post-Soviet space.<sup>27</sup>

For liberals, this is a depressing perspective on the prospects for democratic police governance. Western governments may try to identify inroads for democratic governance and provide extra-budgetary (ExB) funding that does not require consensus among all participating States. Nevertheless, they face formidable

obstacles. A shift to effective control of the executive branch of government and its agencies would pose a challenge to dominant networks. Moreover, democratic police governance would require a strengthening of formal over informal norms, which is a slow, incremental process at best.

As early as 2005, one assessment stated that the “climate for SSR in Central Asia is weak as a consequence of both the global ‘war on terror’ and the nature of political regimes that prevail across the region. Weak legislatures and judiciaries, emasculated medias and low levels of civil society activity have only reinforced the conservativeness of the Central Asian regimes”.<sup>28</sup> Fifteen years later there was more rhetorical commitment to reform. Yet, police governance has not made great strides, supporting the view that patronalism is resilient.

### Controlling the OSCE

Central Asian states have various options for preventing OSCE activities they do not want. Most importantly, as members of the organization with equal rights, they not only host field operations but make decisions about them and control the wording of their mandates.

Mandates have become increasingly restrictive, as reflected in the revisions and modifications that also led to name changes: The OSCE Centre in Astana became the Programme Office in Astana in 2015. The OSCE Centre in Uzbekistan was transformed into the Office of the OSCE Project Co-ordinator in 2006.

The OSCE Centre in Bishkek was transformed into the OSCE POiB in 2016, and the field office in Osh was closed. The OSCE Programme Office in Dushanbe replaced the OSCE Office in 2017. Turkmenistan still has the OSCE Centre in Ashgabat, but it has a limited remit.

Central Asian governments not only control policy, but also its implementation. They give approval to activities, often down to the level of specific projects. They also issue interpretative statements that compel OSCE executive structures to only conduct activities explicitly covered by mandates, significantly limiting implementers’ autonomy. Russia, too, issues such interpretative statements.<sup>29</sup>

Governmental preferences also work indirectly: OSCE executive structures become risk averse. International staff at headquarters and in the field anticipate which activities Central Asian governments will endorse, and tend to err on the side of caution. Local field operations staff are exempt from rules prescribing maximum periods of employment. However, they have even more reason to be cautious than international staff. Legal protection by the OSCE, including tax exemption, is a perennial issue during negotiations of memoranda of understanding (MoUs) with host states; the OSCE’s weak legal status makes it difficult for the organization to exercise its duty of care.<sup>30</sup> Local staff also have few chances to progress within the OSCE (a “non-career organization”) and tend to keep an eye on the job market, including government jobs, reducing their incentives to advocate for politically risky governance initiatives.

Another institutional obstacle to pursuing long-term objectives such as better governance relates to funding. The OSCE budget cycle is usually one year, and much funding is provided through ExB projects trickling in over the course of the year. This militates against strategic planning and the pursuit of ambitious goals such as democratic governance. An assessment of the OSCE's SSG/R activities published in 2013 still rather accurately describes OSCE police-related activities in Central Asia:

Projects are often *ad hoc*, based on requests from participating States and immediately available expertise, and shaped by the priorities of individual states which contribute extrabudgetary funding and seconded personnel. Consequently, projects are often not inserted within a 'chain' of activities that aim to achieve a broad goal – thereby considerably reducing their impact.<sup>31</sup>

Field operations may indeed plan several years ahead. But uncertainties over the extension of the mandate, the risk that host states may no longer consent even to programmes laid out in MoUs, and possible funding shortages create uncertainty. Bureaucratically, it is therefore rational to plan for the short term.

If OSCE executive structures have little room for manoeuvre in promoting democratic police governance in Central Asia, what about efforts to improve police protection of human security?

## Can the OSCE help protect human security in Central Asia?

Human security – the freedom of individuals from fear and want – falls primarily into the human dimension. Type 2 activities tackling human trafficking, prison reform, and gender-based violence touch less on the core of statehood than democratic governance, and are therefore tolerated or even sought by authoritarian states who see opportunities to gain legitimacy. Moreover, these activities can be flexibly adapted to the local context, which dovetails with the consensus against cookie-cutter solutions within the SSG/R community. Type 2 activities such as community policing also tend to be inclusive and thus play to the OSCE's historical role of a convening power, creating forums where non-likeminded states or societal groups can find compromise solutions.

For these reasons, type 2 activities have made up a large part of OSCE police-related activities in Central Asia over recent years and were carefully tailored to government agendas. These included conferences, workshops, and roundtables, as well as training events, handbooks, awareness campaigns, and study trips for Central Asian officials.<sup>32</sup>

In Kyrgyzstan, the OSCE continued to support community policing after the end of the CSI by funding police vans (Mobile Police Reception vehicles) that facilitate police-public interaction in remote areas, and by supporting local public councils involved in the governance of this programme. The POiB also helped to improve road safety, provided training

in new criminal justice laws, supported torture prevention and the rights of victims of human trafficking, and helped to implement a code of conduct for police.

In recent years in Uzbekistan, the OSCE has supported the president's efforts to improve state services and to address egregious human rights violations. The prevention of torture has thus become an important part of the agenda of the PCUz and other OSCE executive structures.<sup>33</sup> Other activities covered human trafficking, and supported government efforts to create law enforcement media services and to address violent extremism and radicalization that lead to terrorism (VERLT).

Even in Tajikistan, the OSCE kept human security concerns on the agenda by organizing activities focusing on issues including gender-based violence, torture prevention, and juvenile justice, and promoted community policing by funding and equipping model police stations, training police in responding to public requests, and supporting public councils bringing together police and community representatives.

### Challenges in improving human security

Such activities provided real help to many people, as in Kyrgyzstan, where, according to the OSCE, many approached the OSCE-sponsored mobile police teams. However, empirical evidence and research findings from other fields raise questions as to whether the assumptions that seem to guide OSCE action are valid.

First, OSCE support to civil society suggests that the organization assumes civil society can be empowered, and that civil society participation will change police behaviour. However, there are various issues with civil society support, including power asymmetries. Central Asian public councils serving as platforms for discussion on police reform tend to be dominated by MoI officials and the security forces. In Tajikistan, one assessment called such councils "government-run".<sup>34</sup> Moreover, civil society members may not represent vulnerable groups. The way those who hold power, such as male elders, deal with domestic violence, for example, may not be in line with liberal norms. The term "civil society" also implies a clear distinction between state and society that patronal systems defy.

The possibility of changing police behaviour by changing their values is a second assumption that seems to guide OSCE efforts to improve human security; indeed the aspiration to change values has a long history in the CSCE/OSCE.<sup>35</sup> The hope is that by interacting with civil society and international experts who diffuse international norms and best practices, police can be socialized into norm-compliant behaviour. Unfortunately, organization theory questions the prospect of changing police values through one-off events. Organizational cultures and routines are slow to change since they are produced and reproduced as officers internalize organizational norms at a young age, as well as through hierarchies, training, and peer pressure.<sup>36</sup> Moreover, organizational be-

behaviour is shaped by politics. High-level corruption sends a signal that street-level corruption may be tolerated. Patronal networks are also likely to punish 'change agents' calling for deep reform.

A third assumption also seems to inform OSCE efforts: that small steps will develop their own dynamic. Police reformers may hope that model police stations will be rolled out across the country. However, the government may end or water down community policing projects, as illustrated by the Community Security Initiative in Kyrgyzstan. Police reform may go on for over a decade but not lead to democratic policing, as demonstrated by the case of Tajikistan. Central Asian states are skilled at accelerating or slowing down reform and at controlling its content.

Type 2 activities therefore face these limitations, and carry with them the risk of buttressing authoritarian modernization (i.e. the efforts of illiberal states to gain legitimacy without changing patronal governance). These limitations and risks must be weighed against any improvements in human security, and are even higher with the next type of police assistance.

### **What are the limitations and risks of law enforcement support?**

Law enforcement aid can improve the police's ability to prevent and investigate crime more effectively. It may also align policing practices with human rights obligations, such as when police are en-

abled to rely on forensic evidence rather than on forced confessions.

These type 3 activities are central to the OSCE's work with police in Central Asia. The Annual Reports of the Secretary General on Police-Related Activities provide extensive lists of the OSCE's involvement in fields such as organized crime, criminal investigation and analysis, cross-border cooperation in criminal matters, terrorist financing and VERLT, illicit drugs and chemical precursors, financial investigations, anti-money laundering and seizure of criminal proceeds, human trafficking, migration-related crime, border security, and cybercrime. The OSCE has provided support primarily through training and the provision of equipment. Moreover, international study tours are mechanisms for sharing best practices and for building transnational police networks.

Type 3 activities are popular for several reasons. Most importantly, Central Asian governments seek law enforcement support: indeed, they complain that the OSCE does not deliver enough of it.<sup>37</sup> Institutional drivers within the OSCE are also key. OSCE policy implementers, such as SPMU officials, often have a security background and are therefore inclined towards improving police capacity. Law enforcement support allows the Secretariat and field operations to report on activity, secure funding, and spend money quickly. Indeed, researchers have argued that instead of the OSCE socializing Central Asian states, the latter have socialized the OSCE as an instrument for preserving the status quo.<sup>38</sup>

Moreover, various other international actors deliver technical police aid, which puts the OSCE under pressure to do likewise in order to be seen as relevant by Central Asian states. Examples include European Union (EU) support to border management, the United Nations Office on Drugs and Crime (UNODC) police programmes, and bilateral U.S. law enforcement aid. Many programmes externalize Western domestic concerns about drug trafficking, terrorism, or illicit migration (in particular security risks emanating from Afghanistan), with the unintended effect of strengthening Central Asian power ministries.<sup>39</sup> Russia also works closely with Central Asian security forces, while China is increasingly exporting its own policing practices there, many of which violate democratic policing norms.

#### Law enforcement support as an inroad?

The OSCE routinely includes human rights elements in its technical police aid, in line with its comprehensive security agenda. In fact, technical police aid can be an opportunity for mainstreaming human rights, such as by discussing international and national obligations not to torture detainees, or with practical guidelines such as not overtightening handcuffs. However, optimism with regards to translating comprehensive security into practice underestimates the capacity of Central Asian states to micromanage assistance, and may also overestimate the willingness of OSCE executive structures

to risk antagonizing host states through creative mandate implementation.

One could also argue that technical aid creates buy-in for democratic policing. However, David Bayley cautions international actors “to provide material assistance only to defray the operational costs of [democratic] reform for which there is local commitment rather than using it to induce commitment among people who are otherwise unwilling.”<sup>40</sup> Moreover, training is not sustainable if newly learned skills are not immediately applied. In Central Asia, the domestic institutional setting militates against the application of internationally-sponsored human rights-based training.

Type 3 activities may not only be ineffective for promoting democratic policing; they also involve significant risks under conditions of authoritarianism. Critics have pointed at the risk of OSCE-sponsored law enforcement aid inadvertently reinforcing repression.<sup>41</sup> Other risks are less visible, in particular buttressing the legitimacy of authoritarian governance. Central Asian states speak the language of democratic policing, making it easier for Western governments to authorize assistance. But embracing global models such as gender mainstreaming, especially without clear roadmaps and subsequent monitoring, is not the same as redistributing power. In Vienna in early 2018, for example, the Tajik interior minister

presented the priority areas that needed further support from the OSCE participating States, specifically mentioning such issues as new police

uniforms, the procurement of new equipment for the police, and the automatization of all communication processes in MoI structures. During the discussion that followed, the Minister touched upon issues of community policing and gender mainstreaming [...].<sup>42</sup>

## Conclusions and recommendations

There is little public debate on the challenges to OSCE police-related activities in Central Asia outlined in this paper. While OSCE reporting is highly optimistic, there is no evidence that the organization has reflected on past criticism, and many assumptions remain untested.

While we still lack knowledge about what works best in the field of foreign police assistance, various literatures do provide clues, if only about what does not seem to work well. Participating States concerned about OSCE police-related activities in Central Asia could take the following steps:

- *Debate police-related activities.* Participating States should discuss the opportunities, limitations, and risks of OSCE police-related activities within the Permanent Council, the Security Committee, and among the Group of Friends of SSG/R. They should underline that these activities are cross-dimensional and, as such, firmly anchored in the human dimension. Moreover, Western states should improve policing at home in order to create role models for other countries,

and explore ways in which the OSCE can better support police reform west of Vienna, too.

- *Question concepts and claims of success.* Rather than accepting the statements made in many publicly-available OSCE reports that downplay the difficulties of implementing OSCE commitments, reducing the concepts of democratic policing, SSG/R and capacity building to mere buzzwords, states should scrutinize whether OSCE rhetoric matches practices. States should stress, for example, that providing material and knowledge support to security forces without support for improved oversight violates the comprehensive security approach upon which the OSCE is based. In light of the challenges posed by Central Asian politics and Russian resistance to democratization, participating States should closely scrutinize whether OSCE rhetoric matches practices through better evaluation (see further below).
- *Identify change agents.* International actors in Central Asia lack the leverage and linkages they have in other parts of the world. Moreover, democratic policing cannot take place in a silo: it depends on a broader SSG/R strategy and, indeed, on democratization, which is a long-term process even in contexts less patronal than Central Asia. Yet, the OSCE can support domestic change agents, in particular during critical junctures when political conditions are ripe (as the OSCE did in Kyrgyzstan after the 2010 revolution). The OSCE should identify the

most promising change agents, and acknowledge that supporting them is a political, not a technical process, and as such requires a trade-off. Thus, civil society groups that share OSCE values may lack domestic influence while groups with domestic clout may be part of the regime.

- *Support civil society.* Civil society is a crucial element for advancing the human dimension, notwithstanding cooptation and marginalization by the state. Participating States should make sure that field operations also work with civil society groups critical of the government. Central Asia has knowledgeable analysts and advocates of police reform that would benefit from systematic OSCE support such as advice on coalition-building, financial management, and report writing. Other inroads include training journalists on writing about policing, and sponsoring (and politically supporting) research on police reform and oversight – and SSG/R more generally, such as at the OSCE Academy in Bishkek. Political and financial support to Central Asian youth and educational initiatives merit special consideration as a long-term investment in institutional change.
- *Support OSCE policy implementers.* OSCE institutions, the Secretariat, and field operations need financial support for type 1 and type 2 projects, including through the ExB process. They also need political backing, such as assurances that OSCE staff, including local staff, will not be left alone if they displease host states, for exam-

ple by working with reform-minded NGOs.

- *Limit OSCE law enforcement support.* The risks of type 3 activities, which aim at strengthening the police, may outweigh the benefits for Central Asian populations. Making law enforcement aid conditional upon improved governance or human security protection, or ‘mainstreaming’ human rights into law enforcement aid, is no panacea. Central Asian states may put up democratic facades and micromanage projects, and the consensus principle leaves little room for EU-style conditionality. Reducing or ceasing political support and funding for ‘train and equip’ programmes is in line with the do no harm principle. Democratic states should also rethink law enforcement aid provided to Central Asia through other international organizations and bilateral programmes, to reduce competitive pressure on the OSCE. One might object that limiting law enforcement assistance deprives Western states of the chance to cooperate with Central Asian states against transnational security risks. But this view underestimates the negative consequences of unprincipled assistance, not only for human rights locally but for Western interests too. After all, repression creates a fertile ground for crime and political violence.

There is a main precondition for debating and improving OSCE police-related activities as suggested above: evaluation. Participating States should scrutinize the

activities and underlying logics of the Secretariat and field operations, and systematically request, analyse, and debate the internal evaluations of the Office on Internal Oversight. Field operations' self-evaluations also deserve more scrutiny, and extra-regular audits may additionally enhance transparency. Furthermore, the OSCE might benefit from more outside independent evaluations and innovative methodologies such as those used by ethnographers. Thick descriptions or surveys of public trust in the police raise questions of causality. Nevertheless, such approaches often produce better insights than box-ticking and new public management models.

Participating States should also discuss how to publish information that would allow for an open and informed debate. The OSCE produces large amounts of information but publicly available documents leave many questions open. The public knows little about theories of change and underlying assumptions, which states provide how much extra-budgetary funding for which projects, or risk management plans. One way to address this problem is to create oversight bodies for specific projects and programmes that share their findings with the public.

Most importantly, assessments should focus on whether OSCE police-related activities have changed police behaviour (outcome) and third-party crime and violence (impact). These measures are notoriously difficult to obtain due to contextual factors such as economic or demographic change. In the case of OSCE police-related activities, these difficulties

are aggravated by further factors, including scarce reliable data provided by Central Asian governments, and police aid by other international donors. Soft power mechanisms such as norm diffusion, where the OSCE is strongest, are equally difficult to measure.

Although evaluations of OSCE police-related activities will necessarily remain inconclusive, the central rationale of these activities should not be beyond scrutiny. There is a risk in simply assuming that the OSCE cannot solve complex problems in a difficult political environment with a small budget, but that without the OSCE, policing in Central Asia would be worse. While this may be true, untested assumptions rarely make good policy.

## Notes

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# Combating Antisemitism in Europe: Is the OSCE up to the Challenge?

*Rabbi Andrew Baker\**

## *Abstract*

This paper focuses on two of the most recognized and longstanding challenges the OSCE faces in combating antisemitism: security concerns of Jewish communities and the importance of a common and comprehensive definition of antisemitism. Drawing on the author's personal experiences in his role as Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism, it then examines key turning points in the OSCE's approach to combating antisemitism, looking at the challenges specific to the OSCE's organizational structure, funding, and decision-making principles, before finally reflecting on possibilities for restoring the OSCE's leadership role in combating antisemitism going forward.

## *Keywords*

OSCE, ODIHR, antisemitism, terrorism, Jewish community security

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## **Introduction**

On a sunny April afternoon in 2004, I found myself walking alongside Ambassador Christian Strohal, Director of the Office for Democratic Institutions and Human Rights (ODIHR), on our way to the German Chancellery. The high-level OSCE Conference on Anti-Semitism<sup>1</sup> had just concluded, and we were headed to a closing reception hosted by Chancellor Gerhard Schroeder. By all accounts, this had been

a milestone in efforts to get the OSCE to address the resurgence of antisemitism in Europe.

The German Foreign Minister, Joschka Fischer, and the Bulgarian Chairperson-in-Office, Foreign Minister Solomon Passy, presided over the meetings, and many participating States attended at that same high level. The previous year, I had worked closely with the US Ambassador to the OSCE, Steve Minikes, in efforts to convince the organization to mount a first conference, which took place in Vienna in June 2003. It placed antisemitism clearly on the agenda, but there was no certainty of any follow-up until the German delegation announced in the closing session that Berlin would host a second conference.

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\* Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism  
Organization for Security and Co-operation in Europe (OSCE)  
[bakera@ajc.org](mailto:bakera@ajc.org)

Now we had both this 2004 conference and the important Berlin Declaration<sup>2</sup> that was issued at its conclusion. The 2004 Berlin Declaration called on ODIHR to “follow closely...anti-Semitic incidents in the OSCE area making use of all reliable information available.”<sup>3</sup> It was asked to “systematically collect and disseminate information throughout the OSCE area on best practices for preventing and responding to anti-Semitism and, if requested, offer advice to participating States in their efforts to fight anti-Semitism.”

I was naturally buoyed by this outcome but Christian Strohal had a sour look on his face. “It is easy to give us more responsibilities,” he told me. “But will anyone give us the necessary support to carry them out?”

That Berlin Conference and Declaration resulted in ever-increasing attention to the problem of antisemitism and genuine efforts to address it. In some ways, the OSCE was uniquely positioned to do this. Combating antisemitism fell squarely within its human dimension mandate. The United States, one of the most forceful voices calling for more active measures, sat around the same table as European governments. Once adopted, OSCE commitments – even though they lacked legal enforcement – were taken seriously by those participating States where the problem was most acute. Arguably, the lengthy internal debate over the precise wording of the Berlin Declaration reflected an understanding that the words mattered, and States would pay heed.

Only some weeks after the OSCE Berlin Conference, the European Monitoring

Centre on Racism and Xenophobia (EUMC) issued its first report on antisemitism in the European Union.<sup>4</sup> The report consisted of two parts. One drew primarily on the limited data available from incident reports and attitude surveys as assembled by the EUMC monitors in Member States. The second was a compilation of interviews with European Jewish leaders. Those interviews offered an alarming picture, revealing a level of anxiety that had not been seen for decades. Citing the increase in antisemitic incidents and weak government reaction, some even questioned the future of Jewish communal life. The EUMC itself also indicated that its monitors were hampered by the lack (for most) of any definition of antisemitism and the lack (for the remainder) of a common definition.<sup>5</sup>

For this paper, I will look back at some key turning points in the OSCE’s approach to combating antisemitism, first by focusing on two of the most recognized and longstanding challenges: security concerns of Jewish communities and the importance of employing a common and comprehensive definition of antisemitism. I will then look at the specific context of the OSCE, where organizational factors such as funding, decision-making, and the consensus principle also pose a challenge, before reflecting on the opportunities for the incoming Chairmanship to restore the OSCE’s leadership role in combating antisemitism.

### **Addressing Jewish community security concerns**

In February 2020, the Albanian OSCE Chairmanship hosted a conference in Tirana on combating antisemitism in the OSCE region. This followed a tradition of holding such a conference early in the year, established by the Italian Chairperson-in-Office in 2018 and continued by the Slovak Chairperson-in-Office in 2019. The Tirana Conference, organized in cooperation with ODIHR, notably included the participation of the OSCE Parliamentary Assembly and the OSCE High Commissioner on National Minorities, together with representatives from other international organizations, participating States, and civil society. The conference offered recommendations for all to take. Only two weeks after the conference, the OSCE Parliamentary Assembly organized a special session at its Winter Meeting in Vienna for parliamentarians to debate the problem of antisemitism.

We had anticipated that throughout the year there would be additional opportunities to follow up on these recommendations at Supplemental Human Dimension Meetings, meetings of the Permanent Council, and scheduled country visits of the Personal Representatives. The renewed engagement of the Parliamentary Assembly, whose resolutions pre-saged the first OSCE conferences on antisemitism, would add yet another valuable advocate. Unfortunately, the coronavirus pandemic brought an abrupt stop to these plans. Although important Human Dimension Implementation Meetings could still take place in a virtual,

Zoom-based format, they could not allow for the side events and informal get-togethers of civil society organizations and participating States that have also become an important part.

Data on antisemitic incidents over the years and through 2019 has generally shown increases and plateaus.<sup>6</sup> Some fluctuations may also be due to changes in reporting and collection. When 2020 data is reported, experts anticipate a decline in the number of physical incidents, explained by the fact that the coronavirus pandemic has shuttered schools and synagogues and kept most people at home. But no one takes comfort in this. We have witnessed the spread of antisemitism and conspiracy theories linking Jews to the virus on all social media platforms. We know there will be long-term economic consequences because of the pandemic. When normal life returns to our cities, we should expect that antisemitism will return to the streets, as well. If anything, this ought to be the time to ramp up our security training and preparations to combat it.

In 2009 and the years following, I was afforded the opportunity as the Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism to take up the issue in official country visits.<sup>7</sup> I would meet first with leaders and representatives of Jewish communities and key civil society organizations, and then with government leaders. Assessing the security needs and concerns of the Jewish community and the government response was an important element of these visits. While the situation was different in each country, Western Euro-

pean Jewish communities were generally contending with two types of threats. They were targets of radical Islamist extremists who had embarked on an international terror campaign, and thus they had reason to fear for their lives. They were also regular victims of verbal and physical harassment, which eroded the comfort and security of their day-to-day routine.

I raised the issue at the time, and participating States recognized that antisemitism was real and security fears were genuine. But that did not necessarily mean they were being adequately addressed. In fact, I was surprised and disheartened in my meetings with government officials at the overall lack of action and excuses for not doing more. By way of illustration, at meetings with Dutch officials in the Hague, I was told that the government could not provide any enhanced security for synagogues without also providing the same to churches and mosques, even though these other religious buildings did not face similar security threats. Lacking the wherewithal to provide it everywhere, they provided it nowhere, and Jewish communities were right to feel abandoned.

In Belgium, government authorities told me they believed Jewish community buildings in Brussels merited the same threat level as the Embassy of Israel. But they admitted that they lacked the budget to provide the security to synagogues and Jewish schools that they themselves considered necessary.

In Denmark, the Jewish Community in Copenhagen had asked for a visible police presence in front of its community

centre and schools at the times of greatest use, but they were rebuffed. When I brought this up to government officials, I was told that positioning armed police in front of buildings was not a common practice, and it would likely make the general population uneasy. In their calculations, this outbalanced the genuine security interests of the Jewish community. Five months after my visit, an unarmed Jewish community security guard was killed in a terrorist attack in front of the Copenhagen synagogue.

On a first country visit to Sweden, I learned that the Stockholm Jewish community was spending a quarter of its entire budget on security. On a subsequent visit, I was told the government had responded to security concerns by allocating a fixed sum of money to each religious community building for security enhancements. However, even though the Stockholm community had centralized its school and most communal activities in a newly opened downtown building, this hub of community activity was only eligible for the same help provided for a single church or synagogue.

There are, of course, other examples, but they all illustrate the very real gap that existed between Jewish community security needs and the limited understanding and assistance they were receiving from their governments. While the OSCE was not the only organization that took up this issue, a brief review of how the OSCE, ODIHR, key participating States and civil society groups came together to address the problem demonstrates the unique role that the OSCE played.

On 19 March 2012, an Islamist terrorist entered a Jewish school in Toulouse, France and brutally murdered a rabbi and three small children. These killings followed two previous incidents where the same terrorist shot four French soldiers of Muslim background. Before the terrorist was identified, law enforcement had assumed he was acting out of right-wing, ultranationalist convictions. There was broad, public revulsion at all the murders. But when he was named and surrounded by police and the truth of his motivations became clear, some of that solidarity with the Jewish community faded away.

The French Jewish Community had a well-functioning security organization which conducted its own review. Schools were particularly vulnerable at the start of the day, when parents and children are coming and going, and even secure entry doors may be left open. Surveillance cameras revealed that the terrorist had first checked out the school earlier that morning before launching his attack, but those living nearby did not notice the suspicious behaviour, or did not report it. Community leaders were unsure about sharing the details of the attack because they were so horrific, yet they would demonstrate how well-grounded were their fears.

As Personal Representative, I proposed to the Chairperson-in-Office that we organize a conference on Jewish community security. While there was support for such a conference, it would take some months before all the necessary components could be put in place. The 2013 OSCE Ukrainian Chairmanship agreed

to make Jewish community security part of its programme. The German Government offered to host the conference, and German Interior Minister, Dr Hans-Peter Friedrich, agreed to give the keynote address. We formed a planning committee that included representatives of key civil society organizations (European Jewish Congress, American Jewish Committee in Berlin, Central Council of Jews in Germany), the director of ODIHR's Tolerance and Non-Discrimination Department (TND), and German officials. The conference, titled "Addressing the Security Needs of Jewish Communities in the OSCE region: Challenges and Good Practices", took place in Berlin in June 2013.<sup>8</sup> Notably, the conference offered joint presentations of Jewish community security leaders together with their respective government and law enforcement partners from four key participating States. They could lay out both the challenges they faced and offer their own examples of how they cooperated to deal with them. Those examples and the presentations of other speakers resulted in detailed recommendations issued in the conference report.

The following year, Michael Georg Link assumed the position of ODIHR Director. As a former State Secretary in the German Foreign Ministry, he was well-aware of that conference, its recommendations, and the supportive role that the German government played. In November 2014, the Berlin Plus Ten Conference convened in Berlin, providing an opportunity for governments and civil society to review the problem of antisemitism in the OSCE region ten years after the

Berlin Declaration was issued.<sup>9</sup> In the concluding remarks, the Swiss Chairmanship specifically called on “law-enforcement agencies to address the very real threats to Jewish community security”.<sup>10</sup> Director Link laid out an ambitious plan to address the growing problem of anti-semitism in the OSCE region, with a focus on the special security concerns of Jewish communities. His ODIHR TND Director and staff drew up a detailed extra-budgetary proposal called “Words into Action to Address Anti-Semitism”. The German Government agreed to provide the substantial funds necessary to implement this project.

Supplemental ODIHR staff were hired to manage and develop Words into Action. They, in turn, convened several meetings with experts from participating States and with Jewish community representatives who had direct experience with security issues and thus could identify the special problems, the best practice experiences, and what ideally should come from governments. This resulted in the publication of “Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide”.<sup>11</sup>

This guide explains the problem and provides instruction to participating States and law enforcement on recognizing antisemitic hate crimes and dealing with their victims. Its appended documents include a concise explanation of Judaism and Jewish holidays, important for knowing when to be on heightened alert. They offer a table showing what other people, including parliamentarians, and religious and civil society leaders,

can do. And, notably, they include the Working Definition of Antisemitism. The guide has been translated and is now available in thirteen languages.

It is no less important that the guide is an official publication of the OSCE/ODHIR. It follows on the articulated commitments of participating States expressed in multiple ministerial decisions. Thus, there is a unique opening to individual governments for the direct presentation of the guide and its examples as part of national law enforcement training. This, too, was a significant part of the Words into Action programme plan, also supported by the extra-budgetary contributions.

The development and publication of the security guide was a high point in OSCE efforts to address the most immediate challenge facing Jewish communities. Those at ODIHR who developed it had anticipated a robust second phase to promote its use by law enforcement in training sessions throughout the OSCE region. However, ODIHR ended its contract with the professional team that had been hired for the Words into Action to Address Anti-Semitism project, and sought to redirect the remaining extra-budgetary funds to a new, more generic project to fight intolerance, of which antisemitism would be only one part. When told the funds could not be repurposed, it scheduled several new training programmes, but the long-term plans remained unchanged.

## Defining antisemitism

The first step in fighting antisemitism is defining it.

Antisemitism can be a form of racism and xenophobia, but it also defies our general assumptions about intolerance. It is present in places where there are significant Jewish communities; it is present where hardly any Jews reside. It matters little whether Jews are new arrivals akin to other immigrant groups, or have been in countries for centuries. Conspiracy theories may defy any logic – Jews are simultaneously behind communism and capitalism – but that does nothing to impede their spread. Age-old antisemitic tropes are easily repurposed for contemporary circumstances. Jews bore responsibility for the Black Plague in medieval times; they are now behind today's coronavirus pandemic. Jews were once accused of murdering Christians for blood needed in their rituals; now this ancient "blood libel" is applied to Israel's treatment of Palestinians. The Holocaust is surely the most documented crime of genocide in the modern era; yet there are those who deny its existence or its scope. They do so not out of any interest in historical accuracy, but as another means of inflicting pain on Holocaust survivors and their brethren.

The need to be able to describe and convey this complex understanding of antisemitism and the multiple forms it can take was frequently voiced by participants at the OSCE conferences on antisemitism in 2003 and 2004. At the invitation of the EUMC Director, some of us came together in the autumn of 2004

to draft a new, comprehensive definition of antisemitism to remedy this. I was there in my role as the American Jewish Committee's Director of International Jewish Affairs. But our working group included representatives of European Jewish organizations, the Council of Europe's European Commission against Racism and Intolerance (ECRI), and ODIHR's recently established TND unit. A consensus agreement was reached in January 2005, and in March the results were issued in what came to be known as the EUMC Working Definition of Antisemitism. Intended as an educational tool for governments and civil society, it included a set of easily understood examples of antisemitism, including those relating to Israel. When that work concluded and the EUMC Working Definition of Antisemitism was issued, ODIHR included it in the materials it compiled for its new police training programmes to address hate crimes.

The EUMC Working Definition drew considerable attention from both supporters and detractors for including examples of antisemitism related to the State of Israel. Some voiced concern that it could be used to label critics of Israel as antisemites, even though the definition explicitly stated that, "criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic."<sup>12</sup> Meanwhile, Jewish community leaders pointed out that anti-Israel demonstrations frequently turned antisemitic and in some cases even led to physical attacks on Jewish targets, yet authorities deemed them political in nature and they were not treated as hate crimes.

For them, these examples were among the most important.

One might have expected that the OSCE and ODIHR, with its commitments to address antisemitism, would be in the forefront of efforts to promote the adoption and use of the Working Definition. And yet, despite notable actions by certain individuals and some participating States, it has had a mixed record.

Several individual OSCE participating States employed the EUMC Working Definition. These included the United Kingdom, which inserted it in its training manual for police cadets, and the United States which used it in preparing the State Department's first international report on antisemitism. In 2009, the EUMC was subsumed under the new and larger EU Agency for Fundamental Rights (FRA). In March of that year, as the OSCE Personal Representative, I convened a roundtable discussion in Vienna under the Greek Chairmanship and in cooperation with ODIHR that brought together the leaders of Jewish communities in the OSCE region. The newly appointed director of FRA also attended the meeting. Those Jewish leaders, who valued the Working Definition, queried him on whether and how FRA would continue to promote it. While several years later he would decide that it was not in FRA's mandate to provide definitions of antisemitism or of any other form of intolerance, he told participants at that meeting that the definition would remain for them to use. True to his word, it was maintained on the FRA website, but unlike other documents that had been carried over to the new agency, the Working

Definition of Antisemitism stood alone with the old EUMC logo.

In 2013, FRA removed the EUMC Working Definition from its website altogether, saying this was part of a broader cleanup and reminding people that it was not in the definition business. It took the position that minorities and other victim groups should define for themselves the prejudice they face. They also pointed out that a recent survey they conducted of Jewish perception and experience of antisemitism in the EU did include a form of antisemitism relating to Israel as one example that respondents could choose. In fact, it was among the highest polled.<sup>13</sup> Although it was now an institutional "orphan," the EUMC Working Definition continued to be recommended as a means for governments to recognize antisemitism's multi-dimensional nature, and a growing number of OSCE participating States made use of it.

At the November 2014 OSCE Berlin Plus Ten Conference, the Swiss Chairperson-in-Office made specific reference to the definition in his summary of the meeting's conclusions, stating that the OSCE participating States:

*Noted that the Working Definition of Anti-Semitism, disseminated by the EUMC in 2005 and employed by monitoring organizations in various OSCE participating States, remains a useful document for governments and civil society in explaining how anti-Zionism is frequently a mask for anti-Semitism, and Jewish communities are often targets for anti-Israel animus.<sup>14</sup>*

In January 2015, I attended a meeting of special envoys in Prague. Several countries, including the Czech Republic, the United Kingdom, the United States, and Germany, had appointed special envoys to address antisemitism. The European Commission had recently named a special Coordinator on the issue. ODIHR's new TND Director was also at the table. While the discussion was a broad one, it did include an animated exchange on the Working Definition and ways to promote it and put it to use. As each one described what was being done in their respective countries and organizations, I was surprised to hear the TND Director state that ODIHR could not use the Working Definition unless it had the consensus endorsement of all OSCE participating States. Was she unaware that her two predecessors had already made use of the Working Definition in materials they prepared? Did the recent recommendations from OSCE's Chairperson-in-Office not provide sufficient justification?

When Germany assumed the OSCE Chair in 2016, it made the fight against antisemitism one of its priorities. As Personal Representative, I worked closely with the Head of its OSCE Task Force and with Ambassador Felix Klein, the Foreign Ministry's Special Representative for Relations with Jewish Organizations and Issues relating to Antisemitism. Also, meeting in May 2016 in Bucharest, the International Holocaust Remembrance Alliance (IHRA), an organization of 31 countries at the time, adopted the original EUMC Working Definition of Antisemitism with minor edits. It again had a home and was henceforth known as the

IHRA Working Definition. The German Chairmanship resolved to secure the OSCE adoption of the Working Definition as a Ministerial decision at the end of the year.

Throughout the spring and summer of 2016, Germany made extensive efforts to secure the support of individual participating States. It démarched ambassadors and convened a special meeting of representatives in Berlin. It sought endorsement from all the EU Member States so their respective ambassadors to the OSCE in Vienna would speak with one voice. When we heard that the Danish Government had reservations, Ambassador Klein and I made a special trip to Copenhagen. We assumed they had problems with the Working Definition's examples of antisemitism relating to Israel and strategized between us on how to address them. But we were mistaken. The Danish Foreign Office needed to be certain that Germany *genuinely* wanted this decision, and the Chairperson-in-Office meant what he said. (He did.) Once confirmed, Denmark came on board.

Well into this campaign, we realized that no one had yet drafted the proposed decision. No one wanted to open the entire definition to possible additions or deletions from each participating State. As such, a proposed decision was prepared in early September that spoke only about adopting the IHRA Working Definition with a link to the full definition on the IHRA website. In that way, the text of the definition and its examples could not be subject to editing. As we approached the Human Dimension Implementation Meeting, we were optimistic that consensus agreement was within reach.

But we had not considered the Russian Federation, which had so far withheld its support. Trying to understand their objections, I met with their delegation at the Human Dimension Implementation Meeting. They voiced two concerns with the draft decision. First, since Russia was not a member of IHRA, they objected to a decision that endorsed an IHRA definition. (Many OSCE participating States were not IHRA members either, but that did not preclude their support.) Second, they said their own Russian Jewish experts disagreed with the actual definition. (I had until then heard nothing myself from Russian Jewish leaders). I asked if these were the only two problems they had. In reply I was told, “Yes, for now.” It was hard not to conclude that if a new problem were needed, they would find it.

In October, the Russian Jewish Congress organized an international conference on antisemitism in Moscow. Aware of the pending OSCE decision debate, it adopted a resolution placing Russian Jewish leaders clearly behind adoption of the Working Definition<sup>15</sup> and eliminating at least one excuse.

Arriving in Hamburg on the eve of the December 2016 Ministerial Meeting, there was little optimism. Most draft decisions still lacked consensus support, and the decision on adopting the Working Definition was among them. A late evening meeting took place between Russian Foreign Minister Sergey Lavrov and Chairperson-in-Office Frank-Walter Steinmeier to see if some agreement could be found. Early the next morning, I heard from Ambassador Klein, who had positive news. While other draft decisions remained

deadlocked, it appeared that an agreement on endorsing the Working Definition was possible. We were – at least for a few hours – elated. The understanding reached between the two Ministers was that Russia would support the decision if two modest changes were made: the way in which IHRA is identified in the text, and additional language stating that OSCE adoption of the definition should be considered a first step toward reaching a global consensus. We saw no problem in accepting these changes as we gathered for that morning’s drafting session. But when the Russian delegation took the floor to propose changes, there were not two but many, including substantial new language and deleting altogether the essential link to the full IHRA definition. It was clear that there could be no compromise, and at this time Minister Lavrov himself was already flying back to Moscow. The draft decision was withdrawn from consideration.

In 2017, the Austrian Chairmanship considered making another effort to secure an OSCE Ministerial Decision adopting the Working Definition. However, during the year it became evident that the impasse we faced in 2016 was still present. We reluctantly concluded that a second unsuccessful effort might prove counterproductive. Despite the obvious support from an overwhelming majority of participating States, some might claim that repeated Ministerial failure should further limit its use. As noted above, the Working Definition is included in the appendix of the OSCE/ODIHR Words into Action guide on Jewish community security, as well as in the guide for policymakers on addressing antisemitism

through education.<sup>16</sup> However, it is not a central component of these guides as it was in the early ODIHR police training programme.

In the meantime, other international bodies and individual governments have made considerable progress in adopting the Working Definition and recommending its use. A European Council declaration in 2018 called on EU Member States to adopt it.<sup>17</sup> In his first report on antisemitism in 2019, the UN Special Rapporteur on Freedom of Religion and Belief called for UN Members to use the definition and reprinted it in full.<sup>18</sup> Even the EU Agency for Fundamental Rights has since restored the Working Definition to its website and is formally polling all EU Member States on how they are employing the definition in their national plans to combat antisemitism. In 2020, Germany assumed the Chair of the International Holocaust Remembrance Alliance and the EU Presidency in the second half of the year, with a commitment to keep a strong focus on combating antisemitism.

### **Challenges posed by the OSCE's structure and working methods**

The organization's consensus decision-making process makes swift and decisive actions more difficult. This not only presents a challenge to the adoption of Ministerial decisions, which is well known, but can also be an impediment or, worse still, used as an excuse by those who have the authority to make decisions but fail to exercise it. A Chairperson-in-Office has flexibility in mounting an expert

conference or supporting a Personal Representative's travel. ODIHR senior staff have considerable freedom in recommending speakers or drawing up an annotated agenda. Yet, delays or lack of action are not only the result of wanting to bring allies into the process. Sometimes they are only responding to anticipated criticism that might not even come.

What has evolved as OSCE "common practice" has also delayed or diluted efforts. Ambassadors in Vienna often speak of taking a "holistic" approach, insisting that combating antisemitism should be part of a larger effort to fight intolerance. What on the face of it may be a high-minded and principled position has made it more difficult to recognize the unique elements of antisemitism and the special challenges facing Jewish communities. Additionally, the OSCE's legitimate interest in geographic balance has not necessarily made for better conferences or the most effective country visits. The problem of antisemitism, the size and concerns of Jewish communities, and the presence of recognized experts are not uniformly distributed throughout the OSCE region.

Each OSCE Chairpersonship has determined its own priorities for its year in office. Some have paid more attention to the fight against antisemitism than others, although none in my experience has ignored it. This, of course, has made a difference at least in the specific programmes, expert conferences, and decision proposals that the Chairperson-in-Office undertakes. Ambassador Strohal raised the question about the necessary support ODIHR would need to play its role. I believe that question

has been answered: there were and are participating States ready to help. But the importance of the ODIHR Director and their personal commitment cannot be overstated. One Director's attention and activism has resulted in pathbreaking work with a significant impact on addressing antisemitism. Another's indifference has thwarted efforts, even when the Chairmanship has asked for more.

Despite offers from key participating States to support future ODIHR programmes targeting antisemitism, the Director remained firm in her decision to press ahead to seek extra-budgetary funds only for the much broader and more generally focused new Words into Action programme. The departure of senior TND staff and the vacancy of the expert advisor on antisemitism at ODIHR this year further hobbled their efforts.

## Prospects for the future

The Prime Minister of Sweden, Stefan Löfven, had planned to host an international conference in Malmö in October 2020 with a significant focus on combating antisemitism. This would also have been an opportunity to mark the twentieth anniversary of the Stockholm Conference, which gave birth to the IHRA. In January 2020, Löfven gave his full-throated endorsement of the IHRA Working Definition, which would also be addressed by conference participants.<sup>19</sup>

It was also anticipated that security concerns facing Jewish communities would be highlighted, as they have been a significant challenge to the Malmö

Jewish community. Meanwhile, since the terrorist attack on the synagogue in neighbouring Copenhagen in 2015, the Danish Government has worked closely with Scandinavian Jewish security professionals to develop a new, cooperative approach that has won praise from onetime critics. A new, best practice model was ready to be shared.

While the coronavirus pandemic has led to the postponement of the conference until October 2021, it has the fortuitous result of placing the conference squarely in the year of Sweden's OSCE Chairpersonship. It should follow that Sweden will make the fight against antisemitism a key component of its plan as Chair, and will also be afforded the opportunity to draw on the resources of ODIHR. A new ODIHR Director and new professional leadership in the TND Department could offer genuine assistance. With the help and support of other participating States, we could see the OSCE resuming a leadership role in the fight against antisemitism.

Antisemitism is sometimes referred to as the world's oldest hatred. Unfortunately, it must still be addressed in the present tense.

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# Addressing the Conflict Cycle: The OSCE's Evolving Toolbox

Michael Raith\*

## Abstract:

The year 2021 marks the tenth anniversary of Ministerial Council Decision No. 3/11 on Elements of the Conflict Cycle. Since this key decision was adopted, the Conflict Prevention Centre has been working to strengthen the OSCE's ability to prevent conflicts from escalating into violence, to facilitate peaceful conflict resolution, and to support the building of sustainable peace and security. The OSCE has at its disposal a comprehensive set of conflict cycle tools that can be applied across the OSCE area. While their implementation can always be enhanced by learning lessons from the past and anticipating future challenges, what is urgently required are sufficient OSCE resources and the political will of participating States to make proactive use of relevant instruments.

## Keywords:

Conflict prevention, early warning, crisis response, conflict resolution, mediation support, peacebuilding, OSCE

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## Introduction

Three decades ago, the 1990 Charter of Paris for a New Europe established the Conflict Prevention Centre (CPC),<sup>1</sup> which later became part of the OSCE Secretariat. Since then, the CPC's key role has been to support OSCE participating States in preventing violent conflicts, in resolving them peacefully when they occur, and in building sustainable peace and security. Another vital element of

the OSCE's present toolbox was added in 1992 with the final document of the Helsinki Summit, The Challenges of Change,<sup>2</sup> in which participating States agreed to enhance their joint engagement in conflict prevention and resolution, including through the establishment of the High Commissioner on National Minorities (HCNM). The HCNM is mandated to inform participating States when ethnic tensions threaten to escalate into conflict and thus continues to perform one of the OSCE's most important early warning functions.

In 2011, a further milestone was reached with the adoption of Ministerial Council (MC) Decision No. 3/11 on

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\* Dr Michael Raith  
OSCE Conflict Prevention Centre  
Vienna, Austria  
[Michael.Raith@osce.org](mailto:Michael.Raith@osce.org)

Elements of the Conflict Cycle,<sup>3</sup> which aimed to systematically enhance OSCE capacities for conflict prevention and resolution, crisis management, post-conflict rehabilitation, and peacebuilding. Against this backdrop, this OSCE Insights paper examines, from a CPC perspective, how the OSCE’s conflict cycle toolbox has evolved over the past decade and how it can be further strengthened in the future.

### Conceptual foundations

The conflict cycle toolbox is based on the OSCE’s comprehensive approach to security and thus recognizes that root causes of conflict and instability exist in all three dimensions of security. Among many others, these include military threats between states, socio-economic tensions, environmental degradation, and deficien-

cies in the rule of law. The multi-dimensional causality of conflict also forms the basis of the OSCE’s early warning methodology.<sup>4</sup> Another important conceptual foundation of the conflict cycle toolbox is a “tiered approach” to prevention: primary prevention refers to preventing violent conflict by successfully applying early warning and early action instruments and by implementing long-term measures that address root causes of conflict. Secondary prevention takes place when a conflict escalates into violence. It involves crisis management actions to stop the violence from spreading both in intensity and geographically. Tertiary prevention, which is usually referred to as post-conflict rehabilitation and peacebuilding, aims to hinder the re-emergence of tensions and the recurrence of violent conflict. Efforts to facilitate peaceful conflict resolution should be applied in all three prevention phases.

Figure 1: The CPC’s internal conceptual framework for addressing the conflict cycle



OSCE participating States are faced with a multifaceted web of diverse and overlapping security challenges and complex conflicts, many of which are neither exclusively intra-state nor inter-state in nature.<sup>5</sup> Accordingly, the OSCE monitors a wide range of conflict settings and an increasing number of transnational and regional security threats, both inside the OSCE area and in neighbouring regions.

The OSCE's comprehensive approach to security and the "tiered approach" to prevention allow for sufficient flexibility in addressing a wide range of conflict settings. This flexibility is critical in a highly dynamic security environment, not least because many conflicts do not evolve in a linear fashion but vacillate between times of latent and acute crisis. Moreover, because multiple conflicts with varying levels of violence can exist in the same country or region, various OSCE actors may simultaneously be engaged in conflict prevention, crisis management, and post-conflict rehabilitation. As a result, specific attention must be paid to coordination and cooperation within and between OSCE executive structures to ensure mutually reinforcing approaches.

The OSCE's comprehensive approach to security and the "tiered approach" to prevention also necessitate a holistic conception of peacebuilding, comparable to that on which the United Nation's Sustaining Peace Agenda is founded. Accordingly, peacebuilding instruments that facilitate non-violent conflict resolution and address root causes of conflict should be applied throughout the conflict cycle rather than in post-conflict environments alone.

### **Picking up the signals: Early warning and situational awareness**

Effective early warning is fundamental to the OSCE's conflict cycle toolbox, providing policymakers with analytical assessments of risks and conflict dynamics. Early warning analysis helps to identify entry points for short-term operational prevention aimed at averting violent escalation. It also provides options for long-term structural prevention and peacebuilding related to areas such as democratic governance, economic and environmental affairs, the security sector, and the protection of human rights and fundamental freedoms – all of which are addressed by various OSCE executive structures within their respective mandates.

In line with MC Decision No. 3/11, the CPC acts as an OSCE-wide early warning focal point. As such, it provides early warning reports to the OSCE Chair and the Secretary General (SG) and builds the capacities of OSCE field operations to conduct early warning and conflict analysis. The CPC also coordinates a network of early warning focal points in all OSCE executive structures, which is a crucial asset for sharing information and expertise, not only on early warning but also on other conflict cycle tools, such as dialogue facilitation, mediation, crisis management, reconciliation, and peacebuilding. The network plays a key role in fostering an early warning culture among its members, keeping the OSCE's eye on prevailing trends and scanning the horizon for emerging risks. These include transnational and regional security threats and unprecedented challenges

such as the COVID-19 crisis, the wide-ranging impact of which has increased the risk of political instability and tension in some parts of the OSCE area.

The prerequisite for successful early warning is comprehensive situational awareness, which the OSCE maintains by tracking relevant developments throughout its area and beyond. While the organization's early warning capacities benefit immensely from the OSCE's field presence in Eastern and South-Eastern Europe, the South Caucasus and Central Asia,<sup>6</sup> situational awareness must not be limited to those areas that host field operations if early warning is to be effective. To this end, the CPC's Situation/Communications Room (SitRoom) plays a key role by monitoring relevant developments in all 57 participating States and the OSCE's neighbouring regions. On a 24/7 basis, it follows open media sources, providing breaking news and regular updates to the Chair, the SG, and the Secretariat's senior management.<sup>7</sup> During crises, the SitRoom plays a vital role in the security chain between the Secretariat and field operations, which is especially critical outside official working hours.

To keep abreast of information requirements related to prevailing and emerging security challenges, SitRoom staff are briefed on relevant thematic issues, such as transnational threats. The SitRoom also integrates new digital technologies for open-source monitoring and reporting into its daily activities, when possible. In today's complex environment, increased attention must be given to security challenges posed by political fragmentation, polarization, nationalism,

radicalization, and populism, all of which affect a growing number of participating States to various degrees. Moreover, in the age of social media and fake news, latent conflicts may be pushed towards violent escalation more rapidly than before. While tensions may take a long time to build up beneath the surface, a tiny "virtual spark" can quickly ignite the flames. Therefore, a SitRoom with sufficient capacities to monitor and report on such developments in real time is now more important than ever.

The SitRoom's capacities are currently insufficient to pay the same level of attention to every development in the OSCE area and its neighbouring regions. Sharing expertise, best practices, and open-source information with the crisis centres and situation rooms of other international organizations (such as the United Nations (UN) and the European Union) is therefore crucial and should be encouraged as much as possible. In addition, further efforts are required with regard to systematically collecting information from a growing number of initiatives and projects engaged in conflict and crisis mapping.<sup>8</sup> Moreover, as MC Decision No. 3/11 highlights, early warning is also the responsibility of participating States. Accordingly, one way to strengthen the OSCE's early warning capacities would be for participating States to share relevant, unclassified situational awareness information with the CPC's SitRoom.

MC Decision No. 3/11 also mandates the SG to provide formal early warnings to the OSCE Permanent Council (PC) in Vienna. This mandate was a significant development, as the provision of formal

early warning signals had previously been limited to the HCNM.<sup>9</sup> Despite this mandate, the SG has only issued two formal early warnings to the PC since 2011. The first formal early warning was issued in December 2012 in relation to a possible violent escalation of the Nagorno-Karabakh conflict.<sup>10</sup> The second formal early warning came in November 2018 following an incident between Russian and Ukrainian naval vessels in the Kerch Strait.<sup>11</sup>

Formal early warning should be used as a last resort. Early warning is not an exercise in naming and shaming but a crucial prerequisite for effective conflict prevention. Accordingly, early warning needs to be conducted in a “do no harm” manner, freeing the way for preventive efforts, including silent diplomacy. Before issuing a formal early warning, the OSCE Chair and the SG will therefore make use of different forums to express concern about emerging tensions and to facilitate discussions about preventive action. For example, the SG’s weekly report to the PC has been used on numerous occasions to deliver what could be considered an informal early warning.

Some participating States would like the SG to have greater visibility when it comes to early warning, including through facilitating exchanges between participating States on possible responses. In line with the clear early warning mandate given to the SG in MC Decision No. 3/11, consideration could be given to augmenting the SG’s reporting to the PC through regular early warning reports that would contribute to enabling participating States’ early engagement related to

emerging trends, including with regard to transnational and regional security issues.

A key challenge for OSCE early warning and the SG’s role in it is politicization. While all participating States supported the development of a more systematic and structured approach to early warning in MC Decision No. 3/11, not all of them are equally supportive of its practical implementation. Some participating States may wish to be exempt from early warning monitoring, considering it a stigma or an intrusion on sovereignty.

However, no participating State is immune to crisis. The impact of the COVID-19 pandemic is the most recent example in this regard. Therefore, systematic early warning efforts and over-the-horizon scanning must cover the entire OSCE area and beyond, as these are essential to assessing emerging trends and future risks.<sup>12</sup> When providing the SG and the OSCE Chair with timely assessments of relevant developments, the CPC pays the utmost attention to preventing the politicization of its early warning analyses. Accordingly, the CPC provides early warning reporting and early action advice in a confidential manner. OSCE Chairs must make active use of the CPC’s early warning function. They must also provide the SG and the CPC with the political support needed to carry out their early warning mandate,<sup>13</sup> taking the “political heat” if required to protect this critical part of the conflict cycle toolbox.

### Early action and crisis management: Learning lessons for the future

Following the adoption of MC Decision No. 3/11, a number of immediate steps were taken to enhance the OSCE's capacities for crisis response. One was the establishment of the "Virtual Pool of Equipment", which allows for the swift transfer of essential assets (such as armoured vehicles) between OSCE field operations. Another was the "Rapid Deployment Roster", which allows first responders from OSCE executive structures to be quickly deployed to set up new field operations or to temporarily augment existing ones. In addition, the "Operational Framework for Crisis Response" was developed for use by the OSCE Secretariat to take coordinated action in response to crises in line with lessons learned and best practices. All three instruments proved critical in the planning and deployment of the OSCE Special Monitoring Mission to Ukraine (SMM) in March 2014.<sup>14</sup>

The SMM has been the most challenging OSCE field operation since the Kosovo Verification Mission in 1998,<sup>15</sup> which was also deployed in a complex security environment and in the context of a violent crisis. While the SMM started out as a preventive deployment to help address the deteriorating security situation in Ukraine, it quickly became a full-fledged crisis management operation. The rapidly worsening security environment in eastern Ukraine created unprecedented operational risks for the civilian monitoring mission.

The Mission's evolving tasks and activities, in particular ceasefire monitoring

in eastern Ukraine, have required a steep learning curve for the OSCE that has not yet fully flattened.<sup>16</sup> Together with other parts of the Secretariat, the CPC has been helping the SMM to continuously adapt its operations, staffing, and assets. The provision of such support is resource intensive, however, and the number of staff within the CPC is the minimum of what is needed to facilitate operational support,<sup>17</sup> not only for the SMM but for all 16 OSCE field operations.

The SMM is not only a *sui generis* mission but also a pivotal example of a complex peace operation. As such, it provides many valuable lessons for the OSCE. One of the key lessons to be learned for future field missions deployed under similar circumstances is that they require a different staffing model than more "traditional" OSCE field operations, which are mostly focused on programmatic and project activities. Complex peace operations require robust management and leadership frameworks, as well as senior staff with experience in high-risk environments. They also need staff with medical, engineering, infrastructure, and demining expertise and highly qualified security personnel, who understand the essential nexus between operations and security.

To benefit from the experience of the SMM's initial planning and deployment and the Mission's expansion in the wake of the Minsk agreements,<sup>18</sup> the CPC engaged in an extensive lessons-learning exercise in 2015.<sup>19</sup> Based on a tasking from the German OSCE Chair in 2016, the CPC then led a Secretariat-wide effort to develop a set of 20 internal standard

operating procedures (SOPs) for effective action in urgent response situations. These SOPs provide good practices for both new and existing field operations on mission structure, command and control, operational reporting, and the rapid deployment of human resources, among others. Based on the insights gained from the responses of OSCE field operations to the COVID-19 crisis, these SOPs could be further developed in the future.

The lessons (being) learned from the SMM are not limited to the establishment of new missions or the restructuring of existing ones under changing circumstances on the ground. They also encompass lessons related to a wide range of new technologies that are applied as part of the SMM's monitoring operations.<sup>20</sup> The use of satellite imagery, acoustic sensors, camera systems, and drones as part of a civilian peace operation has thrust the OSCE into the forefront in this field, offering many valuable lessons not only for the organization but also for the international community at large. A related aspect is how to manage the enormous amount of data gathered with technological monitoring tools. Accordingly, the CPC is assisting the SMM in enhancing its information management capacities, including the implementation of a mission-wide geospatial information system.

The good practices established by the SMM in technical monitoring constitute a significant enhancement of the OSCE's conflict cycle toolbox. To capture lessons from past and present OSCE field operations, including the SMM and its technological innovations, the CPC is develop-

ing a reference guide on monitoring in all phases of the conflict cycle. It aims to institutionalize the extensive knowledge of OSCE missions that conduct monitoring in support of their mandated activities. Moreover, building on the SMM's experience, the CPC is now recruiting an Associate Technology Officer, who will support executive structures on technological issues related to monitoring and surveillance.<sup>21</sup>

Learning lessons is important for future crisis response. However, crisis management – as in eastern Ukraine – should remain the exception, while preventing violent crises and resolving conflicts peacefully should always be the rule. Conflict prevention requires successful early action, and the OSCE's toolbox contains a multitude of well-established instruments, such as OSCE mechanisms and procedures,<sup>22</sup> confidence-building measures,<sup>23</sup> and Special or Personal Representatives of the OSCE Chairperson-in-Office (CiO). For example, the latter instrument was used by the 2017 Austrian OSCE Chair to conduct silent diplomacy during the political crisis in the then former Yugoslav Republic of Macedonia. Other important instruments include fact-finding missions, which can be used with the support of the receiving country to gather information or to engage in dialogue facilitation, confidence building, and preventive diplomacy. One preventive deployment, which included both fact-finding and dialogue-facilitation elements, was the OSCE National Dialogue Project in Ukraine in spring 2014.<sup>24</sup> Another instrument was the OSCE Community Security Initiative

in the south of Kyrgyzstan from October 2010 to December 2015, which made an important contribution to building confidence between the local population and the police.<sup>25</sup>

The early warning–early action gap is a key impediment to successful conflict prevention and resolution. This is usually related not to a lack of early warning analyses or early action instruments but rather to a lack of political will to make full use of existing early action tools. Moreover, as a soft power organization, the OSCE can apply its crisis response capacities effectively only if local actors on the ground show good faith and take a cooperative approach.

To help bridge the early warning–early action gap, in 2018, the CPC developed the internal “Early Warning–Early Action Matrix”, which provides a broad overview of possible early action measures that can be taken, *inter alia*, by OSCE Chairs and executive structures. The CPC also engages in a crisis simulation exercise (SIMEX) with incoming OSCE Chairs before the start of their term to prepare them for the practical application of crisis response instruments. Based on a fictitious scenario, the SIMEX provides incoming Chairs with an opportunity to apply existing OSCE tools and procedures while responding to an evolving crisis and to clarify their crisis response responsibilities, procedures, and decision-making processes.

### **The crown jewel of the toolbox: The facilitation of peaceful conflict resolution**

Supporting the peaceful resolution of conflicts through mediation and dialogue facilitation is at the heart of the OSCE’s mandate.<sup>26</sup> With its comprehensive approach to security, the OSCE is in a unique position to foster community-level, regional, and state-to-state dialogue on various conflict-related issues. Given the complexity of today’s conflicts and conflict-resolution processes, institutionalized, systematic, and structured mediation support is needed more than ever.<sup>27</sup> Mediators must be able to handle the complexity of the conflicts they deal with if they are to assist the parties in finding common ground and developing joint solutions. Therefore, mediators and their teams require dedicated support in conflict analysis, process design, and micro skills, for example process analysis and communication techniques.

In MC Decision No. 3/11, participating States tasked the SG to prepare a proposal on how to “maximize the continuity, consistency and effectiveness of OSCE engagement in conflict mediation and to strengthen the role of OSCE mediators”.<sup>28</sup> In fulfillment of this task, a Mediation Support Team (MST) comprised of three Mediation Support Officers was established within the CPC and acts as an OSCE-wide focal point for dialogue facilitation, mediation, and mediation support.<sup>29</sup> Now an indispensable instrument, the MST serves to strengthen the OSCE’s capacity to facilitate peaceful conflict resolution. In support of all OSCE execu-

tive structures and participating States, its main activities include:<sup>30</sup>

- facilitating the development of mediation strategies;
- providing advice on mediation and dialogue processes;
- facilitating in-depth conflict analysis;
- providing thematic briefings and skills coaching for high-level OSCE mediators, such as CiO Special Representatives and heads of OSCE field operations;
- facilitating platforms for exchange among mediators;
- debriefing OSCE mediators to identify lessons and good practices;
- providing operational guidance on mediation-related topics;
- providing training for OSCE staff in mediation and dialogue facilitation skills;
- facilitating expert deployments in support of mediation processes.

With the growing need for mediation support, the MST has seen a corresponding increase in demand for its activities. An expanded MST would allow for more dedicated mediation support to be provided to high-level mediators dealing with protracted conflicts in the OSCE area. The dialogue facilitation and mediation activities of OSCE field operations would also benefit from an expanded MST, as it could provide more process support. It could also provide more assistance to field operations in developing their own mediation support capacities. This has already been done for the SMM, and by increasing the number of specialized mediation and dialogue facilitation

officers in field operations, an OSCE-internal network of mediation support structures could be created.

The MST continuously explores new ways to strengthen the OSCE's conflict resolution instruments. Following the outbreak of the COVID-19 pandemic and the UN Secretary-General's call for a global ceasefire, the MST researched and developed a structured approach to identifying windows of opportunity for peace processes. From a process design point of view, this approach provides ideas on how to induce positive dynamics in ongoing peace processes in times of acute crisis. Another area of MST research is supporting so-called insider mediators – those mediators who live within and are thus intrinsic to a conflict context and may be better placed to engage with conflict actors than external third parties.<sup>31</sup> Acknowledging that local, indigenous, and insider methods of dealing with conflict enhance peace and stability over the long term, supporting insider mediators puts local efforts at the centre of peace-building.

A further topic at the centre of the MST's research is the meaningful inclusion of women in peace processes. Women's experiences of conflict and violence differ from men's. Therefore, by including women's perspectives in conflict resolution efforts, the diverse needs of affected societies can be better addressed. Accordingly, women's participation as mediators and/or negotiators in peace processes can increase the likelihood of reaching an agreement and can reduce the risk of relapsing into conflict. To this end, in 2019, the MST and the

Secretariat's Gender Section developed the toolkit *Inclusion of Women and Effective Peace Processes*, which provides practical advice and recommendations on how to achieve more gender-responsive dialogue and mediation processes.<sup>32</sup>

### **Focusing on sustainability: Structural prevention and peacebuilding**

The OSCE has extensive experience in working to address root causes of conflict and instability through the long-term programmatic work of its executive structures. This includes efforts by the three autonomous institutions, the Secretariat, and the OSCE's field operations. More than 80 per cent of OSCE staff work in the field, carrying out programmes to support the implementation of OSCE principles and commitments in all three dimensions of security. These activities aim to build lasting peace and security through comprehensive support on a wide range of topics, from combating violent radicalization and extremism, trafficking in human beings, hate crimes, and corruption to assisting the good governance and reform efforts of host countries related to elections, education, and/or the security sector – to name just a few.

Building sustainable peace and security is a long-term effort that requires patience, perseverance, prudent planning, and foresight. Field operations must ensure that their support is tied to the evolving needs and priorities of their host countries. To that end, the OSCE works with a plethora of actors on the ground,

including governmental agencies, public administrations, civil society, and non-governmental organizations. Accordingly, field operations can play an important bridge-building function by engaging governmental and civil society actors in joint efforts in support of OSCE commitments and principles.

To draw lessons from the longstanding expertise of OSCE field operations, the CPC produced a reference guide in 2018 that provides insights into the structural prevention and peacebuilding activities of OSCE field operations in South-Eastern Europe.<sup>33</sup> The reference guide highlights OSCE support to host countries in seven thematic areas – institution-building, community security, education, electoral reform, reconciliation, diversity, and people-to-people contact. It also shows how OSCE peacebuilding efforts complement the United Nation's Sustainable Development Goals (SDGs),<sup>34</sup> in particular SDG 16 to promote peaceful and inclusive societies.

A key lesson from the reference guide is that the OSCE's work is most effective if delivered in a context-specific and conflict-sensitive manner, taking into account historical and societal developments on the ground. Therefore, to improve the OSCE's ability to build lasting peace and security by addressing root causes of conflict and instability in a structured and systematic manner, the CPC has partnered with the Austrian Study Centre for Peace and Conflict Resolution to develop the first-ever OSCE Peacebuilding Course for OSCE staff from different executive structures.

One important area where more effort is needed to capture OSCE lessons is the gender mainstreaming of long-term conflict prevention and peacebuilding work. Another is the active engagement of youth in addressing prevailing and emerging security challenges, as young people can be forceful catalysts for positive societal change. A third area of critical importance to structural prevention and peacebuilding is the support given by the OSCE to interested participating States in the area of security sector governance and reform (SSG/R), for example with respect to the democratic control of the armed forces. The CPC plays a central role in these efforts, including by coordinating a network of SSG/R focal points in OSCE executive structures.

Although different OSCE executive structures have been providing SSG/R-related support for many years, it was only in 2014 that the first steps toward a more systematic and structured approach to SSG/R were taken. The then Swiss OSCE Chair initiated a process to develop SSG/R guidelines for OSCE staff,<sup>35</sup> published in 2016. Together with SSG/R focal points in executive structures, the CPC promotes the implementation of these guidelines and helps OSCE staff and mission members to develop the capacities required for their practical application. A review of the guidelines is currently underway, with a second edition to be published in 2021.

SSG/R was also given particular attention when Slovakia chaired the OSCE in 2019. At the Ministerial Council in Bratislava, Slovakia and 43 other participating States highlighted SSG/R as a

crucial part of the OSCE's comprehensive approach to security.<sup>36</sup> Moreover, in March 2019, the SG reported to participating States on the efforts made since 2014 to develop a more coherent and coordinated approach to SSG/R that builds on the OSCE's comparative advantages.<sup>37</sup> He stressed that the concept of SSG/R is embedded in core OSCE principles and commitments, such as the Code of Conduct on Politico-Military Aspects of Security (1994), and called for SSG/R to be further integrated into the conflict cycle toolbox, thus leveraging the added value of SSG/R in conflict prevention.

A security sector that is accountable and inclusive and that abides by the rule of law can effectively contribute to building sustainable peace and security. While SSG/R remains a fundamentally national process, the OSCE is well placed to support the implementation of national priorities, particularly through its field operations. The OSCE has established a long track record of successfully supporting national security sector institutions and related actors, such as parliaments and civil society organizations. Accordingly, the CPC will continue to work on a coherent and systematic approach to SSG/R as a key peacebuilding instrument within the conflict cycle toolbox. In this regard, further topics can be explored, such as the inclusion of SSG/R-related provisions in ceasefire and peace agreements and the contribution of SSG/R to addressing the (organized) crime–conflict nexus.

### **Sharing expertise and knowledge: Leveraging partnerships**

The CPC's efforts to further enhance OSCE capacities to address the different phases of the conflict cycle benefit from strong partnerships with other international and regional organizations. For example, the CPC shares expertise and best practices on conflict cycle tools with the European Union External Action Service (EEAS) as part of a so-called structured working-level dialogue. The CPC's MST also maintains regular contact with the mediation support structures in the EEAS and the UN Secretariat. By partnering with the UN's Mediation Support Unit, the MST has access to the UN Standby Team of Senior Mediation Advisers, who can be rapidly deployed to advise a wide range of mediation and preventive diplomacy issues. Regular and active collaboration with the UN and the EEAS also takes place with regard to SSG/R.

The OSCE's cooperation with the UN Department of Field Support resulted in the signing of a Letter of Understanding in 2017 that established collaborative arrangements for enhancing technical capacities and expertise. Based on the Letter of Understanding, the OSCE is able to access UN systems contracts, for example in the area of procurement, and technical training programmes, which provide cost-effective and rapid access to resources for early action and crisis response.

The CPC also enjoys fruitful engagement with the UN Refugee Agency (UNHCR). In 2014, together with the UNHCR Liaison Office to the OSCE and

Vienna-based UN agencies, the CPC published a Protection Checklist that addresses displacement and the protection of displaced populations and affected communities in all phases of the conflict cycle.<sup>38</sup> Since then, the CPC and UNHCR have been providing joint capacity building on the Protection Checklist's practical application for OSCE and UNHCR staff on the ground in field operations.

### **Conclusion**

The OSCE's conflict cycle toolbox has significantly evolved since the early 1990s. The adoption and implementation of MC Decision No. 3/11 was vital to that end. The toolbox includes a solid set of instruments that can be applied across the OSCE area. While the implementation of conflict cycle tools can always be enhanced, what is urgently required are sufficient OSCE resources to do so and the political will of participating States to make proactive use of relevant instruments and mandates.<sup>39</sup>

With the growing complexity of today's security challenges, the OSCE must be ready to make a meaningful contribution to conflict prevention and peacebuilding whenever and wherever it can within its broad geographical area. To that end, flexibility is required, as are sufficient financial and human resources. As the cost of crisis management far outweighs the cost of preventive action,<sup>40</sup> countless dividends arise from investing in structural prevention and peacebuilding activities. Nonetheless, recent years have witnessed a continuous decrease in

the OSCE's Unified Budget, constraining the organization's ability to respond to emerging tensions and to address root causes of conflict. Political will is needed now more than ever to unleash the OSCE's immense potential and make full use of its mandate and capacities.

The tenth anniversary of MC Decision No. 3/11 in 2021, during Sweden's OSCE Chairpersonship, provides an excellent opportunity to take stock of the conflict cycle toolbox, including ways to further strengthen relevant instruments and adapt them to newly emerging security challenges. In that context, participating States could reaffirm the commitments they made ten years ago in MC Decision No. 3/11, for example in a commemorative declaration at the 2021 Ministerial Council. By acknowledging the important work done since the adoption of MC Decision No. 3/11, participating States would provide new impetus to OSCE endeavours to enhance the conflict cycle toolbox, reinvigorating efforts in the areas of conflict prevention, conflict resolution, and sustainable peacebuilding.

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# Kazakhstan's OSCE Connectivity Ambitions: Trade Promotion and Norm Resistance

Sebastian Mayer\*

## Abstract

During the 2010s, “connectivity” became a buzzword within the OSCE’s second (economic and environmental) dimension of security as a policy tool to improve economic relations among participating States. Kazakhstan has advanced the idea of hosting an OSCE connectivity centre in its capital to provide pertinent expertise. This contribution to OSCE Insights discusses the concept of connectivity, delineates Kazakhstan’s connectivity agenda, and outlines its drivers. Beyond a material interest in the theme given its landlocked location, Kazakhstan appears to use its connectivity agenda as a vehicle to downplay commitments in the first (politico-military) and especially the third (human) dimension of security. It is argued that Kazakhstan’s initiative should be taken seriously, not only because the OSCE can indeed play a role in connectivity but also because Kazakhstan’s significant contributions to regional and international cooperation and stability deserve recognition. Yet it is emphasized that the three OSCE security dimensions cannot be played off against each other and that Kazakhstan must continue to pay attention to its commitments in the first and the third dimensions.

## Keywords

Connectivity, economic relations, OSCE, Central Asia, Kazakhstan, trade promotion, norm resistance.

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## Introduction

During the 2010s, “connectivity” became a buzzword as a policy tool to improve inter-state economic relations, particularly in the transition economies of South-Eastern and Eastern Europe and

the former Soviet Union. In the OSCE, the term was first used when Germany chaired the OSCE in 2016, although the theme of improving economic relations can be traced back to the second chapter of the Helsinki Final Act of 1975. According to the OSCE website, the Organization “works on creating the basis of economic connectivity between the 57 participating States, through dialogue on trade and transport”.<sup>1</sup>

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\* Dr Sebastian Mayer  
Kazakh-German University  
Almaty, Kazakhstan  
[mayer@dku.kz](mailto:mayer@dku.kz)

Kazakhstan in particular has put the topic of connectivity at the centre of its foreign policy. This comes as no surprise given its landlocked location and its general isolation from global markets. Against this backdrop, the government has advanced the idea of establishing an OSCE connectivity centre in the capital, Nur-Sultan. Such a centre would give the country the opportunity to benefit from relevant expertise. As we shall see, however, Kazakhstan has further reasons to promote connectivity within the OSCE. An emphasis on this theme would serve to advance its international and regional leadership ambitions. Underscoring topics from the OSCE's second (economic and environmental) dimension of security, such as connectivity, also provides a welcome opportunity for downplaying unpleasant commitments in the other two OSCE dimensions, the politico-military and the human dimension. This is especially true with regard to the latter, where Kazakh officials remain resistant to reform, particularly as regards fundamental freedoms, elections, and the freedom of political parties. There are grounds for believing that the Kazakh government wishes to replace the current OSCE Programme Office in Nur-Sultan, which covers all three dimensions, with the proposed connectivity centre, which would deal only with the second.

In addition to discussing the concept of connectivity in general and within the OSCE, the key aims of this paper are to delineate Kazakhstan's connectivity agenda (focusing on the proposed centre), to outline its drivers, and to provide suggestions for how the OSCE should

react to this state's ambitions. It argues that Kazakhstan's initiative should be taken seriously not only because the OSCE can indeed play a role in connectivity, but also because Kazakhstan's noteworthy contributions to regional and international cooperation and stability deserve recognition. Yet it also points out that the three dimensions cannot be played off against each other and that Kazakhstan must continue to pay attention to its commitments in the first and the third dimensions.

The paper starts by introducing the concept of connectivity. The second section pinpoints how connectivity is moored within the OSCE. The following two sections demonstrate how Kazakhstan's foreign policy places emphasis on connectivity and illuminate underlying drivers. Based on this analysis, the last section offers policy recommendations for the OSCE.<sup>2</sup>

### The concept of connectivity

"Connectivity", as used in this paper, can roughly be defined as the conscious crafting of economic relations among states or regions.<sup>3</sup> A tool of external development policy, it embodies an element of economic diplomacy that is exerted through individual states and international organizations. While early work on trans-governmental relations such as that by Keohane and Nye focused on increased economic interactions among the then industrialized nations,<sup>4</sup> the economies of the former Socialist bloc states were thrust onto centre stage by both scholars

and practitioners when the Berlin Wall came down in 1989. Connectivity was seen as a major driver of economic progress for these states. Examples of connectivity initiatives undertaken include the since expired Technical Assistance to the Commonwealth of Independent States (TACIS) scheme launched in 1991 by the then European Community, the Belt and Road Initiative (BRI) announced by China in 2013, Japan's Partnership for Quality Infrastructure initiative of 2015, and the European Union (EU) Connectivity Strategy for Europe and Asia, which was launched in 2018. In addition to its tangible material benefits, connectivity has the potential to serve as a confidence-building measure for fostering peaceful relations among involved states.<sup>5</sup> These expectations correspond to a strand of liberal thought according to which economic exchange is conducive to stability and peace.

States support connectivity projects because they advance their material interests and/or because they serve these broader goals. Besides bringing benefits, however, connectivity also entails risks. As Keohane and Nye point out, increased economic relations may create national weaknesses to varying degrees,<sup>6</sup> as evidenced by the oil embargoes of the 1970s, trade wars, and supply chain disruptions, such as those resulting from the recent spread of COVID-19. Diverging preferences regarding where and how to nurture economic relations can be a further source of friction leading to their geo-politicization.<sup>7</sup> What is more, the term "connectivity" has widely diverging connotations, which may spark

disagreement. Autocratic polities – China and its BRI being a prime example – by and large frame connectivity in a non-normative, material sense, focusing on physical infrastructure and related strategic calculations. Within liberal states and international institutions, by contrast, the concept tends to be laden with normative claims, including the aforementioned liberal peace expectations. Related concepts such as good governance and sustainability entail a number of guiding principles, values, and norms within the scope of overall connectivity aims. Such principles are likewise articulated by the OSCE, to which we now turn.

### The OSCE and connectivity

The relevance of connectivity to the OSCE dates back to the Helsinki Final Act of 1975, the second chapter of which is devoted to economic and environmental cooperation. Several post-Cold War milestone documents relating to the second dimension further paved the way for this field of action. The Final Document of the 1990 Conference on Economic Co-operation in Europe in Bonn calls for "sustainable economic growth" and "co-operation in the field of economics", emphasizing the "rule of law and equal protection under the law for all, based on respect for human rights and effective, accessible and just legal systems" as accompanying economic growth.<sup>8</sup>

The particularly important Strategy Document for the Economic and Environmental Dimension (the Maastricht Document) was adopted at the 2003

Ministerial Council (MC) in Maastricht against the backdrop of significant difficulties regarding economic transformation processes in the former socialist economies. A number of governance problems were identified, including “ineffective institutions and a weak civil society, lack of transparency and accountability in the public and private sectors, [...] poor public management and unsustainable use of natural resources, corruption and lack of respect for business ethics and corporate governance”.<sup>9</sup>

The MCs in 2006 (Brussels) and 2011 (Vilnius) also resulted in decisions related to economic cooperation. The theme gained significant momentum when the Swiss Chair placed it at the top of the OSCE agenda in 2014. The Decision on Good Governance and Promoting Connectivity taken at the 2016 MC in Hamburg mentioned the buzzword “connectivity” for the first time in the OSCE context, noting that “good governance, transparency and accountability are essential conditions for economic growth, trade, investment and sustainable development, thereby contributing to stability, security and respect for human rights”. This decision charged OSCE bodies with enhancing the simplification, harmonization, and standardization of rules and regulations pertaining to trade in the OSCE area. More recent documents referring to connectivity include the 2017 MC Decision on Promoting Economic Participation in the OSCE Area and the 2018 MC Declaration on the Digital Economy as a Driver for Promoting Co-operation, Security and Growth.

All of the documents mentioned above are premised on the assumption that fostering economic prosperity and related features in line with connectivity enhances security and stability in the OSCE area. However, given their various emphases and the largely diverging regime types among participating States, the OSCE’s approach to connectivity is clearly multifaceted. There is hence no consensus on how to precisely define connectivity within the OSCE.

Within the institutional framework of the OSCE, responsibility for connectivity falls on the Secretariat’s Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA). Its mandate stems from the decisions and declarations mentioned above, particularly the 2003 Maastricht Document. Its 22 staff members deal with the full range of the OSCE’s work in the second dimension, including connectivity and other closely related areas such as digitization and good governance.<sup>10</sup>

The geographic focus of OSCE connectivity lies in Eastern Europe, South-Eastern Europe, the South Caucasus, and Central Asia. As in other OSCE fields of action, the OCEEA fulfils its mandate with respect to states’ economic cooperation largely by outlining best practices for policymakers and practitioners. For example, it has issued a Handbook of Best Practices at Border Crossings<sup>11</sup> and a publication on Inland Transport Security Forum Proceedings,<sup>12</sup> both jointly drafted with the United Nations Economic Commission for Europe (UNECE). The OCEEA also organizes national, regional, and headquarters-level workshops, sem-

inars, and online events on connectivity-related themes. Events thus far have covered cross-border e-commerce, transit coordination, and paperless trade. In June 2020, for instance, a web-based meeting entitled “Safer and Sustainable Supply Chains Connecting Central Asia and Europe” was held. Whether and to what extent related OCEEA functions could be assumed by the connectivity centre proposed by Kazakhstan is thus far unclear.

### **Kazakhstan's OSCE connectivity ambitions**

In landlocked Central Asia, which some observers deem one of the world's least integrated areas, connectivity – and transport in particular – clearly has a special importance, not least given high transit costs.<sup>13</sup> For Kazakhstan, connectivity has represented a foreign policy priority for some time – one that has been further strengthened over the past few years. As a member of the Eurasian Economic Union (EAEU), the country has an interest in promoting trade with other EAEU members. It is also a strong supporter of the Chinese BRI, which was announced in Kazakhstan's capital in 2013. Kazakhstan holds strategic relevance for the BRI as a corridor through which Chinese–Western transport is channelled. The BRI likewise has the potential to improve transit among EAEU members.<sup>14</sup> The Kazakh government has linked its own Nurlı Zhol (Bright Road) infrastructure programme, focusing on rail

and highway connections, closely to the BRI.<sup>15</sup>

Against this backdrop, Kazakhstan has given priority to activities related to connectivity largely because they assist in the modernization of existing routes and the diversification of its trade through the development of new routes – predominantly by helping it to lower transport costs, reap revenues from transit fees, and overcome export instability from over-reliance on just a few markets. Kazakhstan is crucial for China as a transport corridor for both imports and exports and is a source of commodities such as oil and uranium. But there have been recurring problems with the BRI and other connectivity projects, including deficient trade and transit cross-border standardization, a lack of transparency, rule of law, and accountability, and aid recipients' vulnerability to debt distress.<sup>16</sup> As the last section will argue, these are difficulties that could be addressed by an OSCE connectivity centre.

When it chaired the OSCE in 2010, the Kazakh government took the opportunity to put economic cooperation high on the Organization's agenda, prioritizing the theme of land transport.<sup>17</sup> It saw a further opportunity when, responding to earlier requests from several Eastern European and Central Asian participating States, the 2014 Swiss Chair paid increased attention to economic and environmental issues. Kazakhstan made use of this momentum in order to enhance its own voice regarding these themes. As a consequence, its ambitions and expectations with regard to connectivity in the OSCE intensified. Between 2016 and 2019, the

German, Austrian, Italian, and Slovakian Chairs all further nurtured the topic with different areas of focus. Italy, for example, emphasized digitization, while the German Chair linked connectivity closely to good governance.<sup>18</sup>

Kazakhstan's connectivity ambitions culminated in its lobbying for the establishment of an OSCE Thematic Centre on Sustainable Connectivity (CSC) in its capital city, Nur-Sultan. The idea was introduced in the capital in June 2017 at the Second Preparatory Meeting for the OSCE Economic and Environmental Forum and was further discussed at the Vienna MC in December. Twelve months later, on the occasion of the 2018 Milan MC, Kazakhstan's foreign minister, Kairat Abdrakhmanov, likewise voiced the idea of establishing a CSC. In July 2019, at the informal OSCE Ministerial meeting in Slovakia, the proposal was given a more definite form. The new foreign minister, Beibut Atamkulov, stated that the centre should conduct research on "connectivity in its broad interpretation". Kairat Sarybay, Kazakhstan's ambassador to the OSCE, specified "sustainable connectivity issues, [...] good governance, green economy, development of new technologies, disaster prevention, energy security, and trade promotion" as second dimension-related themes to be covered by the proposed CSC.<sup>19</sup> The Kazakh government recommended that this institution be established in the Astana International Financial Centre, a financial hub that officially opened in mid-2018 in Nur-Sultan, halfway between the airport and the city centre.<sup>20</sup> The location would allow for the devel-

opment of synergy between the CSC and both in-house institutions and scholars from the nearby Nazarbayev University. The precise functions of a CSC have yet to be determined.

Initially, Kazakhstan suggested that it and/or a group of "friends of Kazakhstan" would cover the expenses of running the CSC. It has since insisted that the costs should be covered by the OSCE's Unified Budget.<sup>21</sup> There is reason to believe that this change of mind was not (primarily) money driven. Given the OSCE's tight budget and zero nominal growth policy, which means that the budget is shrinking in real terms, it is unlikely that both the current Programme Office *and* a CSC will be able to exist in tandem if funded by the Unified Budget. While the South-Eastern European countries receive a large share of the latter (34%), Central Asia's share is also considerable (15%), topping both Eastern Europe (4%) and the South Caucasus (2%).<sup>22</sup> For this reason, and absent peacebuilding, peacekeeping, and immediate conflict-prevention needs, a substantial increase in Central Asia's share is unlikely for the foreseeable future. Former OSCE Secretary General Thomas Greminger once pointed out that given the tight Unified Budget, it will be impossible for the OSCE to afford two presences in Kazakhstan. The argument currently being advanced by Kazakhstan that the CSC should be paid for from the Unified Budget logically implies that the Programme Office in Nur-Sultan would have to be dissolved, although this has not been stated publicly.

### Norm resistance and leadership ambitions

Beyond the prospect of immediate material benefits, from Kazakhstan's perspective the proposal of hosting a connectivity centre represents a vehicle for escaping unpleasant normative commitments and a way to advance its leadership aspirations in the field. As noted in the last section, the CSC may be intended to replace the present OSCE Programme Office in Nur-Sultan. At the MC plenary session in Basel in 2014, Deputy Minister of Foreign Affairs Alexei Volkov indicated in his speech that this office could be closed altogether. While this threat was not put into effect,<sup>23</sup> the Kazakh government later repeatedly voiced the idea of changing the mission's mandate, strongly emphasizing the second dimension while downplaying, if not entirely ignoring, the other two. Like most other field presences in Central Asia, the initial OSCE field operation in Kazakhstan (established in 1998) had already been downgraded to the current Programme Office and lost some of its competences in 2015, such as trial monitoring – the observation and gathering of information on court hearings and procedures so as to assess their compliance with fair trial standards.<sup>24</sup> Back in 2004, Kazakhstan was a prominent signatory to the “Astana Appeal”, which contained complaints regarding the OSCE's alleged bias towards the human dimension and accompanying intrusions into domestic affairs. In 2018, Foreign Minister Kairat Abdrakhmanov was the first Kazakh government representative to state in writing that the Pro-

gramme Office had fulfilled its mandate and that a new focus would be necessary.<sup>25</sup>

It appears that the Kazakh government views the hosting of an official OSCE body, such as the proposed CSC, as a way to refocus its OSCE engagement. It might consider the CSC initiative a welcome distraction from unpleasant commitments, particularly in the third (human) dimension.<sup>26</sup> This rationale reflects a broader tendency within the OSCE, with several participating States increasingly resisting compliance with OSCE commitments and, using their veto power, blocking the employment of unwelcome high-level officials.<sup>27</sup>

Leadership ambition is yet another driver of Kazakhstan's connectivity agenda. Since the 1990s, the country has amply shown regional and international leadership by way of numerous cooperation initiatives. Among other things, Kazakhstan's first president, Nursultan Nazarbayev, proposed following the model of European integration and pressed for integration under a Eurasian Union.<sup>28</sup> Kazakhstan's chairing of the OSCE in 2010 was likewise a clear sign of leadership.<sup>29</sup> The country largely paved the way for the declaration of a Central Asian nuclear-weapons-free zone. With some success, Kazakhstan has positioned itself proactively with an ambitious diplomatic and foreign policy agenda, particularly as an honest peace broker, for example in its role as host to the settlement process on Syria.<sup>30</sup> It is perhaps no coincidence that at the aforementioned informal OSCE Ministerial gathering in Slovakia in 2019, Kazakhstan not

only announced its proposal to host a CSC but also mentioned its aim of hosting a meeting on dispute resolution in Afghanistan.<sup>31</sup> To a certain extent, the country has thus become an exporter of regional and international security. Connectivity aspirations in Nur-Sultan and Vienna also aim at providing guidance and consolidating Kazakhstan's increasingly proactive role in regional and international affairs. The International Financial Centre in which the CSC would be located was set up by the Kazakh government to make the country a focal point for the global financial system.<sup>32</sup> Modeled on previous initiatives, particularly in the Persian Gulf, it describes itself as functioning "as a global centre for business and finance, connecting the economies of [...] Central Asia, the Caucasus, EAEU, West China, Mongolia, Middle East and Europe".<sup>33</sup>

Nevertheless, Kazakhstan's leadership is not uncontested. For instance, both Uzbekistan and Kyrgyzstan likewise wish to host Afghanistan talks to exhibit leadership. Uzbekistan – the most populous country among the five – is generally wary of Kazakhstan's leadership ambitions, which would be enhanced by the establishment of a CSC.<sup>34</sup> When further deliberating on this initiative, it is therefore important for Kazakhstan to take seriously and accommodate the reservations of its southern neighbours.

Linked to both normative escapism and the quest for international standing, there is a good amount of status thinking at play in Kazakhstan's OSCE connectivity agenda. It appears that in Nur-Sultan, the presence of the current OSCE Pro-

gramme Office is increasingly perceived by Kazakhstan as giving the (in their view mistaken) impression that internal political conditions are deficient. This discomfort is partially understandable inasmuch as Kazakhstan stands out positively from some of its peers (such as Turkmenistan and Tajikistan) in several respects, such as investment climate, economic progress, rule of law, and overall political stability. Against this backdrop, the proposed CSC corresponds to Kazakhstan's desire to host a normal OSCE institution rather than an office for participating States in "real need". At the informal OSCE meeting in Slovakia in 2019, the Kazakh delegation stated that one of the CSC initiative's aims was to balance the geographical representation of OSCE institutions.<sup>35</sup>

It is difficult to conjecture whether a CSC will materialize. Premised on sufficient funding, the Permanent Council would ultimately have to decide on this via the consensus of all 57 participating States. It appears that strong support from the remaining four Central Asian states has been lacking thus far.<sup>36</sup> In addition, a number of other participating States have been reluctant to endorse the idea, including at least one larger European Union (EU) state. For Kazakhstan and other interested parties, it is therefore important to clarify the functions that a CSC would fulfil and to make an attempt to accommodate those who remain reluctant.

## Conclusions and Recommendations

The OSCE has a role to play in connectivity, and Kazakhstan has shown notable leadership in regional and international cooperation and stability. Therefore, this participating State's connectivity initiative should be taken seriously. Yet supporting Kazakhstan's connectivity ambitions should not lead to the discarding of first- and third-dimension commitments. Spillover potential across the three dimensions should therefore be utilized. Strictly speaking, connectivity is a second-dimension theme; insofar as it builds political confidence and transparency and promotes better border management, however, it also concerns the first dimension. It likewise has implications for the third, human dimension of security. In fact, both the 1990 Bonn Declaration and the 2016 MC Decision make direct reference to respect for human rights. The theme of good governance, which has third-dimension implications, has frequently been cited since the German Chair explicitly brought it to the forefront of OSCE discussions on connectivity. Although good governance is predominantly framed in economic terms in the OSCE context (anti-corruption, anti-money laundering), "full respect for the rule of law" is also demanded when good governance is implemented,<sup>37</sup> thus implying spillover to the third dimension, where the OSCE views the rule of law as lying at the core of human rights and democratization. Politico-military and human security issues remain central to holistic and sustainable connec-

tivity as it is currently understood by the OSCE, and this should remain the case.

It must be acknowledged that the OSCE is not the most prominent organization in the field of connectivity, considering its limited resources and the greater experience of other institutions, such as the EU, the World Bank, the World Trade Organization, the European Bank for Reconstruction and Development, and the UNECE. Commensurate with its moderate clout, the OSCE should therefore act as a platform, discussion forum, or knowledge broker for connectivity projects within the OSCE area.<sup>38</sup> These are functions through which it can contribute added value. The proposed CSC in particular could function as a think tank or clearing house for sustainable trade- and transport-related projects, helping to avoid or alleviate shortcomings such as insufficient ecological sustainability and economic feasibility, poor trade standardization, and a lack of transparency and accountability. Vulnerability to debt distress is another major issue – not so much in Kazakhstan as in other participating States, such as Kyrgyzstan, Tajikistan, and Mongolia.<sup>39</sup> With regard to this latter problem, a connectivity centre could, drawing on pertinent studies, counsel potential borrowers for future projects, address debt problems, and generally help to define standards for sustainable financing. In performing the suggested functions via studies, workshops, and conferences, a CSC could act as a catalyst for trade and transport in the OSCE area. This would be relevant to the five Central Asian countries in particular, which have significantly in-

creased their trade and economic cooperation since 2014 due to several infrastructure projects (such as the gas pipeline from Turkmenistan to Western China via Uzbekistan and Kazakhstan, built between 2006 and 2009) and are likely to add further projects.<sup>40</sup> Given the OSCE's modest funding and expertise in some dimensions of connectivity, a CSC would have to cooperate closely with other like-minded development, infrastructure, and financial institutions.

When honing its connectivity profile, the OSCE should also exploit its added value as a security organization compared to more technical organizations, highlighting the nexus between connectivity and security. Border management, political confidence-building measures, agreements to demarcate borders and to solve transboundary problems, and energy security are all themes that a future CSC should address.

When further lobbying to host a connectivity centre, Kazakhstan should avoid alienating other Central Asian countries with its leadership ambitions in this field. Since 2016, double-landlocked Uzbekistan<sup>41</sup> in particular has likewise become a dedicated supporter of connectivity, with emphasis on relations among the Central Asian countries.<sup>42</sup> Any initiatives undertaken by Kazakhstan to promote connectivity must integrate other interested Central Asian states rather than estranging them. This could be achieved, *inter alia*, by ensuring the sufficient representation of experts from Uzbekistan in the proposed CSC. Overall, Kazakhstan and other interested parties should spell out the functions of the CSC in greater

detail and must attempt to accommodate those who have thus far been reluctant to approve such a project.

## Notes

- 1 OSCE, "Connectivity", available at: <https://www.osce.org/oceca/446224>.
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- 22 Figures based on the 2019 Unified Budget. See OSCE, *Annual Report 2019*, p. 98, available at: <https://www.osce.org/annual-report/2019>.
- 23 Which the government principally could have done, given that each field mission requires a renewed mandate once per year that must be consensually adopted in the Permanent Council. For instance, capitalizing on its veto power and being discontent with the OSCE Office in Baku, the Azeri government provoked its closure in 2016.
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- 34 Interview with OSCE official from Central Asia, July 2020.
- 35 Altynsarina, cited above (Note 19).
- 36 Interview with OSCE official from Central Asia, July 2020.
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# Deployment of Armed Forces During the Coronavirus Crisis: Compliance with the OSCE Code of Conduct?

*Alexandre Lambert, Filip Ejodus, Thomas Schmidt\**

## *Abstract*

The aim of this paper is to assess whether the deployment of European armed forces during the coronavirus crisis has been in compliance with the OSCE Code of Conduct on Politico-Military Aspects of Security and other relevant OSCE documents. We show that most of the measures taken by OSCE participating States in response to the COVID-19 pandemic thus far have complied with OSCE norms and commitments. Nonetheless, weak points are identified, particularly in relation to the provision of a clear definition of the role and mission of armed and security forces and safeguards related to the principles of necessity, proportionality, and non-discrimination in the context of measures taken to address public emergencies. There have also been a few cases of derogation from obligations related to basic human rights and fundamental freedoms. We offer policy recommendations for strengthening future compliance with OSCE norms and commitments on the domestic use of armed forces in support of civilian authorities in emergency situations.

## *Keywords*

coronavirus, OSCE, Code of Conduct on Politico-Military Aspects of Security, armed forces

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## **Introduction<sup>1</sup>**

Toward the end of 2019, an atypical viral pneumonia appeared in the province of Wuhan in the People's Republic of China. By early 2020, the disease had been identified as COVID-19, caused by the coronavirus SARS-CoV-2. On 30 January, the Director-General of the World Health Organization (WHO) declared the outbreak of the disease a public health emergency of international concern. Soon after, the virus quickly spread across the world. To curb this unprecedented health

emergency, which came to be known as the coronavirus crisis, most OSCE partic-

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\* *Prof. Dr Alexandre Lambert*  
Geneva Institute of Geopolitical Studies  
[lambert@geopolitics-geneva.ch](mailto:lambert@geopolitics-geneva.ch)

*Assoc. Prof. Dr Filip Ejodus*  
University of Belgrade  
[filip.ejodus@fpm.bg.ac.rs](mailto:filip.ejodus@fpm.bg.ac.rs)

*Colonel Thomas Schmidt*  
Permanent Mission of Switzerland to the OSCE, the United Nations and other International Organizations in Vienna  
[thomas.schmidt@eda.admin.ch](mailto:thomas.schmidt@eda.admin.ch)

icipating States introduced some form of emergency regime, including the use of armed forces.

As large and well-organized bodies with substantial infrastructure and human and material resources, modern militaries are expected to engage in contingencies like this and to support civilian authorities in times of crisis. While doing so, however, they must comply not only with the constitutional frameworks in which they operate but also with international norms on the use of force, including those originating from the OSCE. As a security organization, the OSCE does not deal directly with health and medical issues. Nevertheless, the 1994 OSCE Code of Conduct on Politico-Military Aspects of Security (the Code) provides normative guidance for the deployment of armed forces in public health emergencies such as the coronavirus crisis.<sup>2</sup> This is especially so given the Code's relevance to both the politico-military dimension and the human dimension of security.<sup>3</sup>

The key question addressed in this paper is how European armed forces have been used in the coronavirus crisis and whether this use has complied with OSCE norms and commitments. We first outline the normative provisions of the Code and other OSCE documents that can be seen to apply to the domestic use of force in public emergencies, including health emergencies such as the coronavirus crisis. We then offer an analysis of the different ways in which states have made use of their military forces in the crisis and identify the most significant challenges with respect to compliance with the relevant OSCE norms.

We draw on official documents of the OSCE and participating States, including the official websites of ministries of defence and armed forces, country reports to the European Organisation of Military Associations and Trade Unions, academic publications, and news reports. Our analysis covers the period from the recognition of COVID-19 as a public health emergency in January 2020 to early September 2020, when the first peak of the pandemic had subsided in most European countries and measures responding to the second wave had not yet been introduced. In terms of the countries covered, the analysis encompasses European OSCE participating States. Our analysis shows that while there are clear risks associated with both domestic deployments and states of emergency, the countries examined have generally complied with OSCE norms, although with a few notable exceptions. In conclusion, we draw lessons learned from the coronavirus crisis and offer policy recommendations.

### Relevant OSCE norms

OSCE documents, which are politically binding, contain several provisions that are relevant to the use of armed forces during the coronavirus crisis. A first group of provisions contained in documents relevant to the OSCE's third, human, dimension of security relates to public emergencies in general. The 1991 Moscow Document on the Human Dimension of Security<sup>4</sup> (§ 28.10) requires participating States to notify the CSCE (forerunner of the OSCE) when a state of

emergency is declared or lifted and to give notice of any future derogations from their international human rights obligations due to a state of emergency.<sup>5</sup> This was further elaborated in the 1992 concluding document of the Helsinki Summit,<sup>6</sup> which set out that the Office for Democratic Institutions and Human Rights (ODIHR) would serve as the OSCE's clearinghouse for information on states of public emergency. Paragraphs 24 and 25 of the 1990 Copenhagen Document are also relevant to potential derogations from obligations related to basic human rights and fundamental freedoms during public emergencies.<sup>7</sup> They clearly prohibit the abuse and arbitrary application of restrictions on human rights and fundamental freedoms and stipulate that legitimate restrictions and exceptions must observe the principle of *proportionality* (§ 24). This provision reminds participating States that a certain number of fundamental human rights are not open to derogation clauses and thus cannot be restricted, even in times of emergency (or war).

Finally, § 25 of the Copenhagen Document includes specific clauses that set out the principles of *publicity* (25.2), *necessity* (25.3), and *non-discrimination* (25.4) in the context of a state of emergency. Regarding *necessity*, it provides that “measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation”. Concerning *non-discrimination*, § 25 states that “such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority”.<sup>8</sup>

A second group of provisions relevant to the coronavirus crisis in OSCE documents relates to the use of force for internal security purposes. As mentioned above, the Code is the OSCE's key source of normative provisions on the use of armed forces. It includes a group of complementary provisions concerning the deployment of armed and security forces for internal security missions, applicable, for example, to the enforcement of public emergencies. They stipulate that such missions must comply with international human rights standards, including standards related to the basic rights and fundamental freedoms of armed forces personnel, thus supplementing the human dimension norms mentioned above.

The paragraphs of the Code that are most relevant to the coronavirus crisis are § 21, which deals with the importance of the constitutional framework for democratic control, § 34, which concerns respect for international law, and §§ 36–37, which contain provisions relating to the assignment of armed forces for internal security missions, including the principle of proportionality in the (potential) use of force mentioned above. Due to their significance, these paragraphs are provided here (see text box).

**OSCE Code of Conduct provisions most relevant to the coronavirus crisis**

§ 21. Each participating State will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

§ 34. Each participating State will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law [...]

§ 36. Each participating State will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law. If recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs for enforcement. The armed forces will take due care to avoid injury to civilians or their property.

§ 37. The participating States will not use armed forces to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.

In line with § 25.4 of the Copenhagen Document regarding the principle of non-discrimination (mentioned above), § 17 of the Code warns that political tensions may emerge in the case of violations of human rights and fundamental freedoms and that this may endanger peace and security. According to this paragraph, such violations may include “manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism”.

Finally, the Code contains provisions pertaining specifically to states of emergency, applicable to public health emergencies such as the coronavirus crisis. Participating States deploying armed and security forces in a state of emergency must a) clearly define the roles and missions of armed forces and their obligation to act solely within the relevant constitutional framework (§ 21); b) provide assurance that the military, paramilitary, and security forces' individual service personnel will be able effectively to exercise their civil rights (§ 23, § 32); c) protect the political neutrality of the armed forces as an institution (§ 23); d) safeguard against the accidental or unauthorized use of military means (§ 24); e) ensure the individual accountability of armed forces personnel under national and international law (§ 30); and f) adhere to the principle that the responsibility of superiors does not exempt subordinates from any of their individual responsibilities (§ 31) – e.g. *vis-à-vis* humanitarian and human rights law.

Regarding the application of the Code, a decision by the OSCE's Forum for Security Co-operation obliges participating States to exchange information on their implementation of its provisions on an annual basis.<sup>9</sup> This includes voluntary reporting on optional issues. Switzerland voluntarily made use of this opportunity in the information exchange of 2020, including a short chapter called “Measures to Combat the Corona Virus” with the information it provided. It stressed, *inter alia*, that all national measures taken in response to the pandemic have been in line with the provisions contained in § 24 and § 25 of the Copenhagen Document

and in §28 of the Moscow Document. Furthermore, on the occasion of the Annual Discussion on the Implementation of the OSCE Code of Conduct in June 2020, the Permanent Delegation of Switzerland to the OSCE invited all OSCE participating States to use the annual information exchange as an opportunity to share lessons learned and best practices regarding the deployment of armed forces during the coronavirus crisis.<sup>10</sup>

### **States of emergency and the use of armed forces in the Covid-19 pandemic**

Since the beginning of the coronavirus crisis, more than one-third of OSCE participating States have officially declared a state of public emergency as envisaged by international law, while others introduced other emergency regimes of different intensity or have adopted restrictive measures through legislation and policy.<sup>11</sup> Twenty-eight participating States have informed ODIHR that they have undertaken emergency measures<sup>12</sup> in response to the pandemic. The emergency measures undertaken have led to derogations from obligations related to fundamental human rights and freedoms, including freedom of assembly and association, freedom of movement, the right to liberty, the right to a fair trial, the right to respect for private and family life, the right to security, freedom of thought, conscience and religion, the right to property, the right to education, and in some cases freedom of expression and the prohibition of torture and ill treat-

ment. Some countries, such as Hungary, introduced an open-ended state of emergency without the time limitations required by the Copenhagen Document.<sup>13</sup> In addition, emergency measures have posed challenges for democratic oversight and the functioning of parliaments, transparency, privacy (including personal data protection), justice institutions, free and fair elections, and combatting hate crime and discrimination.<sup>14</sup>

Across the OSCE region, participating States have witnessed the militarization of the public sphere – a development that is without recent precedent in most OSCE participating States. High-level politicians have used war metaphors extensively in their political discourse. Their public statements have abounded with references to battles, invisible enemies, and analogies to war and military victories. Although this type of discourse can help to convey urgency, suspend partisanship, foster solidarity, and muster resources, it can also diminish pluralism, undermine democratic procedures, and hinder international solidarity.<sup>15</sup> This militaristic language also paves the way for both warranted and unwarranted use of armed forces in managing the crisis.

Historically, militaries have played an essential role in curbing pandemics, from the 1918 Spanish flu<sup>16</sup> to the H1N1 pandemic of 2009.<sup>17</sup> With their unrivalled crisis management capabilities, research and development infrastructure, discipline, authority, and command and control, militaries are a natural partner for civilian authorities in public emergencies, including public health emergencies. It is therefore not surprising that military aid

to civilian authorities has played an essential role across the OSCE region in the coronavirus crisis. In some participating States, this has involved large-scale operations such as Operation Resilience in France, Operation Balmis in Spain, and Operation Restrict in the UK. While in most countries use of armed forces has been “in conformity with constitutional

procedures” (§ 36 of the Code), there have been exceptions. In both Serbia and Albania, for example, parliaments were sidelined, and the executive did not seek their timely approval.<sup>18</sup>

Across the OSCE region, the military has been mobilized for various tasks, which can be grouped into five main categories (see Table 1).

*Table 1: Tasks conducted by armed forces of OSCE participating States during the coronavirus crisis*

Logistics and Transportation	Medical Support	Research and Development	Governance Support	Internal Security
<ul style="list-style-type: none"> <li>• Repatriation of citizens</li> <li>• Humanitarian relief</li> <li>• International assistance</li> <li>• Transportation of patients, medical staff and PPE</li> </ul>	<ul style="list-style-type: none"> <li>• Disinfection of public areas</li> <li>• Manufacturing of PPE</li> <li>• Construction and management of field hospitals – Testing and contact tracing</li> <li>• Provision of military medical staff, PPE, infrastructure and equipment</li> <li>• Morgue management</li> </ul>	<ul style="list-style-type: none"> <li>• Development and testing of vaccines</li> <li>• Production of disinfectants</li> <li>• Development of tracing applications</li> <li>• Production of PPE</li> </ul>	<ul style="list-style-type: none"> <li>• Strategic communication</li> <li>• Engagement of defence planners in other government bodies</li> <li>• Contact tracing support</li> </ul>	<ul style="list-style-type: none"> <li>• Border control</li> <li>• Migration management</li> <li>• Provision of law and order</li> <li>• Quarantine enforcement</li> <li>• Protection of hospitals, retirement centres, public enterprises, and critical infrastructure</li> </ul>

First, participating States have used their armed forces for *logistics and transportation*. This includes the repatriation of citizens stranded abroad as tourists or workers and the provision of humanitarian relief inside the country, such as food delivery to those living in poverty (Albania),<sup>19</sup> those who have been quarantined (Malta),<sup>20</sup> and those without housing (Belgium).<sup>21</sup> Moreover, militaries have taken part in sending and receiving international assistance, including in the transportation of patients, medical staff, and personal protective equipment (PPE). These military logistical and transportation activities have been uncontroversial and have not infringed the Code or other core documents.

Second, participating States have used their armed forces for *medical support*, including the disinfection of public areas, the manufacturing of PPE, the construction and management of field hospitals, testing, and contact tracing, the provision of military medical staff, PPE, infrastructure, and equipment, and the management of morgues. While these activities have been relatively uncontroversial, they raise concerns in relation to the Code. To begin with, they involve activities that potentially expose soldiers to the virus and that raise the issue of the human rights and fundamental freedoms of armed forces personnel, particularly regarding their health and safety at work (§ 32 of the Code). In many cases, it has been reported (usually by military unions) that soldiers did not have proper training or sufficient PPE, resulting in unnecessary infections and deaths.<sup>22</sup> In addition, the involvement of the military in population testing and tracing raises concerns regarding potential human rights

violations and civil–military tensions (§ 2, § 17 of the Code). In Slovakia, for example, the armed forces implemented obligatory testing of the Roma population, which, according to Amnesty International, only added “to [the] stigmatization and prejudice they already face”.<sup>23</sup>

Third, the armed forces have been used for *research and development*. This includes the development and testing of vaccines, disinfectants, tracing applications, and PPE. The only activity in this category identified in the present study that potentially infringes the Code (§ 32) is the testing of vaccines on Russian soldiers.<sup>24</sup> Even though the soldiers volunteered, this is potentially problematic insofar as the military is a hierarchical structure in which pressure, either direct or indirect, can undermine informed consent.<sup>25</sup> Other known research and development activities conducted by the militaries of OSCE participating States have been unproblematic in terms of adherence to the Code.

Fourth, participating States have used their armed forces as *governance support* to other bodies of government. In Lithuania, for instance,<sup>26</sup> military experts in strategic communication provided support to the civilian authorities in curbing disinformation and fake news.<sup>27</sup> The British Armed Forces embedded military planners in local governments to support planning and decision-making.<sup>28</sup> In Ireland, members of the Defence Forces assisted health authorities with contact tracing.<sup>29</sup> Planners from the Armed Forces of the Netherlands have been assigned to national crisis structures, the Ministry of Health, and other civilian institutions to support coordination.<sup>30</sup> The support to civilian authorities provided by

the armed forces in these and similar capacities is unproblematic as long as these forces are “under the effective control of constitutionally established authorities and subject to the rule of law” (§ 36) and as long as they remain *politically neutral* as an institution (§ 23). In all of the cases known to the authors of this paper, this provision has been complied with, and no instances of military bodies making decisions that lie outside of civilian democratic control have been recorded within the observed region.

Finally, a significant number of participating States have used their militaries for *internal security*. This includes border control, migration management, the provision of law and order, quarantine enforcement, and the protection of hospitals, retirement centres, public enterprises, and critical infrastructure. Some countries, such as Germany and the UK, have refrained from using their militaries for internal security due to constitutional constraints and historical sensitivities.<sup>31</sup> In those states where the military has been assigned this role, the use of undue force has been reported in several participating States. In Serbia, for example, military police were mobilized to guard the asylum centres in which the country’s approximately 9,000 refugees were detained throughout the state of emergency.<sup>32</sup> In Ireland and the Netherlands, it has also been reported that asylum seekers were detained on military premises.<sup>33</sup> The military was also deployed to protect borders in several OSCE participating States, including Greece, Croatia, Poland, the Czech Republic, Latvia, Lithuania, the Netherlands, North Macedonia, Austria, Portugal, Serbia,

Slovakia, and Slovenia. This led to the involvement of the armed forces of several participating States in migrant pushbacks and human rights violations. In Croatia, the military was involved in a violent pushback at the Croatian border, while in Slovenia paramilitary vigilantes patrolled the southern border in an attempt to prevent migrants from entering.<sup>34</sup> In many participating States, armed forces have been deployed to safeguard quarantines, patrol the streets, and guard establishments. While such military aid to civilian authorities is acceptable in certain contexts, especially when police capacities have been exhausted, there has been no clearly expressed rationale or definition of the roles and missions of the armed forces in several such instances, which has raised concern.<sup>35</sup> In Hungary<sup>36</sup> and Serbia,<sup>37</sup> extensive use of the military for internal security purposes has not always been warranted by public health considerations and has only worsened the ongoing democratic backsliding that has taken place in these countries.

### **Conclusion and policy recommendations**

The COVID-19 pandemic caught the world by surprise. It has exposed weaknesses that have affected the ability of national governments and international organizations to coordinate their efforts to limit the spread of the virus in a timely manner and to deploy their assets proportionately, in a way that consistently upholds the human rights and fundamental freedoms of their citizens. More

than one-third of participating States declared a state of emergency, and some applied unusually draconian, maximally restrictive lockdown measures. Across the European part of the OSCE region, countries have deployed armed forces for transportation, medical support, research and development, governance support, and the provision of internal security.

Although the use of armed forces has for the most part been warranted and uncontroversial, in some cases, especially with respect to the provision of internal security, it has not been in compliance with the OSCE Code of Conduct. The activities undertaken by armed forces in modern, developed states must be based on the rule of law and a well-established, clearly defined legal framework. Armed forces are strategic reserves and “hard power assets” that states can draw on to defend themselves legitimately against outside enemies and to provide peace enforcement and peacekeeping within the mandates given to them by the United Nations Security Council. Armed forces are therefore structurally ill-suited to tackling non-military domestic problems such as the coronavirus crisis, as illustrated by the examples of misbehaviour and overstepping of competences outlined above.

The deployment of armed forces in extraordinary situations and states of emergency, and the extent of proper parliamentary and democratic control over such deployments, is a significant litmus test for a society’s commitment to democratic standards (and the commitments of its top-level politicians). Shortcomings in the deployment of armed forces during the COVID-19

crisis are thus symptoms of underlying, deeply rooted, systemic governance issues. If these failings could merely be attributed to poor implementation, stress, and lack of experience, future insufficiencies and failures could be avoided through assessments and lessons learned processes led by political and parliamentary representatives. If they originate in general failures of governance, however, they may be attributed to weak democratic institutions and/or democratic political culture. The coronavirus crisis may therefore serve as a useful indicator for the state and quality of democratic governance. In this context, we may also refer to § 20 of the Code, in particular to its final provision that participating States shall “[...] further the integration of their armed forces with civil society as an important expression of democracy”.

Any policy recommendations must remain tentative, given the evolving situation of the coronavirus crisis. Nevertheless, analysing recent deployments of armed forces in response to the crisis against the backdrop of the norms and principles enshrined in the Code allows us to make several preliminary policy recommendations that should be taken into consideration by the OSCE and its participating States:

- Emergency measures and the use of armed forces must be conducted within states’ constitutional framework and fully under democratic, parliamentary, and civilian control. OSCE participating States should implement the relevant norms and provisions of the 1990 Copenhagen Document, the 1991 Moscow Document on the Hu-

man Dimension of Security, the 1992 concluding document of the Helsinki Summit, and the 1994 OSCE Code of Conduct on Politico-Military Aspects of Security.

- COVID-19 task forces should take the form of ad hoc government formations led by heads of governments or health ministers rather than ministries of defence. If providing military aid to civilian authorities in the context of a pandemic or other civilian task, armed forces should play a strictly subsidiary role and should be subordinated to the leading civilian authority.
- Competent and clear hierarchies and tailor-made rules of behaviour (ROB) and/or rules of engagement (ROE) are of paramount importance to ensure the efficient and constitutional deployment of armed forces in civilian environments and productive interaction between armed forces and civilians.
- Joint training and drills by all institutions and agencies dealing with emergency situations and disaster relief should be carried out regularly at the national, regional, and local levels, thus increasing the efficiency and effectiveness of their responses. These different governance levels should also develop a shared understanding of vertical interaction with a clear list of tasks assigned to each level, according to the principle of subsidiarity.
- Members of armed forces who are deployed during the pandemic should be trained and equipped to minimize contagion. Military activities that have no relevance to national security or territorial defence (ongoing conflict, defence against armed attack, etc.) or which cannot be organized in full compliance with health measures should be suspended or downscaled.
- Within the requirements of service, members of armed forces should be able to enjoy and exercise their human rights and fundamental freedoms, which include the inviolability of the individual service member's physical integrity. Service members should not be unnecessarily exposed to biological threats; if they are, they should be properly protected. Moreover, members of armed forces should not be ordered to "volunteer" in the testing of newly developed vaccines or medications, which would be a clear abuse of the military hierarchy.
- The annual exchange of information on the Code, which is considered part of the OSCE's toolbox of confidence- and security-building measures, should be more extensively used as a platform for exchanging information on how participating States are dealing with the emergency situation caused by the pandemic and how the Code's norms and provisions are being upheld.<sup>38</sup>
- The OSCE participating States, as well as the OSCE Secretariat, should step up their efforts to raise awareness of the importance of the Code. Over the past years, the OSCE's relevance has unfortunately diminished in the eyes of many participating States, and many OSCE documents are no longer well known. This means that governments may plan for the emergency de-

- ployment of troops without consulting the Code as a key norm-setting document.
- The implementation of seminars, workshops, and other activities across the OSCE region aimed at universalizing participating States' familiarity with the Code should be further encouraged and intensified. In addition, a chapter dedicated to the issue of implementing the Code in extraordinary situations/states of emergency could be included in a revised version of the *Compilation of Practical Examples on the Democratic Control of Armed Forces*, a best practice guide on the implementation of the Code of Conduct throughout the OSCE region.<sup>39</sup>
  - Emergency measures and the challenge of their proportionate application (as illustrated by the coronavirus crisis) are not new; they reflect more general shortcomings, especially in countries with pre-existing governance challenges and deficiencies. A few participating States have already announced their intention to undergo a thorough self-evaluation regarding their COVID-19 response. Such an assessment should target the actions of all executive branches, both civilian and military, and should encompass all actors, from the top command and control level down to police and military personnel on the ground. It should be aimed at determining the extent to which these actors have complied with the principles of proportionality and of doing the least harm possible.
  - ODIHR could assist participating States in conducting such assessments and self-evaluations, drawing on general concepts and experiences from past cases. Following its assessment of the situation in the OSCE region, ODIHR could provide general recommendations to all participating States through the publication of a best practice guide on parliamentary democratic control of armed forces during states of emergency and emergency situations. Furthermore, ODIHR should be given the opportunity to share the conclusions of its OSCE-wide assessment by issuing tailor-made recommendations to individual participating States, if desired.

### Notes

- 1 The authors would like to thank the anonymous reviewers for their valuable comments on the earlier version of this manuscript.
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# OSCE Minsk Group: Lessons from the Past and Tasks for the Future

*Philip Remler, Richard Giragosian, Marina Lorenzini, Sergei Rastoltsev\**

## *Abstract*

The international community, acting through the OSCE Minsk Group, has been unable to induce the leaders of Armenia and Azerbaijan to resolve the Karabakh conflict, which began in 1988 and burst into a new round of fighting in September 2020. Leaders and populations on both sides had become increasingly maximalist; any leader willing to compromise could be branded a traitor. The 2020 fighting drastically changed facts on the ground. With Turkey's assistance, Azerbaijan recovered much of the land it lost a generation previously. But Azerbaijan was compelled to permit Russia to deploy a large peacekeeping force, something it had resisted for 25 years. While its authority is diminished, the Minsk Group can play a role going forward in restoring confidence and communication between the sides, opening borders, and ultimately leading negotiations on the future status of the region.

## *Keywords*

Karabakh, Azerbaijan, Armenia, Russia, Turkey, OSCE

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## **Introduction<sup>1</sup>**

The fighting that engulfed Azerbaijan and Armenia on 27 September 2020 re-

minded the world – yet again – that for over thirty years the Karabakh conflict has defied efforts to find a solution.<sup>2</sup> Since 1992 the Minsk Group of the OSCE has been the international body officially mandated to mediate. It led serious negotiations throughout that time but proved unable to persuade the leaders of Azerbaijan and Armenia to make the mutual concessions necessary for peace. The recent intensive combat changed the situation on the ground, diminished the current role of the Minsk Group, and challenged its work in the future. This report seeks reasons for past failure and prospects for a future role.

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\* *Philip Remler* (principal drafter)  
Carnegie Endowment for  
International Peace

*Dr Richard Giragosian*  
Regional Studies Center, Yerevan  
[director@regional-studies.org](mailto:director@regional-studies.org)

*Marina Dolcetta Lorenzini, M.A.*  
The Fletcher School, Tufts University  
[marina.lorenzini@tufts.edu](mailto:marina.lorenzini@tufts.edu)

*Sergei Rastoltsev*  
MEMO, Moscow  
[sergej-ras@yandex.ru](mailto:sergej-ras@yandex.ru)

The report is structured in four sections. The first analyses the strategies employed by the warring sides in the Minsk Group negotiations from the ceasefire in 1994 until the hostilities were renewed on 27 September 2020. The second discusses efforts by the Minsk Group during that period. The third section analyses the aims and reactions of the main stakeholders since 27 September. The fourth section lays out some parameters for future prospects.

### Negotiating strategies after the 1994 ceasefire

To understand why Azerbaijan launched an offensive on 27 September 2020, we must understand the sides' aims in the hostilities of the early 1990s and their aims since the ceasefire.

#### Armenia

The initial aim of the Karabakh movement was “miatsum” – unification of Nagornyy Karabakh with Soviet Armenia via official transfer from Soviet Azerbaijan. After the Soviet Union collapsed, the overt aim changed to independence from Azerbaijan, though desire for unification with Armenia remained. Armenian forces were victorious in the fighting that started in 1988 and grew by 1992 to include full-scale military operations. Armenians expelled Azerbaijani forces from Nagornyy Karabakh, captured Shusha (for centuries the fortified

seat of Azerbaijani power in Karabakh), occupied a buffer zone surrounding the region, forced the inhabitants out, and repelled Azerbaijani counterattacks. Nagornyy Karabakh achieved *de facto* separation, though the 1994 ceasefire (the Bishkek Protocols) brought no political settlement. United Nations (UN) Security Council Resolutions still consider Karabakh part of Azerbaijan.<sup>3</sup>

The provinces that Armenian forces captured surrounding Karabakh fell into three categories:

*Provinces between Nagornyy Karabakh and Armenia:* Lachin and Kelbajar, the Soviet Red Kurdistan district of the 1920s. Lachin was occupied in May 1992, days after the capture of Shusha. Kelbajar was captured in a March–April 1993 operation. The fighting forced the Kurdish and Azerbaijani population out of both. Armenia and Nagornyy Karabakh considered these provinces *existentially vital*, as they ensured land access between them.

*Provinces between Nagornyy Karabakh and Iran:* The fall of Kelbajar led to revolution in Azerbaijan. Armenian forces launched a summer 1993 offensive that captured the provinces of Qubadli, Zangilan, and Jabrayil, forcing out the inhabitants. This region, south from Karabakh to the Aras River, borders Iran; it was considered *strategically important*.

*Provinces east of Nagornyy Karabakh:* Also in summer 1993, Armenian forces captured the strategic town of Agdam and parts of Füzuli province. The towns were looted for construction materials; little infrastructure remained, and the front lines were mined to prevent an Azerbaijani counterattack. These

provinces were considered the Armenian side's easiest and cheapest *bargaining chips*.

The Armenian side's goal was to preserve as much of those territorial gains as possible. Rifts emerged between the strategy of then-president Levon Ter-Petrosyan and that of a harder-line group in both Nagorny Karabakh and Armenia. Ter-Petrosyan and his group believed that success could only be ensured by trading some of the Armenian-occupied provinces in return for a peace agreement that would ensure the security and status of Nagorny Karabakh against a potentially richer and more militarily powerful future Azerbaijan.<sup>4</sup> The harder-line group believed that Armenia need not make concessions and that its task was to maintain the *status quo* while stalling until the international community and Azerbaijan recognized Nagorny Karabakh's independence.

That internal rift made bargaining with Azerbaijan difficult for Armenian leaders. Large parts of the populace sympathized with the hard-line group and increasingly opposed compromise. Assassinations and threats of violence blocked moves toward compromise and sabotaged deals agreed by the leaders.<sup>5</sup> Indeed, as Armenia's Prime Minister Nikol Pashinyan admitted after signing the ceasefire on 9 November 2020, "[...] when I signed that document, I realized that I was facing the threat of my personal death, not only in a political but also in a physical sense."<sup>6</sup> In 1999 gunmen stormed the parliament and assassinated senior officials and key legislators, ensuring the failure of a peace plan. Thereafter,

Armenia's leaders temporized in negotiations, hoping the international community would eventually accept *de jure* the *de facto* situation.

## Azerbaijan

Azerbaijani leaders faced the opposite dilemma. Whereas Armenia strove to drag out negotiations until facts on the ground were recognized *de jure*, Azerbaijan sought to change those facts and ensure that the existing situation never gained international recognition. Current President Ilham Aliyev, like his Armenian counterparts, feared domestic instability if he deviated from maximalist territorial demands.

The most direct way to change facts on the ground was through armed combat, and Azerbaijan consistently devoted substantial resources to its military with that end in mind. Another strategy for changing facts on the ground involved mobilizing international community pressure on Armenia to force concessions during negotiations. In the 1990s Azerbaijanis hoped their oil and gas resources would prompt the West to pressure Armenia. After disappointments in negotiations in the United States (US) (Key West, 2001) and France (Rambouillet, 2006), however, the Azerbaijani leadership apparently concluded that only Russia had the capacity to move the Armenians. Azerbaijan's sabre-rattling, its insistence on keeping snipers and heavy weaponry on the front lines, and its offensive of April 2016 were aimed at reminding the international community in general – but Russia in

particular – that the situation was unstable and that action was needed to force Armenian concessions. None of these tactics, however, bore the results Azerbaijan desired.

### Minsk Group activity since 1992

Established in 1992, the OSCE Minsk Group's efforts comprised three phases. The first, 1992–98, was marked by Russian efforts to circumvent the OSCE and counter-efforts by Western powers to contain Russia. In 1994, when a military stalemate was reached, Russia's forceful first Minsk Group negotiator, Vladimir Kazimirov, bypassed Western mediators and set up ceasefire negotiations at a Commonwealth of Independent States (CIS) meeting in Bishkek, aiming to secure deployment of a Russian-led peace-keeping force over expected Western objections. Azerbaijan refused and signed the ceasefire document in Baku without any peacekeeping mechanism.

In 1997 France and the US joined Russia as Minsk Group Co-Chairs, and Kazimirov was replaced. Working together, the Co-Chairs drafted a peace plan in two documents, negotiating interim dispositions and final status separately (hence called the “step-by-step” plan). Armenian and Azerbaijani presidents Ter-Petrosyan and Heydar Aliyev accepted the plan when it was presented in July 1997. Neither had any illusions that a status agreement could be reached. Both believed that the agreement they would sign would give Armenia a permanent *de facto* protectorate over Nagornyy Karabakh in

exchange for returning occupied territories to Azerbaijan. Aliyev believed the deal would shelve the Karabakh problem, which had brought down the five previous leaders of his country. The deal suited Ter-Petrosyan's strategy of reaching a deal before Azerbaijan was able to deploy its oil wealth. But Ter-Petrosyan, facing internal opposition, had been compelled in March 1997 to accept Nagornyy Karabakh's leader, Robert Kocharyan, as prime minister. Ter-Petrosyan's last supporter wielding military force – Defense Minister Vazgen Sargsyan – abandoned him over the peace plan. In January 1998, the hard-line group, now controlling all levers of Armenian armed power, forced Ter-Petrosyan to resign. Kocharyan became president, Sargsyan became prime minister, and they rejected the OSCE plan.<sup>7</sup>

The second phase, 1998–2005, started with negotiations between Kocharyan and Aliyev that were secret not only from their publics but from their senior officials as well. In 1999 they orally agreed their own plan: a land swap that would annex Nagornyy Karabakh to Armenia *de jure* in exchange for Armenian territory along the Iranian border between Azerbaijan and its Nakhchivan exclave. In autumn 1999 they briefed the Minsk Group Co-Chairs on the plan and asked them to put it in writing. Just weeks later, on 27 October 1999, extremist gunmen took over the Armenian parliament and assassinated several officials, including prime minister Sargsyan and parliament president Karen Demirchyan. As a result, Kocharyan informed the Minsk Group that he could no longer sup-

port the peace deal. The Minsk Group Co-Chairs tried to keep the plan alive by skewing it towards Armenian interests – keeping the Armenian acquisition of Nagornyy Karabakh but eliminating the land that Azerbaijan would receive in return, replacing it only with access to a road to Nakhchivan. This change was unacceptable to Azerbaijan; Aliyev rejected the plan at negotiations in Key West (2001). Aliyev, who spent a lifetime cementing his personal power base in Azerbaijan, died in 2003 and was succeeded by his son, Ilham Aliyev, who had little power base beyond his clan. The elder Aliyev could be confident of surviving popular unrest if he made concessions; the younger could not. Neither Azerbaijan nor Armenia was thereafter capable of real compromise.

The third phase, from 2005 to the present, saw a return to a scaled-down version of the step-by-step plan in a short document of “principles”, eventually codified and presented to the parties in Madrid at the end of 2007. The Madrid Principles, aimed at saving the negotiation process, mandated the return of some occupied territories, guarantees of interim protection for Nagornyy Karabakh against Azerbaijani military action, and eventually an undefined “binding expression of popular will” to determine final status. Agreement on that status would unlock the return of remaining occupied territories.

Dmitry Medvedev, during his presidency of Russia (2008–2012), devoted great efforts to mediating between his Armenian and Azerbaijani counterparts, Serzh Sargsyan and Ilham Aliyev. Russia

began to dominate the negotiation process with the assent of the US and France, which could not invest such high-level political capital. After 1997, the Minsk Group was a rare example of Russia–West cooperation and remains an exception today despite tensions over Ukraine, Syria, and elsewhere. Part of the reason for that success, however, has been the willingness of the US and France since 2008 to cede Russia the initiative in the Group.

Sargsyan and Aliyev continued to meet to please Medvedev, but in reality neither was interested in negotiating a compromise that would cause unrest among their populaces. Despite Russian optimism before a summit in Kazan in 2011 – trying to persuade the presidents to sign an agreement on just a few of the principles – Aliyev and Sargsyan refused. The “Kazan Formula” (the final, heavily abridged iteration of the Madrid Principles), though often cited, became a dead letter, though some discrete points remain relevant. The Minsk Group went into a dormancy that lasted through the Azerbaijani offensive of 2016, the Armenian revolution of 2018, and the 2020 fighting. During these events, the main mediator was Russia, whose overriding aim appears to have been to deploy a Russian peacekeeping force, reviving the effort made in 1994.

Thus, for the last twenty years – since extremists sabotaged the deal reached between Kocharyan and Aliyev – the sides have engaged in what one Russian negotiator called a “simulacrum of negotiations”. Part of this charade was the ritual blaming of the Minsk Group for the sides’ own failure to compromise.

The Minsk Group accommodated this, knowing that providing political cover to those leaders would be essential to the compromises required for peace. In reality, however, by not pushing back against the leaders, the Group was providing them with political cover to *avoid* making peace. Mediators cannot make peace; warring parties must. Leaders on both sides had painted themselves into a corner: promising to deliver maximalist demands without compromise, they convinced their populations that compromise was treason. Leaders adapted accordingly. In early 1993 Heydar Aliyev, still exiled in his native Nakhchivan, could tell the American ambassador privately: “Even when we had Karabakh, it wasn’t ours.” Today, his son repeats a single slogan, “Karabakh is Azerbaijan,” and declares that Azerbaijan will not offer the “high degree of autonomy” it once proposed for the region.<sup>8</sup>

One other aspect of OSCE efforts: in 1996 the Chair-in-Office appointed a Personal Representative to be based in the region, as opposed to the Co-Chairs, who flew in on occasion. For 24 years, Ambassador Andrzej Kasprzyk has filled that role. In the absence of a peacekeeping force or permanent observation mission, Kasprzyk’s office carried out most of what little monitoring there has been, conducting brief observation missions on limited segments of both sides of the line of contact. Since these were only by advance permission from the sides, however, findings were of limited use.

### Political effects of the recent fighting

The offensive *Azerbaijan* began in September 2020 was a continuation of the two policies it pursued for years to change facts on the ground: reclaiming territory and concentrating international pressure on Armenia. By recapturing occupied territory, Azerbaijan could deny Armenia bargaining chips in subsequent negotiations. With Turkish military assistance, Azerbaijan met with greater than expected success. Rapidly advancing through four provinces, on 7 November the Azerbaijani army recaptured the mountain fortress of Shusha in the heart of Nagornyy Karabakh, making it capable of shelling the capital Stepanakert and interdicting the Lachin Corridor, with its road connecting Stepanakert with Armenia.<sup>9</sup>

The second prong of Azerbaijan’s strategy was marshalling international pressure. By threatening a wider war and greater instability close to Russia’s borders, the Azerbaijani leadership hoped to push Russia into putting meaningful pressure on Armenia. The success of the military campaign accomplished this. Both strategies were enabled by the support of Turkey, which provided military assistance, including the Bayraktar TB2 combat drones that tipped the balance in the fighting, plus diplomatic support to reinforce Aliyev’s pressure on Russia.<sup>10</sup> Turkey transported mercenaries from Syria to Azerbaijan and placed F-16s in Ganja; their presence had little significance in military terms but spoke loudly to Russia of what could happen if things got out of control.<sup>11</sup>

*Russia's* counter, embodied in Foreign Minister Lavrov's statement of 14 October,<sup>12</sup> offered only to freeze the sides in place with the promise of handing back five provinces in which Azerbaijan was already advancing rapidly and which it was close to regaining anyway, while leaving the fate of Lachin, Kelbajar, and Shusha to the final political solution. Lavrov made clear that the price for this would be the deployment of Russian peacekeepers.

For over 25 years Azerbaijan had rejected Russian peacekeepers. Deploying a Russian peacekeeping contingent would preserve the regime in Nagorny Karabakh and freeze the conflict for another generation. The advantage given to Azerbaijan by the full support of Turkey would be squandered, along with the advanced weaponry that brought success. Aliyev did not bother to respond to Lavrov's offer. Negotiations sequentially hosted by the Russians, French, and Americans resulted in "humanitarian" ceasefires that collapsed, sometimes in minutes, as Azerbaijan pressed ahead with its offensive. Aliyev dismissed international concerns by stating that he was merely enforcing UN Security Council Resolutions on the books since 1993, when Armenian offensives captured large parts of Azerbaijan and displaced the populations.<sup>13</sup>

*Armenia and Nagorny Karabakh*, which for many years ignored improving Azerbaijani military capabilities, never found an effective response to the rapid Azerbaijani advance. Prime Minister Pashinyan appealed to Putin for help but on 31 October received a cold reply,

not from Putin, but in a statement by the Russian Foreign Ministry, which repeated the stock position that, were Armenia itself to be attacked, Russia would fulfil its alliance obligations under the Collective Security Treaty. Meanwhile, Russia called on all sides in the conflict to observe the ceasefire they agreed in Moscow on 10 October.<sup>14</sup> Russia had been left with its frequent dilemma in the South Caucasus: how to balance between Armenia and Azerbaijan, maintaining influence on both while minimizing destabilization by either.

*Russia* has appeared unwilling to support Pashinyan, who is unpopular in Russian media for leading a "colour revolution". On coming to power, Pashinyan tried to reassure Putin that "he viewed democracy as a firm belief, rather than a geopolitical orientation".<sup>15</sup> Although that distinction may not have mollified Putin, it is hard to believe that disapproval of one leader could upend a generations-long Russian-Armenian alliance. It is more likely that Putin believed a greater prize was within reach: strategic partnership with Azerbaijan gained by granting Aliyev some of his war aims. If that shattered Nagorny Karabakh's hopes of unification with Armenia or independence, Armenia would be left in a bind. Its security remained dependent on Russia, as Turkey's military venture in Azerbaijan conveniently demonstrated. Putin had already created a precedent: in 2003 he was willing to sacrifice his Transnistrian clients when Moldova offered Russia military basing rights and geopolitical orientation through the Kozak Memorandum.

*Turkey's* involvement in the Karabakh war was a sharp break with past policy: former president Süleyman Demirel used to say it would take minutes to be drawn into Karabakh but years to get back out. Despite speculation about President Recep Tayyip Erdoğan's "neo-Ottoman" strategy, his interventions appear to be opportunistic, triggered whenever the prospect of enlarging Turkey's footprint and influence beckons. There is strong public support for Azerbaijan in Turkey. Armenian statements in August 2020 seeking to revive the Treaty of Sèvres (1920) may have prompted Erdoğan to action.<sup>16</sup> There was little else at stake for Turkey, which already had direct road and rail access to Armenia, Azerbaijan, and Central Asia through Georgia. Turkey's yearly \$248 million in exports to Armenia are unlikely to expand noticeably – or to be noticed if they cease.<sup>17</sup>

*France and the US*, the Minsk Group's Western Co-Chairs, which had ceded the initiative to Russia, attempted to mediate ceasefires but did little after they broke down. The passivity of the Western powers allowed both Russia and Turkey more room to manoeuvre.

### The ceasefire and its aftermath

For decades, Azerbaijan rejected Russian demands for a peacekeeping force. Why, then, did Aliyev accept the Russian ceasefire plan on 9 November, which included the deployment of 1,960 heavily armed peacekeepers?<sup>18</sup> From a military point of view the Azerbaijani army could have

pushed on to capture both Lachin – thereby cutting Nagorny Karabakh off from Armenia – and Stepanakert, the capital. The prospect of creating another 80,000 Armenian refugees could hardly have been daunting to Aliyev, who must still deal with about 850,000 Azerbaijani refugees and persons internally displaced by the fighting over Karabakh in the early 1990s.<sup>19</sup>

To answer this question we must first examine what the peacekeepers accomplish. First, they provide a five-year (or more) security guarantee for Nagorny Karabakh, whether or not agreement is reached on status. Second, they project Russian power throughout the South Caucasus, a longstanding Russian objective. Third, Russian peacekeepers will oversee transport between Nagorny Karabakh and Armenia. Russian border guards will oversee transport between the Azerbaijani exclave of Nakhchivan and the rest of Azerbaijan through Armenia's Meghri region; they could potentially also control Armenian trains headed to and from Iran through the bridge rail link over the Aras River at Julfa, in Nakhchivan. These functions will increase Russian influence over the commerce and economy of the region.

Why, then, did Aliyev stop his offensive and agree to this expansion of Russian power? We infer that Putin (and possibly Erdoğan) exerted enough pressure on him. It is possible that Putin already had an understanding with Erdoğan. It is probable that Putin made promises to Aliyev to gain his compliance. The ceasefire's stability will depend on how well Russia honours those secret promises and

understandings, but that is *ipso facto* impossible for us to ascertain. We can deduce that there is disagreement over the role of Turkey. Aliyev clearly envisioned a Turkish role equal to Russia's; Russia envisioned minor Turkish technical assistance.<sup>20</sup> Russia and Turkey are still working out whatever understandings they had. Russia has gotten its way so far, but if Erdoğan believes he is not being allowed an appropriate role, he is unlikely to remain passive.

Lavrov has made clear that Russia will seek UN Security Council endorsement of the ceasefire, which would at a minimum imply endorsement of the Russian peacekeeping force, preventing changes in its composition.<sup>21</sup> From the time of Medvedev's initiative until 2016, including in the "Kazan Formula", Russia had seemed to accept the prospect of a multinational, neutral peacekeeping force under OSCE auspices that would mandate troop and command limits to prevent any one country from monopolizing the peacekeeping function. After the Azerbaijani offensive of April 2016, however, Lavrov tried to pressure Azerbaijan and Armenia into accepting a Russian peacekeeping force. It is indicative of Russia's priorities that the most fully elaborated clauses of the current ceasefire plan are those which establish the Russian armed presence in the region and which do not provide for a peacekeeping role for the OSCE. One potential effect of the enlarged Russian role, which freezes the new front line: whereas leaders previously found in the Minsk Group a scapegoat to take public blame for their own failure to achieve peace, now (especially in Azer-

baijan) they may shift that blame onto Russia and its peacekeepers instead.

### Prospects for negotiations

There is nothing in the ceasefire agreement about future negotiations on the status of Nagornyy Karabakh, as Aliyev triumphantly made clear in his 10 November address to the nation.<sup>22</sup> Ultimately, however, it is courting future trouble to leave a reduced Nagornyy Karabakh sitting there indefinitely without any status. Azerbaijan may not yet wish to welcome Karabakhis back into the fold with "a high degree of autonomy", and the Karabakhis may be too embittered to want interaction with Azerbaijan, but ultimately re-opening transportation and commercial links will raise practical questions that must be answered through negotiations. Azerbaijan could argue that, since the war with Armenia is over, this is now a domestic question for Azerbaijan (using as a precedent Russia's ending the mandate of the OSCE Assistance Group to Chechnya after imposing a military solution in that war). Russia and others, however, may press Azerbaijan to open negotiations with international mediation.

If such negotiations take place, Russia has already made clear that it will not allow changes to the Minsk Group negotiating format.<sup>23</sup> As mentioned above, Russia has dominated that format for over a decade. Russia's clear intent, by keeping the current format, is to maintain that dominance. Keeping that format is preferable to the alternatives most fre-

quently proposed: replacing current Co-Chairs with other, unspecified countries, creating a separate seat at the table for the Karabakh Armenians, or making Turkey a Co-Chair. Any of these would hinder negotiations:

- New Co-Chairs would face a steep and time-consuming learning curve. The Co-Chairs should maintain closer links with other Minsk Group countries, including both Turkey and Sweden, which will chair the OSCE in 2021. Closer contact may improve transparency, but the balance of power within the Group is unlikely to shift.
- Karabakh Armenians, whose leaders ruled Armenia from 1998 to 2018, were well-represented in negotiations during that time. Armenia has repeatedly demanded inclusion of Nagorny Karabakh in negotiations as a separate side, not to promote a settlement but to bolster the case for international recognition and to spare Armenia the onus of rejecting compromises. Under new negotiations the Karabakhis could either replace Armenia (if parties accept that this is an internal dispute with international ramifications) or take places within the Armenian delegation (signalling that this remains an international dispute).
- Turkey's inclusion as Co-Chair would have a toxic effect, giving irredentist hardliners among the Armenian diaspora in the West – whose ancestors underwent the Genocide at the hands of the Ottoman Turks – a moral veto

over Armenian positions in the negotiations.

Some have suggested shifting the negotiating forum to the UN to give the process new impetus. There are a number of obstacles to overcome, including the opposition of some stakeholders and the existence of four UN Security Council Resolutions that, Azerbaijan argues, justify its military actions.<sup>24</sup> Russia would be strengthened in its quest for another UNSC Resolution endorsing its deployment of peacekeepers, cementing Russia's regional footprint into international law. There is no evidence that the UN might find more success in persuading the leaders of Armenia and Azerbaijan than did the Minsk Group Co-Chairs, all of whose countries are permanent members of the Security Council.

There have been calls to convene the Minsk Conference (in which the entire Minsk Group would participate), originally scheduled for 1992 but blocked by successive objections from the sides. The inability to convene the Conference led to the Co-Chair structure of today. It is generally held that convening the Conference would make sense only to finalize the text of a political solution on which the sides had already made sufficient progress and to serve as a venue for a donors' conference to promote post-war stability. If the Conference convenes prematurely, we might expect the unproductive mutual recriminations already seen in the OSCE Permanent Council. Another perennially proposed move is Armenian recognition of Nagorny Karabakh's independence. This

might affect Armenian morale but would be a gesture without impact outside that context.<sup>25</sup>

### The Minsk Group going forward

Finally, then, we see a prospective role for the OSCE Minsk Group in the Russian-brokered ceasefire with regard to the following: the negotiations on confidence- and security-building measures (CSBMs) between the sides; the future status of Nagornyy Karabakh; and the mechanics of a regional peace agreement.

CSBMs need to start with rendering the region secure for current residents and returning displaced persons. The US and the European Union are unlikely either to put large civilian assistance presences on the ground or to provide finances without oversight to Russia, Armenia, or Azerbaijan. The OSCE should establish a presence to negotiate and implement the projects necessary for both remaining and returning populations. This presence could be a continuation of or successor to the current office of the Personal Representative of the Chairperson-in-Office. In addition to general humanitarian relief for reconstruction of homes and other vital infrastructure, these include:

- demining;
- force/heavy weapons disengagement/withdrawal;
- police/police training;
- a future OSCE role in military/civilian observation of the ceasefire;
- establishment of communications infrastructure for civilian contact between the sides, including for sustainable transport access between Armenia and Nagornyy Karabakh;
- dialogue through UNHCR/ICRC for a humanitarian needs assessment for remaining Karabakh Armenians and returning Azerbaijani IDPs;
- protection and restoration of the religious and cultural heritage of the region;<sup>26</sup>
- establishment of markets for each side, aiming later to establish markets accessible to both sides;
- establishment of joint working groups to perform necessary cooperation on infrastructure, health, and such economic functions as banking; and efforts, including through civil society, to restrain hostile rhetoric. The prospects of success at first are dim, but every little bit helps. These efforts may eventually expand to include joint civil society programmes, e.g., for young leaders.

*Negotiations on the future status of Nagornyy Karabakh* and its inhabitants will be long and hard. The ceasefire has set new lines of contact in concrete. Both sides – which have just seen once more that it is possible to change facts on the ground through combat – will take time to come to terms with the new equilibrium. But that does not mean a respite for the Western powers in the Minsk Group – not only the US and France, but also Germany, Turkey, and Sweden. They need to work together to come up with an alternative to a prospective

Russian plan, which will inevitably contain clauses cementing Russia's footprint in the region. The most essential preparation for that effort is to listen to the concerns of affected populations throughout the region. Decision-makers of all outside powers (including Turks and Russians) require a better understanding of the history, culture, and people of these countries.

*A regional peace agreement* is needed to normalize relations, in the first instance between Armenia and Azerbaijan, and to open international borders, e.g., between Turkey and Armenia. By signing the Alma-Ata Protocols of 21 December 1991, which founded the CIS, Armenia, and Azerbaijan, along with other Soviet Union Republics, agreed to recognize one another as independent within Soviet-era borders. But the Karabakh conflict was already entering its full combat phase, and the two countries never established relations or agreed borders. Azerbaijan considered the Karabakh war aggression by Armenia, and Armenia considered it Azerbaijani aggression against the populace of Nagornyy Karabakh. Russia's 2014 actions in Crimea and eastern Ukraine, with their implications for the Alma-Ata Protocols, further complicated these considerations.

As a first step, the Minsk Group should try to mediate a formal ceasefire along Azerbaijan's border with Armenia – especially necessary in view of the prospective return of Azerbaijani displaced persons to their former homes in Kelbajar and Lachin provinces, which border Armenia. Clashes have occurred along the border, most recently in July

2020. A ceasefire there might create opportunities for developing relations further.

A regional agreement could also include fully opening the land border between Armenia and Turkey. Since Soviet times, a weekly train had run between Kars in Turkey and Leninakan (now Gyumri) in Armenia. In 1993 Turkey budgeted funds to open the road border, too, to automobile and truck traffic. However, the March 1993 offensive against Kelbajar, in part staged from Armenia, led Turkey to stop train service and cancel its plans for the road border. Attempts in 2009 to normalize relations, strongly backed by the US, met opposition from key constituencies. With the reversion of Kelbajar to Azerbaijani control, the events that led to the closure of this border have been reversed. Re-establishing border communications may produce an opportunity to pursue overall normalization.

## Conclusion

The recent combat marked a break with the psychology of the last 26 years: for the first time since the ceasefire of 1994, both Baku and Yerevan now realize that military force can achieve political goals. Both capitals had been accustomed to military stalemate and adapted their strategies to that mindset. Military actions were demonstrative, not strategic, meant to impress a domestic and/or international audience, not materially to change facts on the ground. There is no going back to that mindset. Russian

peacekeepers may keep armed hostilities from breaking out again, but they cannot extinguish the idea on both sides that re-summing combat might in future change the balance again.

It is therefore imperative that multi-lateral negotiations re-start. Negotiations run unilaterally – e.g., by Russia – or by secret collaborations – e.g., with Turkey – will not serve the interests of either combatant side or their people. It is for the Minsk Group – all Co-Chairs, supported by all other members – to step up to their responsibilities, build confidence and security between the combatants, and together formulate and negotiate new plans to deliver a just and lasting peace to the entire region.

## Notes

- 1 The authors wish to thank the members of the peer review panel, colleagues in member institutions, and other trusted colleagues with whom we shared drafts of this report, and who provided valuable insights at every stage.
- 2 A note on terminology: following de Waal, the term “Nagorny Karabakh” designates the polity named Montane-Karabakh Autonomous District (NKAO – “Nagorno-Karabakhskaya Avtonomnaya Oblast”) in Soviet times, known today in Armenian as Artsakh (Thomas de Waal, *Black Garden*, New York and London: New York University Press, 2003). “Armenia” designates the Republic of Armenia. “Karabakh conflict” designates the conflict that broke out in 1988 after the NKAO Supreme Soviet petitioned Soviet authorities to transfer the NKAO from Soviet Azerbaijan to Soviet Armenia. For reasons of space, place names in Armenian have been transliterated; in Azeri place names, only the non-Latin characters have been changed for comprehensibility. Translated titles in footnotes are marked “(TR)”.
  - 3 UNSC Resolutions 822 (30 April 1993), 853 (29 July 1993), 874 (14 October 1993), and 884 (12 November 1993).
  - 4 Jirair Libaridian, *Why Negotiations Failed*, *Armenian Mirror-Spectator*, 2 November 2020, at: <https://mirrorspectator.com/2020/11/02/why-negotiations-failed/>.
  - 5 See, e.g., Philip Remler, *Chained to the Caucasus*, IPI, 2016, at: <https://www.ipinst.org/wp-content/uploads/2016/05/1605-Chained-to-the-Caucasus.pdf>.
  - 6 “PM addresses the nation”, Office to the Prime Minister of the Republic of Armenia, 12 November 2020, at: <https://www.primeminister.am/en/statements-and-messages/item/2020/11/12/Nikol-Pashinyan-Speech/>.
  - 7 “The step-by-step approach [...] cannot serve as a basis for resolution.” Robert Kocharyan, undated letter to Minsk Group Co-Chairs, early 1998.
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  - 9 Ilham Aliyev, Facebook post, 8 November 2020, at: <https://www.facebook.com/PresidentIlhamAliyev/photos/a.10151996474470315/10164122626875315/>.
  - 10 On drones: “After the Karabakh conflict everyone is talking about the ‘drone revolution’” (TR), *Meduza*, 19 November 2020, at: <https://meduza.io/feature/2020/11/19/posle-karabahskogo-konfliktka-vse-govoryat-o-revolutsii-dronov>. On diplomatic support: “Erdogan: Time to resolve Nagorny Karabakh” (TR), *Deutsche Welle Türkçe*, 29 September 2020, at: <https://www.dw.com/tr/er>

- doğan-dağlık-karabağda-çözüm-vakti-geldi/a-55079318.
- 11 Kareem Fahim/Isabelle Khurshudyan/Zakaria Zakaria, “Deaths of Syrian mercenaries show how Turkey, Russia could get sucked into Nagorno-Karabakh conflict”, *Washington Post*, 14 October 2020, at: [https://www.washingtonpost.com/world/middle\\_east/azerbaijan-armenia-turkey-nagorno-karabakh/2020/10/13/2cdca1e6-08bf-11eb-8719-0df159d14794\\_story.html](https://www.washingtonpost.com/world/middle_east/azerbaijan-armenia-turkey-nagorno-karabakh/2020/10/13/2cdca1e6-08bf-11eb-8719-0df159d14794_story.html).
  - 12 “Lavrov called for Russian peacekeepers in Nagorny Karabakh” (TR), *Regnum.ru*, 14 October 2020, at: <https://regnum.ru/news/polit/3089582.html>; “Foreign Minister Sergey Lavrov’s interview with Russian and foreign media on current international issues, Moscow, November 12, 2020”, Ministry of Foreign Affairs, 14 October 2020, at: [https://www.mid.ru/ru/press\\_service/minister\\_speeches/-/asset\\_publisher/7OvQR5KJWVMR/content/id/4381977](https://www.mid.ru/ru/press_service/minister_speeches/-/asset_publisher/7OvQR5KJWVMR/content/id/4381977).
  - 13 Ilham Aliyev, Facebook post, 31 October 2020, at: <https://www.facebook.com/PresidentIlhamAliyev/photos/a.10151996474470315/10164085858605315/>.
  - 14 “Statement of the Russian MFA on the appeal by the Prime Minister of the Republic of Armenia...”, RF Ministry of Foreign Affairs, 31 October 2020, at: [https://www.mid.ru/ru/press\\_service/spokesman/official\\_statement/-/asset\\_publisher/t2GCdmD8RNIR/content/id/4411939](https://www.mid.ru/ru/press_service/spokesman/official_statement/-/asset_publisher/t2GCdmD8RNIR/content/id/4411939).
  - 15 Mikayel Zolyan, “Can ‘New Armenia’ disentangle democratic change from geopolitics?”, *OC Media*, 25 July 2018, at: <https://oc-media.org/features/analysis-can-new-armenia-disentangle-democratic-change-from-geopolitics/>.
  - 16 Jirair Libaridian, “A step, this time a big step, backwards”, *Aravot*, 1 September 2020, at: <https://www.aravot-en.am/2020/09/01/263436/?fbclid=IwAR0Fhx9xluqFMXcvcLu3JNqtuERdX4Oxca5B5o7EjUrp94tPBABlStLUbyg>. With the Treaty of Sèvres, the victorious allies of World War I intended to partition the Ottoman Empire. The treaty was never ratified. Subsequent treaties signed variously by parties to Sèvres, including Armenia (Treaty of Kars, 1921), rendered it moot. The 1923 Treaty of Lausanne between Turkey and the Allies replaced Sèvres for its signatories and became a founding document of the Republic of Turkey.
  - 17 “Armenia”, *Observation of Economic Complexity*, at: <https://oec.world/en/profile/country/arm>.
  - 18 “Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation” (TR), President of the Russia, 10 November 2020, at: <http://kremlin.ru/events/president/news/64384>.
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  - 21 Lavrov 12 November 2020 press conference, cited above (note 12).
  - 22 Ilham Aliyev, “Ilham Aliyev addressed the people” (TR), Facebook post, 10 November 2020, at: <https://www.facebook.com/PresidentIlhamAliyev/videos/402316387790506>.
  - 23 See, e.g., Lavrov 12 November 2020 press conference, cited above (note 12).
  - 24 Ilham Aliyev, Facebook post, 31 October 2020, at: <https://www.facebook.com/PresidentIlhamAliyev/photos/a.10151996474470315/10164085858605315/>.

- 25 Russia's President Putin, answering questions from the press on 17 November 2020, chided Armenia for not having followed Russia's example in Crimea by recognizing Nagornyy Karabakh's independence, then achieving unification and presenting the international community with a *fait accompli*. However, much of the international community has branded Russia's actions violations of international law and imposed severe sanctions, which Armenia's much smaller economy would have been ill-equipped to weather.
- 26 "Answers to media on the situation in Nagorno-Karabakh" (TR), President of Russia, 17 November 2020, at: <http://kremmlin.ru/events/president/news/64431>.
- "Foreign Minister Sergey Lavrov's telephone conversation with Foreign Minister of the Republic of Azerbaijan Jeyhun Bayramov" (TR), RF Ministry of Foreign Affairs, 15 November 2020, at: [https://www.mid.ru/en/telefonnye-razgovory-ministra/-/asset\\_publisher/KLX3tiYzsCLY/content/id/4434452](https://www.mid.ru/en/telefonnye-razgovory-ministra/-/asset_publisher/KLX3tiYzsCLY/content/id/4434452).



# No Fair-Weather Instrument: The Need to Rethink Military Confidence Building in Europe

*Benjamin Schaller\**

## *Abstract*

The current crisis of confidence in Europe has clearly had an impact on defence and security relations between Russia and the West. Against this backdrop, the relatively constructive and well-functioning working relations that currently hold among arms control units clearly stand out, calling for a critical rethinking of how confidence- and security-building measures (CSBMs) contribute to increasing levels of trust among OSCE participating States. This paper outlines a new analytical framework that allows us to better understand how CSBMs contribute to increased levels of trust between arms control units, offering us a new perspective on how to enhance their positive effects on defence and security relations in times of increased political tension and distrust. The main takeaway of this new perspective is that CSBMs are not essentially dysfunctional but that many of their trust-building effects target the wrong actors and levels in defence and security politics. Amid the current crisis in European security, governments ought to focus on multilateral forms of verification, strengthen military-to-military contacts, find ways to extend the effects of CSBMs beyond the relatively small arms control community, and invest in more targeted confidence building at a higher political and military level.

## *Keywords*

OSCE, military security, confidence- and security-building measures, arms control

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## **Introduction<sup>1</sup>**

More than six years since the beginning of the conflict in and around Ukraine, Europe is still witnessing one of its profoundest crises since the end of the Cold War. The loss of trust between Russia

and the West runs deep, and the conventional arms control and military confidence building regimes of the OSCE, once central to overcoming the divide between East and West, have ostensibly become just one of many arenas in which political and strategic tensions between Russia and the West unfold. In 2016, Russia blocked an update of the Vienna Document on Confidence- and Security-Building Measures, arguing that NATO's "policy of military containment of Rus-

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\* Dr Benjamin Schaller  
UiT – The Arctic University of Norway  
Tromsø, Norway  
E-Mail: [benjamin.schaller@uit.no](mailto:benjamin.schaller@uit.no)

sia and the Alliance's concrete steps in the military sphere rule out the possibility of reaching agreements on confidence-building measures".<sup>2</sup> In 2020, President Donald Trump announced that the United States (US) would withdraw from the Treaty on Open Skies amid repeated complaints of Russian non-compliance.<sup>3</sup> With serious modernization efforts having been blocked for many years, and with mutual allegations of non-compliance and disputes about verification findings dominating the political agenda,<sup>4</sup> some have begun to question the viability of military confidence building altogether, dismissing the role of existing confidence- and security-building measures (CSBMs) as mere "fair-weather" instruments, functional only in already conducive political environments.

I argue that this negative outlook does not do justice to the current state of military confidence building in Europe. Not only did the Vienna Document and the Treaty on Open Skies provide valuable information at the beginning of the crisis in and around Ukraine,<sup>5</sup> but the relatively good working relations that continue to hold among arms control units also clearly stand out against the backdrop of the negative impact that mutual allegations and tensions have had on many political and high-level military channels between Russia and the West.<sup>6</sup> While some may dismiss these positive working relations as isolated incidents with limited impact, I argue that it is worth exploring the reasons for the seemingly disparate experiences at the political and the implementation levels.

This paper therefore calls for a critical rethinking of how to approach and understand the role of CSBMs in building trust among OSCE participating States. While the focus has traditionally been on the role and impact of CSBMs at a higher political and military level, I argue that a better understanding of how CSBMs contribute to increasing trust among arms control units provides valuable insights into how to strengthen the overall impact of existing CSBM regimes in times of increased political tension and distrust.

To this end, this paper will first discuss both the value and the shortcomings of the traditional focus on increased transparency and verification in military confidence building. Second, based on my doctoral research on trust and distrust in defence and security politics, the paper will present a new framework for understanding how CSBMs contribute to increasing trust among arms control units. The paper concludes with a discussion of how to apply these lessons to existing CSBM regimes so that military confidence building can have a more comprehensive impact on overall defence and security relations between OSCE participating States.

### **Trust, but verify: Shortcomings of a traditional approach to CSBMs**

Traditionally, trust-building in defence and security politics has often been reduced to the simple paradigm: "Trust, but verify" (*Доверяй, но проверяй*). This Russian proverb, popularized by former US President Ronald Reagan during US-

Soviet arms control negotiations in the 1980s,<sup>7</sup> nicely captures the mainstream understanding of the role of arms control and military confidence building in defence and security politics. Through a combination of increased transparency and predictability regarding military forces, equipment, and activities, coupled with a thorough and intrusive verification regime, arms control and CSBMs are assumed to contribute to increasing trust among states.<sup>8</sup>

The problem, however, is that states can have considerable incentives to misrepresent or withhold relevant information, for example in order to secure a strategic advantage.<sup>9</sup> This problem seems to be particularly prevalent in situations where trust is already very low and where states have strong incentives to discredit the findings of verification measures, for example to obscure cases of non-compliance or to increase diplomatic pressure and isolate political opponents on the international stage. Adding to this problem is the fact that CSBMs, unlike most disarmament and arms control treaties, are usually not designed around a particularly thorough and intrusive verification regime. While the legally binding Treaty on Conventional Armed Forces in Europe contains provisions for comprehensive and intrusive verification of its disarmament and arms control obligations,<sup>10</sup> the politically binding Vienna Document on Confidence- and Security-Building Measures sets out only a limited number of less intrusive verification opportunities. For example, it only allows for three inspections and one evaluation visit for every 60 units reported in the annual infor-

mation exchange.<sup>11</sup> In the case of Russia, this amounts to a maximum of three inspections and two evaluation visits per year.<sup>12</sup> Furthermore, the thresholds that would trigger a mandatory observation of larger-scale military activities are simply too high for the military realities of today, while OSCE participating States, above all Russia, have also found creative ways to avoid mandatory observations of their military exercises.<sup>13</sup>

It is therefore unsurprising that CSBMs frequently come under significant pressure in times of increased political tension and distrust and that policy debates on their modernization tend to focus on increasing the number of inspections and evaluation visits or on reducing the thresholds for notifying and observing certain military activities.<sup>14</sup> While undoubtedly of great importance, however, discussions on the modernization and strengthening of CSBMs should not be limited to questions of increased transparency and verification. While transparency and verification play an important role in reducing distrust by deterring (or at least detecting) possible violations by other states early on, there is a widespread understanding among scholars that no verification system – no matter how intrusive – can ever provide absolute certainty about another state's actual compliance.<sup>15</sup> In fact, the usual disputes over alleged cases of non-compliance and verification findings suggest that when trust is already low, verification measures may even have the opposite effect, reinforcing existing negative perceptions and contributing to even lower levels of trust in defence and se-

curity relations. In other words, it can be argued that if it is to dispel residual doubts, verification presupposes at least a minimum level of trust on both sides.<sup>16</sup>

This apparent dilemma prompts the difficult question of how to establish an initial level of trust in times of increased political tension and distrust. To address this problem, I suggest that we turn to the implementation level and to improving our understanding of how CSBMs contribute to increasing trust among arms control units.

### Understanding military confidence building at the implementation level

To understand how CSBMs contribute to good working relations and increased levels of trust at the implementation level, I suggest building on Gordon Allport's conditions for constructive intergroup contacts and developing his original *contact hypothesis*<sup>17</sup> into a new framework for understanding and analysing the trust-building effects of CSBMs on interactions between arms control officers. In his original work, Allport suggested that intergroup contacts that (a) take place under conditions of *equal status*, (b) pursue *common goals*, (c) focus on *cooperation*, and (d) receive active *support from authorities* help to reduce prejudice and lower tensions between majority and minority groups in society.<sup>18</sup> This list of conditions was later complemented by arguments to the effect that intergroup contacts should also (e) allow for the development of *cross-group friendships*.<sup>19</sup>

Based on various interviews with arms control officers in the context of my doctoral research on trust and distrust in defence and security politics,<sup>20</sup> I will argue that these conditions also offer valuable insights into understanding how CSBMs contribute to increasing trust at the implementation level.

First, looking at the issue of *equal status*, it is interesting that most arms control officers not only share a general military background but also self-identify as part of a wider "arms control community" in which officers generally share a common understanding of how the different documents and treaties are to be implemented on the ground.<sup>21</sup> This common identity is felt even more strongly if officers come from the same level of command (tactical, operational or strategic), the same military branch (army, air force, navy), or if their countries have entered into some form of defence cooperation.<sup>22</sup>

Second, when it comes to the pursuit of *common goals*, the main objectives of the inspecting and the host team at first seem to differ rather substantially. While the inspecting team aims to verify the compliance of the inspected state, the host team is primarily concerned with striking the difficult balance between following the documents' provisions and carefully managing and, where necessary, limiting the inspecting team's access to sensitive military information. At the same time, both teams are aware that the host team of today will be the inspecting team of tomorrow, which ensures a considerable level of interdependence and helps to explain the usually friendly, pro-

fessional, and constructive atmosphere during the implementation of CSBMs.<sup>23</sup>

Third, this interdependence ensures a significant level of *cooperation* during the implementation of CSBM regimes. This cooperation, and in particular the personal interaction between the inspecting team and the host team that it involves, is considered by arms control officers to be one of the most important elements in forming trust at the implementation level. This effect is felt to be even stronger where the cooperation is centred on a clearly formulated common task, such as conducting collaborative observation flights under the Treaty on Open Skies or verifying certain military equipment in the course of an evaluation visit under the Vienna Document.<sup>24</sup> As one arms control officer put it: “You should be able to count. Not because the counting necessarily is important, but you must [...] work on something [together].”<sup>25</sup>

Fourth, no matter how positive and trusting relations among arms control officers may be, the political guidance and *support of authorities* will likely remain a decisive factor in the implementation of CSBM regimes. Insofar as most governments have an interest in being perceived as complying with their obligations under international documents and treaties, arms control officers can at least count on general support for their work. At the same time, however, serious tensions at the higher political and military levels, whether related to non-compliance or the future direction of arms control and CSBMs, have also regularly led to serious disruptions to the implementation of arms control and CSBM agreements.

This can express itself in more restricted access and reduced cooperation during verification measures.<sup>26</sup> In the worst case, political tensions can even result in a complete standstill, as occurred in the unresolved political dispute between Russia and Georgia that led to the complete cessation of all observation flights under the Treaty on Open Skies in 2018.<sup>27</sup> Interestingly, however, while arms control officers consider political tensions to be most prevalent in more political and formalized OSCE forums, committees, and bodies, they continued to describe the general atmosphere during evaluation visits, inspections, and observations as “friendly” and “professional”.<sup>28</sup> In fact, several arms control officers underscore that they explicitly decide not to discuss difficult political issues in their interactions with arms control officers from other countries, instead focusing on the military-technical aspects of their jobs.<sup>29</sup>

Finally, professional encounters and in particular the social interaction during dinners, receptions, and bus or jeep rides seem to make CSBMs particularly conducive to the development of professional *cross-group friendships*. This is bolstered by the fact that the international arms control community is relatively small, and most officers remain in their respective positions much longer than their colleagues from other parts of the armed forces. This allows for the establishment of more personal relations and networks that can be used to resolve smaller problems before they reach the higher political and military level.<sup>30</sup>

In sum, applying the above framework for constructive intergroup con-

tact broadens our understanding of how CSBMs contribute to increasing trust at the implementation level and offers interesting new perspectives. Nevertheless, since many of these trust-building effects remain largely confined to a relatively small group of arms control officers, just how this broader understanding might also help to amplify the impact of CSBMs at a more general level remains to be discussed.

### **Rethinking military confidence building in Europe**

Over the years, military confidence building in Europe has struggled to maintain its supposed stabilizing role in times of increased tension and distrust between OSCE participating States. While a better understanding of how CSBMs contribute to increasing trust between arms control officers will not resolve the deep political impasses that have long influenced discussions on the current state and future of arms control and CSBMs in Europe, it opens up new perspectives, revealing both the inadequacy of viewing existing CSBMs as “fair-weather instruments” and the shortcomings of focusing narrowly on a “trust through verification” approach in such discussions.

Based on the lessons learned from the effects of CSBMs at the implementation level, four major areas stand out when it comes to strengthening the impact of CSBMs in times of increased tension. First, even though limiting discussions to a mere “trust through verification” approach remains inadequate, it is still

important for governments to try to reduce the level and scope of interpretation within existing verification regimes. While increasing verification quotas and lowering thresholds for the observation of military activities are certainly of value, greater attention should also be given to multilateral approaches to verification. Increasing multilateral verification could be achieved through the even more frequent formation of multinational verification teams or by exploring possibilities that would allow the OSCE to play a stronger role in verification.<sup>31</sup> Such multilateral approaches to verification have several advantages over current verification procedures. On the one hand, they elevate the discussions on verification findings above more conflictual bilateral relations and have the potential to provide a more impartial source of information. This seems particularly important in emerging crisis situations, where swift and appropriate responses are needed.<sup>32</sup> On the other hand, multilateral verification benefits from the additional trust-building results achieved through multinational verification teams, in which inspectors are usually equal in status and cooperate even more extensively in the pursuit of a common goal: verifying compliance.<sup>33</sup>

Second, since verification measures presuppose at least a minimum level of trust and often come under significant pressure as tensions between states rise, governments ought to invest even more effort in preserving, and ideally strengthening, constructive working relations at the implementation level. As we learned in the previous section, rather than focus-

ing narrowly on verification of compliance, a main objective here should be to increase the number of personal encounters and interactions between arms control units. Ideally, such interaction will take place in the pursuit of a clear and limited military task that fosters high levels of interdependence and allows those involved to avoid overly difficult and controversial political discussions. As already mentioned, a good example of this kind of trust-building interaction is the Treaty on Open Skies, which brings together air force officers from non-allied countries to conduct cooperative observation flights. Similar effects could also be achieved through the various options for military-to-military contacts, as suggested in Chapter IV of the Vienna Document, including visits and exchanges between officers and military units, participation in joint seminars, training and language courses, and conducting joint military exercises and training activities.<sup>34</sup> Although such measures are already elements of many CSBM regimes and have been implemented by various OSCE participating States, their more frequent and deliberate use in times of political tension and distrust should be considered.

Third, since the effects of CSBMs are currently largely confined to a small group of practitioners at the implementation level, governments should also explore ways to expand these effects and experiences to officers from a broader spectrum and different levels of command in the armed forces. To this end, even though the complex and technical nature of many arms control agreements and the establishment of meaningful interperson-

al relations require time and expertise, it is worth considering putting (at least some) arms control officers on longer but regular rotation cycles (e.g. every five to ten years). To support these officers' careers as highly specialized subject-matter experts, such a rotation could occur, for example, between the implementation, the conceptual, and the political-ministerial level in CSBMs and arms control. Another way to ensure that CSBMs have a greater impact at the national level could be the regular inclusion of officers from different parts of the armed forces and desk officers from ministries of defence and foreign affairs in host, inspection, and observation teams. While some smaller countries, such as Norway and Sweden, already rely on a system of part-timers (mainly for reasons of limited personnel),<sup>35</sup> such an approach could also be of use in diffusing the trust-building effects of CSBMs more intentionally across a broader spectrum of areas and actors in defence and security politics.

Finally, while it is worth strengthening CSBMs and maintaining well-functioning relations between arms control units, it is important not to overstate their impact in overcoming current political and military tensions between Russia and the West. Since the roots of the current crisis run much more deeply, it is important for both sides to engage in more targeted trust-building efforts at a higher political and military level. Based on experiences at the implementation level, such efforts should ideally focus on areas of common interest, create high levels of interdependence, and ensure that interaction takes place under conditions of equal status.

Key examples of venues and formats that largely meet the conditions for constructive inter-group contact include the High-Level Military Doctrine Seminars<sup>36</sup> and study visits to increase knowledge of national defence planning procedures<sup>37</sup> foreseen in the Vienna Document, as well as various hotline agreements and bilateral formats at a higher political and military level, such as the recently resumed meetings of the German–Russian High Level Working Group on Security<sup>38</sup> and between the Norwegian and the Russian Ministries of Defence.<sup>39</sup> While such talks cannot guarantee the simple resumption of normal relations (or “business as usual”), they create venues and opportunities that allow for frank and open exchange on some of the most central dividing lines and underlying sources of tension between Russia and the West, such as the conflicts in Ukraine and Syria, nuclear disarmament and arms control, the Iran nuclear deal, and the fight against terrorism.<sup>40</sup> At the multilateral level, similar exchanges could also take place under the OSCE Structured Dialogue, which provides for informal exchange among officials from state capitals and experts on current and future challenges and risks to security in the OSCE area (e.g. arms control, threat perceptions, and military exercises and encounters)<sup>41</sup> or within the framework of the NATO–Russia Council.<sup>42</sup>

In sum, rethinking how CSBMs contribute to increasing trust in defence and security politics leads to new perspectives on how to strengthen their trust-building capacities in times of increased political tension and distrust. In addition to iden-

tifying ways to increase multilateral verification and to reduce the scope for interpretation in existing verification regimes, it allows us to appreciate and strengthen the potential of CSBMs when it comes to establishing more trustful relations at the implementation level and developing mechanisms that specifically target the political and strategic incompatibilities that currently define defence and security relations between Russia and the West.

### **Concluding remarks and policy recommendations**

Amid mutual allegations of non-compliance and a deep crisis of confidence in Western–Russian relations, CSBMs have increasingly been dismissed as mere “fair-weather” instruments. As the discussions in this paper have shown, however, this purely negative assessment does not do justice to the current state of military confidence building in Europe and to the fact that the relatively well-functioning working relations between arms control units appear to have prevailed. In other words, the problem is not that CSBMs are essentially dysfunctional but that they generally do not target high-level decision makers in defence and security politics, confining many of their positive effects to a small group of arms control experts.

While constructive relations between arms control units will not be able to resolve the deep crisis of confidence that currently characterizes defence and security relations between Russia and the West on their own, this paper has shown

that applying a socio-psychological framework for constructive intergroup contacts allows us to gain a better understanding of how CSBMs contribute to increasing trust in interactions between arms control officers and opens up new perspectives on how to strengthen the role and impact of CSBMs in times of increased political tension and distrust. Based on the notion that constructive interactions should ideally (a) take place under conditions of *equal status*, (b) pursue *common goals*, (c) focus on *cooperation*, (d) receive active support from authorities, and (e) allow for the emergence of professional *cross-group friendships*, discussions on the future of CSBMs should give greater attention to the following issues and focus areas:

- *Multilateral verification.* While strengthening verification and reducing the scope for interpretation through increased verification quotas, lower thresholds, and a more rigorous verification regime are certainly important, governments should also put greater focus on multilateral approaches to verification, which not only offer a more impartial source of information in times of crisis but also benefit from additional trust-building effects among the members of the verification team. Multilateral verification of this sort could be achieved either by increasing the use of guest inspectors in national verification teams or by allowing the OSCE to play a greater role in verification.
- *Strengthen military-to-military contacts.* As verification presupposes at least a

minimum level of trust to realize its stabilizing and trust-building potential, it is important for governments to invest even more in preserving and strengthening constructive working relations at the implementation level. Particular attention should be given to increasing interaction and forms of cooperation that focus on a clear and limited military task, foster high levels of interdependence, and allow for the avoidance of difficult political discussions. To this end, greater attention should be given to the various elements involved in increasing military-to-military contacts, as suggested in Chapter IV of the Vienna Document.

- *Rotation cycles for verification personnel.* To ensure that the positive experiences and trust-building effects of CSBMs are not confined to a small group of arms control experts, governments should also consider putting (at least some) arms control officers in longer but regular rotation cycles (e.g. five to ten years). To maintain and benefit from their experience and subject matter expertise, this rotation could occur, for example, between the implementation, the conceptual, and the political-ministerial level in CSBMs and arms control.
- *National guest inspectors and a system of part-timers.* Another step that governments might consider is to include officers from other parts of the armed forces and desk officers from ministries of defence and foreign affairs in their verification teams on a more regular basis. This would help to en-

sure that the positive effects and experiences of CSBMs are diffused across a broader spectrum of practitioners at the national level. Following the example set by some smaller countries, a system of part-timers in arms control could also be considered.

- *Political- and strategic-level confidence building.* Since the roots of the current tensions in Western–Russian relations run much deeper than current CSBMs may be able to reach, it is important for both sides to engage in more targeted trust-building efforts at a higher political and military level. Ideally, these efforts will focus on areas that are of common interest, that ensure high levels of interdependence, and that take place under conditions of equal status. Key examples of interactions that largely meet such conditions include the High-Level Military Doctrine Seminars foreseen in the Vienna Document and various hotline agreements and bilateral formats, such as the recently resumed meetings of the German–Russian High Level Working Group on Security and between the Norwegian and Russian Ministries of Defence. Such efforts should be understood not as a simple return to “business as usual” but as a means of paving the way for frank and open discussion about some of the most central dividing lines and underlying sources of tension in defence and security relations between Russia and the West. At the multilateral level, such an exchange could also take place under the OSCE Structured Dialogue on current and future chal-

lenges and risks to security in the OSCE area or within the framework of the NATO–Russia Council.

Despite these areas for improvement, it is important to manage expectations and not to overstate the possible impact of CSBMs in times of increased political tension and distrust between OSCE participating States. It could be argued that, as long as both sides are unable to agree on the basis and substance of their defence and security relations, neither military-to-military contacts and dialogue nor transparency and verification regimes can hope to resolve the deep underlying political and strategic tensions between Russia and the West that characterize the present situation. Nevertheless, maintaining and strengthening the positive relations that have already been established between arms control units while working towards better and more trusting relations at a higher political and military level should still be an important objective for OSCE participating States when it comes to the future of arms control and CSBMs in Europe.

## Notes

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- 34 See Vienna Document 2011, cited above (Note 11), Chapter IV: Contacts.
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# The Minsk Process: Societal Perceptions and Narratives

*Cécile Druey, Anna Hess, Julia Kaplan, Valentina Cherevatenko\**

## *Abstract*

The official negotiation process to resolve the conflict in eastern Ukraine, the “Minsk Process”, has been ongoing since 2014, with very little tangible success. Based on interviews conducted with persons living in different regions of Ukraine and Russia, this paper examines positions on the Minsk Process held by those most immediately affected by the crisis. Focusing on the restoration of Ukrainian statehood in the non-government-controlled areas of the Donetsk and Luhansk regions as a key issue in the conflict, the paper identifies two main positions: “border first” and “status first”. Exploring the needs and fears that underlie these positions enables us to identify shared interests and creates space for the development of mutually acceptable solutions.

## *Keywords*

OSCE, Ukraine conflict, Donbas, Minsk Process, societal perceptions, shared interests

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## **Introduction<sup>1</sup>**

For the past six years, the official process to settle the conflict in the Donbas area of eastern Ukraine, known as the “Minsk

Process”, has aimed to implement the provisions of the so-called “Minsk agreements” designed to restore peace and security in eastern Ukraine. This goal has remained elusive. At the core of the problem is the fact that diverging positions on key provisions of the agreements, for example on restoring Ukrainian statehood in eastern Ukraine, are held not only by officials at the Minsk talks but also at the societal level, in all areas affected by the conflict.

This paper aims to identify these diverse societal positions and to explore the interests, needs, and fears that underlie them. In our analysis, we do not take a stand on who is responsible for the war or which political positions are most con-

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\* *Dr Cécile Druey*  
University of Bern, Switzerland  
[cecile.druey@hist.unibe.ch](mailto:cecile.druey@hist.unibe.ch)

*Anna Hess*  
Center for Security Studies, ETH Zurich,  
Switzerland

*Dr Julia Kaplan*  
National Institute for Strategic Studies  
(NISS)  
Kyiv, Ukraine

*Dr Valentina Cherevatenko*  
Union of the Don Women  
Novocherkassk, Russia

ductive to ending it. Rather, we see our role as that of discussing how the official peace process and its key provisions are perceived by members of society on all sides, and searching for common interests that could contribute to unblocking the road to sustainable peace.

The paper is based on the study “The Minsk Process as Perceived from Within”, which was conceptualized and conducted by Ukrainian, Russian, and Swiss researchers<sup>2</sup> from 2017 to 2020 within the framework of the transnational dialogue platform Women’s Initiatives for Peace in Donbas (WIPD).<sup>3</sup> The study examined perceptions of the Minsk process in different regions of Ukraine, including the non-government-controlled areas (NGCAs) of the Donetsk and Luhansk regions, and in Russia.<sup>4</sup> Following the WIPD’s approach of combining dialogue and practical cooperation, sometimes referred to as “diapraxi”,<sup>5</sup> the study was conducted as a research dialogue, in which results were elaborated in constant exchange among researchers representing different sides to the conflict.

The initial aim of the study was to introduce positions on the Minsk Process held by members of society into the official negotiations, based on the premise that their exclusion might lead to blind spots in a future agreement, thus creating problems for its implementation. Our preliminary findings challenged this assumption. They showed that societal perceptions of the key provisions of the Minsk agreements, although excluded from the official discourse, by and large reflect the diverging positions that have led to stalemates in the negotiations. This

insight inspired us to reorient our study: we sought rather to analyse the interests that underlie these societal perceptions with a view to discovering areas where they converge. Such an analysis creates space for the generation of options potentially acceptable to all, which can be useful not only for the official peace process but also for multitrack peacemaking initiatives.

In this paper, we focus on one of the key points of contention in the Minsk Process, which also emerged as one of the most controversial questions among those interviewed in our study: the restoration of Ukrainian statehood in eastern Ukraine. We identified two main narratives in this regard, which we dubbed “border first” and “status first” narratives. The exploration of the interests underlying these opposing narratives revealed a number of needs and fears shared by the respondents representing the different sides. The most prominent, especially among respondents from areas in the immediate vicinity of the conflict, were de-militarization and physical security, socio-economic survival and mobility, and political participation. Our analysis shows that between the moderate positions within the two main narratives there is potential space for exploring mutually acceptable solutions.

## Methodology

Our study examined the positions and interests of those interviewed through a conceptual lens inspired by the Harvard method of interest-based negotiations. A

key principle of the Harvard method is that parties to a conflict and their positions are separate from the interests that underlie them. Accordingly, understanding parties' interests, needs, and fears increases the chances of generating options that are conducive to a mutually acceptable solution.<sup>6</sup>

Data was collected from 144 qualitative interviews conducted between 2018 and 2019, covering all geographic regions impacted by the conflict in Donbas. These include the government-controlled areas (GCAs) of Ukraine (in the central, western, eastern, and southern parts of the country), the NGCAs (in the Luhansk and Donetsk regions), and Russia (the border region with Ukraine and the central/northern parts of Russia). In addition, interviews were conducted with persons in two non-geographic categories: internally displaced persons from Donbas in Ukraine and Donbas refugees in Russia. The latter group proved to be a valuable source, as the positions held by Donbas refugees in Russia often reflect the opinions of NGCA inhabitants more openly. The study did not aim to collect quantitative information or to reconstruct proportions. Rather, it focused on analysing narratives. These narratives were deduced from thematically coded interviews and then compared among groups of respondents, which were labelled with geographic and demographic codes. The study was not focused on any particular social group and was based on voluntary participation. Perhaps as a result of this selection based on motivation, around two thirds of the respondents had a higher education, most of them were

between 35 and 55 years old, and women were slightly overrepresented compared to men (57 per cent).

## Background

Since its inception in 2014, the conflict in eastern Ukraine has claimed over 13,000 lives.<sup>7</sup> Ukraine is now home to around 1.5 million internally displaced persons,<sup>8</sup> and at least one million refugees have left Donbas for Russia.<sup>9</sup> As a result of the high-intensity conflict, Ukraine has lost control over its state border with Russia and parts of Donbas, the self-proclaimed Donetsk and Luhansk People's Republics.<sup>10</sup> A 472-kilometre contact line divides the region into GCAs and NGCAs.<sup>11</sup> The conflict has not only eroded Ukraine's state sovereignty but also caused major infrastructural damage, resulting in a crumbling economy and an affected population living in dire humanitarian conditions. The security situation along the contact line remains volatile. The fault lines do not adhere to geographical and ideological boundaries, instead running straight through the heart of societies, with family members and friends often finding themselves in different camps.

International efforts to deal with the conflict in eastern Ukraine were launched in 2014, but the violence did not begin to abate until the end of 2016/early 2017. What is commonly referred to as the "Minsk agreements" are three documents from September 2014 (the Minsk Protocol and the Minsk Memorandum) and February 2015 (the Package

of Measures on the Implementation of the Minsk Agreements), signed by Russia, Ukraine, and representatives of the NGCAs, under the auspices of the four heads of state or government of the “Normandy Format” (Germany, France, Russia, and Ukraine). The agreements serve as the basis for talks within the OSCE Trilateral Contact Group (TCG) and its four thematic working groups.<sup>12</sup> The Minsk Process and notably the TCG is the only format that brings together all parties to the conflict at the official level. Six years after the signing of the agreements and biweekly meetings in Minsk, however, there is no comprehensive and sustainable ceasefire and no political solution in place. One of the key obstacles to the implementation of the Minsk agreements remains the issue of sequencing their political and security provisions. Other factors that have hampered implementation include procedural non-transparency and the contested political and military role of Russia.

### **Restoring Ukrainian statehood: From diverging positions to converging interests?**

As mentioned above, restoring Ukrainian statehood in eastern Ukraine is a main

point of contention in the Minsk Process. While the Ukrainian government insists on restoring control over its border with Russia before any decisions can be made about the status of the NGCAs, the latter, backed by Russia, demand autonomy and security guarantees before a possible reintegration of the territories into Ukrainian territory can be discussed. At face value, the diverging narratives identified in our study, ranging from a “border first” to a “status first” approach, reflect the official positions that have led to the current stalemate. However, our analysis shows that the respondents’ attitudes reflect a broad spectrum of positions. Between the extremes of “hard reintegration” and “full independence”, they also hold more moderate attitudes that can be engaged with to generate mutually acceptable outcomes.

This spectrum of narratives is presented in the following subsections, followed by a summary of the relevant needs and fears that underlie them and the reactions they have provoked. Table 1 provides an overview.

Table 1: Overview of narratives and positions

Narrative	Position	Underlying fears/interests	Shared by (group of respondents)
<p><b>Narrative I</b>  <b>“Border first”:</b>                      Restoration of Ukrainian control is required in the first instance</p>	<p><b>Position 1</b>                      “Hard reintegration and restoration of status quo ante”</p>	<p><b>Fear:</b></p> <ul style="list-style-type: none"> <li>• creeping Russification of Ukraine</li> </ul> <p><b>Interest:</b></p> <ul style="list-style-type: none"> <li>• status quo ante (Ukraine, including Donbas and Crimea)</li> </ul>	<ul style="list-style-type: none"> <li>• Ukraine (mainly southern and central parts)</li> <li>• Russia (central part)</li> </ul>
	<p><b>Position 2</b>                      “Territorial integrity and national interest”</p>	<p><b>Fear:</b></p> <ul style="list-style-type: none"> <li>• special status of the NGCA as a threat to the Ukrainian state (territorial fragmentation)</li> </ul>	<ul style="list-style-type: none"> <li>• Ukraine (all parts)</li> <li>• Russia (all parts)</li> </ul>
	<p><b>Position 3</b>                      “Soft reintegration and restoration of statehood”</p>	<p><b>Interests:</b></p> <ul style="list-style-type: none"> <li>• socio-economic survival</li> <li>• restoration of statehood and infrastructure in the conflict region</li> </ul>	<ul style="list-style-type: none"> <li>• Ukraine, areas close to the conflict zone (GCAs and NGCAs)</li> <li>• Russia (border region)</li> </ul>
<p><b>Narrative II</b>  <b>“Status first”:</b>                      Special status/ autonomy/ independence for the NGCAs is required in the first instance</p>	<p><b>Position 4</b>                      “Independence or unification with Russia”</p>	<p><b>Fears:</b></p> <ul style="list-style-type: none"> <li>• isolation</li> <li>• “hard integration” as a humanitarian disaster for NGCA inhabitants</li> </ul> <p><b>Interest:</b></p> <ul style="list-style-type: none"> <li>• human security of NGCAs</li> </ul>	<ul style="list-style-type: none"> <li>• NGCAs</li> <li>• Donbas refugees in Russia</li> </ul>
	<p><b>Position 5</b>                      “Transitional autonomy and soft independence”</p>	<p><b>Interests:</b></p> <ul style="list-style-type: none"> <li>• human security of NGCAs</li> <li>• restoration of statehood and infrastructure in the conflict region</li> </ul>	<ul style="list-style-type: none"> <li>• Ukraine GCAs (all parts)</li> <li>• NGCAs</li> <li>• Russia (border region)</li> </ul>

### Narrative I: Reintegration and the “border first” perspective

The tension between the two main narratives, namely the “border first” and “status first” narratives, mirrors the challenge of sequencing the security and the political provisions of the Minsk agreements. “Border first” respondents believe that Ukraine must first restore its control over the border with Russia if there are to be further steps toward resolution.

#### *Position 1: “Hard re-integration and restoration of the status quo ante”*

“I am not in favour of any special status for those regions [for the NGCAs], apart from the fact that these regions must be subject to strict discipline, surveillance, and order. In short, I want and believe it is fair and right for these regions to be punished.” (Central Ukraine)

Among the more radical positions within the “border first” narrative is the call for the “hard re-integration” of the NGCAs into Ukrainian territory, often coupled with a call for the restoration of the territorial *status quo ante* (including for Crimea). In military terms, these respondents view this “hard reintegration” as involving the restoration of full control over (and the total closure of) the border with Russia and a military takeover of the Donbas. In socio-cultural terms, this would mean the restoration of full control over and a “(re-)Ukrainization” of the population in the NGCAs, often

also reflecting a note of retribution (see quote above). The option of granting autonomy to the NGCAs based on the special status law, as discussed in the Minsk agreements, is categorically rejected by these respondents, who fear that “special status” would be used by Russia to exert pressure on Kyiv’s security and foreign policymaking through the political participation of Donbas authorities in Ukrainian politics.<sup>13</sup> In general, proponents of this position consider Russian aggression the main, if not the only, cause of the conflict in Donbas, viewing the popular motto “Russia out!” as a promise of salvation and the de-Russification of the Donbas as essential to peace. Interestingly, this “hard reintegration”, “Russia out!” position was expressed by respondents not only in southern and central Ukraine but also in Russia, most often in regions most remote from the zone of immediate conflict.

With its preference for a military solution and its ideological and highly emotional quality, the “hard reintegration” position stands in opposition especially with that of inhabitants of the NGCAs and Donbas refugees in Russia. It also diverges from the opinions held by respondents living close to the conflict zone in the government-controlled parts of Donbas and southern Russia, who argue that a military re-seizure of the Donbas would threaten the security and the economic development of the entire region.

This radical position would seem to be partly due to a lack of accurate information on the content and procedures of the Minsk Process. Several respondents from the GCAs, the NGCAs, the Donbas

refugee population, and Russia have indicated that they have little to no information on the peace process and that when they do get information, it is usually through informal channels, their trusted sources being bloggers and other influential elites. As a result, concepts such as “special status”, “federalism”, “autonomy”, and “amnesty” are associated with myths of territorial loss and creeping Russification. A lack of transparency and reliable information on the conceptual and operational modalities of these key concepts has led to the spread of fear and the hardening of positions.

***Position 2: “Territorial integrity and the national interest”***

“[restoring peace means] the achievement of complete control of Ukraine over the entire state border of Ukraine. I consider this to be absolutely necessary; each country has the right to sovereignty!” (Central Ukraine)

This position adheres to the “border first” narrative, but views the issue of reintegration from a legal and institutional, rather than an ideological, point of view. Proponents of this position believe that the NGCAs should be reincorporated and that border control should be restored due to the Ukrainian state’s right (and obligation) to exercise jurisdiction over its entire internationally recognized territory.

This position differs from the “hard reintegration” approach not only due

to its more sober content but also because it provokes less opposition. There is broad consensus among respondents from all groups, including inhabitants of the NGCAs and the even more radical refugees in southern Russia, that territorial integrity and an intact border regime with Russia are in principle positive because they are core conditions of a well-functioning Ukrainian statehood.

When we unpack the “territorial integrity and national interest” position and the more radical “hard reintegration” and “Russia out!” approach, it becomes clear that the main interest underlying both positions is the need for Ukrainian sovereignty and fear of Ukraine’s further territorial fragmentation. The fear of fragmenting Ukrainian state power goes hand in hand with indignation regarding Russia’s dominance. The call for a full Russian withdrawal and the reluctance to agree on local elections and on giving the NGCAs special status are also fuelled by fear of the increasing Russification of eastern Ukraine. Further, several respondents from southern Russia and Ukrainian-controlled Donbas have expressed their apprehension regarding the geo-politicization of the conflict, in particular Moscow’s use of the Donbas and notably the permeability of its border with Russia as an instrument for freezing and thawing the conflict, depending on Kyiv’s stance towards Moscow.

***Position 3: “Soft reintegration and the restoration of statehood”***

“[Ukrainian control of the state border means] the entry/exit control of normal citizens and visitors of the country. The same applies to the movement of goods. But they [i.e. the Minsk Protocols] do not mention this, they only mention that no supplies for the armed formations should be allowed to pass through...”  
(eastern Ukraine/Donbas GCAs)

Among the more moderate stances within the “border first” narrative is the “soft reintegration” position. In contrast to the more hard-line positions discussed above, it emphasizes not the control or closure of the border, but the restoration of borders that fulfil their normal functions, as part of the restoration and consolidation of Ukrainian statehood in the zones immediately affected by the conflict.

This stance accords with Johan Galtung’s notion of “positive peace” as involving stability beyond a purely military sense, where not only the imminent problems of (physical) security but also the root causes of conflict are addressed.<sup>14</sup> In particular, respondents from areas close to the conflict on the Ukrainian-controlled side and in southern Russia emphasized the importance of a “positive” state presence as a basis for successful reintegration in the future. In their eyes, this entails reinstatement of an intact legal system, a functioning socio-economic infrastructure, and the presence of administrative structures across Ukraine, including the NGCAs. On this view,

restoration of Ukraine’s control over the border entails control not only over weapons but also over the movement of persons and goods. This view was especially prevalent among respondents from areas close to the conflict zones (government-controlled Donbas, NGCAs, and southern Russia). For them, it is important that both the Russian–Ukrainian border and the internal Ukrainian line of contact be secure and favourable to mobility on both sides.

***Shared interests: Socio-economic survival and mobility***

The needs that underlie the restoration of statehood and “border first” approaches are linked to security, socio-economic survival, mobility, and access to a dignified livelihood. A large number of NGCA respondents also have a shared interest in “positive” peace and a people-focused solution to the problem of reintegration. They expressed tolerance or even support for the idea of reintegration on the condition that their security and socio-economic needs are met.

The restoration of a “positive” Ukrainian state presence across the Donbas region can be identified as a second area of common interest, shared by respondents from different groups on both sides of the border and the line of contact, which may open up possibilities for compromise.

## Narrative II: Autonomy and “status first”

Respondents who subscribe to the second narrative, which we have called “status first”, view the granting of special status (such as independence, autonomy, or federalization) to NGCAs and subsequent local elections as a key priority that should precede the restoration of border control and prepare the ground for further steps toward peace. Like the “border first” approach, this narrative does not entail a unified position on the potential restoration of Ukrainian statehood. While some “status first” supporters insist on “independence at any price” for the NGCAs, others recommend the granting of special status to Lugansk and Donetsk as a temporary solution on the way to a more comprehensive settlement. Here, too, the moderate positions offer space for exploring mutually acceptable solutions.

### *Position 4: “Independence or unification with Russia”*

“The word ‘Ukraine’ means ‘death with braided hair’ [...]. I mean, these whole negotiations are playing with fire. Do whatever you want, tell me on radio and television whatever you want. With a friendly smile, strangle your own people...” (Russian Federation, Donbas refugees)

As reflected in the quote above, supporters of the “independence at any price” position perceive the potential reintegration and restoration of Kyiv’s control

over the border with Russia as an immediate threat to their security. The statements by some NGCA inhabitants and most of the Donbas refugees in Russia interviewed in the study reflect the position that “war has created a point of no return”. They subscribe to the view that, as a result of the war and six years of alienation, the only option for the NGCAs is maximal independence from the central authorities in Kyiv or incorporation into Russia, should independence be hindered.

In other words, like the radical positions within the “border first” narrative, the “independence at any price” position revolves around the role played by Russia. The popular perception of Russia as a guarantor of peace and a selfless protector of the local population provides a basis for seeing the potential unification of the NGCAs with Russia as an attractive alternative to re-unification with Ukraine, especially if the latter entails “hard reintegration”.

The “independence at any price” stance comes from the parties’ immediate need for physical safety and human security in a broader sense. The permeability of the border with Russia has proved vital for NGCA inhabitants during the intensive fighting and the subsequent isolation from Ukraine. Without a solution to their political status, and without guarantees from Kyiv regarding the safety of Donbas, these respondents are afraid of being pinned between a closed border with Russia and a regime of restricted access at the line of contact.

The call for full independence is motivated not only by considerations of

hard security but also by psychosocial considerations. In particular, NGCA inhabitants and Donbas refugees in Russia fear “retribution” from Ukraine should they reintegrate. This fear has been exacerbated by the psychosocial consequences of the armed conflict and six years of alienation between the NGCAs and the GCAs. Heavily traumatized by their immediate experience of war and exposure to death, destruction, and displacement, Donbas refugees in Russia in particular fear that if Ukraine regains full control over the territory of the NGCAs, the conflict will resume. Many inhabitants of the NGCAs fear that reintegration will result in their being treated as “second-class citizens” by the GCAs due to perceived cultural and linguistic differences that are also reflected in socio-political orientation (e.g. “pro-Maidan” vs “anti-Maidan”, pro-Western vs pro-Russian).

The need for full independence and separation from the Ukrainian state also seems to be justified by the adherents to this position on socio-economic grounds. The limited mobility of goods and persons, lack of access to economic opportunities across the line of contact, and the embargo against the NGCAs all give rise to unfavourable prospects for local development and cooperation in the future. This perception has fed the belief that independence or unification with Russia are the only viable options. Here again, these fears are directly related to the need for security and access to a dignified livelihood.

As in the case of “hard reintegration”, one of the reasons behind this hard-line “independence or unification with Rus-

sia” stance seems to be lack of transparency and information about the Minsk Process and its provisions. A transparent and solid communication strategy would serve all parties concerned.<sup>15</sup>

***Position 5: “Transitional autonomy and soft independence”***

“If there is a peaceful life there and five to ten years pass, the very issue of special status will disappear over time.” (central Ukraine)

At the other end of the spectrum within the “status first” narrative are supporters of “transitional autonomy”, who also view granting NGCAs autonomous status as an important first step on the way to peace. In contrast to those who adhere to the previous “full independence or unification of Russia” stance, however, they look at the issue from the perspective of Ukraine’s national interest. The respondents who belong to this group are moderate insofar as they accept that the experience of war and six years of alienation between the GCAs and the NGCAs have created a new reality that must be taken into account in the peace process. Rather than viewing autonomous status as an ultimate solution, however, they understand it as a temporary compromise that will ensure that Ukraine “does not lose the Donbas”. This transitional autonomy, combined with the restoration of Ukrainian statehood in the NGCAs, is perceived by these respondents as one of the most promising means of restoring peace.

***Shared interests: a positive presence of the Ukrainian state serving popular needs***

As a preliminary conclusion, it is clear that several of the abovementioned positions offer space for shared interests. The “soft independence” position (Position 5) is reflected in the account of respondents from all areas of Ukraine. Like the “soft reintegration” approach, it is also a moderate position aimed at a settlement of the conflict through a positive presence of the Ukrainian state, with the ultimate interest of serving popular needs and preserving national interests, and counteracting an increased Russification of the Donbas.

Although this position of “transitional autonomy and soft independence” was most prominently reflected in the statements by respondents in the GCAs, it seems to be compatible with the interests of the NGCA population. A large part of the NGCA respondents were not categorically against their territory remaining (or becoming again) part of Ukraine, but were primarily opposed to a “hard reintegration” for fear of Ukrainian retaliation.

**Synthesis of converging interests and related recommendations**

Our brief analysis of the two key narratives on the issue of the restoration of Ukrainian statehood has uncovered converging interests that open a space for potential dialogue. Behind most of the positions are interests related to survival, security, socio-economic well-being, and

access to a dignified livelihood. In the following, we offer recommendations to relevant target groups with respect to the identified areas of shared concern. Elaborating more concrete measures to this effect is beyond the scope of this contribution, however, and must be further explored by all actors who remain committed to a peaceful settlement of the conflict in eastern Ukraine.

**1) Security and survival**

Respondents from all groups mentioned security and the absence of armed violence as basic conditions for their existence, the survival of the state, and the restoration of peace in general. The hard-line and emotionally charged “hard reintegration” and “independence at any price” positions seem to be rooted in a deep feeling of insecurity and existential threat. Negotiation and decisions on the restoration of statehood in the NGCAs must take these insecurities and fears into account if an agreement on the restoration of Ukrainian statehood in the NGCAs is to be possible and its implementation feasible.

***Recommendations***

***a) to the Ukrainian government***

- Develop measures to ease the reintegration of NGCA inhabitants and returning Donbas refugees, e.g. by offering guarantees that NGCA inhabi-

tants in Ukraine will not be discriminated against.

**b) to the Russian government and NGCA de facto authorities**

- Contribute to demilitarization and demining in the NGCAs.

**2) Restoration of statehood and a “positive” Ukrainian state presence**

Another area of shared interest reflected mainly in the moderate positions outlined above is the restoration of a “positive” Ukrainian state presence in the Donbas area as a whole, based on respect for the rights of – and meeting the needs of – local inhabitants of both the NGCAs and the GCAs. Notably, respondents from the border zones in the GCAs, the NGCAs, and Russia mentioned the need to find pragmatic solutions to problems related to socio-economic development, the reconstruction of infrastructure, and trans-border mobility. Many respondents from the NGCAs (in both the Luhansk and the Donetsk regions) showed openness to the idea of “soft re-integration” based on autonomous status combined with a positive Ukrainian state presence. Several respondents from different groups stated that a moderate “soft integration” position combined with the recognition of transitional autonomy or “soft independence” was an area of shared interest that could be further explored.

**Recommendations**

**a) to the Ukrainian government**

- Develop a comprehensive and coherent strategy for state-building and local development in the NGCAs in order to win the confidence and support of the local population and facilitate reintegration.
- Develop an easy, secure and transparent regime of transfer between NGCAs and GCAs at line of contact checkpoints.

**b) to the OSCE, the Ukrainian government and civil society organizations**

- Develop cooperation mechanisms between the OSCE and the Ministry for the Reintegration of the Temporarily Occupied Territories of Ukraine, on the one hand, and civil society organizations with expertise in transitional justice, dialogue initiatives and local development in NGCAs, on the other.

**c) to the Russian government and NGCA de facto authorities**

- Support the mobility of Ukrainian citizens between NGCAs and GCAs by contributing to a simple, secure, and transparent regime of transfer between NGCAs and GCAs at the line of contact, notably through the renewal of operations at existing

checkpoints and the opening of additional ones in the Luhansk region (at Schaste and Zolotoe).

porary steps being a more realistic approach than “one big solution”.

### 3) Transparency and communication

Several respondents from the GCAs, the NGCAs, the Donbas refugee population, and Russia indicated that the little information they have on the content and procedures of the Minsk Process comes from informal channels.

#### *c) to the Russian Government and NGCA de facto authorities*

- Promote the establishment of an open communicative space in the NGCAs for Ukrainian and international media (including the availability of Ukrainian and international broadcasting in digital, analogue, and cable formats).

### *Recommendations*

#### *a) to the OSCE and the Ukrainian and Russian governments*

- Develop mechanisms of systematic and regular communication for transmitting and discussing information about the Minsk Process and its components, the progress of the negotiations, and the continuous work of the TCG with the larger public, including Ukrainian, Russian, and international audiences.

#### *b) to the Ukrainian government*

- Communicate openly and transparently about the transitional nature of the special status and autonomy of the NGCAs, as foreseen in the Minsk Process. This would contribute to reducing tensions and polarization at the societal level, with small and tem-

### Notes

- 1 We would like to take this opportunity to thank the external reviewers, whose comments helped to put the finishing touches to this article.
- 2 The members of the research team came from different geographic areas affected by the conflict, as do the authors of this paper, who were members of the team and are participants of the dialogue platform WIPD.
- 3 The Women’s Initiatives for Peace in Donbas (WIPD) is a platform for dialogue and cooperation on issues related to the conflict in eastern Ukraine among women in Ukraine, including non-government-controlled areas, Russia, and Western Europe. For more information on the WIPD, see Dana Jirouš, “Red lights and diapaxis”, FriEnt Website, TJ Blog, 15 November 2019, at: [https://www.frient.de/en/blogdata/tj-blog/red-lights-and-diapaxis?fbclid=IwAR03ALYQC59\\_5VNxMpo0UV6VYAaYONdIWwOqbVQU1FR65YsnRrvEI6OhevY](https://www.frient.de/en/blogdata/tj-blog/red-lights-and-diapaxis?fbclid=IwAR03ALYQC59_5VNxMpo0UV6VYAaYONdIWwOqbVQU1FR65YsnRrvEI6OhevY).
- 4 Beyond its conceptual support, the WIPD provided valuable access to respondents from all conflict parties, help-

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- 5 For a description of the origins of the concept “diapraxis”, see Jean-Nicolas Bitter, “Diapraxis in Different Contexts: A Brief Discussion with Rasmussen”, in: *Politorbis* 2/2011, pp. 65–69.
  - 6 Roger Fisher/William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Boston: Houghton Mifflin, 1981.
  - 7 Information on the exact numbers and origin of dead and injured persons (2014–2020) can be found here: Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine: 16 November 2019 to 15 February 2020, February 2020, at: [https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine_EN.pdf).
  - 8 According to the Unified Information Database on Internally Displaced Persons of the Ministry for Social Policy of Ukraine, as of 12 May 2020, 1,446,651 internally displaced persons from the NGCAs of Donetsk and Luhansk and the Autonomous Republic of Crimea have been registered. See the Ministry of Social Policy of Ukraine, Official Website, 12 May 2020, at: <https://www.msp.gov.ua/news/18640.html>.
  - 9 Maria Litvinova, “Mama posadila menya v poezd v Belgorod, a na sleduyushchiy den’ v zdanie vokzala popal snyaryad” (“*My mother put me on a train to Belgorod, and the next day a shell hit the station building*” – CD), *Kommersant*, 18 April 2020, at: <https://www.kommersant.ru/doc/4323849>.
  - 10 “Ukraine crisis in maps”, BBC News, 18 February 2015, at: <https://www.bbc.com/news/world-europe-27308526>.
  - 11 The latter are also referred to as Certain Areas of Donetsk and Luhansk Regions (CADLRs).
  - 12 For further information on the official peace process in Ukraine (the Minsk Process), see: OSCE, Protocol of the Results of the Consultations of the Trilateral Contact Group, signed in Minsk on 5 September 2014, 5 September 2014, available at: <https://www.osce.org/ru/home/123258?download=true>; “Full text of the Minsk agreement (English version)”, *Financial Times*, 12 February 2015, at: <https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de>. See also: Anna Hess Sargsyan, “Introduction” and “Conclusion”, *The Security and Human Rights Monitor Special Issue on OSCE Mediation and Conflict Management*, November 2017, at: <https://www.shrmonitor.org/security-human-rights-special-issue-osces-mediation-conflict-management-introduction-conclusion/>; Anna Hess Sargsyan, “Unpacking complexity in the Ukraine peace process”, *CSS Analyses in Security Policy* Nr. 243, Benno Zogg, ed., April 2019, at: <https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CSSAnalyse243-EN.pdf>.
  - 13 For further information about internal Ukrainian debates on special status, see RFE/RL’s Ukrainian Service, “Ukrainian lawmakers extend Donbas special status law until end of 2020”, RFE/RL, 12 December 2019, at: <https://www.rferl.org/a/ukrainian-lawmakers-extend-donbas-special-status-law-until-end-of-2020/30321863.html>.
  - 14 Johan Galtung, *Peace: Research–Education–Action. Essays in Peace Research I*, Copenhagen: Ejlers, 1975.
  - 15 A positive example in this regard is the blog on the website of the Ukrainian presidential administration on current

activities in the framework of the Minsk Process. See “TCG meeting: OSCE noted sustainable regime of silence for 80 days, emphasizing the need for its further observance”, President of Ukraine Official

Website, 14 October 2020, at: <https://www.president.gov.ua/en/news/zasidannya-tkg-obsye-vidznachila-stalij-rezhim-tishi-v-prodov-64589>.



# Enhancing Cooperation Between the OSCE and the Council of Europe

Frank Evers, André Härtel, Marietta König\*

## Abstract

The Council of Europe (CoE) and the OSCE both work to ensure human rights, the rule of law, democracy, and stability in Europe. Both organizations struggle with deteriorating multilateralism and the erosion of compliance with shared norms in Europe. This contribution discusses the cooperation between the CoE and the OSCE and how it can be deepened. Governments should provide more political support, personnel, and funding to the two organizations. Specifically, we recommend: 1) enhancing communication at the political level by energizing the CoE–OSCE Coordination Group and reviving the idea of holding “2+2” senior officials’ meetings; and 2) promoting and funding more interaction between the two organizations in countries where both have field presences, while ensuring that they are giving compatible political and legal advice.

## Keywords

OSCE, Council of Europe, European Union, international organizations, field operations

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## Introduction<sup>1</sup>

The Council of Europe (CoE) and the OSCE are both regional international organizations working to ensure stability in Europe. As such, they are natural partners with a well-established and long-standing

relationship. Both promote human rights, fundamental freedoms, democracy, and the rule of law.

In Europe and elsewhere, we are seeing eroding compliance with the norms that enabled dialogue, security building, and trust among states and societies after

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\* *Dr Frank Evers*  
Institute for Peace Research and Security  
Policy at the University of Hamburg (IFSH)  
[evers@ifsh.de](mailto:evers@ifsh.de)

*Dr André Härtel*  
Institute for Peace Research and Security  
Policy at the University of Hamburg (IFSH)  
[haertel@ifsh.de](mailto:haertel@ifsh.de)

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*Marietta S. König*  
Office of the Secretary General, OSCE Secretariat, Vienna  
[Marietta.Koenig@gmx.de](mailto:Marietta.Koenig@gmx.de)

Note: This contribution expresses the personal views of the authors and does not necessarily reflect the official positions of the CoE, the OSCE, or their member and participating States.

the end of the East–West conflict. Public trust in democratic institutions is decreasing and political radicalization growing. Given this situation, one would expect governments to ensure close cooperation between the CoE and the OSCE. However, while improving cooperation has repeatedly been a topic of discussion between the CoE and the OSCE over the past two decades, it is not currently a priority for member/participating States.

The paper has a twofold purpose: to analyse the current state of cooperation between the CoE and the OSCE and to suggest ways of deepening it. The paper starts from the premise that enhanced interaction between the CoE and the OSCE could mitigate some of the challenges facing Europe.

We argue that cooperation between the organizations at the expert level needs to be enhanced and complemented by more substantial interaction at the level of leadership and senior management, particularly in the CoE–OSCE Coordination Group, where communication is overly ritualized. Moreover, we suggest reviving the idea of holding “2+2” senior officials’ meetings. We also recommend greater interaction in countries where both organizations run field presences. European Union (EU) capitals, in particular, should better utilize the OSCE and the CoE as two central actors for ensuring stability in Europe.

The paper is based on interviews conducted with representatives of the two organizations in Strasbourg, The Hague, Vienna, and Warsaw between September and December 2017 and a series of follow-up interviews in 2020. It also draws

on an analysis of documents adopted to regulate and formalize relations between both organizations.

The first section describes existing cooperation between the OSCE and the CoE. The second outlines political and structural obstacles to closer cooperation. The third and final section offers recommendations to governments and the executive structures of the two organizations on how cooperation could be deepened.

### OSCE–CoE interaction

The CoE and the OSCE each work to promote security and stability in Europe in their own specific ways. The OSCE, the world’s largest regional security organization under Chapter VIII of the United Nations (UN) Charter, is an inclusive forum for negotiations. Its 57 participating States regularly discuss security matters in the Permanent Council and the Forum for Security Cooperation in Vienna. The OSCE also has an extensive network of field operations and is the continent’s largest conflict manager.

With 47 member states, the CoE, in turn, contributes to stability in Europe by advocating human rights, democracy, and the rule of law, in particular through adopting and supporting the implementation of international agreements and conventions. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the more than 220 other conventions and international legal provisions (along with the extensive apparatus for their imple-

mentation) help to protect the rights of those who reside within their jurisdiction. The CoE's legal instruments and the OSCE's norm-setting political commitments and strong field presence complement one another well.<sup>2</sup>

The two organizations have a well-established and longstanding relationship. They have on various occasions emphasized "the flexible and pragmatic character"<sup>3</sup> of their cooperation and their fundamental intention to "complement and reinforce each other".<sup>4</sup> At the expert and operational level, the organizations work together closely in a relationship based on complementarity, transparency, democratic accountability, and mutual respect for each other's mandates, membership, and autonomy.

However, deepening or expanding this cooperation is hampered at the level of high-ranking officials and political leaders, where communication is sparse or overly ritualized. The situation is similar in the field, where there is room for improvement when it comes to interaction and coordination.

### Established modalities

Flexibility and pragmatism are the guiding principles of the four key documents that formally regulate cooperation between the CoE and the OSCE, with the intention of avoiding duplication and making best use of their comparative advantages (see text box).

### Documents regulating cooperation between the Council of Europe and the OSCE

1. CoE/OSCE, Relations Between the Council of Europe and the OSCE: Common Catalogue of Cooperation Modalities, SEC.GAL/30/00, 4 April 2000 [OSCE], and CM(2000)52, 25 April 2000 [CoE].
2. OSCE, Enhanced Cooperation Between the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE), Permanent Council Decision PC.DEC/637, 2 December 2004.
3. OSCE, Cooperation Between the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, Permanent Council Decision PC.DEC/670, 28 April 2005.
4. CoE/OSCE, Declaration on Cooperation Between the Organization for Security and Cooperation in Europe and the Council of Europe, 17 May 2005.

These documents provide a set of working modalities that include:

- mutual representation at meetings of the decision-making bodies and the parliamentary assemblies, and mutual liaison;
- the Coordination Group, established in 2004<sup>5</sup> as a regular top-level meeting format to discuss cooperation within four formally agreed thematic areas (the Group's potential is discussed below);

- high-level “2+2” meetings of the OSCE Chairperson-in-Office and CoE President, the two Secretaries General, and heads of institutions and senior officials;
- “2+2” meetings at the level of senior officials, parliamentary meetings, joint meetings with the participation of experts from capitals, and representatives of the secretariats (both “2+2” formats are not in use but could be activated – see recommendations below);
- high-level tripartite meetings between the Chairpersons and Secretaries General of the OSCE and the CoE, as well as the Director General of the United Nations Office in Geneva, and others (held annually from 1993 until 2011);<sup>6</sup>
- cooperation between CoE and OSCE institutions based on the above-mentioned agreed areas of cooperation;
- secretarial cooperation and information exchange;
- ad-hoc contacts and consultations, including desk-to-desk meetings.<sup>7</sup>

A number of working arrangements, memoranda of understanding, and exchanges of letters between the two organizations have aimed to additionally facilitate interaction over the years. The exchange of letters between the Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the CoE Secretary General on areas of cooperation (2019) is a recent example.

The framework of cooperation is applied with varying degrees of effectiveness at the different organizational levels:

rather sparsely and inflexibly at the higher political level (namely in the Coordination Group), intensively in interactions between the organizations’ institutions at the working level, and unevenly in the field.

#### Fixed modalities of high-level communication

Communication between the CoE and the OSCE at the political level is challenging. The Coordination Group, established in 2004, is the official format for high-level meetings between the two organizations. The Group convenes twice a year, the venue alternating between Strasbourg and Vienna. (On 13 November 2020, the group met for the thirty-second time, for the second time online due to COVID-19 restrictions.) Some view the original agreement to “meet as necessary and at least every six months”<sup>8</sup> as a commitment to more frequent communication. Depending on the thematic focus, the list of CoE participants includes the Chairperson and Bureau of the Ministers’ Deputies, the Chair of the Rapporteur Group on External Relations, and Secretariat representatives. The list of OSCE participants includes representatives of the Troika (previous, current and incoming Chair), the Secretariat, including the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and the institutions, in particular the High Commissioner on National Minorities (HCNM) and ODIHR.

The formal agenda of the Group's meetings is highly ritualized, limited to four fixed areas of cooperation, namely (a) the fight against terrorism, (b) the fight against trafficking in human beings, (c) the promotion of tolerance and non-discrimination, and (d) the protection of the rights of persons belonging to national minorities.<sup>9</sup> This leaves little room for quickly responding to events and trends. The four areas were initially conceived as a starting point for discussions, but the list was never expanded. This is mainly due to lack of consensus among the participating States, for some of which potential further subject areas are controversial. Even within the four thematic areas, sharp disagreements exist on addressing matters such as minority issues, tolerance and non-discrimination, and gender mainstreaming.

#### Flexible interaction at the working level

Cooperation at the working level between the CoE and the OSCE is less structured but much more developed than the Coordination Group's activities. Senior officials of both organizations appreciate the excellent ties at the expert level. There is a high level of mutual awareness of activities, particularly between ODIHR and the European Commission for Democracy through Law, better known as the Venice Commission. Joint work often follows established procedures. Several OSCE field operations exchange information with the CoE and organize joint events and projects pertaining to their respective mandates.

However, these are rarely reflected in the Coordination Group meetings or in reports to the member/participating States.

ODIHR leads joint election observation missions with the Parliamentary Assembly of the Council of Europe (PACE) and the OSCE Parliamentary Assembly. The two assemblies hold frequent meetings, and cooperation between them (as well as with the European Parliament and, from time to time, the North Atlantic Treaty Organization's Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe) is assessed as excellent. Election observation is the flagship joint activity, visible to the broad public in many countries.

There are thematic consultations between ODIHR and the CoE Commissioner for Human Rights, who is a regular guest at OSCE forums. Ties also exist between OSCE institutions and the Congress of Local and Regional Authorities, the Conference of International Non-Governmental Organizations, and the European Court of Human Rights. CoE officials underline best practices of cooperation such as mutual invitations of senior OSCE representatives to high-level meetings, the OSCE's participation in the CoE Steering Committees and their subordinate bodies, and interaction with OSCE field operations.<sup>10</sup>

The institutions of both organizations systematically make use of each other's decisions, judgements, guidelines, and other publications as legal and political reference points. The Venice Commission and ODIHR have a long tradition, based on a cooperation agreement, of jointly producing opinions and guide-

lines, e.g. on freedom of religion, freedom of peaceful assembly, and freedom of association.<sup>11</sup> Cooperation is particularly intensive in those areas where guidelines have been drawn up.

ODIHR works not only with the Venice Commission on legislation reviews and opinions and with PACE on elections, but also with the CoE Secretariat on topics of mutual concern. These include promoting tolerance and non-discrimination and protecting human rights (including of minorities such as Roma and Sinti), supporting the work of human rights defenders, and action against hate crime. Experts from the institutions meet regularly, exchange information, share reports, and engage in common endeavours. ODIHR systematically uses the country reports and policy recommendations of the European Commission against Racism and Intolerance (ECRI) in its capacity-building work, while ECRI uses ODIHR's hate crime data in its country reports. The Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) frequently refers to ODIHR hate crime data in its country reports and to the HCNM's thematic recommendations and guidelines. In turn, the HCNM uses the opinions of the Advisory Committee on the FCNM and the reports of the Committee of Experts of the European Charter for Regional or Minority Languages. Visits by the HCNM to Strasbourg and Venice to discuss country-related minority matters with high-level representatives is established practice.

An exchange of letters between ODIHR Director Ingibjörg Sólrún

Gísladóttir and CoE Secretary General Marija Pejčinović Burić in November 2019 underscored and served to alert expert teams to the areas of cooperation between ODIHR and the CoE.<sup>12</sup> A similar correspondence between the CoE and the HCNM or the Representative on Freedom of the Media (RFOM) could be considered.

### Uneven cooperation in the field

Interaction in the field is the cornerstone of OSCE–CoE cooperation. Both organizations have numerous field presences. The CoE runs 17 external offices with different profiles in different regions, along with four liaison offices and an office in Paris. Among them are countries where the OSCE does not have a presence or is not permanently stationed, such as Turkey and the three South Caucasus states. As of 2020, the OSCE runs 16 field operations, including five in Central Asia, where the CoE is not present, and has three institutions that also conduct work in the field. There is considerable overlap between the two organizations' field presences in South-Eastern and Eastern Europe.

Cooperation between the OSCE field operations and the CoE external offices has developed unevenly. In Ukraine, where both organizations enlarged their presences after 2013–2014, cooperation is relatively advanced. Based on a memorandum of cooperation, the organizations hold biannual meetings and have integrated their activities in an EU/CoE/OSCE action plan. Excellent synergies

exist here, for example with respect to justice sector reforms, where the CoE and the OSCE Project Co-ordinator in Ukraine are working together to support reforming the prosecutor general's office, with the OSCE relying, *inter alia*, on European Court of Human Rights (ECtHR) judges in its training activities. In other countries, there is a need for more systematic interaction. This is the case in Bosnia and Herzegovina, for example, where both organizations have almost identical priorities (as laid down in the CoE Action Plan and the mandate of the OSCE Mission) and work with the same partners and donors. In general, cooperation in the field is difficult where the political context is sensitive, EU integration dynamics are slowing down, or host states are distancing themselves from the OSCE presence and activities. This is often due to the alleged stigma of field presences being deployed in countries with democratic deficits or internal conflict.

### Obstacles to closer interaction

For over a decade, there have been occasional efforts to bring the CoE and the OSCE closer together. Specific proposals were made in the CoE paper entitled "Relations Between the Council of Europe and the OSCE: The Way Forward" (2012),<sup>13</sup> the last major exchange on the matter. The organizations have not been able to take steps based on these proposals, however. This is partly due to reticence at the political level and partly due

to structural differences between the organizations.

### High-level reluctance

In the 2012 paper,<sup>14</sup> the CoE proposed measures for regular joint decision-making and re-establishing the practice of reciprocal invitations. After a year of discussion, the OSCE responded with caution, referring to its preference for "pragmatic, effective, goal-oriented, results-driven and experts-based cooperation" based on expert-to-expert action and case-by-case interaction in the field.<sup>15</sup> The Belgian Chair of the CoE Committee of Ministers' subsequent suggestion to start another consultation process between the organizations was insufficiently coordinated within the CoE and eventually not brought forward for discussion with the OSCE.<sup>16</sup> The Belgian Chair did host an extra-ordinary CoE–OSCE High-Level Meeting on the margins of the 125th Session of the Committee of Ministers in Brussels. Since then, however, no further CoE–OSCE high-level meetings have taken place.

Giving each other the right to speak at the OSCE Ministerial Council meetings and the CoE Committee of Ministers' meetings has been politically controversial. Generally, international organizations are given the floor after the representatives of the member/participating States in the respective meetings have spoken. At the OSCE Ministerial Council, the speaking right of the CoE Secretary General depends on the participating States' consensus-based agreement on the annual meeting's modalities. Due to lack

of agreement on the modalities of the OSCE Ministerial Council meetings in Belgrade in 2015 and Hamburg in 2016, the floor was not given to the CoE and other international organizations. In Belgrade, the Serbian Chairperson-in-Office gave CoE Secretary General Thorbjørn Jagland the floor at the Ministerial lunch. Since 2016, the Head of the CoE Liaison Office in Vienna has represented the CoE at the OSCE Ministerial Council.

Conversely, OSCE Secretary General Thomas Greminger participated in the commemorative ceremony of the 70th Anniversary of the CoE and addressed the 129th Session of the Committee of Ministers of the CoE in 2019 – following four years without the participation of an OSCE Secretary General in the annual event. An official of the Office of the Secretary General represented the OSCE at the CoE Ministerial Sessions in 2018 and 2020.

At the same time, mutual representation at the OSCE Permanent Council and the meetings of the CoE Ministers' Deputies functions well. However, repeated inquiries on the part of the CoE as to the possibility of permanent access to the Permanent Council have remained unanswered, the OSCE participating States having been unable to reach consensus on the matter. In 2014, the Swiss OSCE Chair consequently initiated the practice of announcing representatives of the CoE and other international organizations accredited to the OSCE as guests of the Chair at the beginning of each meeting of this and other decision-making bodies. Since then, every OSCE Chair has continued the practice.

Efforts to launch frequent bilateral meetings of the Secretaries General bore fruit only after the change of incumbents in 2017 (OSCE) and 2019 (CoE). Secretaries General Greminger and Pejićinović Burić paid increased attention to the relations between their organizations and started to make use of different meeting formats. CoE Secretary General Pejićinović Burić addressed the OSCE Permanent Council in December 2019 and again in December 2020. However, the increased interaction between the two Secretaries General was cut short following the non-extension of OSCE Secretary General Greminger's mandate in July 2020.

Regular senior officials' meetings were discontinued in 2010 as they were no longer considered useful. From the OSCE's perspective, they were basically made redundant by the OSCE–CoE Coordination Group meetings. The heads of external cooperation/relations still meet on a case-by-case basis to discuss substantial agenda points and to prepare high-level meetings.

Providing more substance to the dialogue in the Coordination Group has been repeatedly considered, particularly with a view to expanding the four-areas agenda. From Strasbourg's perspective, it is the OSCE that opposes its expansion. In Vienna, it is commonly remarked that the participating States generally want control and do not want the structures to act on their own. On the other hand, a number of previous OSCE Permanent Council Chairs and CoE Chairs of the Ministers' Deputies seized the opportunity during their tenures to add informal

communication on additional subjects to the Coordination Group meetings, thereby turning them into “extremely fruitful events”, as meeting attendees noted. This suggests that adding informal exchange rather than expanding the standardized exchange is the way forward (see our recommendation below).

All in all, the reluctance (among OSCE participating States in particular) to give the CoE speaking rights at OSCE Ministerial Councils and to consider relaxing the rigid framework for formal interaction in the Coordination Group makes more systematic communication at the higher political level difficult. On many topics, communication and substantial collaboration between the organizations take place at a lower level. The closer to the working level, the more constructive for the experts involved.

### Structural differences

Efforts for more systematic cooperation between the OSCE and the CoE are hampered not only by political reluctance but also by structural differences. The OSCE is a non-career organization with a weak bureaucratic apparatus that is kept under close scrutiny by the delegations in Vienna. Political direction is exercised by the Chairperson-in-Office, who, however, is only *primus inter pares* among fellow ministers. The Secretary General merely has a mandate as a representative of the Chairperson-in-Office and the organization’s chief administrative officer. He/she has no direct authority over the three institutions – ODIHR, the HCNM, and the

RFOM – or the field operations, which answer directly to the decision-making bodies of the organization (and in this way to the delegations). The OSCE Parliamentary Assembly is not even an integrated element of the organization, and its deputies do not enjoy the powers exercised by their colleagues at PACE.

By contrast, in the CoE (which is a career organization), the Secretary General and the bureaucratic apparatus play a significant role, as do the deputies and delegations in PACE. The ECtHR enjoys judicial independence. The decisions of the bodies of the CoE and the rulings of the Court are legally enforceable throughout the CoE area.

Different decision-making procedures often lead to different positions taken by the organizations. The consensus rule makes the political dialogue in the OSCE more complex and often reduces decisions to lowest common denominators. Decisions in the OSCE are politically binding commitments, and their non-fulfilment cannot be penalized. The CoE and its bodies take their decisions, which are legally binding under international law, by majority vote. Member states can thus be overruled, as was frequently the case with Russia on matters regarding Ukraine, for example. The withdrawal of Russia’s voting rights in the Parliamentary Assembly of the CoE after the annexation of Crimea in 2014 was a disputed case in point – unthinkable in the inclusive, consensus-based OSCE.

Differences also exist in the organizations’ membership, although they are largely identical. Russia participates in both organizations, whereas the United

States (US), Belarus, Canada, the Holy See, the five Central Asian countries, and Mongolia are not members of the CoE.<sup>17</sup> The US and Canada do have a permanent seat as observers, however, and closely monitor the CoE's internal discussions.

In combination, these organization-specific factors – differences with regard to type of commitment (legally binding and enforceable or political), voting modes, and the degree of the apparatuses' autonomy – hamper cooperation between the two organizations. Especially at the political level, arriving at common positions on sensitive matters can be complicated, despite cooperation at the working level.

## Conclusions and recommendations

The CoE and the OSCE, each with its own instruments and comparative advantages, both seek to promote stability in Europe. Both are devoted to promoting human rights, fundamental freedoms, democracy, and the rule of law. Given the eroding compliance with shared norms and the political radicalization Europe is experiencing, improving cooperation between these two organizations is important.

This requires more than a verbal commitment from governments to make use of multilateral platforms. It also requires key states to take a more active role in practice. This applies not only, but in particular, to EU member countries and the institutions of the EU. For the EU, both the CoE (e.g. in accession processes) and the OSCE (e.g. in conflicts such as the one in and around Ukraine or in re-

gions where the EU has limited clout and instruments) are valuable partners. The challenge is to translate formal cooperation agreements into action. A 2012 CoE Rapporteur Group Report puts this idea succinctly: "There is probably not much need for more binding conventions. Most focus should be on implementation."<sup>18</sup> Below, we offer suggestions for small, practical steps towards improved cooperation.

## Improving high-level communication

Deepening or expanding cooperation between the OSCE and the CoE is largely hampered at the level of high-ranking officials and political leaders, where communication is sparse or overly ritualized. Governments should therefore aim to improve communication between the organizations at the political level and, in particular, to provide more substance to the discussions at the biannual meetings of the Coordination Group. Given that changing the formal modalities of the meetings is unrealistic, the possibility of expanding the scope of discussions by means of informal consultations should be considered. Along these lines, we suggest the following:

- *First*, the two organizations should consider adding more expert consultations to meetings of the Coordination Group. Representatives from both organizations have reported positive experiences in recent years with such informal consultations for streamlining joint work. These side meetings could

address topics not covered by the four formal agenda items, such as migration, non-discrimination, youth and security, media freedom, and the safety of journalists. They could also be an occasion for discussing topical issues such as responses to the COVID-19 pandemic and field operations' activities. Cybersecurity and artificial intelligence and their influence on democracy and human rights is another area of discussion that could be promising with a view to future cooperation.

- *Second*, under the agenda item “any other business”, the Coordination Group could be tasked with elaborating common thematic priorities in preparation for high-level meetings and further consultations with member/participating States.
- *Third*, the ground should be prepared for reviving the “2+2” meetings at the level of senior officials, as foreseen in the 2000 Common Catalogue<sup>19</sup> for specifying common working topics and practical ways to proceed further. In 2021, Sweden (as the OSCE Chair), supported by the Troika members Albania and Poland and the three Presidencies of the CoE (Germany, Hungary, and Italy), could take the initiative to relaunch these meetings.

### Supporting interaction in the field

Although the CoE and the OSCE have a similar number of field presences, they carry different weight in the two organizations. The main operational focus of the CoE lies with its headquarters, while

the OSCE has more than three quarters of its staff stationed in the field. The CoE, with its conventions, legal expertise, monitoring bodies, and solid financial resources, is a valuable counterpart to the OSCE, with its rapid-reaction capacities and know-how and its activities in areas such as conflict management and democratization.

The complementary nature of the two organizations suggests possibilities for coordination and cooperation in their pursuit of similar political goals on the ground. More systematic interaction between the OSCE and the CoE in the field, on a case-by-case basis and tailored to the needs of individual host countries, is not a novel suggestion.<sup>20</sup> Interaction between the OSCE and the CoE in Ukraine is a good practice to build on. Along these lines, we suggest the following:

- *First*, governments should promote and fund greater interaction between the OSCE and the CoE in countries where both organizations have field presences. The OSCE has ample local expertise and personnel on the ground. Complementing this, the CoE has legal expertise and considerable financial resources.
- *Second*, the EU should leverage its prominent position in both organizations to systematically bolster OSCE–CoE interaction in the field. It has a special relationship with the CoE based on a broad “framework for enhanced cooperation and political dialogue” and an associated set of agreements and working plans.<sup>21</sup> In addition, it has taken steps to work more

closely with the OSCE.<sup>22</sup> The Presidencies/Chairs of the EU, the CoE, and the OSCE could jointly launch a political initiative to discuss ways to strengthen joint field activities and include trilateral efforts in a strategic vision of European security.

- *Third*, both organizations should ensure that they are giving compatible political and legal advice. The OSCE should make more frequent use of the legal language of the Council of Europe, while the latter should make more systematic use of OSCE documents in the fields of democratic elections, protection of fundamental rights, the rule of law, and tolerance and non-discrimination. Ensuring the coherence of their advice will increase the legitimacy of both organizations and their political impact on the ground.

## Notes

- 1 The authors would like to thank their many interlocutors and the reviewers for their valuable comments and advice.
- 2 The CoE has a total annual budget of about €496 million plus voluntary contributions and about 2,500 staff, while the OSCE has an annual budget of approximately €139 million plus extra-budgetary means and a regular staff of about 2,880. See: “The Council of Europe in brief: Budget”, Council of Europe, at: <https://www.coe.int/en/web/about-us/budget?desktop=true>; OSCE, Approval of the 2020 Unified Budget, PC.DEC/1369, 28 May 2020, at: <https://www.osce.org/permanent-council/453804>; “Who we are: Funding and budget”, OSCE, at: <https://www.osce.org/funding-and-budget>.

3 CoE/OSCE, Relations Between the Council of Europe and the OSCE: Common Catalogue of Cooperation Modalities, SEC.GAL/30/00, 4 April 2000 [OSCE] and CM(2000)52, 25 April 2000 [CoE], at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680599d8d>.

4 OSCE, Enhanced Cooperation Between the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE), PC.DEC/637, 2 December 2004, at: <https://www.osce.org/pc/14732>.

5 Ibid.

6 The last such meeting was held in New York on the margins of the UN General Assembly on 21 September 2011, hosted by the Lithuanian OSCE Chair. It was the CoE’s turn to organize the next meeting, but between 2012 and 2014 the respective Presidencies could not find a time/venue or agenda for a “2+2” meeting. A high-level meeting in a “2+3” format (including the incoming CoE Presidency of Bosnia and Herzegovina) eventually materialized under the Belgian Presidency in 2015 (see below) but has remained the last one for the time being.

7 CoE/OSCE, cited above (note 3).

8 OSCE, cited above (note 4).

9 CoE/OSCE, Declaration on Cooperation between the Organization for Security and Cooperation in Europe and the Council of Europe, 17 May 2005, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046a481>.

10 CoE Directorate of External Relations, OSCE: Background Information, 6 November 2017.

11 See “Fundamental rights”, Council of Europe, Venice Commission, at: [https://www.venice.coe.int/WebForms/pages/?p=02\\_Rights&lang=EN](https://www.venice.coe.int/WebForms/pages/?p=02_Rights&lang=EN).

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- 12 These subject areas include tolerance and non-discrimination, migration, rule of law, democratic governance, Roma and Sinti issues, gender equality, and communicating on democratic values and human rights.
- 13 CoE Ministers' Deputies/Rapporteur Groups, Relations Between the Council of Europe and with the OSCE: The Way Forward, GR-EXT(2012)11-rev, 25 October 2012, at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c9b83](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c9b83).
- 14 Ibid.
- 15 Igor Prokopchuk, Chairperson of the OSCE Permanent Council, Letter to the Permanent Representative of Austria to the Council of Europe/Chairperson of the Council of Europe's Committee of Ministers' Deputies, CIO.GAL/186/13, 30 December 2013.
- 16 Belgian Chair of the CoE's Committee of Ministers, Possibilities for enhanced cooperation between the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE), January 2015.
- 17 The CoE maintains constructive working relations with the five Central Asian countries. Kazakhstan and Kyrgyzstan were included in the CoE Policy for Neighbourhood Regions launched in 2011. In 2007, the Venice Commission and the Central Asian countries established cooperation, with project funding provided by the European Union and some CoE member states. A Joint Programme Agreement for the Central Asia Rule of Law Programme was concluded with the five states in January 2020. Kazakhstan joined the Council of Europe Group of States against Corruption (GRECO) that same month.
- 18 CoE Secretariat General Rapporteur Group on External Relations, The Council of Europe and the OSCE: Enhancing Cooperation and Complementarity Through Greater Coherence, DD(2012)40, 16, 19 January 2012. Cf. the related study by Professor Dr juris Geir Ulfstein, University of Oslo, published under the same title, DPP (2012)1, 23 March 2012, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680599dd7>.
- 19 CoE/OSCE, cited above (note 3).
- 20 See for example: Igor Prokopchuk, Chairperson of the OSCE Permanent Council, cited above (note 15).
- 21 See: Memorandum of Understanding between the Council of Europe and the European Union, 11 and 23 May 2007, at: <https://rm.coe.int/1680597b32>. The EU has thus far funded several hundred EU-CoE programmes.
- 22 This common understanding on strengthened EU-OSCE cooperation is reflected in the letters exchanged between EU High Representative Federica Mogherini and OSCE Secretary General Thomas Greminger on 22 June 2018.