Conflict-Solving Mechanisms and Negotiation Formats for Post-Soviet Protracted Conflicts: A Comparative Perspective

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November 2021

Summary

The OSCE area has been plagued by protracted conflicts for several decades. These are long-lasting, identity-based conflicts that involve contestations over territory. They are state-based, but often internationalized, thus also affecting relations between OSCE participating States. As such, they are a legitimate concern for the Organization whose mandate is focused on comprehensive and cooperative security.

Protracted conflicts in the OSCE area include, among others, the conflicts in Northern Ireland and Cyprus, which date back to the Cold War, the ones in Kosovo and the Republika Srpska in Bosnia and Herzegovina, both of which had their origins in the prolonged disintegration of Yugoslavia, and the conflict over Crimea between Ukraine and Russia.

Of particular interest for this report, because they involve the OSCE in a conflict-management role, are the conflicts on the territory of the former Soviet Union occasionally but erroneously described as "frozen". These include the conflicts over Transnistria in Moldova, over Abkhazia and South Ossetia in Georgia, and the one between Armenia and Azerbaijan over Nagorno-Karabakh. The latest additions to this list are the conflicts over the so-called "Donetsk People's Republic" and "Lugansk People's Republic" (Russ. abbr.: DNR, LNR) in the Donbas area of Ukraine.[1]

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1   Arguably, other conflicts could be added to this list: the conflict over South Tyrol between Italy and Austria from 1946 to 1969 (formally declared resolved in 1993), the conflicts in the Basque country and Catalonia in Spain, and the conflict over Corsica in France. Apart from South Tyrol, the Northern Ireland conflict is the only other case of a protracted conflict in the OSCE area that can be considered resolved, albeit with some question marks concerning the impact of the United Kingdom's exit from the European Union.

For the most part, these conflicts have been managed with varying degrees of success. Several of them have reached a more or less stable equilibrium (Transnistria, Abkhazia, South Ossetia, Crimea), while others remain in a low-intensity state (Donbas). Events in and around Nagorno-Karabakh in the autumn of 2020, meanwhile, serve as a reminder that the label "frozen" is misleading for these conflicts, as there is always a danger of a resurgence of violence, something also evidenced in relation to Abkhazia and South Ossetia in the context of the Russo-Georgian war of 2008.

The protracted conflicts in the post-Soviet space have a geopolitical dimension. The general deterioration of relations between east and west has accelerated since the unilateral declaration of independence by Kosovo and the Russo-Georgian war of 2008 and, in an even more pronounced way, since the beginning of the crisis in Ukraine in late 2013. For over a decade, this has been the context in which the management of these conflicts has not only failed to make any substantial progress towards sustainable negotiated solutions, but has also seen a significant deterioration of security and stability on the ground.

In addition, renewed geopolitical rivalry has turned the states affected by protracted conflicts into targets of competitive influence-seeking, with detrimental effects for the affected populations, states, and societies, and contributing to a lack of political stability and economic development, increasing fragility of core state institutions, and deteriorating human rights conditions.

As they have become new arenas in which geopolitical rivalries are played out, the negotiation formats in the protracted conflicts in Moldova, Ukraine, Georgia, and Azerbaijan, which are the focus of the following analysis, have also been negatively affected by these developments. At the same time, negotiated settlements are the stated preferred outcome for the overwhelming majority of participating States, although they have either not yet materialized (Transnistria, Abkhazia, South Ossetia, Nagorno-Karabakh) or not yet been implemented (the Minsk Accords in Donbas).

This is not the fault of the existing negotiation formats per se, but rather that of the participants themselves, whose unwillingness to make concessions and compromises represents the main stumbling block in reaching sustainable negotiated settlements. Over the years and decades, the immediate conflict parties have often sought unrealistic maximal gains at the negotiation table, gains that they could not achieve on the battlefield, and their external backers have lacked the leverage (or the willingness to use it) to incentivize or pressure them to moderate their demands.

Although the existing negotiation formats have failed to reach their ultimate objective of reaching sustainable settlements, they have been important in stabilizing volatile situations, providing humanitarian relief, and addressing issues that fall short of political settlement questions (such as economic connectivity, freedom of movement, and environmental management). These smaller, but nonetheless important successes have, to a significant degree, been due to OSCE efforts, especially those focused on mediation and confidence building.

Introduction

Why do protracted conflicts in the post-Soviet space occur, why do they persist, and why do they matter? Why are the various negotiation formats and their track records important to know, even if they have so far been distinctly unimpressive? What are the revealing commonalities and differences between the different settlement process and their results?

The unresolved territorial conflicts in Eastern Europe are protracted, rather than frozen, meaning that there remains an acute danger of a resurgence of violence as happened, for example, in and around Nagorno-Karabakh in 2020. These conflicts provide Russia with geopolitical leverage beyond the concrete confrontation on the ground, while having extremely detrimental effects for the populations, states, and societies affected. This includes a persistent lack of political stability, greatly restrained economic development, large-scale human rights violations, etc.

As noted above, negotiated settlements are the stated preferred outcome for the overwhelming majority of the involved parties, despite their failure to materialized or to be implemented (as in the case of the Donbas). Nevertheless, the various negotiation formats, including those created ad hoc, have proved relevant. They have contributed to stabilizing volatile situations, providing humanitarian relief, and addressing issues short of political settlement, such as economic connectivity, freedom of movement, or environmental management. However, they have not brought the conflicts any closer to a resolution based on international law and OSCE principles and commitments.

The Protracted Conflicts and Their Negotiation Formats

The negotiation formats in the five protracted conflicts examined here have a number of features in common, most strikingly perhaps the lack of accurately defined conflict parties and of progress towards a negotiated settlement. At the same time, there are important differences concerning the number of negotiations and the extent to which these have (not) led to a more stable and secure situation on the ground and (not) created an environment that is more conducive to future conflict settlement efforts.

In the case of the Transnistrian conflict in Moldova, the general lack of progress towards a settlement of the conflict must not be imputed to a lack of effort on the part of the various domestic and external actors. Numerous plans and strategies were elaborated, especially during the first decade of conflict settlement attempts.[2] Even during periods of high tension between Chisinau and Tiraspol, or during geopolitical crises, communications between the two sides never broke down completely and were always maintained at least informally. Over the past decade, however, there has been a noticeable turn from efforts at conflict settlement towards stabilization of the status quo. This has manifested itself in a focus on so-called confidence-building measures (CBMs), which have tackled issues in such a way as to improve the functioning of existing arrangements without moving the conflict itself closer to a settlement.

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2   Stefan Wolff, "A Resolvable Frozen Conflict? Designing a Settlement for Transnistria," *Nationalities Papers* 39, no. 6 (2011): 863–70, https://doi.org/10.1080/00905992.2011.617363.

The current 5+2 negotiation format emerged in 2005 when the EU and the US (+2) joined the existing five-sided format consisting of Moldova and the de facto authorities of the Transnistrian region, as the two conflict parties, plus the OSCE, Russia, and Ukraine as mediators and guarantors of a settlement. For more than a decade now, and arguably during the decade before, confidence building has been a constant feature within an otherwise inconclusive settlement process. This has also been facilitated by the flexibility of the 5+2 format, which in some ways also functions as an umbrella for formal and informal 1+1 talks (between the respective chief negotiators of Chisinau and Tiraspol), for discussions among the 3+2 (OSCE, Russia, Ukraine, the US, the EU), and for several more technical Working Groups co-chaired by deputy ministers from Moldova and their de facto Transnistrian region counterparts. This has meant that, although talks are often deadlocked at the highest political level, technical discussions can continue and prepare the ground for political decisions that could be made when there is a window of opportunity. Examples are the gradual, albeit still incomplete, implementation of the so-called called "Package of Eight" (or Berlin+ agreement), the successful 2015 Deep and Comprehensive Free Trade (DCFTA) negotiations for the secessionist Transnistrian region in the context of the annual so-called "Bavaria Conference", which represents yet another forum complementing the overall 5+2 format.

By contrast, Georgia's two protracted conflicts in Abkhazia and the Tskhinvali region ("South Ossetia"), the Russo-Georgian war of 2008 and Russia's subsequent recognition of the two separatist regions as states constituted a fundamental game changer in that they broke established principles of international law and challenged the OSCE's norm consensus. Until then, the UN and the OSCE had overseen settlement processes which were, however, highly unproductive and largely dysfunctional. In the aftermath of the 2008 Five-Day War, the Geneva International Discussions (GID) became the only forum in which Georgia, Russia, and the de facto representatives of Abkhazia and South Ossetia interact. They do so in fulfillment of the final point of the 2008 ceasefire agreement, namely to open "international discussions on the modalities of security and stability in Abkhazia and South Ossetia".[3]

The relative stability of the current status quo in the conflicts in Abkhazia and South Ossetia is based on Russia's "protection" of the conflict zones and their increasing integration with Russia. Although there has been some minimal progress over the years on a few humanitarian issues in the Geneva negotiations, there is no longer even the pretence of a conflict settlement process. The implementation plan for the Medvedev-Sarkozy six-point plan of 12 August 2008 establishes the scope of the GID merely "arrangements to ensure security and stability in the region; the issue of refugees and displaced persons on the basis of the internationally recognized principles and post-conflict settlement practice; any other subject, by mutual agreement of the parties."[4] With mutual agreement mostly absent, Georgian initiatives, like the Government's 2018 peace initiative, "A Step to a Better Future", and its offer of a unilateral commitment to the non-use of force have not been discussed in

3   Author's translation based on the French-language version of the six-point plan. The two Russian-language versions talk about "international discussions on the modalities of lasting security in South Ossetia and Abkhazia." See "Six-Point Peace Plan for the Georgia-Russia Conflict," *United Nations Peacemaker Database*, 2008, https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_080812_Protocol d%27accord_0.pdf.

4   "Implementation of the Plan of 12 August," United Nations Peacemaker Database, 2008, https://peacemaker.un.org/sites/peacemaker.un.org/files/GE_080909_Implementation of the 12 August 2008 Plan.pdf.

a manner that would pave the way to actual settlement negotiations.[5]

Regarding Nagorno-Karabakh, conflict settlement negotiations have been as fruitless as in the other three cases. The status quo here is one characterized by especially high volatility and virtually no prospect of sustainable stabilization, let alone progress towards a negotiated settlement. Following the renewed escalation of military hostilities in autumn 2020, the conflict over Nagorno-Karabakh has become structurally both more similar and more dissimilar to the other conflicts. Russia now has an established military presence on the ground along the ceasefire line and protects the land connection between Nagorno-Karabakh and Armenia. At the same time, Russia has managed to defend the existing Minsk Group format, and its dominant role within it, against Turkish attempts to create a new separate negotiation format.

A key difference is that representatives of the Nagorno-Karabakh authorities remain formally excluded and can only exercise varying degrees of influence on the Armenian position. There are so far also no significant Track 2 or Track 3 initiatives. Thus, to the extent that one can speak in any meaningful way about a settlement process at all, it is almost entirely driven externally, i.e. by the co-chairs of the OSCE Minsk Group and especially by Russia. Discussions are conducted only at the highest political levels in Yerevan and Baku.

Another telling peculiarity of the Nagorno-Karabakh negotiations is that all conceivable options, in terms of both the substance and the process of a settlement, have already been put on the table at some point. Yet they were all ultimately rejected by one of the two sides – or by both. The Package Plan, the Step by Step (or phased) approach, the Common State plan, a Land Swap proposal, and the Madrid Principles (or so-called "Basic Principles") have all suffered the same fate over the past two decades.

To be sure, the Madrid Principles, which represent a combination of more or less compatible preferences contained in the earlier Package Plan and phased approach, are formally still on the table. Yet there has been little progress towards an agreement since they were first suggested by the co-chairs of the OSCE Minsk Group. After the last "fruitless summit in Kazan in June 2011 ... the Minsk Group circled in a diplomatic wilderness."[6] Worse, it "went into a dormancy that lasted through the Azerbaijani offensive of 2016, the Armenian revolution of 2018, and the 2020 fighting."[7]

After the 2020 military escalation and ceasefire agreement, which makes no provision for any settlement negotiations, there are no realistic prospects of positive change in this regard. This is despite the fact that, in their respective statements to the 2021 UN General Assembly, Azerbaijan's and Armenia's leaders proclaimed their willingness to engage in settlement negotiations. Ilham Aliyev noted that "Azerbaijan has already announced its readiness to embark upon the border delimitation and demarcation between Azerbaijan and Armenia, and

5   The 2018 peace initiative includes two separate policies on trade facilitation and on educational opportunities. See State Minister of Georgia for Reconciliation and Civic Equality, "'A Step to a Better Future' Peace Initiative Enhancing Educational Opportunities for the Residents of Abkhazia and Tskhinvali Region/South Ossetia," 2018, https://smr.gov.ge/uploads/prev/Education__9dd0e9dc.pdf; State Minister of Georgia for Reconciliation and Civic Equality, "'A Step to a Better Future' Peace Initiative Facilitation of Trade Across Dividing Lines," 2018, https://smr.gov.ge/uploads/prev/Concept_EN_0eaaac2e.pdf.

6   Laurence Broers, "Requiem for the Unipolar Moment in Nagorny Karabakh," *Current History* 120, no. 828 (2021): 255–61, https://doi.org/10.1525/CURH.2021.120.828.255.

7   Philip Remler et al., "OSCE Minsk Group: Lessons from the Past and Tasks for the Future," *OSCE Insights,* no. 6 (2020): 85–99, https://doi.org/10.5771/9783748922339-06.

to start negotiations on peace agreement [sic] with Armenia, based on mutual recognition of sovereignty and territorial integrity of each other [sic]."[8] Meanwhile, Nikol Pashinyan stated that "Armenia is ready for a constructive dialogue, which should lead to the establishment of sustainable and lasting peace in the region" and that it was "necessary to resume the peace process for the settlement of the Nagorno-Karabakh conflict under the auspices of the OSCE Minsk Group Co-Chairs." At the same time, however, both statements were openly hostile towards the other side.[9]

The most recent protracted conflict is the one in Ukraine's Donbas region, which started in April 2014. After Moscow's instigation of a violent escalation, separatist forces, with active Russian participation and support, established two de facto states, the DNR and LNR.[10] A similar negotiation format soon emerged in the form of the so-called "Trilateral Contact Group", which includes Ukraine, the Russian Federation, and the OSCE, while representatives of the DNR and LNR are present in the working sub-groups. Similar to the 5+2 and the GID, these working groups deal with security, political, economic, and humanitarian issues.

As in the other cases, substantive progress in the negotiations has been limited, if not nonexistent. There were several successful prisoner exchanges, but recently talks on this matter have stalled again.[11] Freedom of movement across the "contact line" has become more rather than less constrained. Above all, there has been no material progress whatsoever towards implementation of the Minsk II Accords of February 2015. There has been no withdrawal of illegal armed groups and military equipment or of fighters and mercenaries from the territory of Ukraine (Minsk I); illegal groups have not been disarmed (Minsk II).

Regarding security, the Trilateral Contact Group concluded negotiations on a Framework Decision relating to disengagement of forces and hardware in September 2016. Its so far patchy implementation has been monitored by the OSCE's Special Monitoring Mission, which, however, is prevented from monitoring all of the non-government-controlled areas, particularly the non-government-controlled Ukrainian-Russian state border, over which arms and fighters to the DNR/LNR travel from Russia.[12] The Trilateral Contact Group achieved an apparent breakthrough in July 2020 when negotiators "reached agreement regarding additional measures to strengthen the ceasefire, aiming to ensure compliance with a

8   Ilham Aliyev, "Statement by H.E. Mr. Ilham Aliyev, President of the Republic of Azerbaijan, to the General Debate of the 76th Session of the United Nations General Assembly," *United Nations*, September 23, 2021, https://estatements.unmeetings.org/estatements/10.0010/20210923/5DX0mCyb94TX/nuzzTkqSWaW9_en.pdf.

9   Nikol Pashinyan, "Statement by H.E. Mr. Nikol Pashinyan, Prime Minister of Armenia, to the General Debate of the 76th Session of the United Nations General Assembly," *United Nations,* September 24, 2021, https://estatements.unmeetings.org/estatements/10.0010/20210924/7gIp44D6mxWV/Nn1M9CNhBEVL_en.pdf. For a more optimistic assessment, see Aylin Unver Noi, "Can 'make Trade Not War' Become a New Reality in the Caucasus?," *The Hill*, September 27, 2021, https://thehill.com/opinion/international/574099-can-make-trade-not-war-become-a-new-reality-in-the-caucasus.

10   See Tatyana Malyarenko and Stefan Wolff, "The Logic of Competitive Influence-Seeking: Russia, Ukraine, and the Conflict in Donbas," *Post-Soviet Affairs* 34, no. 4 (2018): 191–212, https://doi.org/10.1080/1060586X.2018.1425083; and Jakob Hauter, "Forensic Conflict Studies: Making Sense of War in the Social Media Age," *Media, War & Conflict*, August 4, 2021, https://doi.org/10.1177/17506352211037325.

11   Organization for Security and Co-operation in Europe, "Press Statement of Special Representative Kinnunen after the Regular Meeting of Trilateral Contact Group on 26 August 2021," *OSCE*, August 26, 2021, https://www.osce.org/chairmanship/496483.

12   Organization for Security and Co-operation in Europe, "Framework Decision of the Trilateral Contact Group Relating to Disengagement of Forces and Hardware," *OSCE*, September 20, 2016, https://www.osce.org/files/f/documents/2/4/266271.pdf.

comprehensive, sustainable and unlimited ceasefire."[13] However, one year on from this agreement, the situation along the line of contact remains highly volatile. The number of daily ceasefire violations has risen again in the course of 2021 to levels similar to those prior to the July 2020 agreement.

Unlike the other cases discussed here, the conflict in eastern Ukraine is characterized by a second negotiation platform, the so-called "Normandy Format", which comprises Russia, Ukraine, France and Germany. In the early years of the conflict in Donbas, negotiations proved critical in achieving the two Minsk agreements of September 2014 and February 2015. Since then, further meetings of the four countries' leaders or their advisors have taken place on a semi-regular basis, but without any notable breakthrough regarding the stalled implementation of the Minsk II Accords. The last meeting of the Normandy Quartet at the highest level took place in Paris in December 2019 without any tangible results.[14] Since then discussions regarding another such meeting have proven largely fruitless.[15]

Insights From Three Decades of Negotiations: What Has (Not) Worked and Why?

In four of the five protracted conflicts covered here, negotiations have been ongoing for around three decades now. In the fifth case, that of Ukraine, they are less than a decade old. Despite the considerable resources spent by all sides involved, none of the conflicts has moved closer to a solution. Even preserving the stability of the status quo seems hard to accomplish at the negotiation table, as the 2008 Russo-Georgian and 2020 Armenian-Azerbaijani wars vividly illustrated.

Agreement on Non-political Issues is Possible

Despite the notable absence of any breakthroughs on political status issues, negotiations have not been completely useless. In particular, non-political issues tended to have a good chance of being negotiated and implemented. That was especially the case if they contributed to improving economic and social development, freedom of movement, access to services, humanitarian relief, and other issues from which the immediate conflict parties, as well as their external patrons, benefitted. This has been evident in the cases of Transnistria, pre-

13   Organization for Security and Co-operation in Europe, "Press Statement of Special Representative Grau after the Regular Meeting of Trilateral Contact Group on 22 July 2020," *OSCE*, July 23, 2020, https://www.osce.org/chairmanship/457885.

14   During the summit, its members managed to agree a prisoner swap, but made otherwise no real progress other than "underlin[ing] their common aspiration for a comprehensive and sustainable architecture of trust and security in Europe, based on the principles of the OSCE, of which the resolution of the conflict in Ukraine is one of the important steps." See "Agreed Conclusions of the Paris Summit of the Normandy Format," December 9, 2019, https://www.elysee.fr/emmanuel-macron/2019/12/09/sommet-de-paris-en-format-normandie. See also Katya Gorchinskaya, "The Normandy Summit Ended With No Breakthroughs. What Has It Achieved?" *Forbes*, December 10, 2019, https://www.forbes.com/sites/katyagorchinskaya/2019/12/10/the-normandy-summit-ended-what-has-it-achieved/; and Mykhailo Minakov, "Results of the Normandy Format Talks for Ukraine: Hope, with Reservations," *Ukraine Focus*, December 11, 2019, https://www.wilsoncenter.org/blog-post/results-the-normandy-format-talks-for-ukraine-hope-reservations.

15   "Berlin Says Leaders Of Germany, France, Ukraine, Russia Agree To Ministerial-Level Meeting," Radio Free Europe/Radio Liberty, October 11, 2021, https://www.rferl.org/a/31504107.html.

2008 Abkhazia (and, to a lesser extent, South Ossetia),[16] as well as Donbas.[17]

In the case of Transnistria, the Package of Eight has achieved some results. Initially agreed in Berlin in June 2016 during the German CiO,[18] significant further progress was made under the Austrian and Italian CiOs in 2017[19] and 2018.[20] By May 2019, negotiations on six out of the eight priority issues agreed in Berlin in June 2016 had been concluded successfully. This included the opening of the Gura Bicului–Bychok bridge and acceptance of Transnistrian licence plates. However, this confidence building process did not continue under the subsequent Slovak,[21] Albanian,[22] and Swedish CiOs.[23]

Such ambivalent successes are often associated with a lack of alternatives to local accommodation. For example, Transnistria has no border with Russia, and thus depends on viable arrangements with Chisinau and Kyiv to ensure the continued ability of its residents to travel and its businesses to import and export goods. Similarly, Donbas depends on cooperation with Kyiv for the continued functioning of critical civilian infrastructure, especially related to water and electricity supplies. The same was true for South Ossetia in the early post-2008 period, when there were no realistic alternatives for gas supplies via the Agara-Tskhinvali pipeline or for the maintenance of the Zonkari dam serving communities on both sides of the administrative boundary line.[24] Over the years, however, South Ossetia has

16   See Philip Remler, "Protracted Conflicts in the OSCE Area: Innovative Approaches for Co-Operation in the Conflict Zones" (Hamburg, 2016), http://osce-network.net/file-OSCE-Network/documents/Protracted_Conflicts_OSCE_WEB.pdf; and Stefan Wolff, Philip Remler, and Lance Davies, "OSCE Confidence Building in the Economic and Environmental Dimension: Current Opportunities and Constraints" (Hamburg, 2017), http://osce-network.net/file-OSCE-Network/Publications/OSCE_Confidence_Building_in_EED_final.pdf.

17   The OSCE Special Monitoring Mission has regularly facilitated local ceasefires to repair and maintain critical civilian infrastructure. See, for example, Special Monitoring Mission to Ukraine, "SMM Facilitation and Monitoring of Infrastructure Repair in Eastern Ukraine," *OSCE*, 2019, https://www.osce.org/files/f/documents/f/2/437834.pdf.

18   Organization for Security and Co-operation in Europe, "Protocol of the Official Meeting of the Permanent Conference for Political Questions in the Framework of the Negotiating Process on the Transdniestrian Settlement, 2-3 June 2016, Berlin," *OSCE*, June 2016, https://www.osce.org/files/f/documents/d/f/244656.pdf.

19   Organization for Security and Co-operation in Europe, "Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the '5+2' Format," *OSCE*, December 8, 2017, https://www.osce.org/files/f/documents/a/c/361586.pdf.

20   Organization for Security and Co-operation in Europe, "Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the '5+2' Format," *OSCE*, December 7, 2018, https://www.osce.org/files/f/documents/b/2/405917.pdf.

21   Organization for Security and Co-operation in Europe, "Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the '5+2' Format," *OSCE*, December 6, 2019, https://www.osce.org/files/f/documents/9/8/441524.pdf.

22   Organization for Security and Co-operation in Europe, "Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the '5+2' Format," *OSCE*, December 4, 2020, https://www.osce.org/files/f/documents/4/4/479774.pdf.

23   Organization for Security and Co-operation in Europe, "Joint Statement by the Mediators and the Observers in the Permanent Conference on Political Issues in the Framework of the Negotiation Process on the Transdniestrian Settlement in the 5+2 Format Following Their 3-4 June 2021 Visit to Chisinau and Tiraspol," *OSCE*, June 4, 2021, https://www.osce.org/chairmanship/488530. See also "OSCE Chairperson-in-Office Linde Concludes Visit to Moldova," Organization for Security and Co-operation in Europe, October 6, 2021, https://www.osce.org/chairmanship/499948.

24   Teona Giuashvili and Jaba Devdariani, "Geneva International Discussions – Negotiating the Possible," *Security and Human Rights* 27, no. 3–4 (September 16, 2016): 381–402, https://doi.org/10.1163/18750230-02703003.

become less dependent on such cooperation initiatives,[25] and there have been no parallel "easy wins" of late.[26]

By contrast, neither Armenia nor Nagorno-Karabakh had, at least until 2020, any constraints at all and hence only a limited need for engaging even on relatively non-political issues. Given the new realities on the ground after the 2020 war, especially Armenia's loss of control over the territories surrounding the Lachin corridor, this may gradually change and require a higher level of engagement between Armenia and the authorities in Nagorno-Karabakh and Azerbaijan. This could create openings for more purposeful OSCE engagement, whether through the Minsk Group, the Conflict Prevention Centre, or the CiO.[27]

However, difficulties also emerge in the opposite direction. An isolationist policy pursued by the metropolitan state and also the international community can reduce the possibilities of even limited engagement by authorities in breakaway regions. Higher reliance, and subsequently dependence, on the patron state may be a consequence. It may mean increased leverage for the patron state over the breakaway authorities, as illustrated by the case of Abkhazia.[28] Once established, such dependencies are difficult to break.[29]

Another reason why agreements are, at times, possible is because de facto authorities in the conflict zones, on occasion, have a brief window of opportunity in which they can exercise relative situational autonomy. Gains made in these periods are more likely to be sustained if they do not touch on (final) status questions but rather consolidate an already established status quo, one serving often deeply entrenched constituents on both sides. Thus, Moldovan and de facto Transnistrian negotiators agreed on an Agenda and on Principles & Procedures for their settlement talks in 2012.[30] Yet they have so far not started negotiations on the so-called third basket (final status questions).

Situational autonomy was facilitated by rapprochement between Russia and the EU in the context of the 2010 Meseberg process. Initial progress in the 5+2 talks in 2011–2012, after a five-year hiatus, also benefitted from regime change in Chisinau (2009) and Tiraspol (2011). Yet the resurgent geopolitical rivalry between the US and Russia after Putin's resumption of the Russian presidency in 2012, the failure of the US "reset", and the intensification of EU-Moldova negotiations on an Association Agreement meant that the OSCE-facilitated

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25   For example, since the opening of the Dzuarikau-Tskhinvali pipeline in 2009, South Ossetia no longer depends on gas transits via Georgia.

26   For example, the Odzisi crossing point at the Georgia-South Ossetia administrative boundary line has been closed for more than two years, severely restricting the freedom of movement of people on both sides. See Organization for Security and Co-operation in Europe, "102nd Incident Prevention and Response Mechanism Meeting Takes Place in Ergneti," *OSCE*, September 27, 2021, https://www.osce.org/chairmanship/499005.

27   Remler et al., "OSCE Minsk Group: Lessons from the Past and Tasks for the Future."

28   See, for example, Archil Gegeshidze, "Prospects for Abkhazia's De-Isolation in the Context of the Non-Recognition Policy," in *The De-Isolation of Abkhazia*, ed. International Alert (London: International Alert, 2011), 27–37, https://www.international-alert.org/sites/default/files/Caucasus_DeIsolationOfAbkhazia_EN_2011.pdf; Liana Kvarchelia, "Sanctions and the Path Away from Peace," in *Powers of Persuasion: Incentives, Sanctions and Conditionality in Peacemaking*, ed. Aaron Griffiths and Catherine Barnes (London: Conciliation Resources, 2008), 71–73, https://www.c-r.org/accord/incentives-sanctions-and-conditionality/sanctions-and-path-away-peace.

29   Thomas De Waal, "Abkhazia: Stable Isolation," *Carnegie Europe*, December 3, 2018, https://carnegieeurope.eu/2018/12/03/abkhazia-stable-isolation-pub-77842.

30   Organization for Security and Co-operation in Europe, "OSCE Chairperson Hails Breakthrough in Transdniestrian Settlement Talks," *OSCE*, April 18, 2012, https://www.osce.org/cio/89764.

settlement process slowed down during 2012. It ground to a complete halt after the escalation of the conflict in Ukraine.[31]

By contrast, in late 2015, Chisinau, Tiraspol, and the EU reached an agreement on the application of the DCFTA to Transnistria, which has held ever since.[32] This was partly a result of Moscow not blocking engagement between Tiraspol and Brussels and tolerating its result. This provided the Transnistrian de facto authorities with a certain situational autonomy in the negotiations. Equally important was the fact that there were important Track 2 initiatives involving representatives from the Moldovan and Transnistrian chambers of commerce, NGOs, and academics, such as a project on developing cross-river trade relations, supported by the UK's Conflict, Stability, and Security Fund. They ran in parallel to official negotiations on the DCFTA and added some pressure from business communities.

Such broader social traction is critical and its absence detrimental. In the case of Nagorno-Karabakh, for example, these kinds of initiatives, to the limited extent that they exist at all, are constrained by the restrictive approaches of the two governments. They are also hindered by deep antagonism between the societies of both countries and of Nagorno-Karabakh. When initiatives happen, they occur predominantly in third countries and involve a small number of actors, often with no lasting positive impact. This, in turn, has had a significant negative impact on the preparedness for compromise and concessions on all sides and has led to the entrenchment of mutually exclusive and, for the most part, openly hostile narratives about the conflict, its causes, and possible solutions.

Success on Non-political Issues does Not (Automatically) Spill Over into Political Issue Areas and Does Not (Necessarily) Prevent a Resurgence of Violence

Local and geopolitical conditions permitting, confidence built in the context of agreements on non-political issues contributes more broadly to stabilization and has some positive spill-over effects into non-economic areas of confidence building.[33] Yet this effect is often limited and has not yet paved the way to a sustainable negotiated settlement in any of the cases considered here. In the case of Transnistria, for example, we have seen almost three decades of relative progress on relevant non-political issues, through the extensive use of CBMs. Yet the conflict is hardly any closer to a settlement than it was in the 1990s. Similarly, prisoner exchanges in Ukraine since 2014, and between Armenia and Azerbaijan after the 2020 escalation of hostilities, have not contributed to any political progress.

Nor does success on such non-political issues necessarily prevent conflict re-escalation. There was a reasonable level of "non-political progress" related to Abkhazia and South Ossetia. However, this was swept away during and even in the run-up to the 2008 Russo-Georgian war. An important difference from the case of Transnistria was that access to the

31   John Beyer and Stefan Wolff, "Linkage and Leverage Effects on Moldova's Transnistria Problem," *East European Politics* 32, no. 3 (2016): 335–54, https://doi.org/10.1080/21599165.2015.1124092.

32   Nadja Douglas and Stefan Wolff, "Economic Confidence-Building Measures and Conflict Settlement: The Case of Transdniestria" (Berlin, 2018), https://stefanwolff.com/wp-content/uploads/2021/05/Douglas-and-Wolff-Economic-Confidence-Building-Measures-and-Conflict-Settlement.pdf.

33   Nino Kemoklidze and Stefan Wolff, "Trade as a Confidence-Building Measure in Protracted Conflicts: The Cases of Georgia and Moldova Compared," *Eurasian Geography and Economics* 61, no. 3 (2020): 305–32, https://doi.org/10.1080/15387216.2019.1702567

two conflict zones was limited by the local authorities and by a relatively restrictive Georgian policy on the operation of NGOs in Abkhazia and South Ossetia. This meant that Track 2 and Track 3 initiatives have by far not had the same reach or impact as in the Transnistrian case and that their overall impact was significantly lower. This was true in the case of the forced closure of the Ergneti market in 2004. Confidence destroyed by such actions is difficult to rebuild and its loss can lead to violence.

Across all the cases considered here, with the exception of Nagorno-Karabakh, top-level negotiation formats tend to be complemented by parallel technical, working or/and expert groups that address specific issues, often outside of the political limelight, and with less pressure from political leaders. This not only facilitates success on non-political issues. It can also prepare the ground for spill-over effects in other issue areas. As illustrated by the case of Transnistria, this is a relatively low-risk and low-cost endeavor. A potentially high-gain strategy may well be driven by short-term, pragmatic considerations on both sides.

For instance, in the process of engagement, expert groups in Moldova have contributed to creating new patterns of practice and expectations and created a space for various Track 2 and Track 3 initiatives that bring various civil society actors into the process. Among the latter are the so-called "Transnistrian Dialogues" and the Annual Moldovan European Integration Forum, as well more ad hoc projects like the above-mentioned 2015 British-sponsored initiative to facilitate engagement between relevant actors in Chisinau and Tiraspol allowing them to map out options for the application of DCFTA to Transnistria.

Often sector- and audience-specific in their objectives, such initiatives, externally sponsored and often framed as CBMs, have created an environment in which broad engagement between different actors is possible and constructive. Nevertheless, this environment is not immune to political pressure. The political situation in Transnistria has become more oppressive over the past five years. The polarization in Moldovan society sometimes constrains the ability (and willingness) of political and civil society actors there to engage with the other side.

Similarly, the ups and downs of the two Incident Prevention and Response Mechanisms (IPRMs) set up in Georgia, in the context of the GID – IPRM Ergneti (facilitated by the EU and the OSCE) and IPRM Gali (facilitated by the EU and the UN) – demonstrate both the potential and vulnerability of such CBMs and the mechanisms used to implement them. IPRM Ergneti was commended for facilitating "effective co-operation … during the irrigation season that resolved concrete issues regarding access to water."[34] On the other hand, IPRM Gali is currently under a second lengthy suspension (starting in 2018, after an earlier hiatus between 2012 and 2016).

The broader contribution that CBMs have made, however, is undeniable. This is most obvious in the Transnistrian case where they have shaped a status quo that has remained stable for a long period of time. This status quo represents a baseline for both sides (and arguably for external actors as well) which they are unlikely to be willing to lose. At the same time, it represents an increasingly solid foundation from which progress towards a final status settlement might be possible. But even if such efforts prove futile, the alternative is not a return to conflict, but the continuation of the status quo shaped by CBMs which at least partly reflects the sides' core concerns and, as such, does not entice them to resume

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34   Organization for Security and Co-operation in Europe, "102nd Incident Prevention and Response Mechanism Meeting Takes Place in Ergneti."

violence.

For Settlements To Be Sustainable, They Need To Be Negotiated By The Conflict Parties

Certain important lessons can be drawn concerning the aim of the status settlements that have so far eluded negotiators in all of the cases considered here. The first point to make is that such settlements cannot be imposed from the outside. The Minsk Accords are unlikely ever to be implemented. Multiple external proposals for Nagorno-Karabakh have not led to an actual settlement.

Second, status settlements will not gain societal traction if they are perceived to be favored by, or favoring, just one side (and its external backers) in a conflict. This applies to the Minsk Accords again, but also to the Kozak Memorandum of 2003 and the Georgian proposal for autonomy for South Ossetia of 2005. A third point is that "as important as the right institutional design and the correctly timed, designed and well-resourced international engagement may be, they cannot make up for shortcomings in local leadership. In other words, conflict management in divided societies cannot succeed unless there is a genuine commitment to peace among the parties to such conflicts."[35]

Third, there should be an acknowledgment that the conflict parties are not composed simply of the de facto authorities in separatist entities and the governments of their metropolitan states. With the partial exception of Nagorno-Karabakh, the OSCE region's protracted conflicts are deeply embedded in geopolitical rivalries between Russia and the West. The struggle over zones of influence, reminiscent of the Cold War, is also conducted in the negotiation formats of these conflicts. Consequently, so-called mediators and guarantors pursue their own goals in and through these formats. To the degree that they thereby also become parties to the conflict, no negotiated settlement on the ground will be possible or sustainable unless efforts are made to at least mitigate these geopolitical tensions.

Conclusions

There is no alternative to negotiated settlements, whatever their specific institutional design. Yet status negotiations are not always productive or even feasible. Hence, confidence- and security-building measures (CSBMs)/CBMs can be a useful means to manage conflicts as long as their limited function – i.e. conflict management rather than settlement – is acknowledged and there are realistic expectations as to their results. They should be supported and facilitated by the OSCE and its participating States. At the same time, the ground for any final settlement needs to be prepared carefully, including at the elite level. Whatever is eventually negotiated should be feasible – i.e. adoptable by political leaders and acceptable within societies/ratification processes – and viable, i.e. sustainable in the long term.

Achieving such a degree of preparedness also requires a structure of negotiation formats diverse enough to allow for compartmentalized negotiations on different matters without

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35   Christalla Yakinthou and Stefan Wolff, "Introduction," in *Conflict Management in Divided Societies: Theories and Practice*, ed. Stefan Wolff and Christalla Yakinthou (London and New York: Routledge, 2013), 1–20, https://doi.org/10.4324/9780203803004.

thereby proliferating formats themselves. Moreover, negotiation formats need to be constantly validated through at least some tangible outcomes. The alternative – prolonged periods of non-outcomes – creates the temptation of a recourse to violence and/or the establishment of separate, parallel formats for negotiations.

CSBMs and CBMs play a crucial role in conflict stabilization. Yet, when successful they also stabilize and entrench a status quo – a result that makes conflict settlement less urgent. Hence, they need to be structured in such a way that they do not foreclose future settlement opportunities. That means, for instance, that they can lead to a settlement creating a situation which is worse than the status quo for one or both sides. Therefore, confidence building needs to be characterized by mutuality, reciprocity, expandability, and retractability.

CSBMs/CBMs also need long-term financial security and political support from the "outside" to avoid stalling and blow-back. This requires multi-year strategic, financial and personnel frameworks. It also implies greater intra-OSCE and inter-organizational cooperation and coordination, including with established OSCE partners, such as the EU, the Council of Europe, the Shanghai Cooperation Organization, and the Conference on Interaction and Confidence-Building Measures in Asia.[36]

The protracted conflicts in the OSCE region are heavily influenced by geopolitical dynamics, especially the relationship between Russia and the West, which habitually accuse each other of instrumentalizing the protracted conflicts for their own strategic interests in the contested post-Soviet region. With the various dialogue formats now effectively constituting a "continuation of war by political means", the OSCE (at level of the Secretary-General and the CiO/Troika) needs carefully to manage different aspects of its mandate with regard to inter-state and intra-state relations. This should include a focus on comprehensive security that prioritizes, where necessary, humanitarian and economic aspects over political status issues, or at least "compartmentalizes" negotiations on different issues without making progress in one area conditional on progress elsewhere. Even small steps made on non-political issues are preferable to no steps at all and to the erosion of security and stability, or further polarization and radicalization by one or both sides and their external backers.

The geopolitical dimension of all the protracted conflicts examined here is further complicated by the fact that Russia is in fact a direct conflict party in three of the conflicts (Donbas, Abkhazia and South Ossetia) and holds the key to the resolution of another (Transnistria). Moreover, Moscow has just established a military presence on the ground in the last (Nagorno-Karabakh). Clearly, there is a larger Georgian-Russian and Ukrainian-Russian conflict level that needs to be addressed. Yet this should not distract from the fact that the local conflicts in Abkhazia and South Ossetia, as well as in the Donbas, require a sustainable intra-national settlement.

The trick is thus not to reduce preparatory confidence building to simply the local level, but rather to ensure that confidence is restored and maintained between otherwise rival geopolitical powers in the interest of security and stability in the OSCE region. The OSCE Minsk Group and especially the co-chair arrangement, the less-institutionalized 3+2 format within the 5+2 negotiation process, and the inconclusive Meseberg process of 2010-2012

36   David Galbreath, André Härtel, and Stefan Wolff, "Towards a More Strategic Partnership: Strengthening the OSCE through Enhanced EU–OSCE Cooperation," *OSCE Insights*, April 14, 2021, 1–11, https://doi.org/10.5771/9783748911456-03.

offer instructive examples. The Normandy Format, although helpful in the early stages of the Donbas conflict, appears to have developed into a parallel and largely deadlocked mechanism that can no longer provide positive impulses to on-the-ground engagement through the Trilateral Contact Group.

Ultimately, the perception that the key to the settlement of the OSCE region's protracted conflicts lies with Russia is not wrong, but there is more to the persistent lack of settlement than Russian obstruction. Arguing otherwise simply absolves local conflict parties, observers, mediators, and the OSCE as a whole of any responsibility for decades of negotiations with few, if any, tangible results. It also creates the erroneous, and dangerous, impression that if Moscow were to drop its resistance tomorrow, the parties on the ground would happily and readily embrace a just and fair settlement of their differences on the basis of international law and OSCE consensus.

Russia has clearly played a role in instigating the conflict in Donbas, but the conflicts in Moldova, Georgia, and between Azerbaijan and Armenia were "home-made" in their origins. In other words, Russian policy is a significant but not unique reason for the protracted nature of the conflicts, and this is different from attributing the causes of these conflicts or the absence of any settlement to Russia alone.

Decades of lack of progress have created entrenched interests on all sides in the non-settlement of the protracted conflicts and/or in settlements that are neither feasible nor viable. In this sense, the existing negotiation formats, by merely simulating conflict settlement negotiations, have lost their sense of purpose and their sense of what an actual settlement of any of the protracted conflicts should look like. Even if this situation is in Russia's interest, it has been enabled, or at least not been sufficiently resisted, by others involved. It has, however, become a problem for the OSCE as a whole and can, therefore, only be solved by the OSCE as a whole in the original "Helsinki spirit".

Recommendations

On the basis of the foregoing analysis, the following recommendations can be made.

> **Continue the practice of extended periods of service of CiO Special Representatives**

Special Representatives of the CiO are independently appointed by the CiO and hence do not need an additional mandate from the OSCE Permanent Council. This takes their appointment out of the quasi-habitual wrangling over other similar positions. However, the potential downside is the extremely limited timeframe within which they can operate due to the annual rotation in the CiO. The notable exception to this has been the Personal Representative of the Chairperson-in-Office on the Conflict Dealt with by the OSCE Minsk Conference, based in Tbilisi, Georgia, a position held by Ambassador Andrzej Kasprzyk since 1997. There have now also been positive precedents of multi-annual appointments such as Angelo Gnaedinger, who served as the Special Representative of the OSCE CiO for the South Caucasus in 2014 and 2015, Günther Bächler. Who held the same post in 2016 and 2017, Franco Frattini, who served as the Special Representative of the OSCE CiO for the Transnistrian Settlement Process in 2018 and 2019, and Thomas Mayr-Harting, who has held this post since 2020. Such

long-term appointments create opportunities for individuals to acquire more personal expertise regarding their portfolio, to build relationships with their various interlocutors among the conflict parties and mediators, and allows them to formulate and implement more coherent strategies regarding the conflicts they are dealing with.

⟩ Increase Vienna-based support for Special Representatives

Special Representatives with long-term mandates will still require increased support within the Secretariat to be effective and fulfill the potential that comes with longer terms. Given the constrained budget of the Organization as a whole, including the Secretariat, additional commitments from participating States, including ad hoc "coalitions of friends" may be required to create the foundations for enhanced support. This could take the form of a small pool of geographical and subject matter experts that would serve all Special Representatives simultaneously, thereby also facilitating cross-conflict learning and sharing of best practices. This would also create continuities in knowledge and understanding that would support smooth transitions between Special Representatives regardless of the length of their term of office.

⟩ Enhance cross-institutional, cross-dimensional, and cross-conflict coordination and capacity building.

In line with the idea of a Vienna-based support group for Special Representatives, more efforts should be made to enhance coordination regarding management of the protracted conflicts within the OSCE, involving institutions like the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM) in conflict management activities. This would allow drawing on expertise in the Secretariat from each of the three dimensions of the OSCE and the creation of opportunities for peer learning across different conflict settings. ODIHR and HCNM expertise could, for example, be leveraged as a part of the Vienna-based support group, which might additionally include other experts, for example from the Office of the Co-ordinator of OSCE Economic and Environmental Activities. This would make better use of available expertise within OSCE institutions, create synergies between different types of conflict management activities, and contribute to building sustainable capacity within the Organization. Another dimension of this approach would be closer cooperation with other international organizations, for example in the context of regular consultations and operational cooperation between the OSCE and the EU. This would also provide a potential source of funding for the proposed capacity building within the OSCE, including through the secondment of personnel to a Vienna-based support group for the Special Representatives. Such secondments need not be limited to the EU or its member states.

⟩ Strengthen the role and capacity of existing technical working groups below high-level negotiation formats and create new ones as need and opportunity dictate.

One of the key insights from the comparative analysis above concerns the utility of tech-

nical working groups to deal with specific, often non-political issues whose resolution can have tangible benefits for conflict-affected populations. For example, in relation to the Nagorno-Karabakh conflict, it should be assessed whether the Minsk Group could establish such formats to help the parties formalize and regularize their engagements. A good starting point would be working groups on second-dimension issues, including trade, access to services, and freedom of movement across the boundary line between the sides.

> **Use existing formats to facilitate confidence building among key OSCE participating States to create a more conducive geopolitical environment for negotiations on protracted conflicts.**

Given the significance of geopolitical tensions in the management of protracted conflicts, confidence building needs also to address the relationships between the OSCE participating States that are immediate stakeholders in the conflict. An obvious issue in this regard is the relationship with Russia. Here, the OSCE, and existing formats like the Minsk Group co-chairs and the 3+2 format in the Transnistrian settlement process, offer potential opportunities for engagement. Additionally, involving Russian experts in the aforementioned enhanced support structures for Special Representatives would create additional channels of communication. The key objective of any such engagement should be to determine the parameters for OSCE conflict management, including mediation of ongoing negotiations, that have the endorsement of key stakeholders, including Russia. This might mean limiting, at least temporarily, the scope of OSCE conflict management, but would also imply the possibility of tangible progress on concrete issues that contribute to security and stability without infringing OSCE values and principles.

> **Be realistic regarding what existing formats can currently accomplish and adjust goals flexibly in light of circumstances.**

Even with the aforementioned steps, and potentially others, taken to strengthen OSCE capacity for the management of protracted conflicts in the OSCE area, it is important to be realistic about what can be accomplished within the existing dialogue formats. This is not a call to radically change, let alone replace these formats, but to manage expectations within the Organization and among its participating States. Breakthroughs to negotiated settlements are unlikely for the time being. Thus, current efforts should be directed at stabilization and the gradual improvement of the humanitarian situation. This can only be achieved within the context of functioning channels of communication in the existing dialogue formats, which in turn depend on not pushing conflict parties to negotiate on issues they are not willing to engage on. Rather, a gradual approach of small steps towards improving the situation on the ground builds confidence among the parties and mediators, without foreclosing future opportunities to negotiate issues that are currently too sensitive to touch. In turn, this creates a space for flexible responses to immediate needs on the ground and incentives for the conflict parties to remain constructively engaged in the existing dialogue formats.

» Assess whether existing negotiation formats have the potential, at least in the mid- to long-term, to facilitate a settlement of protracted conflicts within the parameters of international law and the OSCE norm consensus.

In light of a greater realism about what the existing formats can currently accomplish, it is also worth considering whether they are at all able to facilitate any settlement of the conflicts. After decades of negotiations and confidence building during which stabilization has been the closest thing to success that the OSCE has achieved, and even that with only a patchy track record, the question arises whether existing formats have become part of what makes these conflicts protracted. However, this question cannot be answered without greater clarity about what a settlement of any of the protracted conflicts, one that would respect international law and reaffirm the OSCE norm consensus, would look like. Importantly, this may not be a single "solution" but rather a menu of different options. It would then be left to negotiators to determine which of these is the most fitting for their specific circumstances.

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