

Cornelius Friesendorf | Argyro Kartsonaki (Eds.)

# OSCE Insights 2023

Adapting to Change



**Nomos**

<https://doi.org/10.5771/9783748917366>, am 11.08.2024, 16:46:05  
Open Access –  <https://www.nomos-elibrary.de/agb>



**Institute for Peace Research  
and Security Policy**  
at the University of Hamburg

OSCE Insights

Cornelius Friesendorf | Argyro Kartsonaki (Eds.)

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**The Deutsche Nationalbibliothek** lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-7560-1209-1 (Print)  
978-3-7489-1736-6 (ePDF)

**British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978-3-7560-1209-1 (Print)  
978-3-7489-1736-6 (ePDF)

**Library of Congress Cataloging-in-Publication Data**

Friesendorf, Cornelius | Kartsonaki, Argyro  
OSCE Insights 2023  
Adapting to Change  
Cornelius Friesendorf | Argyro Kartsonaki (Eds.)  
120 pp.  
Includes bibliographic references.

ISBN 978-3-7560-1209-1 (Print)  
978-3-7489-1736-6 (ePDF)

1st Edition 2024

© The Authors

Published by  
Nomos Verlagsgesellschaft mbH & Co. KG  
Waldseestraße 3–5 | 76530 Baden-Baden  
[www.nomos.de](http://www.nomos.de)

Production of the printed version:  
Nomos Verlagsgesellschaft mbH & Co. KG  
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN (Print): 978-3-7560-1209-1  
ISBN (ePDF): 978-3-7489-1736-6

DOI: <https://doi.org/10.5771/9783748917366>



Onlineversion  
Nomos eLibrary



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# Introduction to *OSCE Insights 2023: Adapting to Change*

*Cornelius Friesendorf and Argyro Kartsonaki\**

To cite this publication: Cornelius Friesendorf and Argyro Kartsonaki, "Introduction to *OSCE Insights 2023: Adapting to Change*," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-00>

Russia's war of aggression against Ukraine continued throughout 2023, with negative consequences for the OSCE. Although this was the biggest problem faced by the OSCE, there were others as well. These included resistance from many participating States to free elections, media freedom, and other democratic norms promoted by the OSCE.

And yet, 2023 looked less grim than 2022 with regard to the OSCE's ability to survive war and authoritarianism and to remain vital, that is, to take decisions and run activities. In late 2023, governments at the Ministerial Council meeting in Skopje resolved the main obstacle to maintaining the OSCE as a vital organization. They agreed on Malta as the Chair for 2024 and extended the mandates of the Secretary General and the heads of the three institutions. Shortly after, par-

ticipating States also prolonged the mandates of the field operations.

To be sure, success was partial. The mandates of the top four positions were only extended until September 2024, and, as it had in December 2022, Russia only agreed to extend the OSCE Mission to Moldova for six months. By the fall of 2023 it was also becoming clear that a consensus decision on the OSCE's 2023 regular budget could not be reached. By the end of the year, however, a compromise on the 2024 regular budget seemed possible. Generally, in 2023 the OSCE proved its resilience to a combination of factors that could have led to its demise.

Contributors to the 2023 edition of *OSCE Insights* examine a range of topics: the Transnistria conflict, OSCE election observation, the OSCE's consensus rule, budgeting in the OSCE, back-channel negotiations on the war against Ukraine, the OSCE's role in Ukraine, conventional arms control, and the link between gender inequalities and corruption. The diversity of topics, recommendations, and methodologies notwithstanding, the papers shed light on three themes: a) the drivers of change in the

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OSCE area, b) how participating States and the OSCE have adapted to these changes, and c) the opportunities that change offers to the OSCE.

### Drivers of change

The primary cause of change in the OSCE area remains Russia's war against Ukraine. Nadja Douglas and Stefan Wolff show how this war has made the Transdniestrian conflict more volatile. Gabriela Rosa Hernández demonstrates how the crisis in relations between Russia and Western states has led to a near-total collapse of the conventional arms control regime in Europe, the continuing selective implementation of the Vienna Document notwithstanding. The war has also fundamentally changed the OSCE's engagement in Ukraine, as Tetyana Malyarenko and Stefan Wolff demonstrate.

But Russia's war against Ukraine is not the only driver of change. Daniela Donno analyzes how Russia and like-minded states have been challenging ODIHR election observation since the early 2000s, with the aim of weakening its independence. In addition, there were external challenges, especially alternative election monitoring that countered ODIHR's assessments. Ronny Patz also shows that the OSCE has been facing challenges for a long time—in his case with regard to budgeting and resourcing. For example, participating States have managed to adopt the Unified Budget on time (i.e., before the start of the new budget year) only seven times since 2002. Since 2014, the main causes of the breakdown of

budget routines were Russia's aggression against Ukraine and the conflict between Armenia and Azerbaijan. In her analysis of OSCE research efforts to better understand the nexus between gender inequality and corruption, Arianna Briganti hints at growing awareness of this link as a driver of OSCE activities in this field. This awareness has been spurred by societal changes such as increasing reliance on the provision of public education.

### Adapting to change

Several authors of the 2023 edition of *OSCE Insights* show how Ukraine's Western supporters, and OSCE structures and institutions, have responded to Russia's war against Ukraine. Rick Fawn examines a core OSCE rule: consensus decision-making. The OSCE has shown much "inventiveness" in applying, and also circumventing, this principle in order to maintain the OSCE's vitality. Notable examples of activities that have tweaked the consensus rule include the Human Dimension meeting in Warsaw and the Support Programme for Ukraine (funded through extrabudgetary contributions). In their *OSCE Insights* contribution, Malyarenko and Wolff offer a detailed analysis of the Support Programme for Ukraine, listing projects, funding, and timelines.

Other authors examine adaptations to different changes. Donno reveals how ODIHR has adapted to challenges related to election observation, which produced "a story of resilience and continued vitality against difficult odds." Adaptive

responses included sending election observers to established democracies, increasing the number of observers from post-Soviet countries, and increasing transparency and the consistency of election evaluations. These adaptations did not go so far, however, as to compromise ODIHR's election evaluation standards, the autonomy of observation missions, or the practice of publishing preliminary statements after elections. Patz reveals how participating States that want OSCE activities to continue (especially Ukraine's Western allies), together with OSCE structures and institutions, have responded to budget impasses. Thus, the Support Programme for Ukraine represents an innovative scheme for employing voluntary funding. Briganti demonstrates how the OSCE has responded to growing awareness of the link between gender inequalities and corruption by initiating research to shed light on this nexus.

### Opportunities for the OSCE

The political upheaval caused by Russia's aggression, along with other changes, has weakened the OSCE in many areas. It has also given rise to opportunities, though. Studying the Transdniestria conflict, Douglas and Wolff argue that the political dynamics caused by Russia's war against Ukraine have created a "window of opportunity" for Chisinau and Tiraspol and for international actors, including the OSCE, to support intensified confidence building. Fawn provides recommendations on how the OSCE can con-

tinue to expand its activities even without consensus, if need be. He sees opportunities in the Western Balkans, Central Asia, and the South Caucasus, as well as in specific fields such as higher education. He also points out, however, that non-consensus activities should be exceptional and supported by a large majority of participating States. Patz formulates recommendations on how the OSCE might deal with its budgetary travails. These include shifting to an integrated budgeting process and setting up a better resource mobilization function.

P. Terrence Hopmann points to another opportunity for the OSCE: the provision of a venue for "preliminary, informal, and discreet" back-channel pre-negotiations between Russia and Ukraine. These conversations can, Hopmann argues, pave the way for formal negotiations to end Russia's war against Ukraine. Back-channel talks would not require the OSCE to play a formal role and could be limited to the provision of good offices by the OSCE or participating States. Such talks are not intended to resolve the conflict; they are rather "negotiations *about* negotiations," the aim of which is to lay the ground for formal negotiations when domestic politics in Russia and Ukraine allow for it. For Hopmann, Vienna and its surroundings are ideal for such back-channel talks.

Malyarenko and Wolff identify opportunities for the OSCE in Ukraine. They single out the reintegration of Ukrainian society and its path to EU accession as areas where the OSCE can add value. This is not least because in these areas the OSCE can draw on experiences from



the Western Balkans and the Baltic states since the 1990s, in particular as regards national minorities, legislative reform, and media freedom.

Hernández looks at another area where Russia's war against Ukraine seemingly leaves no political space: arms control and confidence- and security-building measures. However, while the conventional arms control regime in Europe has broken down, Hernández shows that conventional arms control tools can still be used on an ad hoc basis, even in times of war. Participating States can use such tools for signaling and monitoring, which contributes to preventing false alarms and military incidents.

and colleagues from the Institute for Peace Research and Security Policy at the University of Hamburg (IFSH). The German Federal Foreign Office has covered some of the production costs of *OSCE Insights*. We also sincerely thank colleagues who have contributed to the Russian-language versions of the papers, despite the difficult political—and personal—circumstances, and the editors, translators, and proofreaders of the English-language edition of *OSCE Insights*, especially Carolyn Benson. Particular thanks are due to Frank Evers and Stefan Wolff for staying positive in difficult times.

## Acknowledgements

Producing a policy paper series on an organization that is off the radar of most researchers, even those who specialize in international organizations, is not easy. In addition to finding authors who are interested in, and knowledgeable about, the OSCE, high levels of politicization in Vienna and at the capital level posed a challenge to producing *OSCE Insights* 2023. Politicization tends to reduce appetite for critical analysis, even for papers that offer constructive recommendations and represent the views of the authors alone—as is the case with *OSCE Insights* papers.

Navigating these challenges was only possible because of a collective effort. We are grateful to the authors, the external reviewers, Eva Lang and Carsten Lang from the Nomos Publishing House,

# ODIHR Election Observation under Pressure

*Daniela Donno*\*

## *Abstract*

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

## *Keywords*

Election observation, ODIHR, democracy promotion, institutional adaptation

To cite this publication: Daniela Donno, “ODIHR Election Observation under Pressure,” in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-01>

## **Introduction**

In 1990, members of the CSCE expressed their commitment to free and fair elections by approving the Copenhagen Document.<sup>1</sup> This path-breaking agreement contained detailed standards for democratic elections that went beyond the mere commitments found in other legal instruments like the Interna-

tional Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). The Copenhagen Document specified standards not only for voting but also for the political, legal, and administrative context in which elections are held, including respecting the freedom to form political parties and to campaign without government intimidation and with equal access to the media.<sup>2</sup> The document also required all participating States to extend a standing invitation to CSCE (later OSCE) missions to observe national elections.

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The institutional basis for election observation was further laid by the Charter of Paris (1990), which established the Office for Free Elections headquartered in Warsaw, and the Moscow Document (1991), which affirmed that matters relating to the human dimension are of “legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.”<sup>3</sup> Over the next decade, monumental changes would take place in the region as the states of East Central Europe and the former Soviet Union transitioned away from communism. The CSCE/OSCE underwent its own transformation, bolstered by a strengthened commitment to democracy and human rights. In 1992, the Office for Free Elections was expanded, granted further responsibilities, and rechristened the Office for Democratic Institutions and Human Rights (ODIHR).<sup>4</sup>

ODIHR’s mandate is to support participating States in implementing their human dimension commitments, and election observation has been one of its primary activities from the start. ODIHR’s election observation methodology is globally renowned and characterized by a holistic focus that covers the entire electoral process. This methodology developed over several years, through an iterative process of ODIHR staff initiatives and participating State (Ministerial Council) decisions. Attesting to its global status and expertise, ODIHR has actively participated in developing and implementing the Declaration of Principles for International Election Observation and Code of Conduct for Interna-

tional Election Observers (2005).<sup>5</sup> The EU has aligned its own election observation methodology with that of ODIHR, and for this reason EU missions are not sent to OSCE participating States.<sup>6</sup> ODIHR is therefore the primary international election observation body in the OSCE area.

Throughout the 1990s, demand for ODIHR election observation missions (EOMs) was high, particularly among former communist states. But as tensions between Russia and the EU/United States grew in the wake of the color revolutions in the early 2000s, ODIHR election observation faced intense challenges, often led by Russia and like-minded states. The following provides an overview of these pressures, which were both *internal* (pressures to reform and curtail election observation from within) and *external* (the creation of parallel election monitoring organizations). In addition, it explores how ODIHR has adapted to internal pressures by expanding the scope and inclusiveness of its work without—crucially—losing its autonomy or the credibility of its methodology. My analysis of these processes is informed by interviews with current<sup>7</sup> and former ODIHR officials.

The picture that emerges is one of ingenuity and resilience in the face of sustained political pressures, an example of what Gisela Hirschmann calls a strategy of “adaptation.”<sup>8</sup> This outcome was far from assured; international organizations facing drastic changes in member state politics often either dissolve or slide into “zombie” status.<sup>9</sup> Viewed in this light, the survival of ODIHR election observation, with the credibility of its methodology intact, is noteworthy. Time will tell

whether ODIHR will weather the unprecedented crisis and paralysis that have gripped the OSCE since Russia's invasion of Ukraine in 2022.<sup>10</sup>

The story of ODIHR election observation is also one of an organization whose *de facto* influence among domestic publics continues to be challenged in an era of disinformation and “alternative facts.” I outline the proliferation of shadow observer groups, particularly in the post-Soviet region, and the stark difference between these groups' electoral statements and ODIHR's. As a result, ODIHR's assessments of electoral quality may matter less when consumers of non-Western news primarily read about the rosy conclusions of less credible observers. Shoring up its relevance and informational reach should therefore be a key focus of the Office going forward.

### Internal challenges to ODIHR

In the wake of the Cold War, Russia had hoped that the OSCE would become the continent's premier security organization.<sup>11</sup> But as former communist states sought membership in NATO and the EU, it became clear that instead of transferring authority to the OSCE, these two organizations would extend their own reach. Russia lamented the withering of the OSCE's politico-military dimension in favor of the human dimension of security, which it viewed as less important.<sup>12</sup> Vladimir Putin's rise to power, followed by the electoral revolutions in Georgia (2003) and Ukraine (2004), cemented Russia's resolve to assertively

combat what it perceived as growing Western interference on its turf.<sup>13</sup> Putin was also offended by ODIHR's criticism of Russia's 2004 parliamentary election,<sup>14</sup> an issue that would persist in future elections as Russia sought to place limits on the number of ODIHR observers.

In 2004–2005, Russia launched a diplomatic assault against ODIHR, whose EOMs were perceived as playing a role in the pro-Western electoral revolutions.<sup>15</sup> In 2004, with the support of most Commonwealth of Independent States (CIS) partners, Russia issued an appeal to modify the OSCE's human dimension, specifically the practice of election observation.<sup>16</sup> At the 2005 ministerial council in Ljubljana, Russian foreign minister Sergei Lavrov decried ODIHR as a biased entity, an instrument for meddling in non-EU countries. The theme that ODIHR's activities were biased against countries “east of Vienna” became a frequent talking point for Russia and its allies.<sup>17</sup> In 2005, Russia vetoed the OSCE budget due to disagreements over election observation<sup>18</sup> and blocked the final statement in the Ministerial Council.<sup>19</sup>

Russia made three criticisms, as summarized in the 2004 “Astana Appeal” of the CIS:<sup>20</sup> first, that the geographic scope of ODIHR's election observation was imbalanced (tilting toward states east of Vienna); second, that ODIHR observers hailed disproportionately from Western Europe and North America; and third, that ODIHR's methodology had not been approved by participating States (a misleading claim given the numerous Council decisions affirming support) and that intergovernmental oversight mech-

anisms were too weak.<sup>21</sup> Russia wanted to make the publication of ODIHR's election observation reports contingent on the approval of the Permanent Council—an intergovernmental body that operates by consensus—which would effectively give it veto power.<sup>22</sup> Relatedly, there was a demand to eliminate ODIHR's practice of announcing its preliminary findings in the one to two days following the election<sup>23</sup>—a consequential point because it is these reports that are covered most extensively in the media. As explored below, ODIHR made consequential adjustments related to the diversity and balance of its EOMs. With the steadfast support of key participating States, however, it held the line on fundamental questions of autonomy, recognizing that the credibility of its methodology and independence from political interference were its most crucial assets.

An additional challenge for ODIHR was its co-ordination with observers from the OSCE Parliamentary Assembly (PA), who were present in the host countries only for a short time around election day and were sometimes guided more by politics than by technocratic standards of election evaluation.<sup>24</sup> A 1997 co-operation agreement between ODIHR and the PA aimed to ensure that they would present a unified message in their statements and reports.<sup>25</sup> Yet there were tensions behind the scenes, particularly regarding observation missions in less democratic states such as Azerbaijan, Armenia, and Moldova.<sup>26</sup> These challenges were sharpest when the OSCE PA was under the de facto direction of Secretary General Spencer Oliver (from 1993 to

2015), whose view was that parliamentarians, “as elected officials, [...] are rightly presumed to know more about elections than anybody else.”<sup>27</sup> Oliver, who formally reported to the PA delegations and its elected Presidents, echoed multiple Russian positions, including that ODIHR applied double standards. Tensions reached a boiling point in 2012, when the PA announced that it was ceasing co-operation with ODIHR, and then subsided as ODIHR Director Janez Lenarčič (2008–2014) sought to work with the PA's political leadership to restore trust. Relations became more co-operative after Roberto Montella replaced Oliver as Secretary General of the PA in 2016.

## Adaptation

ODIHR would deal with these pressures by constructively responding to criticism related to diversity, representation, and bias but steadfastly resisting the erosion of the autonomy of its EOMs.<sup>28</sup> In 2002, ODIHR began sending election-related missions to established democracies. From 2002 to 2005, this consisted of just one to two missions per year, including to the United States, the United Kingdom, and Spain. This has increased over time; between 2018 and 2022, ODIHR authorized ten to sixteen missions to EU and North American participating States per year (the numbers vary based on how many elections are held per year). Although this practice had previously been resisted by some as an inefficient use of resources,<sup>29</sup> ODIHR officials soon came around to the idea, giv-

en that established democracies can also benefit from ODIHR expertise.<sup>30</sup> Many missions sent to established democracies are election assessment missions (EAMs), which leave a lighter footprint and do not deploy a full contingent of election-day observers. ODIHR staff have worked to dispel the misconception that these smaller missions are less consequential; rather, it is a matter of tailoring the mission to the particular needs of the country in question.<sup>31</sup>

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

Third, ODIHR took steps to increase transparency and ensure the consistency of its evaluations. This has included the publication of handbooks on ODIHR's

methodology, including on the topics of media monitoring, women's participation in elections, and long-term observation,<sup>34</sup> as well as other efforts to formally respond to criticism and concerns (see for example ODIHR's 2006 report to the Ministerial Council, titled "Common Responsibility").<sup>35</sup> ODIHR EOMs also began issuing pre-election interim reports, which filled the gap between the needs assessment report and the preliminary post-election report.<sup>36</sup> In general, ODIHR staff and heads of missions have maintained a practice of carefully reviewing the language of statements and reports to ensure absolute consistency with OSCE election-related commitments, which in turn ensures consistency across countries.<sup>37</sup>

### Holding the line

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

ODIHR has also assiduously defended the principle that the number and type of observers should be based on the findings of needs assessment missions (NAMs). At times, this has put ODIHR in conflict with governments. In the leadup to the 2007, 2008, and 2021 elections, the Russi-

an government attempted to place limits on the number of ODIHR observers, and similar moves occurred in Azerbaijan in 2015. In the 2020 election in Belarus, by the time the government issued an invitation, it was too late for ODIHR to organize an effective EOM. In each of these instances, the ODIHR leadership took the difficult decision to decline to send an observation mission, viewing the integrity of its methodology as paramount.

In navigating these waters, ODIHR benefited from the skilled leadership of various Directors, including Christian Strohal (2003–2008), Janez Lenarčič (2008–2014), and Michael Link (2014–2017), who worked vigilantly to ensure the office's survival, including through behind-the-scenes efforts to garner support from key participating States. The leadership was aided by the ingenuity and tenacity of ODIHR staff members, who used their expert knowledge to guide the office through recurring crises and budget shortfalls. Another asset to ODIHR election observation is the observers themselves, particularly heads of missions and core team members, who have consistently exhibited professionalism and have been "impervious to corruption."<sup>39</sup>

### **External challenges: Parallel election observation missions**

Parallel to the internal pressures for reform has been an external challenge in the form of non-Western and Russian-directed election observation entities that do not work according to the same inter-

nationally recognized standards for election observation. Perhaps most prominent of these is the CIS, which began observing elections in 2002 after introducing its Convention on Standards of Democratic Elections. While mirroring some of the language of the Copenhagen Document, it places greater emphasis on respect for state sovereignty, as well as principles that are present even in authoritarian elections, such as universal suffrage.<sup>40</sup> Beyond the CIS, other groups such as the Shanghai Cooperation Organisation (SCO) and the Organization of Turkic States (OTS) have also taken up election monitoring in the OSCE area. Autocrats also commonly invite a plethora of observers from little-known NGOs or friendly diplomats and political figures from other countries.<sup>41</sup> In Azerbaijan's 2013 presidential election, for example, the Central Election Commission reported that more than 1,300 observers from 50 international groups were present; of these, only ODIHR criticized the clearly flawed process.<sup>42</sup>

The data that I collected with Julia Gray, which tracks the presence and verdicts of different EOMs in post-communist countries from 1990 to 2018, sheds further light on the phenomenon of parallel election observers. The source materials for this data are international and domestic news reports.<sup>43</sup> As the data shows, there was a clear increase in the number of EOMs in post-Soviet countries beginning in the early 2000s. By 2010, on average, at least six different missions were present in these countries' national elections. In contrast, there has been no increase in the average number

of EOMs in other Central and Eastern European states that are not CIS members, in part because these countries are more democratic and experience less intense contestation between Russia and the West.<sup>44</sup>

In my examination of the range of EOMs that send missions to OSCE-area countries, sharp differences are apparent between ODIHR missions and other missions. ODIHR EOMs do not offer a simplistic up-or-down judgment; rather, they offer a comprehensive technical assessment of multiple aspects of the electoral process. This means, in practice, that ODIHR assessments include a range of positive and negative evaluations, matched by recommendations, related to the legal and administrative context of elections, media freedom, campaign conditions, and the casting and counting of ballots, among other dimensions. Importantly, ODIHR has not shied away from criticizing deficiencies when they are observed. In contrast, my analysis reveals that the CIS skews toward near universal approval of the elections it observes, as does the SCO. The only election ever to have been rejected by the CIS was Ukraine's repeat second round in December 2004—the contest following the Orange Revolution that brought pro-Western Viktor Yushchenko to power.<sup>45</sup>

This can be seen as part of a broader Russian-led disinformation campaign against Western institutions, the aim being to disrupt the established narrative and undermine the legitimacy of international standards for democracy and elections. In their study of the global phenomenon of shadow election moni-

toring, for example, Debre and Morgenbesser note that the goal is to influence *citizens'* perceptions by shaping domestic media coverage.<sup>46</sup> This is a pernicious goal given that one of the aims of ODIHR election observation is to provide accurate information about election quality to both the authorities and the public in the host countries.<sup>47</sup> The problem is exacerbated by the growing presence of media silos. Consumers of Western media read articles in which the statements of ODIHR missions are discussed prominently, whereas consumers of Russian media read articles focused on the positive evaluations of CIS and other shadow observers.

## Recommendations

ODIHR was created at a unique moment of optimism and ideological convergence between West and East in the aftermath of the Cold War. Its resilience is remarkable when one considers the breakdown in relations since then and the fact that ODIHR election observation touches upon one of the most sensitive nerves in these relations. Drawing on Gray's theory of international organization vitality,<sup>48</sup> it is clear that the office has benefited from its ability to attract quality staff and from its autonomy, that is, the ability of its election missions to conduct their work and publish conclusions free from political interference. Yet parallel to this story of survival and adaptation is the assault by alternative shadow election observation groups. This presents a thorny challenge to the legitimacy and influence



of ODIHR EOMs, particularly in terms of whether, and how, their message gets through to citizens on the ground. This paper offers the following recommendations:

*Continue to guard the integrity of the methodology.* This was widely identified as a top priority by ODIHR staff. ODIHR's credibility as a technocratic and apolitical evaluator of elections is its most precious asset. Key features of the methodology that should be defended by both the ODIHR leadership and OSCE participating States include its insistence that the size and shape of missions be determined by ODIHR itself on the basis of a NAM and that the head of mission—rather than a political body—have final responsibility for the content of all reports. The temptation to swerve from these principles can be great when under political pressure, as policymakers face a tradeoff between adherence to the methodology and the desire to retain broad-based support for election observation activities. Russia is not alone in exerting such pressure; in 2019, for example, Ukraine requested that the ODIHR mission not allow any Russian short-term observers (STOs). Yet, as one former Deputy Director expressed, “ODIHR must consider the long-term consequences of giving in to political pressures.”<sup>49</sup>

*Ensure adequate and timely funding.* Budget cuts and standoffs pose another longstanding challenge, with implications for ODIHR's methodology and effectiveness; for example, ODIHR must frequently operate on monthly allotments whenever approval of the annual budget is delayed, and the practice

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

*Participating States should step up their support.* It is not unusual for ODIHR EOMs to suffer a shortage of seconded observers, particularly for missions in EU member states and the United States, which may be (wrongly) perceived as less important to ODIHR's mandate. Western participating States should respond generously to requests for seconded observers and ensure that domestic regulations allow them to fund observers even in ad-

vanced economies that do not qualify for development assistance. A positive milestone in this regard is Hungary's 2022 election, in which a full EOM was both accepted by the Hungarian government and robustly supported by a large cohort of OSCE participating States.<sup>50</sup>

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

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

vation missions, and that it continues to be widely regarded as the gold standard in election observation.

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# Confidence Building in the Shadow of War: Moldova, Transdnistria, and the Uncertain Future of the 5+2 Process

Nadja Douglas and Stefan Wolff\*

## Abstract

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

## Keywords

OSCE, Moldova, Transdnistrian conflict, confidence building

To cite this publication: Nadja Douglas and Stefan Wolff, "Confidence Building in the Shadow of War: Moldova, Transdnistria, and the Uncertain Future of the 5+2 Process," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-02>

## Introduction<sup>1</sup>

Although Moldova and Transdnistria<sup>2</sup> have received an unusual amount of attention of late,<sup>3</sup> the Transdnistrian con-

flict remains in the shadow of the war in Ukraine. However, geographical proximity alone suggests that the latter will have far-reaching implications for the former. Since February 2022, almost half a million Ukrainian refugees have crossed the Moldovan border, and some 100,000 have remained in Moldova.<sup>4</sup> The Russian military presence in Transdnistria has been a source of insecurity and uncertainty for both Ukraine and Moldova. The same goes for the de facto authorities in Tiraspol, who are under increasing pressure from Russia, their belligerent patron, whose ultimate intentions

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remain opaque and unpredictable. What is more, Tiraspol is increasingly at odds with its direct neighbors in Chisinau and Kyiv, both of which have moved with great speed and determination towards the European Union since June 2022.

In light of this, since July 2022 the Transdnistriean leadership has sought to obtain formal security guarantees from international partners in the OSCE-guided “5+2 format.”<sup>5</sup> These efforts on the part of the de facto leader of Transdnistria, Vadim Krasnoselsky, were met with astonishment by local and international observers.<sup>6</sup> Chisinau refrained from responding to Tiraspol’s approach, which reflects a general hardening of Moldova’s and its allies’ positions in the 5+2 format and raises important questions about the prospects of further confidence-building measures (CBMs) in this conflict.<sup>7</sup>

While Moldovan President Maia Sandu and the government’s Bureau of Reintegration have officially stated that negotiations that touch on the status question are impossible at this stage, discussions among Moldovan stakeholders have continued behind the scenes.<sup>8</sup> With a view to preventing Moldova’s and Transdnistria’s being dragged into the Russian aggression against Ukraine, the Transdnistriean dossier has been placed higher on the Moldovan agenda: the Bureau of Reintegration has been restructured,<sup>9</sup> and Deputy Prime Minister for Reintegration Oleg Serebrian has publicly announced the preparation of a new reintegration plan for Transdnistria. Moreover, government officials have avoided using the term “special status,” and neither it nor the 5+2 format was mentioned

in the government program presented by Prime Minister Dorin Recean on February 16, 2023.<sup>10</sup> Instead, the 2005 law on Transdnistria’s special legal status, which treats Transdnistria as a sum of localities and does not oblige the government to negotiate a special status for the region in its entirety, has become a more frequent reference point.<sup>11</sup> Along the same lines, in early February 2023 the Moldovan parliament passed a bill prohibiting actions aimed at separating any part of the territory of the Republic of Moldova or the distribution of information inciting such an offence.<sup>12</sup> One month later, it also passed a law requiring that the country’s language be referred to as Romanian rather than Moldovan in all legislative texts.<sup>13</sup> In March, in a move ostensibly meant to criticize Moldova for its hesitant implementation of policies, the secretary of the Ukrainian national Security Council revealed that the Moldovan government was pursuing a seven-year plan to reintegrate Transdnistria.<sup>14</sup>

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

The 5+2 settlement process has stagnated, continuously stabilizing a status quo

that was effectively established three decades ago and has served the interests of political and business elites, organized crime networks, and many ordinary people on both sides of the Dniester River. The Russian invasion of Ukraine has made this status quo less feasible and desirable. With two participants now openly at war with each other, the OSCE-facilitated 5+2 format (and with it the 3+2 format) is now dysfunctional. Lines of communication—and thus incident prevention and management—have mostly been reduced to informal 1+1 contacts.<sup>15</sup>

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

thus far underappreciated factors that are needed for a potential settlement.

### Divergent understandings of CBMs

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

Moldova’s main motivation for engaging in CBMs is to maintain political, economic, and social links with the Transdniestrian population and authorities and to keep Transdniestria “in the Moldovan reality.”<sup>22</sup> Moldovan public opinion is generally more skeptical about CBMs, dismissing them as unwanted



and unwarranted concessions<sup>23</sup> and thus tainting the public image of those who agreed to them.<sup>24</sup> In addition, these concessions are perceived as a future vulnerability for Moldova.<sup>25</sup>

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

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

### **Situational autonomy: The key lesson from past CBMs**

It has long been maintained that constructive and productive negotiations in the Transdniestrian settlement process depend on the state of Russian-Western relations. While tensions in these relations have prevented an actual settlement

to date, they have at the same time necessitated CBMs as a means of stabilizing a potentially volatile situation. After the war in Georgia in 2008, for example, the Meseberg process,<sup>32</sup> though ultimately unsuccessful, laid the ground for the resurfacing of CBMs in the economic arena by the mid-2010s. This occurred despite the deterioration of the relationship between Russia and the West after Moscow's annexation of Crimea and proxy occupation of parts of the Donbas. It suggests that factors beyond the state of Russian-Western relations may play a role in determining whether negotiations will be successful in the Transdniestrian context.

Some notable albeit relative successes were achieved in the period after 2012. These include the agreement on the agenda and on the principles and procedures of the 5+2 talks in April 2012 under the Irish OSCE Chairpersonship,<sup>33</sup> the inclusion of Transdniestria in the Deep and Comprehensive Free Trade Agreement (DCFTA) as of January 1, 2016,<sup>34</sup> the Berlin Protocol of June 2016 under the German Chairpersonship,<sup>35</sup> and the "package of eight"/Berlin+ process that began in 2017 during the Austrian Chairpersonship.<sup>36</sup> In our view, what accounts for these successes is the degree of situational autonomy<sup>37</sup> that both sides enjoy in negotiations, as well as their will to use it. Conversely, a lack of situational autonomy (or a diminishing will to use it) accounts for the absence or non-implementation of similar agreements, especially from 2019 onwards.

To illustrate this point, the period between the resumption of formal 5+2 negotiations in June 2016 and the

end of 2017 saw substantial progress. Not only was the negotiation process reinvigorated, but it also produced concrete outcomes. The more substantial progress in 2017 compared to 2016 suggests that both sides perceived and made use of significant situational autonomy. This change largely had to do with the fact that by the end of 2016, the political situation in both Chisinau and Tiraspol had turned in Moscow's favor. Long-time Moscow ally Igor Dodon had defeated pro-Western Maia Sandu in Moldova's presidential elections, and Vadim Krasnoselsky had won the de facto presidency in Transnistria for Obnovlenie, a political party that was closely affiliated with the Sheriff business conglomerate.<sup>38</sup> The 2017 Austrian Chairpersonship emphasized both the full implementation of the unresolved issues of the June 2016 Berlin agreement and the inclusion of the other three issues that had long remained unresolved,<sup>39</sup> among them the re-opening of the Gura Bicului-Bychok Bridge after twenty-six years.<sup>40</sup>

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

The negotiation process began to stall from 2019 onwards. The constitutional crisis in Moldova in the summer of 2019 led to the appointment of Maia Sandu as prime minister and to a brief period of cohabitation between Sandu and Dodon until November 2019, when Sandu lost a confidence vote in the Moldovan parliament. Both Russia and the West supported this arrangement, but Russian support significantly cooled when then Prime Minister Sandu announced that federalization as a solution to the conflict was unacceptable to the people of Moldova and vowed to co-operate more closely with Ukraine on interrupting the flow of illicit revenues into the Transnistrian region. Against this background, the last meeting of the 5+2 took place in Bratislava on October 9 and 10, 2019, ending without the adoption of a new protocol.<sup>42</sup> Not only had the situational autonomy of Transnistria decreased as Russia was pondering the consequences of the cohabitation arrangement in Chisinau, but so had both sides' willingness to make the compromises necessary to conclude a Bratislava protocol.

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

status negotiations might find greater success.

### **Confidence building as a catalyst for conflict settlement?**

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

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

Nonetheless, Russia's war against Ukraine has put the Transnistrian leadership under renewed pressure from three directions. First, Transnistria's patron state, Russia, is clearly in a weaker position, which raises questions regarding its ability to prop up the regime in Tiraspol. Second, some fear that Russia could use its remaining influence in the de facto state and with players in Moldova to widen the war in Ukraine. And third,

the Transnistrian leadership is also concerned that Moldova and its Western allies could enforce a violent reintegration of Transnistria.<sup>43</sup>

Ultimately, Moldova's accession to the EU will depend on resolving the conflict, but the example of Cyprus is a vivid reminder of the weak position that de facto entities occupy in this process. Each step that Chisinau takes towards membership decreases Tiraspol's chances of achieving a meaningful special status arrangement. All of this explains Tiraspol's push for "official" negotiations—despite the war and, if need be, outside the 5+2 framework. This is likely to increase Transnistria's willingness and ability to compromise. The Moldovan government could carefully explore this in the context of the current dialogue at the 1+1 and working group levels, especially in relation to whether the red lines that both sides have drawn regarding status issues—the 2005 law<sup>44</sup> and the 2006 independence referendum<sup>45</sup>—have become more malleable.

For Moldova, things were and remain somewhat more complex. During the period from 2016 to 2018, the government took a largely pragmatic give-and-take approach to the Transnistrian issue. However, domestic obstacles prevented greater and faster progress towards reasonable negotiation outcomes. Moldova is currently refusing to engage in negotiations due to the war and the impossibility of convening a 5+2 meeting. In view of current Russian setbacks in Ukraine, Chisinau feels empowered, claiming that, thanks to the war, it has come closer to the goal of reintegration than ever before,

having welded together populations on the left and the right bank.<sup>46</sup> Moldova's self-confidence can be explained by a combination of factors: 90 percent of the Transdnistrian population have supposedly attained Moldovan citizenship,<sup>47</sup> its EU candidate status has provided for a new foreign policy impetus, and the need to adopt the EU's *acquis communautaire* has given it an opportunity to pressure Transdnistria to do the same. This poses an existential threat to the survival of the current regime in Tiraspol, unless it manages to obtain some form of special status, for example something similar to the opt-out enjoyed by Greenland as part of the Kingdom of Denmark but not the EU.

Russia has officially adhered to its role as mediator and guarantor state in the conflict settlement process. However, it has become clear that its capacity to sustain Transdnistria, in particular in economic terms, will not last forever. Transdnistria nevertheless remains a strategic asset, especially for the projection of Russian interests in the region. In the context of the war in Ukraine, these interests appear to include the destabilization of Moldova, potentially by leveraging its influence in and over Transdnistria.<sup>48</sup> By vetoing the extension of the mandate of the OSCE Mission to Moldova and limiting it to six months, the Russian Federation deliberately put the long-term work of the Mission at risk in order to secure a bargaining chip for future negotiations.<sup>49</sup> The state of Russian-Western relations partly explains the failure to reach a sustainable political status settlement thus far.

However, there are other factors that made agreements and pragmatic solutions possible in the past whenever the circumstances required them and whenever the conflict parties enjoyed a reasonable degree of situational autonomy. In each case, confidence was a pivotal prerequisite. Equally important is the traditionally significant part played by Romania (often in its function as an extended arm of the EU) in Moldovan affairs, as well as the growing role played by Ukraine. As a result of the war, Moldova and Ukraine have witnessed a conflation of interests due to their common experience of Russian occupation and their shared goal of EU accession. With regard to Transdnistria and the negotiation process, Kyiv has recently become more vocal in pushing Moldova to accelerate the reintegration process. Given Ukraine's experience in the Donbas region, Kyiv remains skeptical of any solutions that would grant a high degree of autonomy to Transdnistria and has pressed for the withdrawal of Russian troops from the common border. From Ukraine's perspective, it is only a matter of time until Moscow uses its remaining forces in Transdnistria for further destabilization measures.<sup>50</sup>

At the same time, confidence-building processes have been slow—in part due to the complexity of the issues at stake and the high degree of emotional investment on both sides. Overall progress notwithstanding, its slow pace and the significant outside assistance with which it has been achieved reflect a persistent volatility. Building confidence is a difficult undertaking that requires careful

management, including of expectations. With that said, the negotiations between the parties, however slow and minimal in terms of their actual contribution to a settlement, have helped negotiators on both sides to build mutual respect and, arguably, a certain level of trust. A good example of this is agreement on issues of mutual interest, for example in the sphere of ecology.

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

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

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

To make the most of this window of opportunity, Chisinau and Tiraspol should pursue the following strategies:

*Consider alternative dialogue formats.* Together with the OSCE Mission to Moldova, the parties should consider additional or alternative dialogue formats to bolster the current 1+1 engagement, for example between private sector actors.

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

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

*Revive past proposals.* The OSCE should revive past proposals concerning confidence- and security-building measures, such as the organization of joint training sessions for Moldovan and Transdniestrian civil protection contingents in the field of civilian emergency support and relief, as well as the introduction of ear-

ly warning and risk reduction measures that contain consultation, notification, and observation mechanisms with regard to emergencies in the region.

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

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

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

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

Notes

- 1 Both authors are longtime observers of Moldova and the Transnistrian conflict settlement process. They used standard ethnographic methods of data collection (interviews, direct and participant observation, document analysis) and process tracing as their main method of data analysis. Qualitative interviews with various stakeholders involved in the negotiation process were conducted on the ground and via email/VoIP between 2012 and 2022. The authors gratefully acknowledge the assistance provided by Iulia Cozacenco and Iulia Panici in Chisinau and Tiraspol.
- 2 Although “Transnistria” is a common English spelling, we use “Transdniestria,” which is the spelling used by the OSCE.
- 3 This includes coverage in the *Financial Times* (Raphael Minder, “Moldova Urges Calm after Russian Threat over Breakaway Region,” *Financial Times*, February 23, 2023, <https://www.ft.com/content/1a73b07d-b5cb-45af-a056-00c5aa07c406>), the *New York Times* (Marc Santora, “Ukraine Prepares Itself for the Possibility of Russian Aggression via Moldova and Belarus,” *New York Times*, February 22, 2023, <https://www.nytimes.com/2023/02/22/world/europe/russia-moldova-ukraine.html>), the *Washington Post* (Claire Parker and Sammy Westfall, “What Is Transnistria, and Will Russia Destabilize Moldova?,” February 14, 2023, <https://www.washingtonpost.com/world/2022/04/22/ukraine-moldova-transnistria-russia/>), and the *Guardian* (Reuters, “Moldova Dismisses Russian Claims of Ukrainian Plot to Invade Breakaway Region,” *Guardian*, February 24, 2023, <https://www.theguardian.com/world/2023/feb/24/moldova-dismisses-russia-claims-of-ukraine-plot-to-invade-transnistria-region>), among others.
- 4 As of February 15, 2023, there were 109,410 Ukrainian refugees in Moldova.

- 5 See the list (“Estimated Number of Refugees from Ukraine Recorded in Europe and Asia since February 2022”) provided by Statista at: <https://www.statista.com/statistics/1312584/ukrainian-refugees-by-country/>
- 5 The format consists of the two conflict parties plus the OSCE, Russia, and Ukraine as mediators and guarantors of a settlement. The EU and the United States were added as observers (+2) to the existing five-sided format in 2005. The mediators/guarantors and observers previously met separately in the so-called 3+2 format. Bilateral meetings between the chief negotiators of the two sides are commonly called 1+1 meetings.
- 6 Evgenii Cheban, “Приднестровье хочет ‘гарантий мира’”. В Тирасполе предложили участникам ‘5+2’ подписать совместную декларацию” [Transdnistria asks for “peace guarantees”: Tiraspol proposed that participants of the “5+2 format” sign a joint declaration] *News-Maker*, June 19, 2022, <https://newsmaker.md/rus/novosti/pridnestrovoe-hochet-garantiy-mira-v-tiraspole-predlozhili-uchastnikam-5-2-podpisat-sovmestnuyu-deklaratsiyu/>
- 7 For more background information on the origins of the conflict, see William H. Hill, *Russia, the Near Abroad and the West: Lessons from the Moldova-Transdnistria Conflict* (Washington, DC: Woodrow Wilson Center Press with Johns Hopkins University Press, 2012).
- 8 “Молдова рассматривает лишь мирный вариант урегулирования приднестровского конфликта – президент Майя Санду” [Moldova is considering only a peaceful settlement of the Transdnistrian conflict – President Maia Sandu] *Infotag*, December 16, 2022, <http://www.infotag.md/rebellion/303650/>. See also the dossier “Вернуть Приднестровье. Как объединить Молдову, пока Украина воеует с Россией?” [Return Transdnies-

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- 11 The Law of the Republic of Moldova of July 22, 2005, No. 173-XVI, “About basic provisions of special legal status of settlements of left bank of Dniester (Transnistria),” provides for the region’s reintegration into Moldova following its democratization and demilitarization. The law treats the territory as the sum of its local communities rather than an entity of its own. It provides for a “special status” compatible with the Moldovan constitution, with the competences of legislative and executive structures to be established through negotiations between the two sides and guaranteed internationally. For the text of the law, see <https://cis-legislation.com/document.fwx?rgn=18356>. See also Vladimir Socor, “Moldova Extricates from Russian-Dominated Process of Negotiations on Transnistria (Part Two),” Jamestown Foundation, *Eurasia Daily Monitor* 20, no. 34 (2023), <https://jamestown.org/program/moldova-extricate-s-from-russian-dominated-process-of-negotiations-on-transnistria-part-two/>
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- 16 According to a senior Moldovan foreign ministry official, “CBMs prevent the situation from sliding apart, the conflict from deepening, and the gap between the sides from widening. Even if you don’t see a visible rapprochement and build-up of hundreds of economic, social, and humanitarian ties, you don’t allow the separation to deepen” (interview with senior official of the Moldovan foreign ministry, Chisinau, September 2019).
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- or cultural fields with the aim of increasing transparency and the level of trust and confidence between two or more conflicting parties to prevent inter-State and/or intra-State conflicts from emerging, or (re-) escalating and to pave the way for lasting conflict settlement.” See OSCE, OSCE Guide on Non-military Confidence-Building Measures (Vienna: 2012), 9, <https://www.osce.org/files/f/documents/6/0/91082.pdf>
- 18 Telephone interview with Cord Meier-Klodt, former German OSCE Special Representative for the Transdnestrian Settlement Process, August 2019.
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- 20 An initially promising approach that has been applied in the Transdnestrian settlement process was the idea that small steps are a necessary means of fostering an improved political climate and of leading to further steps, agreements, and ultimately co-operative relations. As small steps, CBMs are undertaken to change the climate in which more complex and fundamental issues can be negotiated. They should come both from the bottom up and from the top down, and it is commonly thought that the former can stimulate the latter. See Walter Kemp, Ian Hrovatin, and David Muckenhuber, *From Confidence Tricks to Confidence Building: Resolving Conflict in the OSCE Area* (Vienna: International Peace Institute, May 2011), [https://www.ipinst.org/wp-content/uploads/publications/ipi\\_e\\_pub\\_building\\_confidence.pdf](https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_building_confidence.pdf)
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- 22 Interview with senior Moldovan foreign ministry official, Chisinau, September 2019.
- 23 Interview with Moldovan presidential advisor, Chisinau, October 2019; interview with senior EU advisor, online, November 2022.
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- 25 Interview with Moldovan presidential advisor, Chisinau, October 2019.
- 26 Interview with former senior Transdnestrian official, Chisinau, November 2015; telephone interview with independent Transdnestrian expert, June 2016.
- 27 Since 2005, EUBAM has supported the Republic of Moldova and Ukraine in monitoring the joint border (<https://eubam.org/>).
- 28 Interview with former senior Transdnestrian official, Tiraspol, October 2019.
- 29 Interview with senior Moldovan foreign ministry official, Chisinau, September 2019.
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- 32 The Meseberg process and “Memorandum” initiated the establishment of an EU-Russian dialogue at the foreign minister level and of EU-Russian co-operation on crisis management.
- 33 In the framework of the 5+2 format, and as part of the Document on Principles and Procedures for the Conduct of Negotiations, it was agreed that issues related to the Transnistrian conflict would be grouped into three baskets: 1) socio-economic aspects, 2) humanitarian and human rights issues, and 3) political settlement of the conflict and security issues; see OSCE, “OSCE Chairmanship Welcomes Agreement on Principles and Procedures, Agenda in Transnistrian Settlement Talks,” April 18, 2012, <https://www.osce.org/cio/89752>
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- 50 Vypritskikh, cited above (Note 14).

# The Budgeting and Resourcing of the OSCE in Comparative Perspective

Ronny Patz\*

## Abstract

This paper examines the OSCE's resourcing from a comparative perspective. The OSCE has distinctive features, but its challenges are not unique among international organizations (IOs). Most notable is the hard consensus rule for all OSCE decision-making, which promotes OSCE Unified Budget incrementalism, undermines budgeting routinization, and challenges financial management. In addition, while the OSCE receives earmarked funding from donors, the share of extrabudgetary funding is smaller than in many other IOs. Instead, the OSCE relies heavily on seconded staff as in-kind contributions. Finally, the Special Monitoring Mission (SMM) in Ukraine deployed in 2014 demonstrated potentials and risks for future OSCE financing. This contribution concludes with three recommendations: the introduction of a consensus-oriented integrated budgeting process in the OSCE, the development of a centralized resource mobilization function in the OSCE Secretariat, and greater attention to the lessons of the SMM for the future of OSCE resourcing.

## Keywords

OSCE budget, extrabudgetary contributions, secondments, resourcing of international organizations

To cite this publication: Ronny Patz, "The Budgeting and Resourcing of the OSCE in Comparative Perspective," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-03>

## Introduction

For close followers of OSCE affairs, it is no secret that the Organization is in a budgetary crisis,<sup>1</sup> that budgetary consensus is generally hard to find and currently impossible,<sup>2</sup> that key activities in OSCE

headquarters<sup>3</sup> and in the field<sup>4</sup> depend on extrabudgetary contributions, and that the OSCE's work relies heavily on secondments from participating States. The OSCE also faces significant challenges<sup>5</sup> to filling its budgeted seconded positions,<sup>6</sup> which constitute in-kind support without which the Organization could not function at the current budget level.

Although such observations are commonly made, the last time a detailed examination of OSCE financing was

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published in an academic outlet was in 1999. Then, a former OSCE Chief of Budget shared his insights from the first decade of OSCE budgeting, which saw the rise of voluntary contributions.<sup>7</sup> Since then, there has been no comprehensive, comparative academic consideration of OSCE resourcing, despite a growing body of academic research on the resourcing of international organizations (IOs)<sup>8</sup> and budgeting in IOs.<sup>9</sup> A former OSCE Secretary General published recommendations for budget and finance reforms in the OSCE but without explicitly considering the Organization's challenges from a comparative perspective.<sup>10</sup> Some limited lessons for OSCE finances have recently been drawn by comparing its situation to the experiences of the League of Nations,<sup>11</sup> and OSCE resourcing has been discussed with regard to civilian mission setup in comparison with EU and UN capabilities.<sup>12</sup>

This contribution builds on the academic research agenda on IO finances to develop three key recommendations for the OSCE's future resourcing. While some insights are gleaned from other IOs' experiences, these recommendations also reflect the special features of OSCE resourcing. I conducted desk research—studying all OSCE budget documents, audited financial statements, and annual reports from 2002 to 2021—and visited OSCE headquarters and permanent representations in Vienna in March 2023 for background conversations with ten interviewees who are familiar with OSCE financing and resourcing. Most insights were extracted from official documents and public statements, and these conver-

sations provided important context for developing recommendations.<sup>13</sup>

In the following, I first review some of the recent academic literature on IO budgeting and resourcing. I then summarize key observations on the financial setup of the OSCE since the early 2000s, including during the time of the Special Monitoring Mission (SMM) in Ukraine from 2014. Combining both perspectives, I develop three recommendations and contextualize them in the reality faced by the OSCE in 2023, fully aware that these recommendations may not be implemented until a new consensus emerges for the future of the Organization. These recommendations include introducing consensus-based integrated budgeting, more centralized and politically aware resource mobilization, and learning from the positive and negative experiences encountered in SMM resourcing.

## **A review of recent research on IO resourcing**

### **The dynamics of IO budget decision-making: Incrementalism and challenged routines**

Academics have long known that regular budgeting in international organizations is largely incremental.<sup>14</sup> In other words, last year's assessed budget largely determines this year's budget. There is usually limited nominal growth, which results in core budgets that remain stable in real terms (zero real growth). There can be punctuated increases in limited

policy areas when there is a consensus for change in those limited areas.

One of the reasons for core budget incrementalism in IOs is voting rules—consensus, qualified majorities, or simple majorities—and established alliances that reduce the number of winning coalitions for change. For example, UN budget adoption formally requires a two-thirds majority, although informally consensus is sought.<sup>15</sup> The Group of 77 within the UN, with its 134 members, holds a majority with more than 50 percent of UN membership, against which no budget changes can be adopted. In EU multiannual budgeting, each member state has a veto.

Incrementalism in IO budgeting is also the result of limited ideological shifts among member states' governments when it comes to their international policy goals. Thus, geopolitical voting (or vetoing) coalitions are highly stable with regard to their substantive preferences.<sup>16</sup> In most IOs, there are stable blocking minorities or majorities against significant budget cuts, budget increases, and large shifts between main budget lines. Research on the United Nations Educational, Scientific and Cultural Organization (UNESCO) has also shown that even when an IO is faced with a budgetary crisis, budget reform and strategic budget cuts and shifts are not guaranteed as long as member states' and international bureaucrats' reform efforts are not synchronized.<sup>17</sup> Thus, secretariats of IOs also play a significant role in budgetary decisions.<sup>18</sup> This is true in the EU with its powerful core administration—the European Commission<sup>19</sup>—and across the UN

system, which comprises different types of administrative structures.<sup>20</sup>

Research also shows that IO budget procedures can become increasingly time-consuming and invite greater micro-management. This proceduralization undermines budget process routinization, which in turn undermines orderly mandate delivery.<sup>21</sup> In extreme cases, when veto actors block compromises or consensus, IOs have difficulty adopting their budgets in time for the start of new budget periods. In the 1980s, the EU went through a period in which budgets were adopted *after* the end of the year, requiring the introduction of multiannual budget cycles to break the impasse. The EU came close to the same situation after the European financial crisis of the early 2010s, underlining that multiannual budgeting is not a guaranteed means of easing annual budget compromises.<sup>22</sup>

To avoid such challenges, member states and international bureaucrats often revert to budget segmentation: IOs create multiannual framework budget procedures, such as in the EU, or parallel budget procedures, such as the peace-keeping budget process in the UN. Segmentation allows budget negotiations to be separated into different streams, either to distinguish long-term high-level politics from short-term financial details or to negotiate budgets issue by issue. Segmented budgeting allows more time for compromise on complex package deals and for disentangling negotiations on different issues. One way in which segmentation can be achieved is to shift contentious budget items into extrabudgetary domains. Where multilateral consensus

cannot be found within regular budget procedures, new projects can be financed from earmarked voluntary contributions rather than core budgets.<sup>23</sup>

In some IOs, such as the World Health Organization (WHO), this has resulted in the reduction of core budgets to less than 20 percent of overall expenditures, with the rest being earmarked voluntary finances. Such financing models ultimately require new types of budget procedures, such as the integrated budgeting that was introduced in WHO. UNESCO, in which earmarked financing also exceeded 50 percent, also introduced integrated budgeting based on WHO's experiences.<sup>24</sup> In integrated budgeting, member states agree, first, to the organization's overall resource needs and the priorities to which available resources are expected to be allocated. In a second step, member states decide how many of these overall needs they are willing to meet through assessed contributions. The remaining resources then need to be fundraised. Throughout the budget period, which areas of work remain underfunded is usually made transparent.<sup>25</sup>

### Earmarked voluntary funding of IOs: Multi-bi aid, minilateral funds, and administrative burdens

One of the most important trends in IO financing research has been increased attention to voluntary funding, in particular earmarked voluntary funding. Many IOs—from multilateral development banks, to UN system agencies, to the EU—are dependent to some degree

on this type of funding. The names of the concrete funding arrangements differ and include “trust funds,” “projects,” “special programs,” and the creation of “institutes” that carry an IO's name but are basically financed by a few donors. Even the EU, with its sizeable budget, has introduced its own set of trust funds, which combine EU budget funding with additional donor contributions.<sup>26</sup> All arrangements combine some form of policy and/or geographical specification of what donor funds can be used for. In the UN system, almost the entire increase in funding from just below \$40 billion in 2010 to over \$65 billion in 2021 has come from increases in earmarked voluntary funding, with close to zero nominal increases—and thus real decreases—in assessed budgets over the past decade.<sup>27</sup> What this means is that increases in assessed funding have become the exception across a wide range of IOs.

Initially, academic studies focused on the causes of this trend. Among the causes of increased earmarked voluntary contributions are limited consensus on increasing core budgets and a preference on the part of major donor states to maintain (more) control over funding allocation. As a consequence, many IOs and multilateral funds have implemented either weighted voting rules, so that those who provide more resources have more votes, or permissive earmarking rules, which guarantee maximum donor control over voluntary contributions.<sup>28</sup>

More recently, there has been greater focus on the effects of this trend on IOs such as the United Nations Development Programme (UNDP) and

the United Nations Children's Fund (UNICEF).<sup>29</sup> The observed consequences are unilateral donor structures that undermine multilateral decision-making in IOs,<sup>30</sup> increased transaction costs,<sup>31</sup> fewer projects,<sup>32</sup> and IOs that are merely multilateral channels of bilateral aid<sup>33</sup> or that become global implementing agencies for donors<sup>34</sup> rather than long-term providers of multilateral global public goods. IOs that are dependent on voluntary finances have more short-term staff<sup>35</sup> and face increasing competition for project-based funding from other IOs.<sup>36</sup> Only some IOs, such as the UN Refugee Agency (UNHCR), are able to maintain mandate-oriented financing despite dependence on earmarked funding. However, in times of crises that affect (mostly Western) donors, earmarked funding can decrease or shift quickly from a focus on long-term needs to supporting limited political priorities through earmarked funding in the same organization or in competing IOs.<sup>37</sup>

There is thus growing academic consensus that donors of earmarked funding—including the EU, which earmarks all the support it provides to other IOs<sup>38</sup>—may gain greater influence and control over IOs through these funding arrangements but that, in return, this results in less effective and less efficient IOs. With less predictable funding, higher transaction costs, distracted secretariats, and the declining importance of transparent multilateral budget procedures, the value of the bi- or unilateralization of IO support without multilateral steering has been questioned. In addition, IOs that depend on this type of funding tend

to evolve into bureaucratic fundraising machines with costly fundraising departments and special donor intelligence requirements across the organization.

### Fundraising by international bureaucracies: The emergence of new administrative functions

The trend toward dependence on earmarked voluntary funding has resulted in the emergence of fundraising as a core administrative function of IOs. This function can range from IO secretaries general intervening with national government leaders to ensure continued project funding to specialized fundraising departments reaching out to foreign ministries for specific needs. IO field offices, where they exist, are in regular contact with local embassies to fundraise for field-level work or to organize donor visits to highlight successful projects and programs.<sup>39</sup> This has resulted in a distinct type of IO fundraising bureaucracy with extensive global "donor intelligence."<sup>40</sup>

For such fundraising activities to be successful and to establish donor intelligence, IOs require significant resources, including dedicated resource mobilizing officers or units. In WHO, such a department was introduced in response to the organization's rising dependence on voluntary funding.<sup>41</sup> This function requires additional staff and travel costs for fundraising visits. It can require setting up offices in fundraising hubs, such as Brussels, where IOs can interact professionally with donors where actual decisions are made. This shifts already scarce core



resources from mandate delivery to fundraising. However, in IOs that rely heavily on earmarked voluntary funding, it has become necessary to professionalize fundraising due to competition for scarce international funding between agencies with overlapping mandates and functions.

To be effective, fundraising in IOs also requires additional intra-organizational co-ordination. IO executives have to prevent in-house competition for resources, for instance when two departments approach the same donor for funding or when headquarter fundraising teams have different priorities than field-level fundraisers. In heavily politicized organizations, such co-ordinated fundraising also includes efforts to prevent or adapt fundraising for politically sensitive projects. Resource mobilization in such politicized contexts requires IO secretariat officials with a good understanding of the political sensitivities of all donors and member states. Their fundraising efforts cannot just be oriented towards budget maximization but should produce results that also minimize diplomatic discontent among key members and donors.

### The state of OSCE budgeting and resourcing

The academic literature on IO resourcing, budgeting, and fundraising outlined above has resulted in various expectations and conclusions that find echoes in the OSCE. As in other IOs, OSCE budgeting is mostly incremental and faces challenged budgeting routines. These

challenges are addressed by creating segmented resource streams such as parallel budgets—for example the separate SMM budget—by preventing significant assessed budget increases through budgeting for seconded posts, or by supplementing core resources with (earmarked) voluntary contributions. However, while the OSCE relies to a significant degree on voluntary in-kind and earmarked resources, neither an explicit integrated budgeting function nor a centralized resource mobilization function has been established as of mid-2023.

### No consensus in OSCE budgeting: From lack of routines to challenged financial management

OSCE budgeting routines have been broken for quite some time.<sup>42</sup> Since 2002, the Unified Budget has been adopted just seven times before the start of the new budget year.<sup>43</sup> This reflects the extent to which any participating State that is unhappy with *any* aspect of the Organization's work can hold the entire OSCE hostage by blocking budgetary consensus. The 2021 Unified Budget was set at €138 million, but only in August of 2021, eight months into the budget year. No budget was adopted for 2022, and no consensus has been reached on the 2023 budget as of the summer of 2023.

The exact reasons for non-adoption are not usually made public, but the Russian war in Ukraine since 2014 and the Armenia and Azerbaijan conflict have been mentioned in conversations with those involved as key reasons for the lack of

consensus. There is also significant disagreement about the financing of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), notably between Russia and some Western countries, with the latter remaining unwilling to agree to any cuts to ODIHR, even if this would result in a new budget consensus that could save the rest of the Organization.

The OSCE's non-routinized budgeting situation has significant consequences for the financial management of the Organization.<sup>44</sup> In the absence of an adopted budget, the OSCE operates under provisional quarterly or monthly allotments based on the last adopted budget, until a new one is adopted. In mid-2023, OSCE monthly allotments were thus based on the 2021 budget agreed two years earlier, prior to the shift to a fundamentally new security situation in Europe. In the absence of a consensus on the budget, there is also little space for consensus on budget reallocation through amending budgets, for example to shift funds from areas with underspending to budget lines with more funding needs—such as the doubling of costs for the Hofburg,<sup>45</sup> where the OSCE Permanent Council meets. The result is an organization that even underspends some of its assessed revenue out of caution, so as not to incur spending in advance under the constraints of monthly allotments.

This overall situation means that the OSCE Secretariat must spend valuable time on resource-oriented staff and financial (micro)management rather than focusing on key matters of European security. It also increases the pressure on

the Organization to mobilize additional resources from donors to ensure its continued functioning or to shut down core operations.

#### OSCE staff resources: A hybrid between core and earmarked voluntary contributions

The consensus rule has led not only to challenges regarding budget adoption in the OSCE but to the micromanagement of core and seconded staff resources. Micromanagement is reflected in the fact that the Organization's post table is an integral part of the Unified Budget. The result is that every position, down to each security guard, is decided in an intergovernmental budget process that involves fifty-seven states, each with a veto, with no room for substantive staff management by the Secretariat leadership once the budget is decided. This bears some similarity to the intergovernmental micromanagement at work in the UN's regular budget process, in which negotiations also extend to lower-level staff positions.<sup>46</sup> In the OSCE, however, the staff table is so detailed and specific that staff resources are effectively earmarked—more than one might expect in some extrabudgetary projects.

What is remarkable is that this post table also includes seconded staff positions, that is, positions that participating States are expected to fill with their own nationals. Seconded staff are a form of in-kind voluntary contribution because if states do not provide them, the positions will remain unfilled. In 2021, 31 percent of

OSCE staff members were international seconded staff.<sup>47</sup> Because each seconded position is clearly linked to a headquarter unit or field mission in the Unified Budget, participating States effectively provide an earmarked in-kind resource when sending seconded personnel to the OSCE.

By including these positions in the post table, we see a distinct form of integrated budgeting in the OSCE: the intergovernmental membership defines the need for these positions by consensus but does not agree to provide their salaries from assessed contributions.<sup>48</sup> This de facto integrated budgeting, in which international seconded staff members do not receive their salary from the OSCE, allows the organization to reach a consensus in which some participating States are unwilling to provide more assessed contributions to finance core staff while others want the Organization to do more and are ready to provide the relevant staff resources voluntarily. For example, 16.9 percent of ODIHR posts were marked as seconded positions in the 2021 Unified Budget.

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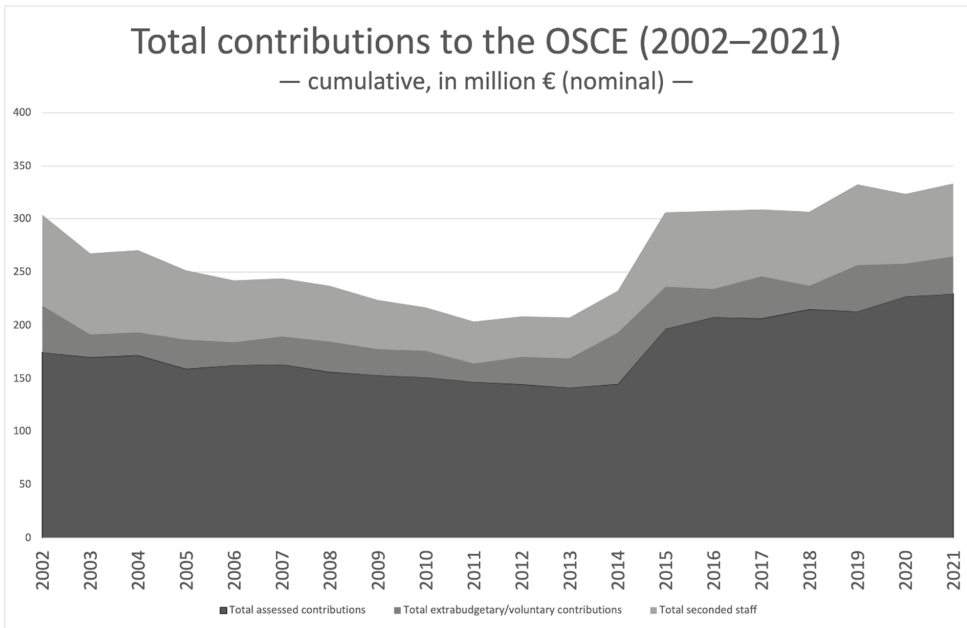


Figure 1. Cumulative OSCE revenue (source: audited financial statements 2002–2021, author’s calculations). Seconded staff values are calculated by the OSCE in terms of replacement value, i.e., what it would cost to replace secondments with the salaries of those in comparable international staff positions.

By integrating secondments into the post table, even states who are unwilling to provide resources must signal their agreement that the staff for such positions are expected to be recruited by the OSCE Secretariat, similar to how integrated budgeting and resource mobilization works for extrabudgetary resources in other IOs. Unlike in IOs with full-fledged integrated budgeting, however, there is no public reporting about which budgeted seconded positions were actually filled in a given year by which donor.<sup>49</sup> There does not seem to be a co-ordinated fundraising approach that includes seconded positions as a key resource for the Organization.

This is remarkable given the dimensions of secondments in the OSCE. The replacement value of seconded staff resources (i.e., the salary costs required if they were hired as international contracted staff) has been reflected informally and formally as in-kind revenue in the audited financial statements of the OSCE for the past two decades. By my calculations, their share of the overall revenue remained around 20 percent in the 2010s and early 2020s (see figure 1), reaching almost €70 million in 2021, when the SMM was still in place and when overall revenues were relatively high.<sup>50</sup>

### SMM budgeting: Increased assessed contributions and a separate budget procedure

Research suggests that conducting the SMM in Ukraine under the auspices of the OSCE was not without alternatives

but was ultimately a better option for Russia than an EU mission, which would have prevented Russia from playing a role.<sup>51</sup> The speedy and substantive setup of the mission has been recognized as a sign of the OSCE's ability to adapt quickly, even under rigid budgetary conditions.<sup>52</sup> The relevance of the SMM for understanding OSCE finances has also been discussed publicly.<sup>53</sup> Still, it is worth considering certain aspects from a comparative perspective.

First, when the consensus on the establishment of the mission emerged, the OSCE was able to quickly mobilize significant extrabudgetary resources and to transfer personnel to establish the mission in the first year. This underlines the extent to which policy consensus and voluntary financing are closely linked in the OSCE. Second, similar to peacekeeping budgeting in the UN, a separate budget procedure for the SMM then emerged, with a different budget period (April to March) compared to the Unified Budget (January to December). This segmented budget process allowed the resourcing of the SMM, which was backed by a consensus mandate, to be separated from the (permanent) consensus-finding process for the Unified Budget.

Participating States even agreed to finance the SMM through a significant increase in assessed contributions to the OSCE. This increase was outside the Unified Budget but still from assessed resources (see the increase in assessed funding after 2014 in figure 1). In 2021, the total assessed contributions received for the SMM reached €91.366 million,<sup>54</sup> while

the (assessed) Unified Budget for that year was agreed at €138.204 million.

As a result, after more than a decade of financial decline, OSCE finances increased massively from 2014 to 2015. The initial increase in voluntary financing when the mission was set up in 2014 was largely replaced with assessed financing and with new secondments from 2015 onwards (see figure 1). This showed that a new consensus could drive both assessed budget increases and related secondments. However, the consensus on the SMM broke down in 2022 after Russia's full-scale invasion of Ukraine, as did any previous consensus on other budgetary matters in the OSCE. As a consequence, the Secretariat was faced with significant financial challenges, as no closing-down budget for the SMM could be adopted. At the time of writing, it is unclear to what degree this affected payments to suppliers and to outgoing mission staff or how many assets were lost.<sup>55</sup>

What this SMM showed is that a new consensus in the OSCE can result in substantively increased assessed funding and increased staff resources through secondments and the provision of voluntary resources (financial or in-kind) that support the consensus-based mandate. Segmentation can allow for the management of such increases. However, any resourcing in the OSCE is only as good as the consensus that underlies its mandates: when consensus cannot be reached, resourcing can quickly break down.

### OSCE resourcing beyond consensus: Extrabudgetary projects and decentralized fundraising

Until 2021, overall earmarked project funding in the OSCE remained relatively low compared to many other IOs, making up around 10 percent of overall revenues. An exception was the short-term increase to 20 percent in 2014, when the SMM was set up and before assessed resources were available. Although detailed reporting on which donors finance which projects is not publicly available, annual reports suggest that average project size has been relatively low for most of the past twenty years. This suggests relatively high administrative costs for fundraising and co-ordination and relatively low financial gains for the Organization.

On the face of things, the introduction of the Support Programme for Ukraine (SPU)<sup>56</sup> in 2022 may seem to be a departure from this trend. When the Unified Budget process broke down completely, the SMM was dismantled, and the consensus on the mandate of the Project Co-ordinator in Ukraine dissolved, some participating States formed a unilateral coalition to continue formerly core activities with extrabudgetary funding. While the Russian Federation disagreed with the setting up of the SPU, this decision revealed the extent to which earmarked voluntary funding and co-operation between donors and the OSCE Secretariat is currently the only way to keep certain parts of the Organization alive.<sup>57</sup>

Nevertheless, what seems like a novel arrangement (because a non-consensus mandate was de facto continued by a

minilateral donor coalition) masks the fact that the previous Project Co-ordinator in Ukraine was already dependent, at 45 percent, on extrabudgetary resources.<sup>58</sup> In other words, while there was formal consensus on maintaining the Project Co-ordinator until February 2022, there was no consensus on providing it sufficient Unified Budget resources. More importantly, the SPU represents an attempt by Western states to circumvent the OSCE's hard consensus rule with a practice in which OSCE activities supported by extrabudgetary funding are decoupled from consensus mandates. The question is whether the increased out-of-mandate resourcing of the OSCE's work through earmarked funding will further undermine consensus or trigger negotiations for new consensus.

From a comparative perspective, it is interesting that the SPU is organized as a "repository program," an OSCE model that is similar to a multi-donor trust fund out of which various individual projects can be financed. Such a model increases donor-Secretariat co-ordination and reduces transaction costs. It has already been used, for example, in the OSCE's small arms program.<sup>59</sup> These examples show that co-ordinated and centralized fundraising is possible in the OSCE above the project level. This is useful because the OSCE otherwise lacks a clear-cut centralized resource mobilization function.

The Programming and Evaluation Support Unit plays a central role in monitoring and assessing proposals for extrabudgetary projects in co-ordination with multiple units within the OSCE Sec-

retariat.<sup>60</sup> The Budget and Finance Services section of the Secretariat also has specialists to manage extrabudgetary contributions. However, this co-ordination is supported neither by a centralized fundraising office—there is just one seconded position in the Secretary General's office—nor by full-scale integrated budgeting. As a result, most project-level fundraising seems to be accomplished through direct contact between OSCE headquarter units or field operation staff and participating State delegations in Vienna or in the field, without central co-ordination.

This situation risks resulting in struggles for limited funds, competition between units, the alienation of donors and key participating States, and an extensive administrative workload for ultimately very low funds. In an organization that could see its Unified Budget and various mandates blocked for an extended period, improving resource mobilization will be crucial.

### Three recommendations for the future of OSCE resourcing

*Consider a shift to an OSCE-specific, full-scale integrated budgeting process.* As argued above, the OSCE is already practicing a form of integrated budgeting by including seconded staff posts in the Unified Budget that effectively rely on large-scale, in-kind contributions from participating States. By shifting to an OSCE-specific comprehensive integrated budgeting process, all resources provided to the OSCE could become part

of an overarching resourcing consensus in which assessed contributions, in-kind staff support, and extrabudgetary financial contributions are provided by states and fundraised by the Secretariat, in line with overall consensus-based resource needs. This could allow discussions on resource needs for agreed mandates to be detangled from the question of how these resources are provided.

A country that would otherwise block consensus on the Unified Budget over the size of its assessed contributions might still agree to an increased integrated Unified Budget as long as that increase comes from secondments or voluntary support. Similarly, a country that would otherwise prefer to limit ODIHR operations might agree to an overall integrated budget as long as ODIHR's resources are increased through in-kind or voluntary resources only—voluntary financing that participating States who strongly support ODIHR would be willing to provide. The key is that such voluntary financing would still be backed by consensus on ODIHR's overall resource needs.

Integrated budgeting would thus aim to reach a needs-related consensus and then try to achieve a maximum of assessed contributions to finance those needs by the end of the budget year. This would allow the Secretariat to manage available resources in an orderly fashion and to fundraise for missing resources—including by recruiting seconded personnel and by finding mandate- and needs-supporting voluntary resources—under the umbrella of a consensus budget. This would of course require a minimum interest in a functioning OSCE and at

least tacit agreement that certain mandates will only survive thanks to voluntary support from a limited number of donors (as has been the case in many parts of the UN system for decades). The 2023–2024 political climate may not allow for such a move, but in the future it could significantly improve consensus-building and resource mobilization in the OSCE.

*Set up a more centralized resource mobilization function.* The OSCE remains a consensus-based organization in which fundraising cannot be completely disengaged from established consensus mandates. With integrated budgeting, participating States could offer the Secretariat clear political guidance on how to fundraise strategically. However, even in the absence of such integrated budgeting, a more centralized resource mobilization function in the OSCE Secretariat could combine donor intelligence with political sensitivity for consensus-based mandates. The central unit(s) in the Secretariat would co-ordinate and prioritize fundraising for financial contributions *and* for secondments to ensure that agreed mandates were fully resourced before trying to finance activities and (repository) programs, such as the SPU, that have large-scale support among participating States and donors but are not currently backed by consensus.

Organizationally, a more centralized resource mobilization process is possible, even in the absence of consensus regarding a new department. The centralized resource mobilization unit would combine some aspects of programming co-ordination in the Programming and Evaluation Support Unit with the financial work of

the Treasury and Extrabudgetary Contributions Unit and the secondment recruitment work of the Department of Human Resources, all linked by a Strategic Planning and Resource Mobilization Co-ordinator (all of these units and positions are in the 2021 Unified Budget post table).

If the resulting resource mobilization unit (or centralized administrative network) were to have the trust of (and a mandate from) the Secretary General and their deputy, the heads of institutions, and the heads of mission, this would also be a trusted central point of contact for donors. This could prevent uncoordinated and potentially relationship-damaging micro-fundraising by individual units and field missions. It would also ensure that politically sensitive fundraising was done with an awareness of the entire Organization's needs. The existing repository program model already shows that co-ordination above the project level is possible, and it could be used in a scaled-up version for more centralized fundraising. This includes treating recruitment for secondments as part of central fundraising so that participating States consider these staff positions more strategically as OSCE resourcing needs. This would reduce transaction costs for both donors and the Secretariat, increase strategic planning, ensure that secondments were filled with qualified personnel, and, in combination with integrated budgeting, allow for timely budget adoption followed by a swift and consensus-based mobilization of missing resources.

*Learn from the positive and negative financial experiences of the SMM to Ukraine. Even in a politically divided situa-*

tion with two participating States at war, not only was the OSCE able to reach consensus on setting up the mission in 2014, but it also had the political space to substantively increase the overall assessed resources of the OSCE. What this means is that, should the OSCE survive as an IO that includes the Russian Federation and Ukraine, a potential future OSCE peacekeeping or monitoring mission could be financially viable even if there were no strong consensus on other OSCE mandates or institutions. For the SMM, undertaking budget negotiations in a segmented budgeting process seemed to work routinely even though the Unified Budget process had stalled, which suggests that turning to this practice in the future may be sensible.

However, the rapid shutdown of the SMM also showed how financially risky such a future mission will be if the possibility of a breakdown of consensus is not built into the financial setup from the beginning. While the SMM could rely on a large share of assessed contributions, there is one problem with this type of funding: In national budgets, assessed contributions often come from budget lines or government agencies rather than voluntary contributions. When assessed contributions are reduced for states, the freed-up money is not directly available as a potential voluntary contribution in a national budget for the same IO. For a future OSCE mission with a short-term mandate, substantively increased assessed contributions must be complemented by official contingency funding schemes that, from the outset,



allow for the orderly winding down of the mission if consensus breaks down.

Overall, the SMM showed that when there is consensus on a mandate in the OSCE, increasing mandate-related voluntary contributions, providing seconded personnel, and increasing financing from assessed contributions are not a problem. When consensus breaks down, however, all three resource streams can break down, too. This is relevant to the other two recommendations as the functions of integrated budgeting and centralized resource mobilization are meant to ensure that comprehensive consensus across all OSCE mandates is maintained—or re-established—through better intergovernmental and administrative processes, with the aim of securing sufficient and well-allocated resources to achieve peace, security, and co-operation in Europe.

### Acknowledgements

This research has been possible thanks to the OSCE Network Research Fellowship I received in 2023. I thank Nicole Butters for her research assistance, Cornelius Friesendorf for sharing his extensive academic insights into the OSCE universe, and Argyro Kartsonaki for her editorial support. I am grateful to all my interlocutors in Vienna for their openness and was inspired by input from my colleagues at the 2023 ECPR Joint Sessions Workshop “Resourcing International Organizations.” Finally, I am grateful for the critical remarks on and suggested improvements to an earlier version of the text by the anonymous reviewers.

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# The Limits and Potential of Consensus in Times of Crisis

Rick Fawn\*

## Abstract

Rather than spelling the end of the OSCE, as many have suggested, the serious test posed by Russia's 2022 full-scale invasion of Ukraine has presented the OSCE with an opportunity both to reaffirm and to reimagine itself. In the process, the OSCE has shown that its greatest asset remains its foremost liability: the principle of consensus, by which all key decisions are unanimously agreed. This paper affirms the OSCE's unique and essential role and addresses both the limits imposed by consensus and the inventiveness that remains possible with respect to it. It then weighs the short- and long-term costs of adaptation with and around consensus and offers recommendations regarding new roles for the OSCE as it faces what may be its greatest challenge.

## Keywords

OSCE consensus, institutional adaptation, Russian invasion, Ukraine

To cite this publication: Rick Fawn, "The Limits and Potential of Consensus in Times of Crisis," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-04>

## Introduction

Rather than being defeated, the OSCE has adapted to the challenges presented by Russia's invasion of Ukraine. It can still do more, however, and continues to provide unique benefits. This is additionally remarkable given that it is an international organization with fifty-seven participating States who decide unanimously on all issues, great and small. In February and March 2022, in the face of Rus-

sia's full-blown invasion of Ukraine, the Organization seemed doomed; life-long supporters wrote it off. Although many peoples and states would be worse off without the OSCE, it continues to face its greatest challenge—and this after years of already having been deemed to be in crisis.<sup>1</sup>

This paper addresses the OSCE's continued utility since the Russian full-scale invasion of Ukraine on February 24, 2022, and identifies the inventiveness that has since helped to keep the Organization alive. The paper then assesses how the Organization can and should proceed in the frustrating situation of possible

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vetoed by one or two participating States (not only the Russian Federation and Belarus) while trying to observe consensus. It is often noted that “small” participating States venerate consensus because of the institutional ownership it affords. The case made here is twofold and asks us to take two very different perspectives. The first considers the ways in which the OSCE can continue to provide essential activities while respecting consensus. The second asks us to consider circumstances in which consensus might be abrogated. The paper concludes by identifying areas for future action.

### Six cases for the continued utility of the OSCE

The OSCE’s continued existence should not be taken for granted. Even those who support the OSCE have warned that the Russian invasion “compromised its ability to take decisions” and that Russia has plenty of opportunities to take the decision-making process hostage.<sup>2</sup> This section makes the case for the Organization against continuing doubts about its utility, which were many in 2022. Even though some worries have abated, arguments in support of the Organization deserve a hearing. This is not said from a position of naive nostalgia but as a response to unnecessary defeatism, against which supportive states and policymakers inside and outside the Organization should continue to fight.

First, the OSCE often works subtly, cumulatively, and over the long term. The human rights dimension of the precursor

to the OSCE, the Conference on Security and Co-operation in Europe (CSCE), did not see immediate success; indeed, human rights initiatives such as Charter 77 and Solidarity in communist Czechoslovakia and Poland suffered more repression in the years immediately following the 1975 signing of the Helsinki Final Act. Yet these beneficiaries, dissidents in Eastern Europe, were adamant that the CSCE mattered fundamentally. Indeed, they became leading advocates of an enhanced CSCE that would become the OSCE of today.

Second, the OSCE continues to have value as a forum. Where and how else can engagement be achieved, beyond irregular bilateral and/or ad hoc limited multilateral engagement? The OSCE continues to serve as a central, unique medium in which all parties are present,<sup>3</sup> where meaningful negotiations can be immediately solidified, and where conflict parties and the vast core of concerned or affected states are involved.

Third, if left to wither, the OSCE (or any remotely comparable organization) would be almost impossible to resuscitate. Negotiations for the OSCE’s precursor Conference format required years, its institutionalization decades. Veteran US diplomat William Hill observes that, well before 2022, US officials remarked on their return from OSCE headquarters in Vienna that Moscow would be unlikely to sign a renegotiated Helsinki Final Act.<sup>4</sup> After the Russian invasion, neither the Act nor the Paris Charter of 1990 could be expected to be signed.<sup>5</sup>

A fourth argument for the OSCE is its unique membership. It is true that the

OSCE's reach from "Vancouver to Vladivostok" had been put at risk even before Russia's full-blown invasion. While political synergies between the EU and NATO had been growing since their 2016 Joint Declaration of strategic co-operation prior to February 2022 and have intensified ever since,<sup>6</sup> these institutions continue to have dissimilar memberships. Even before 2022, French President Emmanuel Macron spoke of the need for a new European security architecture as part of a rapprochement with Russia.<sup>7</sup> Since then, European efforts have also included the formation of the European Political Community (EPC). Convened first in October 2022 and extending to two more summits in 2023, this new initiative used a self-defined "Europe" for a forum that "brought together leaders from across the continent" and has plans for further meetings.<sup>8</sup> This stated ambition belies the fact that not all OSCE states were included.

A fifth feature concerns the international institutional division of labor among international organizations. On the one hand, values-based international organizations play an essential role in holding perpetrator states publicly accountable; on the other, they have the power to punish unacceptable behavior through expulsion. Neither option is sufficient in the face of vast and sustained human rights violations. A combination of both, however, allows for accountability and the expression of revulsion through expulsion. In terms of the latter, Russia has been expelled from bodies such as the Council of Europe and the Council of the Baltic Sea States, and it is no lon-

ger a party to the European Convention on Human Rights. The OSCE plays the former role as an essential forum for debunking and recording disingenuous claims.

Finally, the OSCE's operational costs are relatively low compared to the irreplaceable benefits it provides. The Organization's annual budget of approximately €140 million amounts to the cost of a dozen Leopard tanks. At \$5 million one HIMARS system equates to many times the yearly cost of a Central Asia mission. Funding the OSCE is proverbial pennies compared to the material (let alone human) costs of the onslaught against Ukraine. Even if the OSCE feels intangible, a modest financial commitment will ensure the continued existence of a unique entity.

Many participating States have collectively launched initiatives to keep the Organization functioning. The following section assesses current OSCE innovations and offers further recommendations, including for how to preserve consensus in principle while introducing new, essential functions in practice.

### OSCE functionality in wartime

The OSCE has been able to respond, and innovate, even while remaining hamstrung by its own laudable value of consensus. The Organization has also always lacked (and never intended to provide) the financial/market access incentivization offered by the EU and has never served as a major development agency. This makes participation retention poten-



tially more challenging for the OSCE, especially when values seem less important, if not disrespected. Consensus also generally means that the Organization relinquishes key means of coercion and punishment, even if a core argument for retaining consensus has been that “everything adopted by consensus [is] equally binding for all without exception.”<sup>9</sup> It is even more remarkable that the Organization and its participating States have found ways to keep the system operating in the face of not only profound disagreement but also concerted efforts by its own members to undermine it.

Examples of working amid the limitations of consensus include the convening of an alternative version of what would have been the annual Human Dimension meeting in Warsaw in 2022, a regular activity that was blocked by Russia in 2021; the Support Programme for Ukraine, which operated at the physical premises of the former OSCE Project Co-ordinator and which was closed in 2022 due to Russia’s refusal to permit its renewal; and the establishment of Groups of Friends to support OSCE activities and institutions, which was otherwise impaired by an abuse of consensus when it came to issues such as the safety of journalists and the territorial integrity of Georgia.<sup>10</sup>

The Vienna and Moscow Mechanisms demonstrated the OSCE’s ability to adapt by permitting the investigation of a participating State’s internal conduct if one state with the backing of at least nine others actively supported the measure.<sup>11</sup> This measure has rightly been used by forty-five states to investigate allegations of abductions of Ukrainian children by

the Russian state. Other activities have been conducted without Russian consent. It is time to expand this practice. This can and should be done alongside a review and expansion of the OSCE’s unique offerings to participating States in order to incentivize continued participation. Even in countries where the OSCE’s human dimension is seen as threatening, the Organization has found means of meeting national needs, including in vital areas of national security such as border security and de-mining. Despite the many difficulties, no Central Asian state has refused engagement, and leaders continue to meet publicly with senior OSCE officials.

A considerable incentive for continued participation in the OSCE also comes from the signaled expectation that the OSCE will be a key forum for future pan-European, including Central Asian, security rules. Clear statements to that effect and the reiteration of an invitation to all states to contribute are the way forward.

The Russian crisis is an added call for the OSCE system and its supporters to strategize. As OSCE practitioner-author Walter Kemp observes, “the OSCE has consistently failed to adopt a longer-term strategy” and may even have “an aversion to thinking strategically,” unlike other international organizations.<sup>12</sup> The use of, by whatever name, a strategic policy planning unit in the OSCE Secretariat is a good idea. In its absence, or parallel to it, interested participating States should gather and devise strategies. Such activities can be criticized, but they should not and cannot be abandoned.

## Conclusion and recommendations

Having considered how the OSCE could continue to operate with limited consensus, this section recommends ways and areas in which the Organization can and should act.

*The Western Balkans.* A strong case can be made for the OSCE's contribution to reconciliation in the Balkans, a role in which it has stood out among other international actors.<sup>13</sup> A rapporteur for the OSCE Parliamentary Assembly asserted that, "mainly through its network of field operations," the OSCE "continues to ensure unmatched international presence in the region, including at the grassroots level."<sup>14</sup> Although the EU remains highly influential in this region due to the funding, market access, and education it offers, actual accession for all countries remains years away, and instability is rising. Region-wide measures against organized crime and corruption also remain essential, and the OSCE brings experience that aligns closely with EU initiatives.<sup>15</sup>

*Central Asia.* Bar the two parties to the war themselves, Central Asia faces perhaps the most significant consequences of Moscow's onslaught against Ukraine. Russia's demonstrated weakness and likely physical exhaustion have presented Central Asia with its greatest chance of securing geopolitical freedom of movement since 1991. However, it must also contend with the risk of erratic Russian behavior, regardless of the outcome in Ukraine.

It is true that the mandates of the OSCE field operations and presences have been slimmed down to strip out

human dimension activities and to that end have largely been reclassified to mere project management portfolios. With that said, such operations potentially provide essential help to local activists, who would be less resourced and even more beleaguered without them.<sup>16</sup> Even those who remain skeptical of the OSCE's ability to operate effectively in Central Asia recognize that Central Asian governments still value security co-operation and environmental assistance. To be sure, some Western civil society activists who are engaged with counterparts in Central Asia find that support for the OSCE is diminishing; nevertheless, the consensus is that every effort can and should be made to retain OSCE presences and engagement with Central Asian states and societies.

*The South Caucasus.* All three OSCE field operations in the South Caucasus—in Georgia, Azerbaijan, and Armenia—were closed (in 2008, 2015, and 2017), albeit for different reasons. Additionally, Azerbaijani frustration (and even animosity) towards the OSCE Minsk Group and its inability to bring a solution to the conflict in Nagorno-Karabakh may have contributed to the decision to use force.

Circumstances in the South Caucasus have changed since the closures of field operations. Since the 2020 war over Karabakh and surrounding Azerbaijani territories, Armenia has become more isolated and vulnerable than it has been for thirty years, bar—and also because of—its questionable relations with Iran. The OSCE Office in Yerevan was closed (not by Armenian objections), and the subsequent Armenia Co-operation Programme

continues to operate across the OSCE's three dimensions.<sup>17</sup> An interpretative statement issued by Armenia upon the acceptance of the Unified Budget in 2021 spoke to its desire to retain conflict-related OSCE mechanisms.<sup>18</sup>

An Office would be logical, as Armenia could and should be helped and encouraged to expand relations with the OSCE. For its part, Azerbaijan has affirmed "the need for OSCE support" in eliminating landmines.<sup>19</sup> Georgia, which embraced UN and OSCE presences and lost them after the war with Russia in 2008, would likely welcome them again. Tbilisi had the added imperative of finding alternatives to the 3+3 format, which combined the three South Caucasus states, Iran, Russia, and Turkey. Tbilisi dislikes the lack of Western participation in the format, which would otherwise give it leverage at the negotiating table with Moscow, in addition to fears that Russia will insist on including Abkhazia and South Ossetia as participating sides.<sup>20</sup> Field missions require consensus for their establishment and renewal. In the current circumstances, however, a lack of consensus should not be a barrier to deploying them, if there is willingness on the part of the host country and a majority of participating States.

The Group of Friends of Georgia has called on "OSCE Participating States to decide on the reopening of the OSCE cross-dimensional mission in Georgia."<sup>21</sup> There are possible alternatives, such as a de facto field mission on a roving basis.<sup>22</sup> These scenarios speak to the additional point that the OSCE should prepare

to resume its capacities for post-conflict management.

*Higher education, especially when embedded in OSCE values, empowers future generations.* The OSCE Academy in Bishkek continues to educate dozens of master's students from each of the Central Asian states (and Afghanistan).<sup>23</sup> The OSCE Border Management Staff College in Tajikistan provides niche training, which Tajik officials continue to support. These initiatives can function and be funded even while the Organization remains deadlocked. Specifically, the Organization could consider similar initiatives in the Black Sea area, such as an OSCE Academy for countries of the region, with the eventual prospect of including Russian students.

*Meeting certain Russian interests.* Russia's continued participation in the OSCE meets some Russian interests, as well as the OSCE's interests. According to Putin's doctrine, Russia has an "absolute right to a seat at the table on all major international decisions."<sup>24</sup> William Hill has similarly chronicled Russian perceptions of exclusion from the Euro-Atlantic system.<sup>25</sup> Based on Russia's geographic size, demography, and nuclear and other arsenals, any future Russian government will want a forum for security. Justified or not, Putin's impression in 2007 was that the OSCE's agenda had been hijacked, shifting from security considerations to human rights.<sup>26</sup> Russian efforts to establish a new approach to European security in the years before the Ukraine invasion were proposed separately from the OSCE, for example in Russian President Dmitry Medvedev's 2009 European

Security Treaty.<sup>27</sup> Nevertheless, the Organization or like-minded states could signal that future European security discussions will take place not in an exclusivist great power condominium (even if such discussions initially occur) but multilaterally.

An OSCE that can once again, and uniquely, bundle together mutual interests across security fields will likely be attractive even to those who reject aspects of the Organization's human dimension. The OSCE offers a seat at the table, one that Moscow, even after February 24, 2022, still uses to some extent. In an October 2022 speech at the UN in which he unsurprisingly accused NATO of "provocations," Russia's representative reiterated his country's willingness "to maintain a pragmatic approach to the participation in the work within the OSCE Structured Dialogue."<sup>28</sup>

*Strengthen the autonomous institutions.* Among the issues that some states have raised regarding the OSCE system is the seeming independence of ODIHR, the Special Representative on Freedom of the Media, and the OSCE High Commissioner on National Minorities.<sup>29</sup> These are testing grounds for appointment by votes short of consensus. It is essential to keep them as such, and some participating States have openly asserted this. More should do so. The UK Permanent Delegation, for example, has stated outright that it "support[s] the OSCE's autonomous institutions."<sup>30</sup> This was echoed by the OSCE Parliamentary Assembly in Birmingham in 2022, in a resolution that welcomed "with appreciation the role and activity of the OSCE auton-

omous Institutions and structures."<sup>31</sup> So vital are these institutions that funding should be expanded as necessary beyond the OSCE's Unified Budget.

Appointments to these positions, and indeed to the position of OSCE Secretary General, risk continued contestation. In the extraordinary circumstances of war in the OSCE space, however, such appointments should be made by a majority vote, if need be. Participating States can recognize office holders, much as alternative governments have been recognized in other times of crisis. Each of these offices is vital not only in itself but for its expansive reach across the OSCE space, and given the fierce resistance and resentment that ODIHR has garnered from post-Soviet states, its election observation activities merit separate consideration—and commendation.

*The importance of ODIHR election observation.* The effectiveness of ODIHR's election observation missions has provoked the animus of the Russian Federation and several other post-Soviet states. They have been a significant contributor to Moscow's intensifying sense of Western double standards, earning particular attention in Putin's 2007 Munich Security Conference speech identifying Russian grievances, including the claim that the OSCE (and presumably ODIHR specifically, although it was not explicitly mentioned) was "interfering" in and "imposing" on the domestic affairs of states.<sup>32</sup> These rebukes only speak to ODIHR's importance and effectiveness.<sup>33</sup>

Despite hostility to ODIHR, and even in the face of the invasion of Ukraine, Russian participation in ODIHR

international election observation missions has continued. Engagement with ODIHR by other participating States is also an indication of where post-Soviet states stand on their internal and foreign policy priorities. Not only have Ukraine, Georgia, and Moldova snubbed Moscow-led alternative election observation missions, but they have arguably *over-invited* ODIHR to observe elections, including local ones.<sup>34</sup> ODIHR matters to individuals on the ground and to participating States across much of the OSCE area. Even with the Russian aggression against Ukraine, both Moscow and all other post-Soviet governments continue to engage with ODIHR.

*Further open co-ordination among like-minded states.* Measures that circumvent consensus are exceptional and could impact certain states. A statement by a representative of the Parliamentary Assembly of the Collective Security Treaty Organization warned in February 2023 of “Westernist” plans for the “destruction of the consensus principle,” which would also “destroy the platform for dialogue in the OSCE.”<sup>35</sup> This concern also presumably signals a desire to retain the OSCE and space for discussion.

Advertised meetings of all interested participating States (ideally initiated by both the Secretary General and the Chairperson-in-Office) should be called, with a stated intention to review their decisions later. That is to say, any decisions made without consensus should be done openly, and the rationale for taking such actions outside of consensus should be made clear. Groups of Friends have been created for specific purposes. More such

groups—or a core Group of Friends—could follow. They should explicitly affirm, so as to dispel conspiracy theories, that they are not exclusive and remain open to others. Participation or parallel discussion groups could also be opened to non-diplomats, such as former practitioners and experts. Given the risk of over-participation, and then stalemate, convenors should limit participation at the outset, perhaps to three representatives per participating State. To ensure transparency and maximize opportunities for input, announcements about all meetings, including their findings and suggestions, should be routinely circulated to all participating States—regardless of their current engagement with the Organization. Plans for support for OSCE autonomous institutions, field offices, and other activities should continue, even in the face of a potential veto, as should open commitments to financial and staffing resourcing, including the appointment of deputy heads of missions as acting heads.

*Actively canvassing participating States to identify unmet (or insufficiently met) needs and specifics.* Many post-Soviet states have benefited from, and are now expressing interest in, specific security provisions. This interest can be met by the OSCE with extrabudgetary contributions. The aim should be to retain participating States and to convey that continued engagement, even of states with questionable records in the past, helps the politically vulnerable in those societies. The OSCE may risk further obfuscation or even the withdrawal of a state. If this occurs, resources should be redirected.

Activities for which there is a lack of consensus should be continued through innovative initiatives by Chairpersonships, including events and activities in the human dimension. The OSCE remains a forum in which to deal with current crises and with potential final outcomes. In several cases, the Organization can continue to function through determination and extrabudgetary contributions.

In other areas, and for other purposes, the Organization can and should adopt temporary measures to maintain its functionality. Consensus—or even consensus minus one—should not inhibit what is right and necessary, and atypical courses of action taken by a large majority of states can be justified as exceptional measures, much as when states have recognized alternative governments in the past. The OSCE serves a unique and indispensable purpose on the world stage, and it should continue to do so.<sup>36</sup>

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# Back-Channel Negotiations: Initial Steps toward Ending the Russian War in Ukraine

P. Terrence Hopmann\*

## Abstract

This paper outlines a proposal for opening back-channel pre-negotiations between Russian and Ukrainian officials on the margins of the OSCE in Vienna. It contends that preliminary, informal, and discreet conversations need to begin even before the violence ceases in order to lay the foundations for subsequent formal negotiations to end the Russian war in Ukraine and to negotiate a peace agreement that will prevent violent conflict from re-emerging in the future. Before the war ends and the conditions for a post-war settlement become clear, however, preliminary informal negotiations could discuss modalities for formal negotiations when conditions on the ground become ripe for a negotiated end to the war. At the outset, this would not entail any formal OSCE engagement but rather the provision of good offices by OSCE institutions or by participating States in Vienna. Any formal OSCE role would therefore depend largely on the content of an eventual agreement to end the violence, which could include a formal role for the OSCE in peacekeeping, monitoring, or other roles agreed to by the parties in conflict.

## Keywords

Back channels, pre-negotiations, Russia-Ukraine war, ripeness theory, good offices

To cite this publication: P. Terrence Hopmann, “Back-Channel Negotiations: Initial Steps toward Ending the Russian War in Ukraine,” in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-05>

## Introduction

As things stand in 2023, the outcome of Russia’s invasion of Ukraine remains uncertain; in spite of Ukrainian gains on the ground, a long and potentially stale-

mated war seems like a realistic possibility. However, all wars eventually end, and many end through negotiations. Although formal negotiations of a peace agreement are unlikely to begin until the conflicting parties clearly acknowledge that the war has become too costly for them and/or one or both parties recognize that they cannot win militarily, it may nonetheless be valuable to open informal, back-channel pre-negotiations even before this stage is reached. The

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primary purpose of back-channel encounters is not to resolve the issues in conflict but rather to lay the foundations for more formal, open negotiations when the situation is ripe. Substantive negotiations are only likely to occur once Russian leaders recognize that their original goal of conquering the entire territory of Ukraine or establishing a pro-Russia regime in Kyiv has failed and that they cannot claim sovereignty over large portions of Ukrainian territory. Similarly, Ukraine's efforts to regain control of lost territory have proven difficult, especially in Crimea. Therefore, there is little prospect of a purely military end to the war that would provide an absolute victory for either party.

Any effort to negotiate an end to the war is also likely to be stymied by stalemate at the domestic political level, where leaders of both states have staked their political survival on realizing their desired outcome. For the government in Kyiv, this likely means the full restoration of their sovereignty over the territory of the former UkSSR up to the borders that existed prior to 1991 within the former Soviet Union, including Crimea, which were recognized by the international community and by the Russian Federation in 1991. Yet for the government in Kyiv, which has the support of much of the international community, any ceasefire or agreement based on a military status quo that gave de facto control of portions of Ukrainian territory to the Russian invaders would be unacceptable. Indeed, for Ukraine and its international supporters, this would amount to accepting the outcome of a major vi-

olation of the core principles of the United Nations Charter and the Helsinki Final Act, especially the principles of the inviolability of frontiers, the territorial integrity of states, respect for the rights inherent in sovereignty, and refraining from the threat or use of force. Even if Ukrainian forces retake most territory in the east and south of their country, regaining control of Crimea by military force represents a significant obstacle to the restoration of all sovereign Ukrainian territory in the near term. However, since the Ukrainian population has paid a very high price in the war, anything short of total victory would create the impression that many of its sacrifices were in vain.

Russia's minimum political goal appears to be international acquiescence to its claim that five former oblasts of Ukraine are legally part of the Russian Federation, including Crimea, which was illegally annexed by Russia in 2014, as well as four regions of southeastern Ukraine that Russia claimed to have become subjects of the Russian Federation in 2022, namely Donetsk, Luhansk, Zaporizhzhia, and Kherson (despite the fact that Russian forces have been able to occupy only a portion of each of these four provinces). However, much of the international community does not support Russian territorial claims in Ukraine and continues to recognize Ukraine's post-Soviet borders. Furthermore, Russian President Putin and his military advisors may not survive opposition from internal hardliners if they agree to anything less than the consolidation of the five claimed oblasts under Russian control. Tatiana Stanovaya, writing in *Foreign Affairs*, emphasizes the

challenges to Russia's leadership presented by the war in Ukraine: "The clash of hawks, old and new, will shape Russia's response to its struggles in Ukraine and at home. The more challenges the regime faces, the more quickly it will evolve into something darker. The Russian public is growing more desperate, anti-Western, and anti-Ukrainian, and Russian elites are becoming increasingly anxious and fractious."<sup>1</sup>

Therefore, the shape of any formal negotiations will likely depend on the outcome of the military conflict, possibly after years of intense combat. Until the outlines of that military outcome become clearer in the minds of the leaders and populations of these two states, as well as their international supporters, it will be difficult to engage in substantive negotiations based on a military status quo, in spite of the high cost of the war for all parties.

However, negotiations are often preceded by an informal phase referred to as pre-negotiations, which are in fact negotiations *about* negotiations, that is, talks about the decision to eventually enter into formal negotiations. In a military stalemate that remains far from the outcome preferred by either party, as in the Russia-Ukraine war, opposing sides are usually reluctant to engage even in pre-negotiations, which could signal to domestic opponents of negotiation and to the international community that they are prepared to negotiate away their preferred outcome, especially after so many of their citizens and soldiers have died. For this reason, many pre-negotiations occur in secret through a process often described

as back-channel negotiations, away from public view.

I therefore propose that Russia and Ukraine should consider opening back-channel negotiations while the fighting continues. This process would not require a ceasefire, an insistence on which might reinforce the proposition that the current military status quo should serve as a basis for agreement, which would certainly be opposed by Ukraine and would likely be unacceptable to Russia as well. Although the parties have engaged in some informal negotiations on issues such as the exchanging of prisoners of war, my suggestion here is that informal pre-negotiations should open soon (if they have not begun already) through back-channel processes intended to establish a broad framework for more formal negotiations in the future, when the political-military conditions are ripe for opening negotiations on the fundamental issues underlying the conflict. Although these pre-negotiations would not necessarily directly address the core issues, they could generate momentum towards resolution and provide a foundation for subsequent negotiations to address such issues in the future. Of course, informal pre-negotiations do not come with a guarantee that they will lead subsequently to more substantive negotiations once both parties recognize the need to end the war. However, they would perhaps allow for a shorter and more efficient ceasefire negotiation process (ideally followed by a formal political agreement to end the war) than would be likely if there were little or no contact between the parties prior to the end of the fighting.

## Pre-negotiations and back-channel negotiations

Pre-negotiations generally constitute a process in which parties to a conflict informally explore the basis for opening negotiations regarding the issues in conflict. According to Harold Saunders, they involve defining the problem that needs to be negotiated, moving towards a commitment to opening substantive negotiations, and beginning to arrange for formal negotiations.<sup>2</sup> As William Zartman's "ripeness theory" suggests, their primary goal is to ripen the conflict situation so that it becomes amenable to negotiations, even if the eventual solution seems far off in the future. The conflict may be ripened because of changes in the domestic situation (such as a leadership change) or in the regional/global environment, or because of changing perceptions on the part of the conflicting parties of the costs and benefits of continuing the conflict.<sup>3</sup> Even a stalemate may lead one or both parties to perceive that the costs of continuing the conflict through violent means outweigh the costs of making concessions from their maximal positions. Thus, pre-negotiations may engage the parties in a joint diagnosis of the basis of the conflict and of the opportunities and threats it presents to their core values.

According to Zartman, three primary conditions facilitate a conflict becoming ripe for negotiation. The first condition is met when both parties recognize that they are trapped in a mutually hurting stalemate that has already cost them dearly or that constitutes a precipice they are likely to fall off together should one

side escalate (perhaps with tactical nuclear weapons) to try to break the stalemate. The parties must first accept that they cannot escalate their way out of the stalemate, and thus that they effectively cannot win in terms of achieving all of their goals without suffering costly consequences. Second, ripeness depends on the parties' having a sense of a way out, perhaps without having a clear picture of the specifics, in the sense of recognizing that a path to ending the violence can be found. Finally, the third condition for ripeness is met when the parties discover a "mutually enticing opportunity" to resolve the conflict.<sup>4</sup>

The pre-negotiation phase is an exploratory process in which the parties try to understand each other's needs, goals, and underlying motivations, thus enabling them to better understand each other's real bottom lines and essential objectives (as opposed to the demands made in rhetorical arguments intended mostly for domestic and international audiences). This should help them to learn from one another and possibly to identify bargaining space—the range within which mutually acceptable agreements might be found, on the basis of which a joint vision of a way out of the conflict can be forged. Finding overlapping bargaining space often involves trade-offs in which the parties identify which issues are most essential to each side; when different issues are prioritized by the parties, they may then seek to fashion an agreement that enables both to believe they can gain something of value from agreeing on those issues of primary concern for each, at least compared to the costs of continuing

the violent conflict.<sup>5</sup> This recognition of a way out may lead to tentative decisions about an agenda for formal negotiations, their location and timeline, the set of participants, the possible engagement of a third-party facilitator or mediator, and other related features of the planned negotiation process.

In conflicts such as the Russian war in Ukraine, however, the parties hold primary values that are directly opposed to one another, at times seeming to approach zero-sum bargaining. Since the parties' political goals do not coincide, the search for mutually advantageous trade-offs may be difficult. This in turn makes formal negotiations on the basic issues in conflict premature until the military situation is clarified, whether by the victory of one party or due to a mutually recognized stalemate on the ground, when the parties either become exhausted or one or both recognize that they cannot win unilaterally. However, the search for possible solutions that transcend the warring sides' differences will most likely emerge from a lengthy process of communication between the parties, even in the face of severe and seemingly intractable conflict. Back-channel pre-negotiations can thus serve as a vehicle for opening lines of communication and discussing differences outside the glare of both the domestic and the international spotlight. It is precisely under conditions of intense hostility between the parties that the use of back channels may be most valuable, since the parties are unlikely to be willing to meet openly for fear of conveying a message of weakness to domestic and international audi-

ences, perhaps creating a concern that they are prepared to concede too much to their "enemy."

This process is complicated not only by the parties' different political goals but also by emotional baggage resulting from the conflict itself, which makes mutual trust and forming a common perception of a way out difficult. This is further compounded by the external constraints placed on the negotiators by spoilers within their own governments, their domestic political and public audience, and the way in which their behavior is perceived in the global community at large, including by allies.<sup>6</sup> In order to minimize the impact of these external constraints, it is often necessary to keep pre-negotiations secret from both domestic and international audiences. For this reason, at least in their early stages, pre-negotiations frequently take place through back channels.

Anthony Wanis-St. John defines back-channel negotiations as "official negotiations among the parties to a dispute that supplement or replace open, existing front channel negotiations."<sup>7</sup> This process is thus distinguished from Track II negotiations, which often involve civil society and non-governmental organizations, in that the interlocutors are in some way directly accountable to and representative of the leadership of the conflicting parties. They may include a third party as a facilitator or mediator, but this is not a necessary requirement. They may be held in parallel with open negotiations, but more often they are conducted in a preliminary process intended to pave the way for later formal negotiations.

Most importantly, they must engage individuals who are close to the high-level authorities in their governments and who are authorized to explore options for beginning substantive negotiations without making any commitments about their outcome. Back-channel negotiations should generally be conducted in secret in order to provide the parties with an opportunity to explore multiple options without committing their governments to any agreement at an early stage or closing off options that might be imposed by domestic and international actors.

The central feature, however, is that these informal contacts must take place without political pressure in situations where the parties recognize privately that they may have to depart from publicly declared commitments and goals; in these conditions, open negotiations may be met with political backlash back home that prevents them from making progress. Without resolving the conflict, back-channel negotiations should allow the situation to ripen, in Zartman's terminology, by helping the parties to recognize that there may be a way out of the conflict or even identifying the kind of "mutually enticing opportunity" that could provide the foundation for open negotiations.<sup>8</sup> An important goal is frequently to create a format and an agenda for negotiations without being pressured by domestic and international opposition to engage with the perceived enemy. As Wanis-St. John observes, this does not necessarily require direct communication between the parties to the conflict but may instead involve "a third party mediator who acts as the secret conduit be-

tween noncommunicative or confrontational parties."<sup>9</sup>

In summary, the back-channel process offers a venue in which parties can explore possible negotiations in a preliminary way, without forcing them to commit to any specific terms of agreement that might initially be opposed by factions within their own governments or domestic political forces that favor pursuing total victory regardless of the costs. It may provide a venue for preliminary negotiations where leaders can meet without fear of losing face publicly by implicitly admitting that their proclaimed goals and rationale for the conflict cannot be realized. At the same time, it may allow tentative agreements to be struck in private, which could eventually provide a foundation for open negotiations without significant delay once the conflict becomes ripe for resolution.

### **A proposal for back-channel negotiations in the war in Ukraine on the margins of the OSCE**

The CSCE/OSCE has long been engaged in relations between Russia and Ukraine. For example, the Budapest Memorandum was signed at the CSCE Summit in Budapest in 1994, in which Ukraine agreed to return nuclear warheads and delivery vehicles to Russia and to sign the Nuclear Nonproliferation Treaty as a non-nuclear weapons state. In exchange, Russia agreed not to threaten or use military force or economic pressure against Ukraine (as well as Belarus and Kazakhstan, which also relinquished their nuclear weapons).

However, it conferred responsibility for enforcing the agreement on the UN Security Council, where Russia holds veto power.

Between 1992 and 1996, the OSCE's High Commissioner on National Minorities, Max van der Stoep of the Netherlands, mediated a series of agreements on the status of Crimea within Ukraine, granting a substantial degree of autonomy to the oblast, where a majority of the population identified as Russian. This process also created another layer of sub-autonomy for the Tatar minority living there.<sup>10</sup> These agreements collapsed with the Russian takeover of Crimea in 2014.

The OSCE also played a central role in the negotiation of the Minsk Protocols in 2014–2015, following the Russian occupation of Crimea and the outbreak of violent conflict in two Ukrainian oblasts in the southeast, namely Donetsk and Luhansk, whose *de facto* leaders sought to break away from Ukraine. The OSCE created and operated the Special Monitoring Mission (SMM) in the two regions and throughout Ukraine in an effort to monitor the ceasefire and other provisions of the Minsk II agreement between 2015 and the Russian invasion of Ukraine in February 2022, when it was forced to close.<sup>11</sup> However, its mandate did not permit it to enforce any of these agreements, even though they were extensively violated by all parties and eventually collapsed following the Russian overt invasion of internationally recognized Ukrainian territory.

The limitations on the OSCE's ability to enforce the implementation of the many agreements negotiated between

Russia and Ukraine under its auspices following the breakup of the Soviet Union have negatively impacted its reputation among many states in the region, even though the SMM performed remarkably well in carrying out its limited mandate. Nonetheless, the OSCE still may have a role to play in facilitating an end to the war, whether directly or indirectly, and the successful performance of that task could even help to revitalize the OSCE as a singularly important instrument of conflict management in Europe. Since any final agreement is likely to depend on the outcome of the war, however, it may be premature to negotiate the terms of an end to the conflict and of a postwar settlement before the military situation on the ground opens up space for resolution. Given that Russia failed to gain control of Kyiv in the early months of the war in order to install a pro-Russian government in Ukraine—or even to occupy more than a portion of the four oblasts other than Crimea that it claimed to be Russian territory—a settlement short of complete Russian control over these four regions will likely be perceived, especially in Russia, as a significant setback for President Putin's ambitions in Ukraine. Similarly, large segments of the Ukrainian population and their political leaders are likely to perceive any settlement (or even a ceasefire) that does not include the reclaiming of all of Ukraine's lost territory as falling short of their goal, a position that is also held by many of their international supporters, who have provided vast amounts of military and humanitarian aid.



Although both sides have suffered from the drawn-out and violent conflict, neither party is likely to begin negotiations on any final settlement based on an unstable military and political status quo. This does not mean, however, that they should avoid entering into pre-negotiations of some sort, using discreet back channels to prepare the ground for formal negotiations when the situation on the ground ripens. Such pre-negotiations could take place on the margins of the OSCE in Vienna (or of the UN offices in Geneva or Vienna).

Vienna seems to offer an attractive venue for back-channel pre-negotiations. As the home of the OSCE and of major United Nations institutions, it offers many opportunities for initiating back-channel contacts between Russia and Ukraine. Both countries have large delegations assigned to these institutions, headed by senior diplomats with the ability to communicate with the highest-level government authorities in their respective countries. Since their presence in Vienna is normal and routine, the public is unlikely to view contact between them as indicating anything beyond the performance of their normal diplomatic duties. Diplomats and other senior officials could meet, in the presence of a third party or alone, to exchange ideas about how to prepare for negotiations to bring the war to an end. In the early stages, it might be desirable for a third party to serve as a conduit for communications since tensions between the two parties remain so intense that direct face-to-face communication may be difficult and pressure from

their capitals may constrain their ability to meet, even informally.

The OSCE could offer its good offices to the parties to meet quietly at the Secretariat without necessarily sending a clear signal about the focus of the meetings. Alternatively, the delegations of one or more of the participating States, preferably neutral states such as Austria or Switzerland, could provide good offices for informal meetings between the representatives of the parties. Similarly, Turkey, a NATO member and OSCE participating State, has mediated between the parties, especially regarding the shipment of grain from Ukraine across the Black Sea, and could be an acceptable partner for facilitating further back-channel talks. Although less frequently employed, Vienna also offers numerous cafés and *Heurige* in the surrounding region, as well as remote locations in the nearby Alps, where informal conversations could take place. While there is always a risk that these private conversations could leak publicly, the Vienna setting offers a basis for plausible deniability regarding their real purpose. Although NGOs and civil society organizations located in Vienna could facilitate the initiation of back-channel negotiations, as Wanis-St. John has argued, the sensitivity and significance of the issues will require the direct participation of individuals who have access to senior officials in Moscow and Kyiv.

An additional benefit of the Vienna location is that the proximity of the OSCE institutions could provide a locus for more formal negotiations when and if the stage is reached to begin talking about substantive issues underlying the

conflict. The OSCE's considerable experience with the conflict in Ukraine means that deep knowledge about the issues already exists within its institutional structures, especially in the Conflict Prevention Centre. OSCE engagement, even on the margins of the negotiations, would increase the likelihood that any eventual agreement would conform to the principles of international law and the norms of the Helsinki Final Act and the Charter of Paris, as well as the UN Charter, all of which were violated by the Russian invasion of Ukraine. The OSCE could also offer its assistance in the implementation of whatever agreement might emerge after the war, especially because of its extensive experience in mediating the Minsk Protocols and monitoring their implementation. However, it is important to emphasize that any formal engagement by the OSCE would likely emerge only after the commencement of formal negotiations, or even after the conclusion of a peace agreement. Such a long and violent conflict is likely to require some form of international peacekeeping to prevent instability and frequent violations of a peace process, as occurred prior to the Russian invasion in 2022. Therefore, measures to implement and enforce an agreement could also be organized by the OSCE or the United Nations.

Vienna has long been the preferred location for informal discussions among diplomats and political leaders, including in the period from 1975 to 1990, when it served as the locus of East-West negotiations on confidence- and security-building and conventional arms control, which involved both formal negotia-

tions and informal, back-channel discussions among the parties. Even before the CSCE became a formal organization, the Vienna CSCE Review Conference from 1986 to 1989 provided an opportunity for numerous informal contacts across East-West lines that played a significant role in encouraging the liberalization of Eastern Europe and increased contacts across the Cold War divide in Europe, contributing to the eventual collapse of communism in Eastern Europe and the end of the Cold War. Many of the ideas advanced informally in Vienna were formalized in the Charter for a New Europe adopted at the CSCE's Paris Summit in 1990. Although the context of the war in Ukraine is different from the issues faced by the CSCE in the past, these experiences illustrate ways in which the diplomatic presence around the CSCE/OSCE has provided a context for negotiating larger issues that go beyond the specific mandate of the OSCE.<sup>12</sup>

The Russian-instigated war in Ukraine will eventually end, although how it ends will affect both the process and the content of formal negotiations, as well as the role that the OSCE and other institutions might play in the implementation of an eventual agreement. It may take months or even years before the military situation on the ground, as well as the political conditions in both Kyiv and Moscow, become ripe for even back-channel pre-negotiations. However, it is not too soon to begin laying the foundations for negotiations to end the war. Initiating back-channel pre-negotiations before the conditions are ripe may speed up the process of reaching agreement when the situation

becomes amenable to a negotiated peace agreement.

The consequences of this war in terms of loss of human life, the degradation of human rights, the destruction of economic infrastructure, and the denial of justice for crimes against humanity are simply too serious to delay this process any longer than necessary. Therefore, even before a structure or agenda for formal negotiations emerges, informal back-channel discussions could facilitate both the timing and the process of negotiating a peace agreement when the necessity of ending the war becomes clear to all. OSCE officials and delegations of several participating States could offer their good offices to the parties to begin informal discussions, but Russian and Ukrainian diplomats will ultimately have to set aside their intense hostility and meet privately to lay the foundations for negotiating an eventual end to their war and, thereafter, for a just peace agreement that seeks to prevent war from breaking out in the region again.

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# Supporting Recovery, Reintegration, and Accession: Opportunities and Challenges for the OSCE in Ukraine

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## Abstract

Ukraine's recovery will be long and costly and will require a concerted international effort. The recovery process, partially guided by Ukraine's EU accession agenda, will involve not only physically rebuilding the country but also reintegrating Ukrainian society. Based on its experience, especially in the Balkans since the 1990s, the OSCE has the potential to contribute significantly to Ukraine's recovery, helping the country's institutions to navigate the complexities of reintegration and EU accession.

## Keywords

Ukraine, recovery, reintegration, EU accession

To cite this publication: Tetyana Malyarenko and Stefan Wolff, "Supporting Recovery, Reintegration, and Accession: Opportunities and Challenges for the OSCE in Ukraine," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-06>

## Introduction

Since 2014, Russia has waged war against Ukraine. Until February 24, 2022, this took the form of a grey zone conflict in which the Kremlin used the full arsenal of hybrid and conventional warfare to further its objectives. Since then, what Moscow refers to as a "special military

operation" has been a full-scale conventional war. At the time of writing, eight years of hybrid and almost two years of conventional warfare have taken a huge toll. According to a March 2023 Rapid Damage and Needs Assessment carried out jointly by the World Bank, the Government of Ukraine, the European Union, and the United Nations, Ukraine's recovery needs were estimated to be about \$411 billion.<sup>1</sup>

Broad international efforts to support Ukraine's recovery have been underway since 2017. Events like the annual Ukraine Recovery Conference are both an important symbolic reaffirmation of Western support for Ukraine and a

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mechanism to co-ordinate concerted financial support to ensure that the country can build a sustainable economy and a stable democracy. Thus, the 2023 London conference functioned as a platform where representatives from fifty-nine countries could announce major initiatives and raise donor funding worth \$60 billion to support Ukraine's recovery.

The OSCE has been notably absent from these increasingly formalized and institutionalized efforts to support Ukraine's recovery. In light of the OSCE's consensus principle and the continuing participation of Russia and states that are allied with or dependent on it, this is hardly a surprise. The war in Ukraine has almost completely paralyzed the OSCE, and the Organization faces enormous challenges to its ability to contribute meaningfully to recovery efforts. However, this does not mean that the OSCE cannot play a role in supporting recovery now and in the future. Provided there is sufficient political will, there are a number of opportunities for the OSCE, based on its longstanding presence in the country, projects it has implemented there over the past decade and elsewhere (such as in the Western Balkans and the Baltic states since the 1990s), and certain niche areas of expertise in which it can add real value to broader international recovery efforts.

The main objective of this analysis is to identify these challenges and opportunities and to offer policy recommendations for the OSCE. Our focus is two specific dimensions of Ukraine's recovery: the reintegration of Ukrainian society and the country's path to EU accession. The

paper examines the role that the OSCE could play in this context. The analysis is mainly based on interviews with OSCE officials, staff in delegations from participating States, Ukrainian officials, and a number of experts in think tanks and universities, as well as relevant official policy documents, academic scholarship, and grey literature.

In the next section, we outline the different dimensions of postwar recovery and establish what is specific about the Ukrainian context, identifying the connections between (social) reintegration and EU accession and pointing to particular OSCE experiences in this regard. The following two sections elaborate on reintegration and accession opportunities and challenges for OSCE engagement, respectively. We summarize our findings in a concluding section before offering seven recommendations to policymakers in the OSCE and participating States.

## Postwar recovery

Postwar recovery is a challenging task. It requires physical reconstruction, the transformation of a war economy into a peace economy, and the psychological rehabilitation of the population. It involves a range of tasks related to the demobilization and reintegration of former combatants and the transition to a peacetime security sector. Questions of law and order and transitional justice, including the prosecution of past crimes and compensation for victims, need to be addressed alongside the challenges of returning and

reintegrating refugees and internationally displaced persons (IDPs).

The enormity of postwar recovery in Ukraine has been widely recognized in academic and policy debates.<sup>2</sup> What is often less appreciated is its multi-dimensionality, with some authors explicitly denying those societal challenges of postwar reconstruction that are best encapsulated in the notion of reintegration. For example, Shatz et al. note that “Ukraine [will not] be emerging from a civil war, which comes with the risk of residual dissatisfied elements resisting and forming an insurgency,” and that therefore “the postwar reconstruction challenges in Ukraine are unlikely to resemble the challenges [...] faced in Iraq and Afghanistan.”<sup>3</sup>

In our view, and in that of several of our OSCE and Vienna-based interlocutors,<sup>4</sup> this approach fails to grasp the full complexity of the war in Ukraine and its likely aftermath. The war between Russia and Ukraine constitutes one dimension of a complex conflict.<sup>5</sup> This conflict escalated rapidly from the end of 2013 onwards across all three of its layers: a conflict within Ukraine over the country’s geopolitical orientation, a conflict between Moscow and Kyiv over Ukraine’s sovereign independence and territorial integrity, and a conflict over spheres of influence in the contested European neighborhood between Russia and the West. No forward-looking assessment of what is needed for a successful postwar recovery would be credible without this fuller understanding of the conflict environment in which the war between Russia and Ukraine has been embedded since 2014.

Ukrainian society will need to be reintegrated as a whole. This societal dimension of recovery and reintegration will require a focus on (re-)building democratic institutions that are resilient to the kinds of hybrid challenges Russia is likely to continue to employ against Ukraine. At the same time, it will be necessary to establish institutional structures through which rewards are provided to local elites (and their supporters), which could help to prevent the resurgence of violence in the liberated territories.

From an OSCE perspective, the connections between reintegration and accession are particularly important as they indicate potential areas in which the OSCE can contribute based on its existing expertise and track record. According to the principles adopted at the 2022 Lugano Recovery Conference, “the recovery process has to contribute to accelerating, deepening, broadening and achieving Ukraine’s reform efforts and resilience in line with Ukraine’s European path.”<sup>6</sup> Linking recovery to EU accession gives domestic and international efforts a sense of direction, especially in light of the European Commission’s June 2022 Opinion on Ukraine’s application for membership of the European Union, which restates the Copenhagen criteria for membership.<sup>7</sup> Among these, the first, political, criterion sets out that membership requires “that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,” while the second, economic, criterion specifies “the existence of a functioning market economy

as well as the capacity to cope with competitive pressure and market forces within the Union” as another requirement for membership.<sup>8</sup> According to the third criterion, “[m]embership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.”<sup>9</sup> Based on its overall positive assessment of Ukraine’s current performance against these criteria, the European Commission recommended that Ukraine be granted candidate status, subject to a number of steps aimed at strengthening the rule of law, intensifying the fight against corruption, and finalizing the reform of the minority rights framework.<sup>10</sup>

Taken together, the Ukraine-specific challenges of recovery, including the parallel requirements of societal reintegration and EU accession, underline the relevance of OSCE experiences. The OSCE has played an important role in postwar recovery in the Western Balkans, in past and ongoing accession processes there and in the Baltic states, and, more broadly, in the process of socializing countries “east of Vienna” into European and Euro-Atlantic value systems.<sup>11</sup> Key areas of OSCE expertise and past OSCE-EU cooperation<sup>12</sup> that are repeatedly highlighted in existing studies include the integration of national minorities, freedom of the media, and legislative reform, areas in which the OSCE Project Co-ordinator in Ukraine (PCU) also had a track record of projects that have, in part, informed the subsequent and ongoing work of the OSCE Support Programme for Ukraine (SPU).

One potential problem, noted both in the existing literature and by several interlocutors, concerns competition between OSCE and EU deployments in attracting qualified personnel.<sup>13</sup> This is now further complicated by the fact that the quality and quantity of accession expertise in the EU and the OSCE is nowhere near its peak of the early 2000s and is very limited in Ukraine itself.<sup>14</sup> Nonetheless, OSCE and Vienna-based interlocutors were near unanimous in their assessment that the Ukrainian recovery process offers a number of specific opportunities for OSCE engagement, allowing the Organization to draw on its experience in facilitating post-conflict reconstruction and societal reintegration alongside EU accession.<sup>15</sup>

### **The twin challenges of reintegration and accession**

Within the broader context of Ukraine’s overall recovery, societal reintegration and EU accession stand out as two areas in which the OSCE could potentially make the largest contribution, based on the Organization’s past experiences (especially in the Balkans).<sup>16</sup> Views from within Ukraine are rather different in this regard. Some Ukrainian interlocutors claimed that in terms of the degree of compliance with the political criteria for accession, such as the stability of institutions that ensure democracy, the rule of law, human rights, and the protection of minorities, Ukraine has already reached the level that Croatia, Bulgaria, and Romania had reached when they

were allowed to join the EU.<sup>17</sup> At the same time, however, there is also an acknowledgment that the OSCE's experiences in the Balkans were both mixed (in terms of actual success) and not fully applicable to the situation in Ukraine (in terms of the OSCE's capabilities and capacities). In the Balkans, for example, Russia was never a belligerent party in any of the conflicts, contrary to the situation in Ukraine since 2014.

While Russia allowed at least a limited OSCE presence on the ground prior to the full-scale invasion of Ukraine on February 24, 2022—in the form of the OSCE Special Monitoring Mission to Ukraine (SMM, which ran from March 2014 to March 2022) and the PCU (which ran from June 1999 to June 2022)—any OSCE presence in Ukraine is now operating outside the Organization's consensus principle. With Russia and Belarus wielding their veto power, the OSCE cannot be used to its full potential in Ukraine.<sup>18</sup> Instead, the Organization has had to rely on delivering support through the specially created extrabudgetary SPU. Conceptually and logistically, the SPU stands in the tradition of the PCU;<sup>19</sup> because of its extrabudgetary nature, however, it has greater flexibility, can be more responsive to the needs articulated by Ukraine, and can provide tailor-made support without the constraints of a specific mandate that requires the continuous support of all fifty-seven participating States.<sup>20</sup>

At the same time, seeing the SPU as a “test case for future OSCE financing” more generally<sup>21</sup> could give rise to problems for the Organization. All participating States bar Russia and Belarus agreed

on keeping an OSCE presence on the ground in Ukraine,<sup>22</sup> and the SPU is supported by funds from twenty-nine of them and the EU. The SPU's main donors are Western, including the United States, Canada, and Switzerland, as well as Germany, France, and other EU member states,<sup>23</sup> making the SPU a clearly Westernized, but importantly not wholly EU-ized, initiative.<sup>24</sup> Maintaining this broad consensus among the fifty-five participating States, and thereby marginalizing and rendering ineffective the Russian narrative of biased pro-Western OSCE engagement in Ukraine, will require preventing the SPU from becoming an “executive branch” of the EU—in terms of either funding or the nature of the projects being implemented.<sup>25</sup> Especially from a funding perspective, this is a significant challenge given that many participating States have traditionally not contributed to the extrabudgetary financing of OSCE projects, not least because of the political sensitivities associated with it.<sup>26</sup> It is against this broader background of OSCE engagement in Ukraine that we will now offer more specific reflections on the role the Organization could potentially play within the fields of societal reintegration and EU accession.

## Reintegration

Reintegration has been an ongoing task for Ukraine since the Russian defeat around Kyiv in the first few months of the war and even more so since the successful Ukrainian counteroffensive in the autumn of 2022. The recovery



needs in liberated areas are significant. Among those most frequently mentioned by OSCE and Vienna-based interlocutors were demining and environmental rehabilitation, social-psychological support for trauma-affected population groups, refugee and IDP return and reintegra-

tion, combating human trafficking (including the abduction of children to Russia), and accountability for violations of international humanitarian and human rights law.<sup>27</sup> These needs are reflected in the ten projects that are currently run by the SPU (see table 1).

Project	Funding	Start date	End date
Enhancing Ukraine’s Chemical Emergency Response Capacity	€1,268,182	November 1, 2022	May 31, 2025
Strengthening Ukraine’s Financial Monitoring System Preparedness to Fight Money Laundering and Financing of Terrorism Threats	€458,751	November 1, 2022	May 31, 2025
Support to Environmental Rehabilitation with Focus on Building National Humanitarian Mine Action Capacities of Ukraine	€2,129,768	February 1, 2023	May 31, 2025
Support to National Stakeholders in Enhancing Accessibility of Constitutional Justice	€1,070,000	November 1, 2022	July 31, 2025
Promoting Human Rights–Based Approaches in Higher, Legal and School Education	€382,944	November 1, 2022	May 31, 2025
Safeguarding Human Rights through Courts, Phase Two	€1,980,058	November 1, 2022	July 31, 2025
Strengthening Ability of Media Stakeholders to Apply Media Standards and Promote Media Literacy	€782,887	November 1, 2022	May 31, 2025
Environmental Monitoring of the War Against Ukraine and Recovery Strategy	€821,694	November 1, 2022	May 30, 2025
Strengthening Capacity of the National Police of Ukraine to Combat Trafficking in Human Beings, including Cyber-Enabled Crime	€1,454,741	November 1, 2022	May 31, 2025
Building the Capacity of National Stakeholders to Provide Social and Psychological Support to People in Time of War and During Post-Conflict Recovery	€1,400,283	November 1, 2022	May 31, 2025

Table 1. Projects being implemented by the Support Programme for Ukraine as on August 31, 2023 (source: authors’ compilation based on OSCE data).

The ten projects currently being implemented have all been carried over from the PCU, demonstrating its logistical and conceptual legacy. This has enabled the continuation of important projects dealing with reintegration and other challenges, including from before the start of the full-scale Russian invasion of Uk-

raine. It has also made it possible to retain relevant personnel and thus to preserve local and institutional expertise.<sup>28</sup> In a broader sense, this has prevented the disruption of the three-decades-long presence of the OSCE in Ukraine and has maintained both connections and

goodwill in parts of the Ministry of Foreign Affairs and some line ministries.<sup>29</sup>

However, the environment in which SPU projects are being implemented is very different from that in which the PCU operated after 2014, let alone at the time of its inception in 1999.<sup>30</sup> In addition, the OSCE's credibility, especially in the eyes of many Ukrainians, has diminished because it is seen as having failed to prevent the February 2022 invasion, is associated with the ill-fated Minsk accords, and is still considered a tool for Russian influence.<sup>31</sup> This also limits what the OSCE will be able to contribute in the future, with interlocutors remaining sharply divided between those who categorically rule out the possibility of another ceasefire monitoring mission<sup>32</sup> and those who foresee a future role for the OSCE in this regard.<sup>33</sup>

Complementing some of the ongoing SPU projects in the legal sphere, the OSCE, through its Moscow Mechanism, has also made important contributions to documenting violations of international humanitarian and human rights law during the Russian war of aggression. These include a number of interim reports by experts appointed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).<sup>34</sup> This supports other efforts to build capacity in this area which can subsequently be drawn upon in investigating, documenting, and potentially prosecuting relevant crimes,<sup>35</sup> for example the destruction of the Kakhovka dam and hydroelectric power station.<sup>36</sup>

Another key issue for reintegration, and one that is closely linked to the EU

accession process, is “the reform of the legal framework for national minorities” recommended by the European Commission in its opinion on Ukraine’s membership application in June 2022 and reiterated in its 2023 country report.<sup>37</sup> This is an area in which the OSCE has considerable and ongoing experience thanks to its activities in the Balkans<sup>38</sup> and the Baltics.<sup>39</sup> While some OSCE and Vienna-based interlocutors considered this a logical entry point for clearly relevant and long-established OSCE expertise in the form of the High Commissioner on National Minorities,<sup>40</sup> their Ukrainian counterparts were much more skeptical in this regard. In particular, they noted that any apparent encroachment on the legal status of the Ukrainian language would threaten the country’s national security<sup>41</sup> and that granting broad minority language rights not only to Russian speakers but also to members of Ukraine’s Hungarian and Romanian national minorities would trigger resistance from Ukrainian elites and civil society alike.<sup>42</sup> The Law on Amendments to the Law of Ukraine “On National Minorities (Communities) of Ukraine” on Certain Issues of Exercising the Rights and Freedoms of Persons Belonging to National Minorities (Communities) of Ukraine was adopted by the Ukrainian parliament in September 2023. It made further progress towards aligning Ukraine with relevant EU legislation on national minorities. Among other things, the law guarantees the right to education in national minority languages but does not include the Russian language in these provisions. These views are also borne out in recent

public opinion polls, according to which 52 percent of respondents believe that the Russian language should not be taught at all in schools, compared to the 33 percent who believe that it should be taught along with other foreign languages, with only 6 percent believing that it should be taught at the same level as the Ukrainian language.<sup>43</sup>

A further example of transferable experience from the Balkans is the Southeast European Cooperative Initiative (SECI). Established in the 1990s, SECI is not very widely known, even within the OSCE.<sup>44</sup> Its unique contribution has been to facilitate implementable recovery projects by co-ordinating across the public and the private sectors.<sup>45</sup> For several years, this experience has been transferred to Ukraine and has included a number of projects, including on the digital standardization of good municipal governance services in east Ukraine, the inclusion and economic empowerment of Ukrainian refugees and IDPs, and a number of humanitarian aid projects financed by private sector donors.<sup>46</sup> Other SECI projects, such as the establishment of SECI Business Advisory Council Missions in Kyiv, Odesa, Kharkiv, and Mykolaiv, also dovetail with Ukraine's broader (EU) reform agenda.<sup>47</sup> If properly scaled up, SECI's experience could facilitate the better leveraging of private sector involvement, especially when it comes to the economic reintegration of refugees, IDPs, and veterans. However, facilitating more private sector engagement in its contribution to the Ukrainian recovery effort "would require a significant policy shift" for the OSCE.<sup>48</sup>

Societal reintegration will, to a significant extent, need to be achieved at the local level. It is also a critical factor in the EU accession process, as decentralization is key to resilient democratic institutions. This is a central concern for Ukrainian interlocutors, but one that is not widely shared by OSCE and Vienna-based interlocutors. From the point of view of Ukrainian interlocutors representing local self-government, the OSCE should be involved in the continuation of decentralization reform—one of the most successful reforms in Ukraine over the past decade.<sup>49</sup> According to local-level interlocutors in Ukraine, the current centralization of power, including through the suspension of decentralization reform, is "a path from democracy to Russian-style autocracy,"<sup>50</sup> and "the EU must use all its influence to preserve the achievements of the decentralization reform."<sup>51</sup>

## Accession

The example of decentralization is indicative of the close connection between the reintegration and the accession agendas. Ukraine's reintegration objectives are embedded in, and their success will depend on, longer-term reform efforts to restore and strengthen the country's resilience, including comprehensive institutional and legal reforms and economic recovery, all of which are "closely aligned with the EU accession agenda."<sup>52</sup> Here again, OSCE and Vienna-based interlocutors stressed the relevance of the OSCE's experience in the Western Balkans but also noted other examples of the

Organization working with the EU on pre-accession conditionality issues, such as in the Baltic states and the 2004 and 2007 accession countries across Central and Eastern and Southeastern Europe.<sup>53</sup> There was also an awareness, however, that the OSCE, in contrast to these earlier experiences and ongoing projects in the Western Balkans, is unlikely to be as engaged and effective regarding Ukraine's accession,<sup>54</sup> partly because Ukraine itself was seen as "unlikely to want the OSCE to contribute" to its accession preparations.<sup>55</sup>

There was less skepticism among Ukrainian interlocutors about how welcome an OSCE contribution to pre-accession reforms would be. For example, Ukrainian interlocutors noted that the OSCE could provide significant support to the Ukrainian government in the implementation of the Commission's recommendations on freedom of the media.<sup>56</sup> However, they also recognized that the OSCE's potential support of relevant legal reforms will only have maximum impact in the longer term and once martial law has been lifted.<sup>57</sup> In this context, it is also important to consider the results of a recent opinion poll carried out by the Kyiv International Institute of Sociology.<sup>58</sup> While there is overwhelming public support for EU accession (77%), only just over a quarter of respondents (27%) considered it necessary to prioritize reforms in order to fulfil the accession criteria as soon as possible. More than two-thirds of the respondents also thought that further reforms were needed before accession (43%) or that Ukraine was nowhere near ready for accession (25%),

confirming skepticism among our Ukrainian and international interlocutors concerning the likely speed of the accession process and the likelihood of a broader OSCE role within it in the immediate future. At the same time, some of the priorities identified by respondents, such as the fight against corruption (38%), prosecuting international crimes (33%), and aiding liberated territories (31%), clearly speak to existing OSCE expertise and could provide opportunities for the OSCE and the EU to co-operate on these issues.

However, the European integration of Ukraine itself faces several serious obstacles. The first is state weakness and the resistance of the Ukrainian elites to democratic reforms, combined with deep-seated corruption and economic degradation (which began before the open Russian invasion), which is partially offset by the activity of Ukrainian civil society. With the start of a full-scale Russian invasion, these existing problems have been exacerbated,<sup>59</sup> and the country is now further from joining the European Union than it was before the start of the conflict.<sup>60</sup>

The second obstacle is that there is an increasingly contentious debate over the nature of Ukraine's accession process. Irrespective of their own country's membership, there was broad support among OSCE and Vienna-based interlocutors for Ukraine's accession to the EU.<sup>61</sup> However, there was also an insistence that there cannot be any shortcuts in the accession process and that Ukraine must fulfil all of the Copenhagen criteria before acceding.<sup>62</sup> Ukrainian interlocutors, by contrast, emphasized that the decision

on Ukrainian membership should first and foremost be a political one that takes into account the specific circumstances of the war, allowing the country to join on the understanding that the Copenhagen criteria will only be fully met at some point after accession.<sup>63</sup>

The problem that arises for the OSCE is that, given the current set-up of its support for Ukraine, it has neither the capacity nor, more importantly, the mandate to directly contribute to the reforms required under the EU accession process. The OSCE is not an instrument of EU policy. Under the Memorandum of Understanding between Ukraine and the OSCE on the functioning of the PCU,<sup>64</sup> projects are initially proposed by Ukrainian line ministries, which then negotiate details with the SPU prior to sign-off by the Ukrainian Ministry of Foreign Affairs.<sup>65</sup> This long and bureaucratic process and the ongoing war further reduces the government's capacity to deal with it.<sup>66</sup> This can be a frustrating experience for all stakeholders: as one interlocutor noted, "even an EU-funded demining project, which all sides agreed was a key priority, took more than four months to be approved."<sup>67</sup> As line ministries are effectively driving all project initiation, their priorities, including domestic political priorities, determine which projects the OSCE will be asked to implement. Thus, "the OSCE did not, and will not, develop its own programs for reforming Ukrainian institutions"<sup>68</sup> and instead "relies on the EU and the Ukrainian government, which together should reach an agreement on the nature and scope of the reforms."<sup>69</sup> This notwithstanding,

donor co-ordination, including between the EU and the OSCE, works well,<sup>70</sup> and the broader recovery agenda has created ample opportunities for the OSCE to support aspects of the EU accession process, especially in relation to legal and institutional reforms.<sup>71</sup>

## Recommendations

Ukraine's recovery will be a resource-intensive process requiring concerted international support and close co-ordination between the Ukrainian government and bilateral and multilateral donors. It poses challenges that derive from the complex nature of the conflict. What also makes Ukraine's recovery particular is that it is closely tied to the country's EU accession agenda.

Within the parameters and limitations discussed above, the OSCE can still contribute to Ukraine's recovery. Based on the foregoing analysis and the input received from OSCE and Vienna-based interlocutors and contacts in Ukraine, we offer the following recommendations.

*Retain, expand, and further invest in analysis, monitoring, and evaluation capacity to proactively drive future programming in consultation with key stakeholders.* Given the limited capacity of the Ukrainian government, the need to avoid duplicating donor efforts, and the importance of deconflicting projects on the ground, the OSCE's unique institutional knowledge and networks across Ukraine and in governmental institutions and non-governmental organizations would be a useful, and arguably unrivalled, asset in

this regard. Participating States, especially those that are also members of other regional and international organizations and multilateral donor frameworks, need to take a leading role in this regard. This could take the form of a Group of Friends or a special representative or personal envoy appointed by the Chairperson-in-Office or the Secretary General of the OSCE.

*Work more closely with other international organizations on future programming for Ukraine recovery efforts.* Building on the OSCE's experience in the Western Balkans, multilateral donor co-ordination and co-operation should be improved with a view to Ukraine's long-term recovery needs. This should extend beyond the EU and include the UN and its specialized agencies, as well as international financial institutions. Consultations should also give due consideration to the future institutional framework of multilateral donor engagement with Ukraine.

*Explore expanding existing funding beyond predominantly Western donors.* Participating States should involve the SPU more closely in existing international recovery efforts, including the Multi-agency Donor Coordination Platform for Ukraine and the Ukraine Recovery Conference. Existing OSCE Partners for Co-operation could also be approached.

*Facilitate entry points for the OSCE High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media, and ODIHR.* As long as the OSCE as a whole cannot provide a mandate for the Organization's support of the recovery effort in Ukraine, the SPU, as it is attached to the Secretariat, should closely co-ordi-

nate with these institutions, which can act more independently and could add valuable critical expertise to both societal reintegration and EU accession efforts.

*Maximize existing niche expertise and experience in the economic and environmental security dimension.* The OSCE has well-established expertise in facilitating projects anchored in (but extending beyond) its second dimension that are relevant to Ukraine, including mitigating the environmental consequences of war (including in the context of demining) and facilitating connectivity (including customs and integrated border management).

*Engage more directly with Ukrainian institutions at the regional and the local level.* The overall success of Ukraine's recovery will also depend on strengthening local resilience, and here the OSCE can, through existing initiatives such as SECI, facilitate the involvement of the private sector, thereby meaningfully contributing to projects that aid inclusive economic recovery through job creation.

*Manage expectations and rebuild trust.* At present, the OSCE has a limited (and indeed a diminishing) capacity to deliver on its core mandate and, especially within Ukraine, suffers from a trust deficit. The Organization, key participating States, and donors such as the EU must therefore be careful to manage expectations about what the OSCE can contribute to the recovery effort within the currently existing constraints, using carefully selected and judiciously designed projects to rebuild trust in the Organization as a dependable partner for both Ukraine's security and the security of the wider Euro-Asian and Euro-Atlantic area. Rebuilt

trust can then serve as a foundation for a more ambitious OSCE agenda for contributing to Ukraine's recovery in the longer term.

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# The Intersection between Gender Inequalities and Corruption: OSCE Research Efforts to Understand the Nexus

Arianna Briganti\*

## Abstract

Corruption has persisted over time, often accompanied by gender inequalities, highlighting the systemic nature of these challenges. The interconnectedness of these phenomena can be traced back to power imbalances and the misuse of entrusted authority, which impedes progress towards an inclusive and just society. Although the harmful effects of corruption are widespread in society as a whole, certain types of corruption disproportionately affect women. The OSCE has conducted research and data collection to investigate the link between these two issues and to address the lack of data and gender-sensitive reporting mechanisms. However, the results of this study only provide a preliminary overview. The absence of definitive conclusions should encourage readers and researchers to engage in further in-depth investigations to understand these phenomena. Recognizing the necessity of continued research serves as a call to action. This paper also offers recommendations for anti-corruption and gender equality professionals, contributing to creating a more ethical and equitable society.

## Keywords

Corruption, gender inequalities, sextortion, intersectionality

To cite this publication: Arianna Briganti, “The Intersection between Gender Inequalities and Corruption: OSCE Research Efforts to Tackle the Nexus,” in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-07>

## Introduction

Corruption, which involves using public power for personal gain, has been around for a long time, and it harms people of all genders in diverse ways.<sup>1</sup> It is among the most harmful factors affecting

economies worldwide. It weakens institutions, erodes public trust, undermines fair competition, and discourages investment.<sup>2</sup> Corrupt practices also hinder access to basic necessities such as health-care, education, and clean water, harming subjective factors such as personal well-being and happiness. Corruption’s financial and economic costs are enormous: \$1 trillion is paid in bribes per year.<sup>3</sup> The Sustainable Development Goals (SDGs) highlight the connection

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between corruption and the establishment of peaceful, fair, and inclusive societies. SDG 16—Peace, Justice, and Strong Institutions—has the specific objectives of combating bribery, enhancing institutional strength, and facilitating access to information. This goal is essential in itself and interlinks with every other SDG. However, it is SDG 5, namely achieving gender equality and empowering all women and girls, that feeds into every other SDG cross-cuttingly.

Means of tackling corruption, whether from a preventive, repressive, or awareness-raising perspective, have led to many policies, international agreements, and anti-corruption programs, though not always with the expected outcomes. However, despite much research on corruption, the connection between gender inequalities and corrupt practices is often ignored, not thoroughly examined, and met with doubt. The evidence demonstrates a close link between corruption and gender inequalities, both of which are intricately tied to uneven power structures.<sup>4</sup>

These structures create environments where certain individuals or groups wield disproportionate power, enabling the perpetuation of corrupt practices and reinforcing gender disparities. These power imbalances are pivotal to fostering and sustaining corruption and gender inequalities, intertwining within systems that perpetuate such unequal dynamics. This cyclical nature forms a self-reinforcing loop wherein unequal power structures facilitate corrupt practices, further entrenching gender inequalities.

Gender inequalities span disparities in opportunities, resources, and outcomes across various spheres, including education, employment, healthcare, and political representation.<sup>5</sup> Uneven power structures that predominantly favor men perpetuate them, limiting opportunities for women. Additionally, gender discrimination and unequal treatment significantly impact individuals' prospects, contributing to educational and employment disparities.

The correlation between uneven power structures and gender inequalities extends beyond mere association; they are interlinked causal factors. These structures reinforce existing gender disparities by bolstering inequality. Addressing these imbalances is critical not only to gender equality but also to combating corruption.<sup>6</sup> The deeply ingrained patriarchal values in these systems foster both gender inequalities and a conducive environment for corrupt practices, jeopardizing stability and security.

Although women's participation in building a stable society is widely recognized as indispensable,<sup>7</sup> gendered threats to stability and security are on the rise. Also, as the COVID-19 pandemic has recently revealed, magnifying existing inequalities, the separation of the work of social reproduction (traditionally associated with women) from that of economic production (associated with men) is still widespread. Globally, women do three times as much unpaid care and domestic work as men,<sup>8</sup> making "the gender gap in unpaid care work one of the most glaring manifestations of inequality between men and women around the world";<sup>9</sup> 606

million working-age women perform unpaid care and domestic work full-time, compared to just 41 million men.<sup>10</sup> Unpaid care and domestic work contributes significantly to economic growth by promoting health, productivity, and creativity. However, it often goes unrecognized and undervalued in social and economic policy discussions. Recognizing the societal value of unpaid care work and redistributing labor equitably are essential steps in mitigating gender inequalities and reducing vulnerabilities that foster corruption.

This paper delves into the interconnected nature of gender inequalities and corrupt practices, exploring their mutual influence and impact. To this end, it examines the initiatives of two OSCE field offices, Albania and North Macedonia, along with the Secretariat, in recognizing and studying the relationship between these phenomena. This exploration does not aim to present conclusive findings but rather underscores the necessity of further research. This absence of definitive conclusions signals the urgency of more comprehensive investigations into these interlinked phenomena, which are crucial to unveiling their scale and understanding their detrimental impact on society. Acknowledging the need for additional research is indicative of a pressing call to immediate action.

The first part of the narrative focuses on the existing body of international research, highlighting that corruption and gender inequalities are mutually reinforcing. Data from two specific public services—education and healthcare—is provided. These sectors were chosen as evi-

dence reveals that women tend to rely on these services in various ways more than men due to societal, cultural, and biological factors.<sup>11</sup> For example, worldwide, more than 64 percent of the public sector education workforce is female, and women account for more than 70 percent of workers in the healthcare sector.<sup>12</sup> However, while data shows a significant female presence in the education and healthcare workforce, this statistic doesn't inherently capture the challenges girls and women encounter in accessing education and healthcare services, nor does it address the barriers women have to face to enter the labor market. This paper explores these critical challenges. Sex as a currency of corruption and the significant power disparities involved are also debated.

In the second part of the paper, the OSCE's research findings are elucidated, particularly those collected during the preliminary investigation by the Presence in Albania on the above-mentioned public sectors. Acknowledging the available international studies, the OSCE Secretariat's Gender Issues Programme offers a conceptualization of sextortion in its explorative work on gendered forms of corruption. The commitment of the OSCE Mission to Skopje to investigating the legal and institutional response to sextortion is also explored. The paper ends by offering practical recommendations that have the scope to guide further research on the gendered impact of corruption on society as a whole.

## Corruption in public services

Social norms, discriminatory institutions, and gendered stereotypes that shroud women in the mist of unpaid care and domestic work—which includes caring for children and the elderly—make them more dependent on public services, particularly healthcare and education.

## Gender and healthcare

Research by the World Health Organization<sup>13</sup> has found that social factors and power imbalances, such as childhood abuse, partner violence, gendered family roles, and the social experience of motherhood, play a critical role in women's health.<sup>14</sup> These factors may lead to anxiety, depression, suicide, post-traumatic stress, and substance abuse.<sup>15</sup> Globally, healthcare has a high corruption level, and biased budget allocations, absenteeism, theft, and embezzlement proliferate throughout the system.<sup>16</sup> In such an environment, it is crucial to acknowledge that corruption can affect women's health differently than men's health, depending on the system's culture, economic factors, and level of corruption and governance. Ensuring fair healthcare for all is a fundamental human right; therefore, tackling these specific vulnerabilities is essential. Moreover, for various reasons, women are often more negatively affected by corruption in healthcare than men.<sup>17</sup> Firstly, they require specific healthcare services related to reproductive health, maternal care, and family planning. Women's health is put at risk

if these services are of poor quality or unavailable due to corrupt practices. Secondly, women often bear a significant burden of the healthcare costs for their families. When corruption raises the cost of the service, it can have a disproportionate economic impact on women, who may be responsible for their family's health expenses. Thirdly, in some healthcare settings, women, particularly when pregnant, may be more vulnerable to demands for bribes by medical personnel due to their urgent need to access care.<sup>18</sup> Fourthly, in many societies, women may have limited decision-making power within their households and communities, making them more vulnerable to corrupt practices and less likely to challenge or report corruption in healthcare. Lastly, women's voices and concerns are often underrepresented in decision-making processes related to healthcare governance and oversight.<sup>19</sup>

## Gender and education

In various nations, reliance on public education is substantial. The education system needs to be fair and trustworthy to build an inclusive society. Education is not only essential for economic growth but also contributes significantly to personal development, cultural enrichment, and social cohesion.

Corruption within the education sector can hinder development by impairing the creation of competent, ethical individuals for future leadership and the workforce. Gender-specific corruption is often overlooked, yet it can manifest itself

in many ways. For instance, although biases vary by context, interacting with specific cultural norms, in many parts of the world households decide which children to send to school and how much to spend on those enrolled. Hence, in a context of gender disparities, a child's gender may inform education spending decisions, often in a way that is unfavorable to girls.<sup>20</sup> Discrimination against girls extends to reduced access to quality schools, resources, and learning materials, exacerbating the challenges faced due to societal biases. This also hinders their ability to break free from poverty cycles by accessing the labor market.

Other examples of corrupt practices in education include cheating, bribery, nepotism, and favoritism in school admissions; corruption in the procurement of textbooks and supplies; and theft or diversion of funds and equipment. Additionally, there are issues concerning teacher management; corruption in recruitment, posting, and promotion; teacher misconduct, including sexual harassment by teachers and sextortion; school-related gender-based violence; and the exploitation of child labor in schools.<sup>21</sup>

### Sex as a currency of corruption

When sexual favors constitute the currency of corruption, the content of the exchange is gendered.<sup>22</sup> Sextortion—a specific form of corruption—can affect both genders differently but tends to impact women at far higher rates than men, often with more severe consequences.<sup>23</sup>

Sextortion is “a type of corruption that involves an implicit or explicit request to an individual to engage in any kind of unwanted sexual activity in exchange for exercising power entrusted to someone occupying a position of authority, and it chiefly affects women.”<sup>24</sup> It is essential to notice that it is not the use of sexual activity to obtain an advantage but the result of abuse of power and thus a sexualized form of corruption.<sup>25</sup> It is considered a silent form of corruption that has only recently been understood as a distinct phenomenon. Sextortion often becomes normalized and institutionalized in various contexts, becoming an accepted part of daily life.<sup>26</sup> Even researchers have failed to ask the right questions of survivors, who often do not receive justice. This has also led to a chronic lack of data and reporting mechanisms, which most recent research addresses, including that by the OSCE.

Sextortion occurs when the power disparities between the two parties are significant, and often the bribe-payer does not have sufficient monetary resources to pay. According to Transparency International—which in 2019, for the first time, included questions on sextortion in its Global Corruption Barometer—the following conditions must be met: abuse of authority by the perpetrator; a quid pro quo;<sup>27</sup> and psychological coercion.<sup>28</sup> The conceptualization of sextortion is still controversial, and in the absence of legislation directly targeting sex-related abuses of authority, experts often use existing legal frameworks that can be broadly divided into corruption laws and gender-based violence laws. Although these



laws overlap and are all valuable tools for addressing the abuse of authority to obtain sexual favors, the challenge is that “prosecution may be less likely to occur under either of these legal frameworks, as sextortion cases may be considered beyond the scope of either.”<sup>29</sup>

Research by the International Association of Women Judges (IAWJ) highlights a significant limitation of using corruption laws in cases where sex is the currency of corruption. Most corruption laws tend to criminalize the offer and the provision of a bribe, potentially criminalizing the victim.<sup>30</sup> This underscores the need for the critical engagement of all stakeholders to create legislation that addresses cases where corruption and sexual abuse intersect and that protects survivors. Also, some individuals may not understand that being asked for sex is a form of corruption in which sex constitutes the currency of the bribe. They may not even know they have been the victims of corruption. Moreover, women’s often weaker socioeconomic position can result in less power to seek legal protection or access to justice. Corrupt judiciaries and law enforcement officials can reinforce discrimination against women in many ways, from ruling against them on specific issues like divorce or property rights to protecting the perpetrators of gender violence. Data shows that women tend to report corruption less frequently than men, which could result from shame and fear of retaliation or of not being believed, especially regarding stigmatized issues like sextortion.<sup>31</sup> Even if they are familiar with their rights, they can feel less empowered to use them, mainly

if gender-sensitive reporting mechanisms (i.e., dedicated hotlines and web-based reporting platforms) are not in place. Finally, corrupt practices enable gendered crimes such as human trafficking. While boys and men can also be victims, in particular for labor, most of those identified as trafficked for commercial sex are women and girls.<sup>32</sup> Sextortion involves coercing victims, for example through the threat of disclosing intimate images or information. Women and girls are manipulated or coerced into exploitative situations under the threat of humiliation or exposure.

The United Nations Office on Drugs and Crime reports that for every ten survivors of human trafficking detected globally, five are adult women and two are girls.<sup>33</sup> Corruption is involved at multiple stages in the recruitment and exploitation of individuals. Human trafficking networks rely on corrupt practices to produce fake documents, pay off law enforcement, and obstruct justice when these crimes reach the courts.<sup>34</sup> Corruption can also enable gender violence, from rape and sexual harassment to femicide, by allowing perpetrators to remain unpunished by abusing positions of power or bribing law enforcement officials.

### **The OSCE’s engagement in tackling gender inequalities and corruption**

#### **OSCE strategic documents and commitments**

The OSCE supports participating States in promoting gender equality as a critical

component of its comprehensive security approach. The 2003 Maastricht OSCE Strategy Document for the Economic and Environmental Dimension, along with various Ministerial Council Decisions, are the guiding principles for the Organization's efforts to prevent and combat corruption.<sup>35</sup> The OSCE Dublin Declaration in 2012 emphasized the importance of women's and men's equal participation in fighting corruption. OSCE participating States recognized that women are disproportionately affected by corruption and called for greater engagement to promote their participation in anti-corruption activities to achieve gender equality.<sup>36</sup> Another milestone is the Ministerial Council Decision on the OSCE's Action Plan for the Promotion of Gender Equality, adopted in Sofia in 2004 (still not fully updated).<sup>37</sup> It reinforces the Athens Ministerial Council Decision<sup>38</sup> on women's participation in political and public life and recognizes that women's participation in the economic sphere contributes significantly to economic recovery, sustainable growth, and the creation of cohesive societies and is thus essential to the security and stability of the OSCE region.

The 2020 Ministerial Council Decision—steered by the Albanian Chairpersonship—on Preventing and Combating Corruption through Digitalization and Increased Transparency highlights “the full, equal and meaningful participation of women in the development and implementation of relevant anti-corruption activities, with the view to achieving gender equality, and taking into account

that corruption disproportionately affects women and the vulnerable.”<sup>39</sup>

Despite undeniable general progress towards achieving gender equality, OSCE anti-corruption work still lacks a fully integrated gendered approach. One noticeable limitation is that it still relies on a binary definition of gender. In reality, homosocial capital<sup>40</sup> has negative effects not only on women but also on men who do not adhere to the specific type of masculinity that is based on patriarchal values. Having individuals in decision-making roles who prefer those who are perceived as belonging to the same gender can limit diversity, stifling innovation and hindering a range of perspectives.

### The findings of OSCE research projects

In 2020, the OSCE Presence in Albania—Department of Governance in Economic and Environmental Issues (GEEID)—started a preliminary investigation of the gendered impact of corruption in the Albanian healthcare and tertiary education sectors.<sup>41</sup> The scope of the research in these two sectors was defined through preliminary outreach, exploratory interviews with activists and development practitioners, desk research, and in-depth interviews with service users and providers.

Strong patriarchal structures are still prevalent in Albania, permeating every aspect of society. Even with the numerous Albanian women in politics and the impressive achievement of Albania's ranking first for the share of women cabinet ministers and forty-second for

the percentage of women in parliament globally,<sup>31</sup> only a few enjoy actual decision-making power. More than representation is needed, as counting the number of women in political office does not provide a complete picture of women's political power. Political and social life is mainly organized according to male norms, values, and lifestyles. Women are often expected to care for their extended family and handle public services such as healthcare and education more than men.<sup>42</sup>

In December 2021, GEEID organized an international conference called "Raising Awareness on Gender and Corruption"<sup>43</sup> to present the findings of its preliminary investigation. The conference was held in Tirana and opened by the OSCE Secretary General to raise awareness of the plethora of opportunities that gender-specific approaches to fighting corruption offer for boosting socioeconomic growth and security and consolidating democratic practice. GEEID invited in-depth single-country analyses of corruption and comparative studies to grasp how corruption and gender inequalities intersect with and undermine accountability, transparency, economic development, and power structures.

The research points out that there is indeed a correlation between gender inequalities and corrupt practices in Albania.<sup>44</sup> However, nationwide research and comprehensive data collection, including from official sources, are required for more conclusive findings. Data on corruption collected by state institutions is not disaggregated at a sufficient level, systematized, or analyzed. Building an offi-

cial complaint management system that adopts an intersectional perspective<sup>45</sup> and disaggregates data by sex, socioeconomic factors, geography, education level, ethnicity, and gender identity is critical.

In the healthcare sector, the findings of the preliminary investigation reveal no institutional barriers to petty bribery in healthcare service delivery, where informal cash payments in response to a direct or indirect request by the doctor are widespread. Although desk research found that corruption disproportionately impacts women, the interviews did not identify gender-related aspects. However, one female patient and one female caregiver reported that informal payments were usually negotiated with men in the family.<sup>46</sup> The research also focused on higher education. Albanian university students and professors report that nepotism affects gender equity in student admissions and staff appointments.<sup>47</sup> Further research is needed to explore the impact of these practices on women's careers and life opportunities.

Though representative data was lacking at the time of data collection, initial qualitative research also suggests that sextortion is prevalent in Albanian higher education. The study makes an interesting point: some people are not easily able to recognize gender-specific aspects of corruption in Albania's healthcare or higher education contexts. This might be explained by cultural norms about gender disparities that society normalizes rather than tackling. Cultural norms and societal acceptance of gender disparities can significantly perpetuate corrupt practices such as demanding bribes or

favors in exchange for needed medical care, which is accepted as a part of everyday life rather than a breach of laws.

During the same conference, the OSCE Secretariat's Gender Issues Programme presented its analysis "Gender and Corruption: What Do We Know?"<sup>48</sup> The paper offers a summary of existing international research on corruption and gender and addresses the vital question of how men and women are impacted differently by corruption. The findings confirm that women face higher corruption risks in informal employment and access to services. Poverty, gender inequality, and corruption are all interconnected. Intersectionality plays a crucial role as, for instance, migrant women face higher risks of exploitation than men.<sup>49</sup> Due to limited financial means and high perceptions of corruption, women are often reluctant to report cases to the police or the judiciary. The research looked at sextortion and the challenges of prosecuting sextortion.

At the time of writing, the OSCE Gender Issues Programme continues to raise awareness about gender in the entire OSCE region and to promote the mainstreaming of gender in all OSCE anti-corruption programs. It is also researching the impact of gendered forms of corruption on access to natural resources. To this end, the team set up a cross-dimensional working group with representatives of several field operations in Central Asia and Southeastern Europe to discuss key objectives for the OSCE's work and to train OSCE anti-corruption personnel throughout the OSCE region.

It is worth mentioning the work of the OSCE Mission to Skopje, which was prompted by the lack of available data and which, in 2020, developed a discussion paper that explores how corruption deepens the social, cultural, political, and institutional discrimination women face daily in North Macedonia.<sup>50</sup> In 2021, the Skopje team thoroughly investigated the legal and institutional response to sextortion in the country. The study "Sexual Extortion as an Act of Corruption: Legal and Institutional Response"<sup>51</sup> was enriched by a public opinion survey covering 1,013 North Macedonian women from different ethnic communities, economic statuses, and education levels. Of the respondents, 78 percent recognized the extortion of sexual services<sup>52</sup> by public sector employees in exchange for providing a public service as a form of corruption. More than half of the respondents stated that holders of public office and authority in a position of power sometimes request sexual services instead of money/bribes in exchange for providing public services, and 21.5 percent of them stated that this happens very often. Two-thirds of the respondents believe that the extortion of sexual services in exchange for receiving a public service (mainly in education and healthcare) happens in both the public and the private sector. Out of 142 respondents, 40 percent expressed distrust in the system as reporting would have no effect and they would be faced with shame and judgment by the authorities.

Despite the collection of data in North Macedonia and Albania and the efforts made by the OSCE Secretariat's Gender

Issues Programme to initiate internal discussions on gender-responsive anti-corruption measures, the lack of data remains a significant issue that limits OSCE findings.

## Recommendations

This paper stresses that combating corruption and achieving gender equality is critical for global stability and prosperity. The combination of the two can lead to negative reinforcement and become a threat multiplier if not adequately addressed. The OSCE has been investigating this nexus for several years. However, the OSCE has not conducted in-depth research on its entire region; it has only carried out initial investigations in Albania and North Macedonia, through the respective field offices. Hence, its findings are geographically circumscribed. With its regional reach, the OSCE should broaden the scope of its data collection and gather qualitative information on gender-based corruption that encompasses all participating States. Deepening research in Albania and North Macedonia and expanding the scope of data collection to encompass a larger geographical region will enhance research efforts and bridge the existing data gap. Another significant limitation is that OSCE research is based on a binary definition of gender. Intersectionality, including non-binary people and other vulnerable groups, should be applied in future analyses.

The following measures would help the OSCE and its participating States to achieve their objectives of fighting cor-

ruption and building a fairer and more inclusive environment for all.

*Deepening understanding of gendered forms of corruption.* Researchers and practitioners of both anti-corruption and gender issues must deepen their understanding of gendered forms of corruption. Every piece of research undertaken by the OSCE so far highlights the absence of data to illustrate the scope of the problem. More advocacy for research should include gender-disaggregated data collection and analysis to guide OSCE programmatic activities and policy interventions.

*Addressing diverse individual needs equitably.* Gender-sensitive anti-corruption programs and gender-sensitive whistleblower reporting and protection systems that prioritize a survivor-centered approach must be put in place to ensure that people's different needs are considered equitably. To this end, it is imperative to recognize the risk of retaliation in male-dominated environments; ensuring confidentiality and respect for the privacy and safety of individuals is crucial. Providing various reporting channels, including anonymous options, represents an incentive for individuals to report crimes. It is also crucial to include anti-corruption efforts in a gender equality agenda to address discrimination and inequality at its roots.

*Incentivizing women's initiatives.* Women's representation in decision-making positions is necessary but not sufficient. When considering women's role in achieving peace and security and promoting anti-corruption, accountability, and transparency, it is essential to look beyond

increasing the number of women involved. Continuing to incentivize women's networks and initiatives within the OSCE and beyond will have a positive ripple effect and will serve as good practice.

*Implementing targeted anti-corruption measures within healthcare systems to safeguard women's health rights.* Ensuring equitable and fair healthcare access for women requires a comprehensive strategy for addressing systemic corruption and gender-specific vulnerabilities in healthcare. This strategy should encompass establishing oversight bodies or mechanisms specifically aimed at addressing gender-specific vulnerabilities to corruption within healthcare; enhancing transparent and gender-responsive budget allocations and resource management for women's health services to secure fair and equitable access; developing initiatives that provide education to women about their healthcare rights; fostering the active involvement of women in decision-making processes within healthcare governance to address their concerns; and training healthcare professionals on ethical standards and integrity to mitigate gender-based corruption, particularly in instances where women are pressured or coerced into paying bribes for essential care.

*Strengthening transparency and accountability in education.* Strengthening transparency and accountability mechanisms within educational institutions can mitigate corrupt practices such as bribery, nepotism, and the misallocation of resources. Additionally, promoting inclusive policies and programs that actively address gender disparities in education

by providing equal opportunities and resources for girls could help to combat gender-specific corruption. Investing in awareness campaigns and training for educators in recognizing and preventing gender-based violence and exploitation in schools would contribute to creating safer and more equitable learning environments. Such measures would improve the quality of education and foster social cohesion and personal development, ultimately contributing to more ethical and competent future leaders.

*Developing behavioral change strategies.* Comprehensive behavioral change strategies should be developed and implemented to shed light on and rectify discriminatory behaviors and overcome gender biases within healthcare and education systems. These strategies should involve targeted interventions, awareness campaigns, and training programs for stakeholders, including healthcare providers, educators, policymakers, and community leaders. Emphasis should be put on the importance of gender equality, inclusivity, and fair treatment to foster a more equitable environment for all genders within these critical sectors.

*Tackling financial systems and auditing in healthcare and education sectors.* It is essential to ensure accessible and regularly audited financial information to track and scrutinize resource allocation, expenditure, and fund management. This will foster accountability, uncover potential financial irregularities or biases, and enable informed decision-making to prioritize equitable resource distribution for both healthcare and education, thus

enhancing their accessibility and quality for all genders.

*Establishing survivor-centered complaint mechanisms for sextortion.* More data is needed on sextortion to understand who is affected and what mechanisms allow it to occur. The discussion around sextortion is still centered on women's experience, but this partial view doesn't represent the complexity of society. Identifying the factors that contribute to its occurrence and the individuals or groups most at risk is crucial. Policymakers, law enforcement, and the judiciary must be trained to understand the phenomenon as a crime, although it is still not universally and legally defined and reflected in specific legislation. Shame, stigma, and cultural barriers around this concept must be overcome with specific tools, including peer education programs, legal information, and collaboration with advocacy groups. To this end, establishing survivor-centered complaint mechanisms at the national and the local level is imperative for helping survivors to come forward and gain trust in the justice system. Examples include the creation of hotlines, whistleblower protection programs, online reporting platforms that guarantee anonymity, and independent oversight bodies to investigate high-ranking officials.

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# Whither Conventional Arms Control in Europe?

Gabriela Iveliz Rosa Hernández\*

## Abstract

This paper shows how deteriorating relations between Russia and Western OSCE participating States have led to the erosion of conventional arms control in Europe. It also examines the potential of soft conventional arms control during heightened military tension, focusing on the period of 2021–2023, when Russia first prepared and then carried out its full-fledged invasion of Ukraine. The paper concludes with suggestions for future avenues for conventional arms control in Europe.

## Keywords

OSCE, arms control, CSBMs, Russia, Ukraine

To cite this publication: Gabriela Iveliz Rosa Hernández, “Whither Conventional Arms Control in Europe?,” in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2024), <https://doi.org/10.5771/9783748917366-08>

## Introduction

Russia’s full-scale invasion of Ukraine has exacted a great human toll and has made any attempt to renew common European security futile.<sup>1</sup> Because of the war, the OSCE and its web of interlocking and mutually reinforcing arms control obligations and commitments find themselves in a political environment that is contrary to the founding principles and spirit of the Helsinki Final Act of 1975. This paper examines the utility and erosion of the OSCE’s arms control instruments

against the backdrop of heightened tension among participating States. It shows how participating States have used soft conventional arms control tools to mitigate the risk of military incidents as a result of the Russian invasion of Ukraine.

Soft arms control agreements are focused on openness and transparency and are often linked to confidence- and security-building measures (CSBMs). They are likely to be politically binding documents with language that recommends specific actions. Political agreements do not raise legal obligations, and no ratification is needed. They are therefore more flexible. Hard arms control agreements tend to focus on concrete reductions and specific kinds of armaments. They are often legally binding, more rigid, and

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more directive. Nonetheless, these terms are not mutually exclusive. An agreement can focus on openness and transparency but still be legally binding, such as in the case of the Open Skies Treaty. Both soft and hard arms control agreements may also serve as signaling tools for participating States.

This paper suggests that soft measures may be useful in times of inter-state military competition, to prevent misperception of military activities. Soft conventional arms control agreements tailored to prevent misinterpretation offer an attractive option for OSCE participating States in the foreseeable future as states can take advantage of the flexibility these agreements provide. By contrast, hard conventional arms control agreements with legal obligations are likely to be seen as intrusive and undesirable.

This paper first provides an overview of conventional arms control instruments in Europe: the Vienna Document (VD), the Open Skies Treaty, and the Treaty on Conventional Armed Forces in Europe (CFE). It then focuses on the erosion of the CFE Treaty and the Open Skies Treaty and the dilemma faced by participating States between legal obligations and military transparency, on the one hand, and deterrence needs, on the other. The third section chronicles the use of the VD as both a signaling tool and an early warning mechanism, showing how participating States used the VD to publicly call out Russia's obfuscation of its military activities on the eve of its full-scale invasion of Ukraine. The fourth section examines how participating States have used soft conventional arms control tools to

mitigate military incidents arising from Russia's war against Ukraine and argues that incident management should be prioritized. In conclusion, the paper stresses that soft arms control tools remain a feasible option for lowering the temperature in times of high tension.

### Conventional arms control instruments

Conversations about conventional arms control can be traced back to the late 1960s. The 1975 CSCE Helsinki Final Act laid the foundations for CSBMs, breaking ground on the adoption of an agreement on prior notification of major military maneuvers in Europe exceeding a total of 25,000 troops.<sup>2</sup> Just over a decade later, in 1986, thirty-five countries met in Stockholm under the auspices of the CSCE and adopted the Stockholm Document. This marked the first time state parties agreed to concrete and verifiable CSBMs.<sup>3</sup> These provisions were then incorporated and expanded in the Vienna Document of 1990, perhaps the OSCE's most resilient instrument in the field of arms control. The VD is a series of CSBMs designed to allow participants to observe and notify each other, *inter alia*, of their military exercises. Its provisions include comprehensive military information exchange and military-to-military contacts, as well as other relevant activities intended to prevent the misinterpretation of military movements.<sup>4</sup> To this day, the VD has been updated four times, with the last iteration being adopted in 2011.

Conventional arms control rose on the agenda following the signing of the Intermediate-Range Nuclear Forces Treaty in 1987, as non-nuclear forces assumed greater military importance following the removal of land-based theater-range missiles in Europe.<sup>5</sup> In 1989, President George H. W. Bush revived the idea of an agreement between the United States and the USSR allowing aerial flights over each other's territory. This became the basis for the 1992 Open Skies Treaty, which would allow the state parties to conduct short-notice, unarmed reconnaissance flights over each other's entire territory to collect data on military forces and activities.<sup>6</sup>

Analysts have noted that the history of conventional arms control and CSBMs runs parallel to the improvement of inter-state relations in Europe, changes in force postures, and reduced threat perceptions.<sup>7</sup> These improvements heralded the way forward for what had been an idea in the making for years: the CFE Treaty, signed in 1990. Often hailed as the "cornerstone of European security," it established agreed-upon ceilings for holdings of battle tanks, armored combat vehicles, artillery pieces, combat aircraft, and attack helicopters. By reducing this "treaty-limited equipment," the Treaty followed the logic of an offensive-defensive relationship: a stable balance of (offensive) conventional forces between NATO and the Warsaw Pact would eliminate both sides' ability to launch a surprise attack and to initiate large-scale offensive action in Europe.

The three agreements described above were linked together by the 1996 Frame-

work for Arms Control (the Lisbon Document), which was designed to give conceptual and structural coherence to the OSCE's arms control efforts.<sup>8</sup> It acknowledged that the CFE Treaty established a core of military stability and predictability, that the VD brought increased transparency and mutual confidence in regard to military activities, and that the Open Skies Treaty was a tool that could make a major contribution to transparency and openness. The Lisbon Document underlined the role of these agreements as the basis of a web of interlocking, mutually reinforcing arms control obligations and commitments that linked existing and future arms control efforts in a comprehensive structure.

### **The erosion of legally binding conventional arms control mechanisms**

Analysts and scholars alike have long argued that the deterioration of conventional arms control correlates with worsening Western-Russian relations.<sup>9</sup> Worsening tensions and heightened periods of inter-state competition have put participating States in a difficult position, where they must weigh the benefits of transparency and the fulfillment of their legal obligations against military utility. Given these developments and heightened tensions between Russia and Western states, Western participating States moved to emphasize the signaling and monitoring aspects of these agreements. For instance, NATO members used the Open Skies Treaty to document Russian adventurism at least until the United

States exited the Treaty in 2020 and Russia's 2021 withdrawal. In 2014, the United States and its allies used more than ten Open Skies Treaty overflights covering "thousands of square miles" of Ukrainian and Russian territory to collect photos of Russian forces and their movements.<sup>10</sup> In 2018, the United States also used the Treaty to signal its commitment to Ukraine after Russia seized three Ukrainian vessels off Crimea.

Moreover, the selective implementation of agreements by some participating States in periods of enmity has led others to worry that military transparency and restraint could undermine their own flexibility and overall deterrence needs. For instance, Russia's suspension of its obligations under the CFE Treaty in 2007 prompted NATO members to announce that while they would continue to implement the Treaty in relation to all other Treaty members, they would cease carrying out their Treaty obligations towards Russia.<sup>11</sup> At this time, the Treaty remained a viable tool with which NATO members could signal reassurance towards one another.

Nonetheless, neither reassurance nor good intentions were enough to salvage the Treaty when war broke out. Shifts in threat perceptions with regard to Russia and Belarus put several states in a dilemma.<sup>12</sup> In June 2022, Belarus announced that it was ready to resume verification activities. This may have been what led NATO members to suspend their co-operation with Belarus under established CSBMs. In March 2023, Poland announced that it would cease implementing certain articles of the CFE Treaty in

relation to Belarus. According to Belarus, the Czech Republic also suspended CFE co-operation with the country in August 2022. In turn, Belarus retaliated in October 2023 by suspending its Treaty obligations toward the Czech Republic and Poland.<sup>13</sup> NATO CFE signatories were left with a choice: either fulfill their legal obligations despite their deterrence needs or suspend the Treaty. Similarly, Lithuania, which is not a member of the CFE Treaty, suspended the practical implementation of an additional bilateral agreement on CSBMs with Belarus, citing Minsk's role in Russia's full-scale invasion of Ukraine.

The dilemma between deterrence needs and legal obligations was ever-present in the reasoning behind the suspension of the Treaty by NATO signatories to the CFE. For instance, some officials noted that suspending participation in the treaty allows for greater flexibility in deploying forces on NATO's northern and southern flanks, including in Romania and Bulgaria. It also enables Ukraine's Western allies to avoid sharing information on the deployment of their forces with nations close to Russia.<sup>14</sup> The suspension of the Treaty means that Ukraine's Western allies will not be adhering to the Treaty's ceilings, nor will they be participating in the information exchange or inspection regime. In addition, they will not be observing the 1992 CFE 1A agreement, which created individual, politically binding limits for military personnel based on land.<sup>15</sup>

### The Vienna Document: More than a fair-weather instrument

With the Russian withdrawal from the CFE Treaty and NATO signatories' decision to suspend their participation as well, the Vienna Document is the last remaining piece of the web of interlocking agreements of the post-Cold War conventional arms control security architecture. During the 2021–2023 period, the VD was consistently used as a mechanism for signaling and early warning. Nonetheless, the current dilemma between deterrence needs and obligations and Russia's selective application of the agreement is antithetical to its spirit. Yet the political character of the VD has allowed participating States to exercise flexibility in their implementation of the agreement. This flexibility without legal repercussions may have fostered resentment between participating States, but it has also likely contributed to the agreement's resilience.

Prior to the war, Russia's violations of its neighbor's territorial integrity and its dissatisfaction with the European security architecture created a dynamic between participating States in which NATO members became highly suspicious of Moscow's military maneuvers and in which Moscow, in return, justified its exercises and brinkmanship by claiming they were necessary for Russia's security.<sup>16</sup> These dueling narratives fed the force postures and self-images of both sides. This is perhaps best evidenced by the VD issues that arose between NATO members and Russia, which was accused of exploiting loopholes in the

agreement. NATO member states have argued that Russia's approach to exercise notification was opaque, noting in particular Moscow's pattern of breaking down its large exercises into small components and classing them as a mix of regular and snap exercises, thus circumventing the 13,000-troop limit.<sup>17</sup> Meanwhile, Moscow declared that "snap exercises" were necessary surprise tests for their participants and that notifying other participating States would undermine their value. Moscow raised its own grievances regarding the VD following 2014, particularly in relation to military exercises held by NATO members near its border and Swedish and Finnish participation in NATO military maneuvers.<sup>18</sup>

As it became clear that participating States were unable to separate confidence- and security-building instruments from the underpinnings of the decaying security environment, participating States began to emphasize their signaling and monitoring functions. The VD, for example, sounded the alarm about Moscow's military maneuvers in 2021–2022, thus serving as a tool for preventing attempted deception.<sup>19</sup> In 2021, Russian forces amassed near Ukraine, prompting Ukraine's allies to support its request, under the VD, for clarification regarding its military activities.<sup>20</sup> Russia maintained that its activities did not require notification.<sup>21</sup> Nevertheless, in March, Moscow reportedly agreed to a Swiss inspection conducted within the VD framework. According to Russian media, a team of Swiss specialists conducted an inspection in the Voronezh and Belgorod regions to ascertain the extent of Russia's military



activities. Although it would have been difficult to ascertain Moscow's intentions in the spring of 2021, this case suggests that activity notification and inspection still has potential as a mechanism for monitoring aggression.<sup>22</sup>

The VD proved its worth once more in early 2022 as it provided participating States yet another public opportunity to call out Moscow's obfuscation of its military maneuvers as it prepared to carry out a full-scale invasion of Ukraine. In January 2022, signaling its seriousness regarding its demands, Russia first communicated its decision not to share its national data in the Annual Exchange of Military Information, which takes place every December.<sup>23</sup> Nonetheless, in accordance with the VD, Latvia submitted a request for an OSCE inspection to be held on February 2, 2022, to determine the scale of Moscow's military exercises and whether Russia was obligated to report its activities. While Russian news reports suggested that the inspection would proceed, Latvian officials disclosed that Russia had refused their request, allowing officials to publicly document their suspicions regarding Moscow's plans for aggression towards Ukraine. Moscow also noted that it would no longer take part in inspection and evaluation visits for an indefinite period, allegedly due to COVID-19 restrictions.<sup>24</sup>

Following these developments, the Baltic states and Ukraine once more used the VD to publicly bring attention to Moscow and Minsk's behavior and obfuscation of their military activities, emphasizing the VD's monitoring function. For example, Belarus informed OSCE partic-

ipating States that it would carry out a joint military exercise with Russia (called Allied Resolve) on February 8, 2022.<sup>25</sup> Minsk invited Latvian and Lithuanian observers, but no other OSCE participating States, to observe the exercise. As a result, Lithuania requested that Belarus explain its unusual military activities under paragraph 16.1 of the VD, especially since Minsk had publicly noted that nearly all of Belarus's armed forces would be participating in the exercise. Minsk then responded by claiming that it was exempt from the requirement of prior notification because it was conducting a snap exercise. It also highlighted that its military activities did not exceed the relevant VD11 thresholds for forces or weapons systems.<sup>26</sup> Lithuania then again pushed to expose Moscow and Minsk's obfuscation by making use of the VD, requesting that the OSCE Chairperson-in-Office organize a meeting, as provided for in paragraph 16.2 of the VD, to discuss their activities. Ukraine allied itself with Latvia, Lithuania, and Estonia under the VD query regarding Russia and Belarus's troop movements near its borders.<sup>27</sup> On February 14, the Polish Chair convened the requested meeting by Lithuania, but Belarus avoided giving clear answers and Russia refused to attend. Afterwards, on February 18, Ukraine called for a joint session of the Permanent Council and the OSCE Forum for Security Co-operation pursuant to VD11, paragraph 16, to evaluate the situation regarding Russia's unusual military activities, which Russia declined to attend.

These events occurred as Russia put forward two draft treaties while building

up troops near Ukraine: one treaty to be signed with the United States, and the other to be signed with the United States and member states of NATO. The drafts included numerous measures, among them the demand that NATO members commit to reversing all military deployments on the territory of states that were not alliance members in May 1997, a position Moscow still holds even as it continues to wage war on Ukraine.<sup>28</sup>

## Implications

The current security environment has deep repercussions for the OSCE's toolbox of conventional arms control instruments. Moscow has conditioned its engagement with post-Cold War arms control agreements on the withdrawal of participating States' support for Ukraine. In fact, Russia withdrew from the CFE Treaty in November 2023, noting that "clinging to outdated agreements that are not in sync with the new circumstances is a practice that is also doomed to failure."<sup>29</sup> Moscow has also repeatedly expressed its desire for a new security framework to establish a more favorable balance of power. On top of this, little trust exists between several participating States as Ukraine has called for the exclusion of Russia from the Organization. Diplomats have staged walkouts when Belarus or Russia have taken the floor, and Moscow and Minsk have publicly complained about feeling excluded in the OSCE.<sup>30</sup>

This has serious implications for any solutions that involve conventional arms control and CSBMs. Given the significant

troop and equipment losses Russia has faced in Ukraine, the intrusiveness of the VD and similar mechanisms is less attractive to Moscow, as maintaining ambiguity can provide military advantages. However, the Russian foreign ministry has noted that while Russia has not renounced its obligations under the agreement, "its actions will depend on how other countries fulfill the requirements."<sup>31</sup> More importantly, NATO members have also signaled via the CFE suspension that amidst Europe's deep insecurity, ambiguity is a far more useful tool than transparency for deterrence purposes. As the war rages on, the pressure to further limit the exchange of military information and to block access for inspection visits will increase. Even so, the consensus in Washington in late 2023 was to preserve the VD.<sup>32</sup>

Russia's actions have undoubtedly put pressure on Western states to implement countermeasures such as withholding information about their forces and military exercises. At least for now, however, most participating States, including Belarus, are continuing to implement certain aspects of the VD. In September 2023, for example, Minsk briefed the OSCE Forum for Security Co-operation regarding the Collective Security Treaty Organization's "Combat Brotherhood 2023" exercise.<sup>33</sup> Belarus also participated, with representatives of other OSCE countries, in a visit to an air base and military facility in Kazakhstan.<sup>34</sup>

While the selective implementation of the VD may not yield the security benefits participating States originally envisioned, the flexibility afforded by a political agreement may provide a viable

mechanism for signaling in a multilateral setting. By preserving the agreement, participating States are free to use its provisions to dispel concerns about military activities in their territories. For instance, participating States such as Moldova and Georgia could benefit from using VD 18.3, which allows a participating State to invite other participating States to take part in visits to areas in their territory to counter false claims about military activity within their borders. In addition, participating States could also use VD paragraph 17 regarding possible procedures to report and clarify hazardous incidents of a military nature. Designating points of contact in the case of a hazardous incident could prove useful even among non-adversarial states while simultaneously bolstering the VD.

### **Managing military incidents: An opportunity?**

Although some believe that the OSCE's framework for arms control yields few security benefits in the current environment, others argue that conventional arms control tools are needed now more than ever. Participating States, particularly NATO members, have used soft conventional arms control tools on an ad hoc basis to handle military incidents emerging from Russia's invasion of Ukraine. Managing these incidents could be a promising area for conventional arms control efforts.

In 2022, for instance, a Russian pilot tried to shoot down a British RAF surveillance plane, believing he had permission.

The UK accepted that it was not a deliberate escalation by Moscow.<sup>35</sup> This was not the only close call, however. Ukrainian officials and some of their European backers accused Russia of intentionally firing a missile into Poland in November 2022. It was later revealed that the incident had likely been due to Kyiv's air defense systems. Missile debris had also landed in Moldova earlier that year after a Russian fusillade was intercepted by air defenses in Ukraine.<sup>36</sup>

Governments have handled these incidents with caution, often attempting to dispel misinformation during periods of acute tension. They have also made use of monitoring and documentation techniques to manage periods of tension, declassifying information or evidence of intent and publicly declaring that these incidents do not pose a direct military threat to their territories. An acute example of this is the attempt by Romanian officials to obscure the fact that the remains of a drone used in a Russian attack on a Ukrainian port were found on Romanian territory in September 2023. Although it did not offer an explanation of Romania's initial denial of the incident, Romania's Ministry of Defense noted that "at no point did the means of attack used by the Russian Federation generate direct military threats to the national territory or the territorial waters of Romania."<sup>37</sup>

Soft conventional arms control tools appear to remain a viable option for managing the risk of misinterpretation. The United States made use of these techniques in March 2023 when it declassified footage of a Russian fighter jet

striking the propeller of a US unmanned aerial vehicle over the Black Sea, as a result of which the unmanned aircraft was forced to crash into international waters.<sup>38</sup> Washington also released a statement noting that the incident had been the result of unprofessional behavior by Russian pilots.<sup>39</sup> As further incidents of this sort are likely to arise as the war continues, this may offer a viable model for the future—one that Western states can pursue while nonetheless holding Russia responsible for its aggression. The conflict has repeatedly shown that incident management is an issue that concerns not only NATO members, Ukraine, and Moscow but also non-NATO members such as Moldova. Other states could perhaps adopt a similar model to reduce the risk of misinterpretation and miscalculation among participating States.

## Outlook

Europe's security order will be based on defense and deterrence for the foreseeable future. Participating States will be forced to invest in more intelligence gathering and are set to expect the worst from Russia. The dilemma between deterrence needs and the security benefits of transparency is likely to persist as participating States continue to prioritize rearmament. Still, soft arms control tools remain a feasible option for lowering the temperature in times of high tension.

Thus, arms control experts face the difficult task of proposing measures that promote military transparency among participating States without conflicting

with deterrence needs. In times of war and crisis, strategic ambiguity may seem more attractive, and thus a return to legal conventional arms control agreements is highly unlikely. The VD has proven to be the OSCE's most resilient instrument because of its political nature; however, its survival is not guaranteed. It is unclear how long participating States will resist political pressure to implement countermeasures given amplified threat perceptions.

Simultaneously, participating States have used soft conventional arms control tools during the war to cut through tension when false alarms and military incidents arise. As the war continues, the risk of further military incidents is bound to persist. Should participating States jointly develop a strategy for dealing with military incidents, or should such strategizing remain at the NATO level? While continuing to hold Russia accountable for its full-scale invasion of Ukraine, perhaps more discussions should be held between Russia and the West solely regarding military incidents stemming from the war. Further standardized collaboration between Kyiv, its partners, and non-NATO member states may also be necessary as the war continues.

Overall, discussing how to adapt arms control to a context of full-scale war is an important area of research. Documenting and understanding why and how conventional arms control tools and CSBMs have withered during periods of inter-state competition will be essential to crafting feasible arms control proposals for the future. Meanwhile, keeping track of debates regarding force postures

and differing visions of the security order, as well as the impact that Russia's full-scale invasion has had on both, may be imperative to maintaining deterrence as institutional guardrails vanish.

## Notes

- 1 All opinions expressed in this paper, and any errors it may contain, are those of the author alone. The author would like to thank Alexander Graef for the discussions that led to this paper. Thanks also go to the reviewers for their helpful comments. Finally, many thanks go to the Arms Control Association for its support during the initial stages of the drafting process.
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