The OSCE as Sisyphus: Mediation, Peace Operations, Human Rights

by Philip Remler

ABSTRACT

Over the past decade, the *Organization* for Security and Co-operation in Europe (OSCE) has been returning to its origins as a Cold War–era *Conference* – a forum where states and blocs, often antagonistic to one another and espousing opposing ideals, can air their frictions and hostilities. The OSCE was created without legal personality and with the *liberum veto* of the consensus principle. These constraints stunted the growth of executive capabilities and bound the OSCE closely to the will of its participating States. That rendered most *mediation* efforts ineffective, especially where an OSCE state is both belligerent and mediator in the same conflicts. *Peace operations* have been more effective – notably the Special Monitoring Mission in Ukraine – but the same factors have tightly constrained its activity. Though all participating States committed themselves to *democratic governance, rule of law and respect for human rights*, these ideals failed in much of the former Soviet Union, and autocrats have used the organisation's lack of legal personality and the consensus principle to hobble the OSCE's efforts. If the OSCE's participating States want it to remain an *Organization*, not a *Conference*, they must take action to secure its executive autonomy.

OSCE | Conflict mediation | Peacekeeping | Democracy | Human rights | Ukraine | Russia   keywords

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by Philip Remler*

Introduction

Over the past decade, the *Organization* for Security and Co-operation in Europe (OSCE) has unwillingly been returning to its origins as a Cold War–era *Conference* – a forum where states and blocs, often antagonistic to one another and espousing opposing ideals, can air their frictions and hostilities and look for ways to overcome them.

A brief historical review is necessary. The *Conference* on Security and Co-operation in Europe (CSCE) established by the 1975 Helsinki Final Act was one manifestation of Europe's aspiration to establish an international order to keep the peace and, as Andrei Sakharov wrote in his Nobel speech that year, to stress "the link between defense of peace and defense of human rights".[1]

However, the CSCE was created without the legal personality other international organisations possessed, and operated on the principle of consensus – i.e., all "participating States" (members) must agree to every decision. The lack of legal personality, a US demand at the time, prevented the development of a strong executive and professional cadre along UN lines, and made such basic operational issues as diplomatic immunities and customs clearances dependent upon individual states. The consensus principle, advocated by the Soviet Union, blocked most unified action except in narrowly defined and relatively uncontroversial areas. To this day, these two characteristics render the organisation heavily dependent on and constrained by its participating States.

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[1] Andrei Sakharov, "Acceptance Speech", in *The Nobel Peace Prize 1975*, 10 December 1975, https://www.nobelprize.org/prizes/peace/1975/sakharov/acceptance-speech.

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The end of the Cold War temporarily loosened those constraints and after 1989 the CSCE flowered in the prevailing spirit of pan-European cooperation. Consensus was the norm, allowing the OSCE to establish missions throughout the former Soviet Union and Balkans despite the absence of legal personality. Based on the Charter of Paris (1990), accepted by all participating States, the CSCE eventually became the OSCE in 1994 and acted as an executive organisation in matters of mediation, peace operations and the promotion of human rights and democratic governance. Russia even allowed the OSCE to establish a mission in 1995 in war-torn Chechnya; and the Office of Democratic Institutions and Human Rights (ODIHR) deployed election monitoring missions in states that had not held free elections in living memory, if ever.

The lack of legal personality and requirement for consensus were moot – for a time. But as attitudes towards Charter of Paris commitments fragmented over the last decade, these constraints resurfaced, shrinking the OSCE's room for manoeuvre. Missions closed, mediation – never very successful – returned to individual states, and the promotion of human rights and democratic governance met a backlash that brought the organisation to a standstill. In essence, the OSCE is returning to its origins as a permanent forum for dialogue only – with extremely constrained executive action capabilities – among states and blocs, often hostile toward one another.

The OSCE's efforts span a broad range of activities within the three "dimensions" of its original mandate: security and political-military affairs (with an emphasis on mediation), economics/environment and the "human dimension", including human rights and governance. The three overlap and "cross-dimensional" activities are frequent. Conflict mediation, peace operations and the promotion of human rights and democracy remain among OSCE's most important activities to this day and offer evidence to assess the state of the organisation.

1. Mediation

Mediation became crucial to OSCE efforts in the 1990s with the outbreak of armed conflicts in the wake of the Soviet collapse. The OSCE has mediated in several "frozen conflicts" in the former Soviet space (namely Karabakh in Azerbaijan, South Ossetia and Abkhazia in Georgia and Transdniestria in Moldova) and in Ukraine, a conflict that was on its way to becoming frozen even as intense fighting raged. As an OSCE Head of Mission succinctly put it, "the conflicts themselves are not frozen – only the peace processes are".[2] The last ten years have seen progress through international mediation in only one of the four "traditional" frozen conflicts listed below. Because the OSCE's efforts regarding the conflict in Ukraine are so bound

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[2] Terhi Hakala, Head of OSCE Mission in Georgia, Vienna, 2007.

up with its observer deployments there, they will be examined in the following section on peace operations.

Azerbaijan, Armenia and the Karabakh conflict: The Karabakh conflict began in 1988 and intensified to full-scale military operations in 1992, ending in Armenian military victory and a ceasefire in 1994 that left the Karabakh Armenians in control of large areas of Azerbaijan but without international recognition.[3] Large-scale hostilities broke out again briefly in April 2016 and for an extended period between September and November 2020, during which Azerbaijan reclaimed lands it had lost and the southern part of Nagornyy Karabakh.[4]

In 1992 the Italian CSCE Chair-in-Office attempted to convene a Minsk Conference to resolve the conflict. It never met: the sides imposed mutually contradictory conditions for participating. The Chair then created a Minsk *Group* to steer negotiations. The Group's co-chairs – Russia, France and the United States (US) since 1997 – took over its functions, but in practice acted autonomously on behalf of their three countries, not the OSCE. After Dmitry Medvedev assumed the Russian presidency in 2008, Russia came to dominate the mediation process. Medvedev, eager for foreign affairs accomplishments in what he called Russia's "sphere of privileged interests", mediated negotiations between Armenia's Serzh Sargsyan and Azerbaijan's Ilham Aliyev, convening them to eleven summits during his presidency. The US and French co-chairs became passive. They helped prepare papers for the negotiations and received debriefs afterwards but played no role in the meetings themselves. After the failure of Medvedev's final attempt in Kazan in 2011, the Minsk Group ceased to play a significant role. It made no contribution to mediation following either the April 2016 fighting or the more recent hostilities in September–November 2020, in both of which Russia mediated unilaterally. After the 2020 war, Azerbaijan's President Aliyev bluntly stated that the OSCE Minsk Group played no role in resolving the conflict.[5]

Georgia and the Abkhazia/South Ossetia conflicts: Hostilities broke out in both regions with the dissolution of the Soviet Union in late 1991. By 1993 Russian-backed separatists had emerged victorious and forced Georgia to accept Russian peacekeeping forces. Since then the sides in these conflicts have never engaged in good-faith negotiations on a political settlement. The CSCE was mandated to lead mediation in South Ossetia and deployed unarmed military monitors there; in Abkhazia it assisted the United Nations (UN), which mediated negotiations

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[3] For this military phase of the conflict see Thomas de Waal, *Black Garden. Armenia and Azerbaijan through Peace and War*, Rev. ed., New York/London, New York University Press, 2013. For diplomatic and mediation efforts to 2012 see Philip Remler, *Chained to the Caucasus: Peacemaking in Karabakh, 1987–2012*, New York, International Peace Institute, 2016, https://www.ipinst.org/?p=10369.

[4] Sometimes inaccurately called "Nagorno-Karabakh". *Nagornyy Karabakh*, a transliteration from Russian, is the correct exonym for the separatist region whose boundaries roughly followed those of the Soviet-era. The endonym is Արցախ (*Artsakh*), and the Azerbaijani term is *Dağlıq Qarabağ*.

[5] Azerbaijan's Presidency, Ilham Aliyev Received OSCE Minsk Group Co-chairs from France and U.S., 12 December 2020, https://en.president.az/articles/48908.

and maintained a large observer mission mandated only to observe Russian peacekeepers. After the 2008 Russia-Georgia war, Russia recognised both separatist polities as independent states and blocked renewal of both the UN and OSCE mandates. Those missions closed. The European Union (EU) Monitoring Mission in Georgia took on the patrolling function in October 2008.

Since then, the OSCE has co-chaired the Geneva International Discussions (along with the UN and the EU) and the Incident Prevention and Response Mechanism, which meets in Ergneti, near the Georgian–South Ossetian frontline. Neither forum covers political resolution of the conflicts. They deal with day-to-day security and humanitarian issues. The most political issue is the process of "borderisation": Russian peacekeepers fencing off territory previously controlled by Tbilisi. In 2014–15, following the Crimea crisis, Russia concluded treaties that integrated significant executive authorities of the entities into the respective Russian government institutions, including the foreign affairs, military and security apparatuses.[6] This crypto-annexation has put the process of resolving the overarching political conflict into a further deep-freeze.

Transdniestria conflict:[7] In 1991 pro-Soviet forces, fearing that Moldova would unify with Romania, declared independence on the left bank of the Dniester River. A short war followed in which Russian and local forces secured the separation of Transdniestria from the rest of Moldova and the deployment of a Russian peacekeeping force to protect it. Communication between populaces on both sides of the river remained robust, however, with constant crossings for family visits, commerce, education and transit. Because the lack of a settlement caused little inconvenience and there has been no threat of resumed combat, there has been correspondingly little impetus to reach a compromise settlement. In 2003, while official negotiations were ongoing mediated by the OSCE, Russia and Ukraine, Russia opened a secret second channel of negotiations, aiming to secure peace on its own terms, including favourable geopolitical orientation and military basing rights in Moldova. The attempt failed. In 2006 official negotiations were broken off.

The past decade has seen some progress from OSCE mediation between the two banks of the Dniester, as well as repeated Russian attempts to bypass the "5+2" process in which Russia, Ukraine and the OSCE mediate, with the US and the EU participating as observers. Before 2009, the Communist government in

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[6] Russia's Presidency, Договор между Российской Федерацией и Республикой Абхазия о союзничестве и стратегическом партнерстве (Agreement between the Russian Federation and the Republic of Abkhazia on Alliance and Strategic Partnership), Sochi, 24 November 2014, http://kremlin.ru/supplement/4783; and Договор между Российской Федерацией и Республикой Южная Осетия о союзничестве и интеграции (Agreement between the Russian Federation and the Republic of South Ossetia on Alliance and Integration), Moscow, 18 March 2015, http://kremlin.ru/supplement/4819.

[7] Transdniestria is the hybrid spelling favoured by the OSCE to describe the separatist polity whose endonyms are the Russian Приднестровская Молдавская Республика ("Cis-Dniestrian Moldavian Republic") and the Latin-script Moldovan Republica Moldovenească Nistreană. In Moldova it is called Transnistria.

Moldova tried to persuade outside powers to force unconditional capitulation on Transdniestria. From 2009, when a pro-European government gained power, the OSCE focused its attention on laying the groundwork for renewing official negotiations: promoting one-on-one meetings between the two sides' negotiators, resurrecting moribund sectoral working groups, hosting conferences with security officials from both sides in Germany and Austria, and working with the EU and United Kingdom (UK) on dialogue projects.

In June 2011, Russia tried once again to bypass the OSCE and broker a peace unilaterally. The attempt failed when Russia's negotiator circulated three different – and mutually contradictory – draft declarations within ten days.[8] Soon thereafter, in September 2011, the OSCE persuaded the leaders of Moldova and Transdniestria to restart official negotiations. This success, however, owed more to the leaders themselves than to the OSCE. Moldovan premier Vlad Filat was willing to ignore his cabinet and advisors to meet Transdniestrian leader Igor Smirnov at Bad Reichenhall, in Germany. For his part, Smirnov was aware that Russia wanted to oust him and would oppose him in upcoming Transdniestrian "presidential" elections, and he therefore sought support from the West. On such a flimsy basis, the renewed negotiations went nowhere: Smirnov was out a few months later. His successor, more obedient to Russia, obstructed progress. The OSCE redoubled its efforts, especially under the German chair in 2016. Much progress has been made on the "packet" under discussion since then, but that packet consists of humanitarian and confidence-building measures that may improve the lives of people on both sides of the river but do not comprise a comprehensive resolution of the conflict.

That episode illustrates several important points: mediators do not make peace, the sides in conflict do (indeed, mediators who are also involved in the conflict, and therefore also have a stake in the outcome, can play a negative role). The willingness of the sides' leaders to make peace is wholly dependent on their calculations of what will preserve and increase their power. Humanitarian and confidence-building measures do not threaten the power or lives of leaders. While they do not settle conflicts, negotiating them is valuable for three reasons: 1) the measures themselves have intrinsic value; 2) they give the sides a stake in, and familiarity with, the negotiations that produce them, preparing the sides to move on to more substantive negotiations; and 3) negotiating these measures gives sides a forum for raising their concerns, which can prevent or delay a recurrence of active hostilities.

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[8] Philip Remler, "Negotiation Gone Bad: Russia, Germany, and Crossed Communications", in *Carnegie Articles*, 21 August 2013, https://carnegieendowment.org/publications/52712.

2. Peace operations: The case of Ukraine

A peacekeeping role has often been raised for the CSCE/OSCE, first in 1992 with the suggestion of "Yellow Beret" OSCE peacekeepers for the Karabakh conflict. OSCE observers were deployed in the South Ossetia conflict from 1992 to 2008. An OSCE Chair's Personal Representative participated in a supporting role in implementing the Dayton Accords for Bosnia and Herzegovina from 1995 to 2015. The OSCE rapidly deployed an international police presence to Kyrgyzstan during widespread unrest in 2010.

The OSCE peace operations in Ukraine since the crisis erupted in 2014 – the Special Monitoring Mission (SMM), the Trilateral Contact Group (TCG) and the Observer Mission at the Russian Checkpoints Gukovo and Donetsk (OM) are, together, the largest endeavour the OSCE has undertaken in the last decade, and perhaps the most consequential. Today they deploy over 700 monitors from 44 OSCE participating States. The military and political situation changed rapidly in 2014–15, with armed hostilities in eastern Ukraine falling into three phases: "hybrid war", Ukrainian "anti-terrorist operations" and a Russian-backed counter-offensive. Finally, the conflict cooled into a simmering pattern of ceasefires with frequent violations.

Flexibility was the key to the SMM's transitions through these phases. It was created *before* armed hostilities broke out in eastern Ukraine. Negotiations on forming a mission for national reconciliation began on 2 March 2014. By 21 March, when the OSCE Permanent Council authorised the SMM, unrest was engulfing much of eastern Ukraine and Russia had annexed Crimea. The project staff quickly found themselves becoming conflict monitors. Russia's price for agreeing to the deployment was barring the SMM from Crimea. The monitors were not allowed to operate in areas along the Russian border and had no enforcement powers. The OSCE's lack of a legal personality meant that the SMM had to use the umbrella of the NATO office in Kyiv merely to open a bank account.

The Mission's initial reporting[9] describes the outbreak of civil unrest: on 1 March in Donetsk, on 6 April in Luhansk and Kharkiv, on 12 April in Sloviansk and Kramatorsk, and by 17 April in Mariupol. Civil unrest quickly turned into what came to be known as a "hybrid war".[10] In Ukraine the term meant Russian "little green men" (that is, Russian military units operating on the ground without insignia) and pro-Russian separatist forces hiding among activists, pretending to be Ukrainian civilians as they took over city governments by occupying buildings. A campaign

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[9] OSCE, Situation Remains Tense in Eastern Ukraine, OSCE Monitors Observe, 14 April 2014, https://www.osce.org/node/117622. For Mariupol, see SMM report of 18 April 2014: OSCE, *Latest from the Special Monitoring Mission to Ukraine – based on information received up until 17 April 2014, 20:00 (Kyiv time)*, 18 April 2014, https://www.osce.org/node/117844.

[10] "Hybrid war" is a name tacked onto events in Ukraine; when military strategists refer to hybrid war, they mean something different.

of this type depends for success on the target state treating all opposing forces – fighters and civilian protestors alike – as fellow citizens and refraining from using force against them. On 17 April the foreign relations chiefs of Ukraine, Russia, the United States and the European Union met in Geneva. Their statement called for de-escalation measures and called upon the SMM to play a leading role in helping Ukrainian and local authorities implement them.[11] Daily SMM reports track the spread of unrest fomented by "armed opponents of the central government".[12] Although the government in Kyiv announced that it was engaged in an "anti-terrorist operation",[13] this appears to have been aimed at militarily useful objectives outside the main towns, such as airfields, leaving city administration buildings in the hands of "activists".

The hybrid war stage ended abruptly on 2 May, when in Odessa Ukrainian pro-Maidan forces, including "Right Sector" militants, treated "little green men" and anti-Maidan civilian protestors alike as armed invaders, not citizens. Forty-two burned to death in the building they had occupied.[14] Over the next few weeks SMM teams mostly reported consolidation of the sides: the separatists strengthened their hold over parts of the Donetsk and Luhansk regions, while Ukrainian authorities regained control over cities outside those regions.

The second phase of the conflict began in late May with heavy clashes in the Donetsk region as Ukrainian "anti-terrorist" operations began in earnest. Repercussions for the SMM were immediate. On 26 May, separatists detained four SMM observers based in Donetsk. On 29 May, four observers based in Luhansk were taken prisoner. Both teams spent the next month in captivity.[15] On 28 May, eleven observers were detained west of Donetsk, but were released later the same day. The SMM made a point of continuing its work in both regions, demonstrating the international community's resolve not to be intimidated. As clashes increased, the mission gradually changed from observing hybrid war to monitoring full-scale hostilities.

Initially, Ukrainian forces met with some success, leading Russia to accept international talks in the Normandy Format (France, Germany, Ukraine and Russia) on 6 June. That meeting in turn led to an 8 June meeting of the Trilateral Contact

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[11] United States, European Union, Ukraine and Russia, *Geneva Statement on Ukraine*, 17 April 2014, https://2009-2017.state.gov/r/pa/prs/ps/2014/04/224957.htm; response by OSCE Chairperson-in-Office Didier Burkhalter: OSCE, *OSCE Ready to Assist Ukraine in Implementing De-Escalation Measures Agreed Today in Geneva, Says CiO*, 17 April 2014, https://www.osce.org/node/117837.

[12] See OSCE, Latest from the Special Monitoring Mission to Ukraine, cit; OSCE archive: *Daily and Spot Reports from the Special Monitoring Mission to Ukraine*, https://www.osce.org/ukraine-smm/reports.

[13] See for example "Ukraine Says Donetsk 'Anti-terror Operation' Under Way", in *BBC News*, 15 April 2014, https://www.bbc.com/news/av/world-europe-27031318.

[14] "How Did Odessa's Fire Happen?", in *BBC News*, 6 May 2014, https://www.bbc.com/news/world-europe-27275383.

[15] These were not the first OSCE-linked monitors to be held hostage. On 26 April four Vienna Document monitors were taken captive by separatists in Sloviansk; they were released on 3 May.

Group (OSCE, Russia, Ukraine), chaired by the experienced Russian-speaking Swiss diplomat Heidi Tagliavini, who was appointed as special representative by the OSCE's Swiss Chair-in-Office. Thus the OSCE, which had a presence on the ground in eastern Ukraine, was tasked with conducting the day-to-day negotiations that Germany and France had put in motion. Petro Poroshenko, elected president of Ukraine on 5 May, took office on 7 June and by 20 June had proposed a peace plan. Peace negotiations began in earnest, paving the way for the 27–28 June release of the two groups of OSCE observers who had been held captive by separatists since late May.

Russia took steps, however, to roll back Ukraine's advances on the battlefield. The third phase of the conflict was marked by a more or less open (though rigorously denied) Russian military presence in Donetsk and Luhansk. Moscow sent both personnel and heavy weapons across the border. As the Russian presence grew, the separatists were able to reverse Ukrainian gains. An early event of this new stage was the downing of a Malaysian airliner over Ukraine on 17 July 2014, killing all 298 persons aboard. A Dutch Safety Board forensic investigation, granted access through OSCE intervention, confirmed that the cause was an anti-aircraft missile from a Russian-military BUK system spotted earlier in the hands of separatists. The Dutch Ministry of Justice later identified and charged some alleged perpetrators.[16] Energised by the atrocity, the international community again deputised the OSCE. The OSCE Permanent Council decided on 18 July to deploy observers to two Russian crossing posts, Gukovo and Donetsk, on the separatist-controlled part of the border between Ukraine and Russia to observe traffic between Russia and the separatists.[17] However, the observers were limited to static posts.

Diplomatic efforts continued over the summer in the Trilateral Contact Group (TCG). Observers believe the driving force came from Germany, which was careful never to give the impression that it was acting unilaterally so as not to raise historical memories and suspicions. France was Germany's partner in the Normandy Format and the OSCE was the face of the West in the TCG. On 5 September 2014, the TCG signed the Minsk Protocol, which established a ceasefire in place and mandated autonomy talks for Donbas under Ukrainian law. However, the ceasefire left a Ukrainian salient at Debaltseve, a rail and road junction controlling traffic between Luhansk and Donetsk. In January 2015 a Russian-backed offensive began that over the next month encircled, besieged and shelled the town; the US charged that Russian artillery was responsible for the shelling.[18] A Normandy Format meeting in Minsk proclaimed another ceasefire on 12 February 2015 ("Minsk II"), but the offensive continued until Ukrainian troops abandoned Debaltseve on 18 February.

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[16] "The crash of flight MH17 on 17 July 2014 was caused by the detonation of a 9N314M-type warhead launched from the eastern part of Ukraine using a Buk missile system." See Dutch Safety Board, *Crash MH17, 17 July 2014*, 13 October 2015, https://www.onderzoeksraad.nl/en/page/3546.

[17] OSCE, *Permanent Council Decision No. 1130*, 24 July 2014, https://www.osce.org/node/121826.

[18] Andrew E. Kramer and Michael R. Gordon, "U.S. Faults Russia as Combat Spikes in East Ukraine", in *The New York Times*, 13 February 2015, https://www.nytimes.com/2015/02/14/world/europe/ukraine-fighting-escalates-ahead-of-truce.html.

Throughout this period the SMM patrolled in zones of combat and shelling, staying in close touch with both the Ukrainian military and the Joint Control and Coordination Commission (JCCC) set up between Ukrainian and Russian military authorities. The SMM reported extensively on shelling of civilians by both sides as well as movements of heavy weapons to the separatists.[19] The SMM enhanced its capabilities in October 2014 by deploying uncrewed aerial vehicles to places inaccessible to patrols.[20] The SMM thus adapted to the outbreak of full-scale combat by reporting objectively on what both combatant sides would have preferred to remain lost in the fog of war.

After new frontlines stabilised in Donbas, the role of the OSCE began to resemble other frozen conflicts, albeit with failures of successive ceasefires, widespread ceasefire violations and continued casualties.[21] The SMM and OM monitored and reported to the international community; the TCG, meeting every two weeks, negotiated on day-to-day issues; and the SMM liaised with the Joint Control and Coordination Commission – which took on the form of combined military commissions seen in other frozen conflicts, e.g., the Joint Control Commission in the Transdniestria conflict.

This frozen-conflict system was disturbed in 2016, during Germany's term as OSCE Chair-in-Office, when foreign minister and OSCE Chair Frank-Walter Steinmeier cast aside Germany's usual behind-the-scenes approach and proposed a formula for holding elections according to Ukrainian law in separatist-controlled areas. The OSCE would monitor the elections, and if it judged them to be free and fair, an interim self-governing status would be initiated in exchange for the return of Ukrainian control over its borders. Despite some back and forth, and endorsement in 2019 by Ukrainian President Volodymyr Zelensky, the initiative failed; the separatists ignored the formula and held their own unrecognised elections in 2018.

To summarise, through the SMM, the Observer Mission at the border points and the TCG, the OSCE has performed a valuable service since 2014 in maintaining and managing the international involvement in a dangerous conflict in the heart of Europe and keeping the international community informed. Flexibility and nimble navigation of bureaucratic procedures allowed for quick deployment and rapid adaptation to changing politico-military environments. The OSCE was able to

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[19] E.g., Ukrainian shelling in Donetsk: OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 7 November 2014: Shelling and Fatalities in Donetsk,* 7 November 2014, https://www. osce.org/node/126474; separatist shelling in Debaltseve: OSCE, *OSCE Special Monitoring Mission to Ukraine Today Monitors Evacuation of Civilians from Debaltseve,* 6 February 2015, https://www.osce. org/node/139396; unmarked artillery movements: OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM),* 9 November 2014, https://www.osce.org/node/126485.

[20] DFRLab, *#MinskMonitor: Long-Range Monitoring Drones Return to Eastern Ukraine,* 28 March 2018, https://link.medium.com/lIHc0nQNofb.

[21] Daily compilation of reported violations and casualties at: Live Universal Awareness Map website: *Minsk Monitor - Map of Ceasefire Violations in Eastern Ukraine,* https://minskmonitor.liveuamap. com.

give institutional support to the Normandy process and, through the TCG, to blunt suspicions of German leadership. One factor for success was Russia's continued view of the OSCE as neutral – according to one analyst, the first Russian officers to participate in the JCCC even wore OSCE armbands.[22] This contrasted sharply with Russia's evolving assessment of the EU. In 2008 Russia agreed to EU observers in the wake of its war with Georgia. With Vladimir Putin's return to the presidency, the Russian government adopted the view, previously limited to the military/security services, that the EU was a rival, not a partner.

But the SMM came at a cost. Just as the OSCE gave Germany a multilateral screen, it did the same for Russia, lending a veneer of legitimacy to Russia's assertion that it was a mediator, not a belligerent. Russia also limited SMM/OM activity: Russia's proxies in Donbas constrained and intimidated the SMM; and while static observers could see groups of men of military age and bearing crossing the border, heavy weapons later seen inside Ukraine entered through crossings beyond their view.

3. Democracy and human rights

In 2020 the OSCE underwent a leadership crisis. The terms of the four leaders of its premier institutions – the Secretary General, the Director of the ODIHR, the High Commissioner on National Minorities (HCNM) and the Representative on Freedom of the Media (RFoM) – expired in July. They had been appointed three years earlier in a package deal, and their renewal was expected by consensus. But on 11 June, Azerbaijan announced that it would oppose renewing the RFoM, the French politician Harlem Désir, for his "excessive criticism" of the state of free speech in Azerbaijan.[23] Turkey and Tajikistan followed by opposing the renewal of ODIHR Director Ingibjörg Sólrún Gísladóttir, an Icelandic politician; ODIHR had often targeted those countries on human rights grounds. In retaliation France and Iceland, supported by Canada, Norway and Armenia, vetoed extensions for Secretary General Thomas Greminger, a Swiss diplomat; and HCNM Lamberto Zannier, the Italian diplomat who had previously served two terms as OSCE Secretary General.[24] The OSCE's institutions were thus left leaderless for six months, until a new package deal to fill the posts was reached on 4 December at the OSCE's annual Ministerial Council meeting in Tirana.[25]

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[22] Walter Kemp, "Moving from War to Peace in Ukraine: The Role of a Joint Military Commission", in *Security and Human Rights Monitor*, 29 April 2020, https://www.shrmonitor.org/moving-from-war-to-peace-the-role-of-a-joint-military-commission.

[23] "Azerbaijan Attempted to Paralyze the OSCE", in *Turan*, 24 June 2020, https://www.turan.az/ext/news/2020/6/free/politics_news/en/125171.htm.

[24] Walter Kemp, "Executed Structures: Leadership Crisis in the OSCE", in *Security and Human Rights Monitor*, 14 July 2020, https://www.shrmonitor.org/executed-structures-leadership-crisis-in-the-osce.

[25] OSCE, *OSCE Chairperson-in-Office Rama Announces Appointments of Senior OSCE Officials, Commends One of "Most Productive" Ministerial Councils in Many Years*, 4 December 2020, https://www.osce.org/node/472749.

What caused this crisis? ODIHR had been critical of human rights and elections practices since its inception in 1991; the RFoM had been criticising the persecution of journalists since 1998; and their criticisms had frequently caused irritation in OSCE participating States, especially those "east of Vienna". But no state had ever blown up the process of choosing a slate of leaders for the institutions. What led Azerbaijan – followed quickly by others – to take this step?

To answer this question, we must look back to the OSCE's origins. The Helsinki Final Act of 1975 represented a grand bargain between East and West. The Soviet Union achieved recognition of its sphere of influence: its political, economic and security bloc in Eastern and Central Europe. In return, the West received Eastern recognition that respect for human rights was a universal obligation and therefore that human rights *anywhere* were of legitimate concern *everywhere*.[26] By the end of World War II, democracy had become the only legitimate form of governance – had it not been, the "Democratic" People's Republic of Korea and the German "Democratic" Republic would have chosen different names – but the Helsinki Final Act, adopted while Leonid Brezhnev ruled the Soviet Union, makes no mention of democracy or the rule of law. That was remedied in 1990 by the adoption of the Paris Charter.[27] As new states emerged and joined the CSCE/OSCE, they, too, assumed the Charter's commitments to democratic governance, rule of law and respect for human rights as universal ideals – the price of admission to a Europe-wide organisation in which small states could speak on equal footing with the large.

To actualise those ideals, the Charter established many of the OSCE's current institutions: the Secretariat, the Conflict Prevention Centre and the Permanent Council (originally the Committee of Senior Officials), all now in Vienna; and a Committee for Free Elections (now ODIHR) in Warsaw. The Charter mandated a Geneva conference in 1991 that led to the creation of the office of the High Commissioner on National Minorities in The Hague. It mandated the parliamentary outreach that became the OSCE Parliamentary Assembly based in Copenhagen. The institutions created by the Paris Charter began the process of turning the CSCE

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[26] "The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States. They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them." CSCE, *Helsinki Final Act*, 1 August 1975, p. 6-7, https://www.osce.org/node/39501.

[27] "We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. […] Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law." OSCE, *Charter of Paris for a New Europe*, 21 November 1990, p. 3, https://www.osce.org/node/39516.

into the OSCE: from a *Conference* to an *Organization* with executive functions, still dependent on a consensus of the participating States to ratify its actions, but with rudimentary policy-making capability. That capability grew exponentially in the early 1990s with the establishment of many field presences, mostly in the new states, often war-torn, that emerged from the ruins of the Soviet Union and Yugoslavia. Each field presence possessed the latitude to pursue programmes and policies to promote peace, security, democracy, the rule of law and respect for human rights in places where all these were, when the Charter was adopted, in very short supply.

The hard truth, however, is that regardless of the hopes and dreams of many, democracy failed to survive in most of the former Soviet Union outside the Baltics. In Central Asia, Communist Party first secretaries remained in place, making a seamless transition to presidencies-for-life. In the South Caucasus, democratically minded nationalists only briefly replaced the party leaders. In 1992, warlords overthrew Georgia's Zviad Gamsakhurdia and installed former Party first secretary and Politburo member Eduard Shevardnadze as a figurehead president. To gain real power, Shevardnadze allied with both old Party figures and young democrats. In Azerbaijan, Abulfaz Elchibey and his democratic allies in the Popular Front took power in 1992, upon which Islam Karimov, Uzbekistan's Party boss turned president for life, reportedly commented, "Such a man will survive one year".[28] One year later, Elchibey was indeed ousted in favour of former Party and KGB boss and Politburo member Heydar Aliyev. Levon Ter-Petrosyan survived in Armenia until 1998, when he was ousted by the even more nationalistic Robert Kocharyan. In Belarus, Alexander Lukashenko won the first presidential election in 1994 and then installed a Soviet-style authoritarian regime. More democratic – but extremely corrupt – governments emerged in Ukraine and Moldova. Most significantly, democracy failed in Russia, where Boris Yeltsin's initial promise was drowned in corruption, organised crime and impoverishment. In all these countries – with only partial exceptions in Ukraine, Moldova, Georgia and Armenia – the very concept of democratic governance as an ideal was discredited.

If we take as a proxy for democratic governance the peaceful transition of power from one leader to an elected opponent without the intervention of a revolution, coup or uprising, how many times has this happened in the former Soviet Union (outside the Baltics)? Never in Central Asia, where presidents have left only through revolution or death – or, in the case of Kazakhstan, retirement in favour of a personally designated successor. Never in Russia, where Yeltsin designated his successor, who has remained in power since, though nominally changing positions. Never in Armenia or Azerbaijan, and in Georgia not until 2013, and never since. The only states to experience multiple peaceful democratic transitions of government were Ukraine (1994, 2010 and 2019) and Moldova (1997, 2001, 2016 and 2020).

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[28] Personal conversation.

In place of democratic ideals, nascent autocrats nurtured an ideology of grievance – based on the real lawlessness and impoverishment of immediate post-Soviet life – that blamed early attempts at democracy for abasing their countries. In Russia, the Putin narrative holds that the early 1990s represented a period of misery, disgrace and weakness that the West exploited to expand at Russia's expense, promoting Western – not universal – "interpretations" of democracy and human rights as a means of keeping Russia subjugated. This narrative has found widespread acceptance both inside and outside Russia. It has given political cover to other states adopting overtly authoritarian measures. They use it to buttress an ideology asserting that Western "interpretations" of democracy and human rights are a transplant that corrodes traditional values, a club to bludgeon sovereign countries into weakness and submission.[29]

The OSCE, in its efforts to promote democratic governance and respect for human rights, never developed an effective strategy to counter this narrative. ODIHR heads and other OSCE officials presented – and continue to present – the issue in simple terms: participating States had undertaken solemn commitments to universal ideals and needed to live up to them. Civil society activists who flocked to ODIHR's Human Dimension Implementation Meetings in Warsaw, Europe's largest annual human rights conferences, believed the most effective way to get wayward states to live up to these commitments was to "name and shame" those who did not, unaware that figures such as Vladimir Putin could exploit naming and shaming by the West to boost their domestic standing.

ODIHR election monitoring missions were sent out to "east of Vienna" and "west of Vienna" countries with equal frequency – ODIHR was sensitive to criticism that it thought only "east of Vienna" was worth monitoring – but found far more to criticise in the east, especially in Azerbaijan and Central Asia. From 1999 to 2020 ODIHR issued thirty statements and reports expressing concern, criticism or condemnation of Azerbaijani elections or human rights practices and thirty-five about Kazakhstan, but only sixteen on Russia and eleven on Hungary (mostly about Roma/Sinti issues). The RFoM similarly found much to criticise in Azerbaijan: for the same period, the Representative issued seventy-four statements of concern, criticism or condemnation on Azerbaijan (mostly for high-profile prosecutions of journalists), but only thirty-eight about Kazakhstan and seventeen about Hungary. On Russia the RFoM issued few statements until Putin's return to the presidency in 2012 but has issued ninety-four since then.

OSCE efforts to promote democratic governance and respect for human rights in states unreceptive to that message has resembled, over the last two decades, Sisyphus pushing the boulder uphill, with the slope steepening after Russia's annexation of Crimea in 2014. Already hobbled since the financial crisis of 2008

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29 For example, see the essay by Ramiz Mehdiyev, then head of Azerbaijan's presidential apparatus: Ramiz Mehdiyev, Миропорядок двойных стандартов и современный Азербайджан (The World Order of Double Standards and Modern Azerbaijan), Baku, Sharg-Garb, 2014.

by a "zero nominal growth" budgetary policy, the OSCE suffered from a structural disadvantage imposed by the consensus principle: all decisions require unanimity, including annual consent on the budgets and mandates of field presences. To be sure, field presences had closed in the past: host countries joined the EU and no longer needed the programmes or services provided by OSCE missions, or the single purpose for which some presences were established became obsolete (e.g., the Representative to the Estonian Expert Commission on Military Pensioners). But in 2010 Belarus took a new step: it closed the Office in Minsk, whose director was vociferous in raising democracy and human rights issues. The crisis of 2014 emboldened those who resented OSCE criticisms. In 2014 Azerbaijan downgraded the OSCE Office in Baku to a Project Coordinator and closed it entirely the following year. In 2017 Armenia followed suit, closing the Office in Yerevan.

It was only a matter of time before participating States threatened breaking consensus to promote other demands, and in 2020 Azerbaijan set off the cycle that vacated the leadership positions in ODIHR, RFoM, HCNM and the Secretariat. Now that participating States have seen what is possible, it cannot be unseen and will be difficult to reverse. While it will be the task of the 2021 Swedish Chair-in-Office (CiO) and her successors to help re-establish the institutions to carry out their tasks effectively, the threat of any participating State's breaking consensus reminds the institutions of the cost of doing their jobs. In a Zoom webinar with the Carnegie Endowment for International Peace on 28 January 2021, CiO Ann Linde, Foreign Minister of Sweden, reiterated – in the same words as previous OSCE officials – determination to press for respect for human rights and democracy as commitments undertaken without reservation by participating States. The drama continues.

Conclusion

The OSCE has met with decidedly mixed results over the last ten years. OSCE mediators' best efforts were no more successful than in the twenty preceding years. A mediator cannot make peace if the sides – or in some cases, their patrons – do not want it. The Special Monitoring Mission in Ukraine can be judged as a success in keeping the international community informed and involved but the consensus principle and the lack of a legal personality, which render the OSCE heavily dependent on its participating States, make it impossible for the OSCE to go beyond the bounds set by those states, especially when the latter are belligerents. That limitation is even more severe in the case of promotion of democratic governance and human rights. Participating States can – and did – disrupt all activities in these areas. What do these cases tell us about where the OSCE is heading?

In 2016, following Russia's annexation of Crimea and the war in eastern Ukraine, the OSCE established a Structured Dialogue to work on "challenges in the wider politico-military sphere" in areas on which East and West were still capable of

finding common ground.[30] It followed an earlier attempt at dialogue, the Corfu Process, created by the Greek CiO in 2009 in the wake of the Russian-Georgian War and Medvedev's proposal for a new European security treaty.[31] The Structured Dialogue can be viewed as a return to the CSCE of 1975: a permanent *conference* of states, most affiliated with rival security, political and/or economic blocs, whose purpose was discussing issues of European security and cooperation. Given the continuing difficulties the OSCE faces in carrying out executive functions, the question participating States must ask themselves becomes: "what future do we want for the OSCE?" If the answer is a return to the 1975 CSCE, they need do nothing: the Structured Dialogue is that future, barring only window dressing. A return to 1975 would still leave the OSCE a valuable organisation, especially since some participating States appear to look forward to a return of blocs, spheres of influence and a more Westphalian and less multilateral world.

If, however, the participating States want an OSCE capable of carrying out the executive functions needed to mediate peace, mount effective observer missions and promote the democratic and human rights commitments they undertook at Helsinki in 1975 and Paris in 1990, they must agree to strengthen the OSCE's executive capabilities and give the organisation more autonomy from their own day-to-day pressure. They can start this process in three ways: the first – and admittedly most difficult – is to amend the process of achieving consensus in choosing the leadership of OSCE institutions to negate direct threats from participating States with a particular grievance – the drama we saw in 2020. We can only hope that the certainty of a stalemated organisation – in every function – will serve to concentrate minds.

Secondly, participating States should agree on a legal personality for the OSCE that will allow it to carry out basic day-to-day tasks that are now barred – as we saw, the SMM in Ukraine could not even open its own bank account. In this regard the position of the United States will be key, since it represented the original resistance to a legal personality and a stronger executive. Historically, "Jacksonian"[32] US legislators, suspicious of internationalism, led that charge. After four years of Jacksonian foreign policymaking by the Trump Administration, President Joseph Biden and his team face an uphill battle in credibly asserting that a return of US commitment to internationalism will outlast the new Administration.[33] One step in rebuilding credibility would be strengthening the OSCE's executive capabilities – furthering the twin goals of re-engaging with multilateralism and re-engaging with Europe.

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[30] OSCE website: *The OSCE Structured Dialogue*, https://www.osce.org/node/415298.

[31] OSCE, *Restoring Trust: The Corfu Process*, 1 December 2010, https://www.osce.org/node/87193.

[32] Walter Russell Mead, "The Jacksonian Tradition. And American Foreign Policy", in *The National Interest*, No. 58 (Winter 1999/2000), p. 5-29.

[33] Jonathan Kirshner, "Gone But Not Forgotten", in *Foreign Affairs*, Vol. 100, No. 2 (March/April 2021), p. 18-26.

Lastly, states committed to democracy, the rule of law and respect for human rights need to work together to come up with a better argument for furthering those goals among all participating States. Merely doubling down on insisting that these are universal ideals to which those states undertook commitments has not proved effective in the past and is unlikely to be effective in the future. States now undermine the OSCE *acquis* not by challenging democracy, legality or human rights per se, but rather the meaning ascribed to them by Western powers. Calling those ideals aspects of geopolitical struggle, a community of "illiberal" states now claims the right to define them in Orwellian oxymorons. The democracies of Europe, still the majority, are fragmented but also diverse – which also means they have voices that can bridge the divide.

These three goals are difficult and achieving them demands sustained diplomatic effort. Progress is more likely to resemble a marathon than a sprint, and will demand endurance and persistence, not speed.

Updated 12 April 2021

List of acronyms

CiO	Chair-in-Office
CSCE	Conference on Security and Co-operation in Europe
EU	European Union
HCNM	High Commissioner on National Minorities
JCCC	Joint Control and Coordination Commission
ODIHR	Office of Democratic Institutions and Human Rights
OM	Observer Mission
OSCE	Organization for Security and Co-operation in Europe
RfoM	Representative on Freedom of the Media
SMM	Special Monitoring Mission
TCG	Trilateral Contact Group
UK	United Kingdom
UN	United Nations
US	United States

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