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The OSCE and the Crisis in and around Ukraine: First Lessons for Crisis Management

Introduction

The OSCE's response to the crisis in and around Ukraine is a story of both success and failure. It may be too early to draw authoritative conclusions concerning what this crisis means for the OSCE as an organization. It is clear, however, that all aspects of the core mandate of the OSCE have been affected throughout 2014 and 2015. There are a number of recommendations that can be extrapolated from an already rich body of analysis and other literature, which now also includes two reports by the Panel of Eminent Persons on European Security as a Common Project. In June 2015, the Panel published an interim report dedicated to the OSCE engagement in Ukraine and, in late November 2015, a final report on broader questions of European security.

This article will explore three issues that are directly linked to the Ukrainian crisis but have ramifications that go much further: the challenge of early crisis response; the development of relations between the OSCE and high-level contact groups in crisis management; and efforts to overcome the current political stalemate of the Organization, which results from the crisis in relations between Russia and the West. All three topics impact on the OSCE's capacity to act in times of crisis, and hold lessons for future efforts in crisis management and conflict resolution both for the OSCE and for other regional organizations.

The Failure of Prevention: Early Warning but no Early Response

As a consequence of the seminal 2013 Vilnius OSCE Ministerial Council Decision on the Elements of the Conflict Cycle (MC Decision 3/11),[1] the OSCE has enhanced its ability to act effectively across the conflict cycle, from early warning and early action, via dialogue facilitation and mediation, all the way to post-conflict rehabilitation. This decision was taken during the

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Note: The views expressed in this article are those of the author and should not be attributed to the OSCE or any other organization. The author would like to thank Mr Juraj Nosal for his assistance during preparation of this contribution.

1   Cf. Organization for Security and Co-operation in Europe, Ministerial Council, Vilnius 2011, *Decision No. 3/11, Elements of the Conflict Cycle, Related to Enhancing the OSCE's Capabilities in Early Warning, Early Action, Dialogue Facilitation and Mediation Support, and Post-Conflict Rehabilitation*, MC.DEC/3/11, 7 December 2011, at: http://www.osce.org/mc/86621.

mini-détente following the shock of the Russian-Georgian war of 2008. The crisis in and around Ukraine has become a first test of this decision. A number of authors in this publication explore how the various instruments in the OSCE's crisis response toolbox have been used with some success for mediation, de-escalation efforts, ceasefire monitoring and facilitation, and to prepare the conditions for the peaceful political settlement of the conflict.

However, in terms of early warning and early action, there is disagreement over the OSCE's performance. It is true that the annexation of Crimea by Russia in mid-March 2014 came as a surprise to most analysts and policymakers. The fact-finding missions to Crimea by the OSCE institutions and the newly appointed Special Representative of the Chairperson-in-Office (CiO) that took place in early March 2014 had to be aborted due to threats by local self-defence militias, anti-OSCE demonstrations, and other security concerns. With the absence of the OSCE and other international organizations on the ground in Crimea, the international community was blind and unable to engage in early crisis response, and was soon confronted with a fait accompli.

With regard to the emerging conflict in eastern Ukraine, on the other hand, there was ample early warning. However, the OSCE and the international community at large failed to prevent this conflict from turning into a hot war. This failure of prevention had many reasons, but the lack of early warning was not one of them.

The OSCE institutions performed their early-warning functions, and various OSCE actors did visit Ukraine for fact-finding and assessment missions in the lead up to the crisis. The Secretary General provided early warning-related information during numerous meetings at the end of 2013. Even though Ukraine still held the OSCE Chairmanship, on 29 November 2013, the Representative on Freedom of the Media publicly condemned attacks on journalists in Ukraine and warned of a deteriorating situation. On 3 December 2013, the President of the OSCE Parliamentary Assembly, Ranko Krivokapić, publicly raised the issue of Ukraine. He expressed his deep concern at violence during demonstrations in Ukraine, urged all sides to avoid provocative acts, and called for a dialogue to defuse tensions. The crisis in and around Ukraine has become a regular item on the agenda of the OSCE Permanent Council since 12 December 2013, when it was raised by the United States for the first time. The OSCE was, however, not able to take early action for two main reasons.

First, despite MC Decision 3/11, the OSCE Secretary General is not practically empowered to take initiatives in the early stages of an emerging conflict. In recent years, the Permanent Council has been unable to provide the Secretary General with access to a contingency fund for early preventive action. A fund of this kind could have provided vital financing for fact-finding missions, technical expertise that was not available in the Secretariat, and short-term projects. As well as financial support and capacity building,

political empowerment is also required. The Panel of Eminent Persons recommends that the OSCE "give the Secretary General a standing mandate to take any steps within his authority that he thinks useful in the interests of conflict prevention, where necessary acting behind the scenes and reporting to the Permanent Council after the event".[2] Here, a close relationship between the OSCE Chairmanship and the Secretary General would be key to a coherent and rapid response to an emerging crisis situation.

Second, no action was possible as long as Ukraine continued to treat the escalating conflict as a purely domestic issue and was not open to accepting international crisis support until it was too late. According to the Report of the Panel of Eminent Persons, the government of Ukraine under President Yanukovych "was unready to acknowledge the seriousness of the problems either as OSCE Chairmanship in 2013, or on its own account, when Switzerland took over the Chairmanship in 2014".[3]

Although the Ukrainian government was concerned not to internationalize the crisis, the OSCE was nevertheless able to take a number of measures to improve the information flow that was essential for thorough conflict analysis, early warning, and response. The OSCE used its Project Coordinator in Ukraine (PCU) to co-ordinate its early action. Though the PCU had no mandate for political reporting, the Ukrainian government allowed the OSCE to develop a national dialogue facilitation project, which was led by Ambassador Hido Biščević. This project enabled the OSCE to send experts to Kyiv and to places such as Odessa, Kharkiv, Luhansk, Dnipropetrovsk, Donetsk, and Lviv. They engaged with a wide range of people from state institutions, local authorities, churches, and civil society to assess their views and concerns and identify entry points for dialogue facilitation. The information and insights gained at this early stage of the crisis were shared with the UN and regional organizations in informal workshops in Vienna.

Furthermore, in the very early stages of the conflict, at the point when the Maidan demonstrations turned violent, the OSCE was able to dispatch an expert to the Swiss embassy in Kyiv to support Swiss efforts in mediating the peaceful return of occupied buildings to the authorities.

Finally, after a new government took charge in Kyiv, and the decision was made in Vienna on 21 March 2014 to establish the Special Monitoring Mission to Ukraine (SMM), the PCU in Kyiv played a central role as a co-ordination centre for the rapid deployment and build-up of this mission. These examples show that the search for multiple entry points is essential for timely information, accurate analysis, and the building of a dialogue network with local communities and civil society, especially when faced with host country reluctance.

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2   *Lessons Learned for the OSCE from its Engagement in Ukraine. Interim Report and Recommendations of the Panel of Eminent Persons in European Security as a Common Project*, sine loco, June 2015, p. 9, at: http://www.osce.org/networks/164561.
3   Ibid., pp. 6.

Managing Relations with High-Level Contact Groups

The crisis in and around Ukraine showed that outside responses could only develop sufficient traction when endorsed and supported by high-level contact groups. An initiative by the OSCE Chairmanship, the Troika, or the Secretary General needs to be backed up and actively promoted by various capitals that have a stake in the peaceful settlement of the conflict.

In the case of the crisis in and around Ukraine, the leaders of several countries and institutions have met in varying formats and contact groups. Contact between such high-level groups and the OSCE has been a recurrent feature of the crisis. One question that has emerged repeatedly is the extent to which such contact groups or "group of friends" can mandate the OSCE to perform additional tasks and take on increased responsibilities, as well as the degree to which the OSCE has been given opportunities to influence the decision-making process of such groups.

It was the Swiss CiO who, at a very early stage in the crisis, launched the idea of a contact group in his formal address to the UN Security Council in New York on 25 February 2014. This suggestion came to fruition in different forms and at different levels. The first meeting of a high-level group took place on 17 April 2014, when the foreign ministers of the United States, Russia, and Ukraine and the EU High Representative for Foreign Affairs and Security Policy met in Geneva and issued a joint statement with a number of recommendations pertaining to a peaceful settlement of the differences in Ukraine. The recommendations included the disarmament of illegal groups, the return of illegally seized buildings, and the establishment of a broad national dialogue in support of a constitutional process. Known as the Geneva Joint Statement, this document also empowered the SMM to support the "Ukrainian authorities and local communities" in de-escalation measures.[4]

While disarming illegal groups was a difficult proposition in a time of escalating conflict, the OSCE did feel that it could support the facilitation of national dialogue and engage in a number of activities to promote de-escalation. The Swiss Chairmanship developed a roadmap that spelled out more concretely how the Organization could contribute to the implementation of the commitments set down in Geneva.[5] It turned out that not all of the states concerned were willing to take ownership of the roadmap, which prevented a structured and sequential approach to the management of the Ukrainian conflict.

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4   European Union, External Action, *Joint Statement, Geneva Statement on Ukraine*, Geneva, 17 April 2014, at: http://eeas.europa.eu/statements/docs/2014/140417_01_en.pdf.
5   The CiO presented the key elements of the roadmap to the Foreign Affairs Council of the European Union in Brussels on 12 May 2014; cf. Swiss Confederation/OSCE Switzerland 2014, *A Roadmap for concrete steps forward: The OSCE as an inclusive platform and impartial actor for stability in Ukraine*, CIO.GAL/78/14, Bern/Brussels, 12 May 2014, at: http://www.osce.org/cio/118509.

The Geneva group met several times in Kyiv and elsewhere at different levels in order to assist in the implementation of the various recommendations. The relationship between the Geneva group and the OSCE was not particularly intimate. The CiO was not invited to attend the Geneva meeting in April 2014 and, in contrast to the Normandy format, the OSCE was not involved in the preparation of its meetings. The Normandy format, in which Germany and France took the place of the United States and the EU, superseded the Geneva group after Petro Poroshenko was elected president of Ukraine in May 2014.

This new contact group met for the first time on the occasion of the 70th anniversary of the Allied landings in Normandy. The group, which met at the level of heads of state, established the Trilateral Contact Group (TCG) and has become a key actor in negotiations between Ukraine and Russia, later also including the rebel groups.

The Normandy foreign ministers met in Berlin a month later on 2 July 2014 and, against the background of rapidly escalating violence in Donbas, agreed to a declaration that mandated the OSCE to monitor a future ceasefire agreement "in conformity with its mandate".[6] Thanks to the flexibility of the SMM's mandate, the new task handed down by the Normandy quartet did not need a new Permanent Council decision that would require the consensus of all 57 participating States. The Berlin Declaration also invited the OSCE to deploy observers to two checkpoints on the Russian side of the Ukrainian-Russian border to compensate for the SMM's lack of access to large parts of the Ukrainian border areas controlled by rebel groups. The Normandy group thus brought about the return of an OSCE mission to Russian territory, eleven years after the closure of the OSCE Assistance Group to Chechnya.

Escalation of the conflict in the Donbas over the summer of 2014 led to intensified efforts to reach an agreement that would stop the fighting and pave the way to a political settlement. The work of the TCG bore fruit in September 2014 when, after extensive negotiations, the representatives of Ukraine, Russia, and the separatists agreed on a ceasefire in Minsk, the Belarusian capital. Despite a degree of de-escalation in many areas over the autumn, fighting never stopped completely. A new upsurge in late 2014 and early 2015 threatened to completely derail the ceasefire agreement. It became clear that without the direct involvement of the Normandy group, it would be very difficult to pressure all the parties to the conflict into complying with the provisions of the Minks Agreements. The key Normandy meeting took place in February 2015, again in Minsk. There, the leaders adopted the "Package of Measures for the Implementation of the Minsk Agreements". This package was prepared by several Normandy format working meetings at expert and senior-officials level before the leaders travelled to Minsk. The OSCE was

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6   Auswärtiges Amt [German Federal Foreign Office], *Joint Declaration by the Foreign Ministers of Ukraine, Russia, France and Germany*, 2 July 2014, at: http://www. auswaertiges-amt.de/DE/Infoservice/Presse/Meldungen/2014/140702_Statement.html.

involved in these preparatory meetings and was represented at the Minsk negotiations by Ambassador Heidi Tagliavini, the Personal Representative of the Chairperson-in-Office for the TCG.

The Normandy format prevented parties to the conflict from inserting new conditionalities into the political process and from widening the scope of negotiations beyond the Minsk parameters. One Normandy country (Russia) also introduced a UN Security Council Resolution to endorse the Minsk Agreements on a global scale.[7]

In contrast to the Geneva format, the leaders of the Normandy group engaged directly in the negotiations in Minsk together with the TCG. At the same time, the TCG provided a link to the representatives of the separatists, who have attended its meetings, though they are not formally a part of the group. The Package of Measures for the Implementation of the Minsk Agreements was supplemented by a declaration endorsing it; the declaration makes no explicit reference to the role of the OSCE, but includes a commitment to "establish an oversight mechanism in the Normandy format".[8] This oversight mechanism, in form of regular meetings of senior officials, has since served to provide guidance in the implementation of the political aspects of the Minsk Agreements. The Normandy format's Paris summit meeting of 2 October 2015 provided guidelines for the four working groups of the TCG on security, political, humanitarian, and economic issues. The OSCE is represented in all of these working groups. The Normandy format meeting of ministers of foreign affairs in Berlin of 6 November 2015 produced guidelines for the political affairs working group of the TCG, with a special emphasis on elections.[9]

The Normandy group has thus far met at the level of foreign ministers, deputy foreign ministers, and political directors eleven times and at the level of heads of state or government three times. In addition, several phone conversations among the leaders of Normandy group states have taken place. The OSCE was kept up to date in various ways, for example, through statements to the Permanent Council, as was the case on 8 October 2015, when the delegation of France made a statement on the Normandy summit meeting

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7   Resolution 2202 (2015) calls on all parties "to fully implement the 'Package of measures', including a comprehensive ceasefire", United Nations, Security Council, *Resolution 2202 (2015), Adopted by the Security Council at its 7384th meeting, on 17 February 2015*, S/RES/2202 (2015), 17 February 2015, p. 1, at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2202 (2015).

8   *Declaration of the President of the Russian Federation, the President of Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany in support of the "Package of Measures for the Implementation of the Minsk Agreements"*, adopted on 12 February 2015 in Minsk, Annex II to United Nations Security Council Resolution 2202 (2015), cited above (Note 7), p. 5.

9   Cf. Federal Foreign Office, *Statement by Foreign Minister Steinmeier following the four-way ministerial meeting on Ukraine*, 6 November 2015, at: http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2015/151106_Ukraine.html.

of 2 October.[10] Alternatively, the Normandy host country may make a public statement, as was the case after the Berlin meeting of 6 November. Germany, as a member of the OSCE Troika, also kept the other Troika members informed.

This degree of co-ordination with external high-level contact groups is relatively new to the OSCE. The advantage of high-level groups such as Geneva or Normandy is their leverage over actors involved in the peace process; they can also broaden the agenda to cover issues beyond the remit of the OSCE. In its final report, the Panel of Eminent Persons recommended that the Normandy group be upgraded to include the remaining signatories of the Budapest Memorandum (the United States and the United Kingdom). A "Normandy Plus" group of this kind would "help deal with political and security issues arising in the implementation of the Minsk agreements".[11] However, not all OSCE participating States are keen to support the contact group model, as contact groups are by definition not inclusive, and can be reminiscent of cases where great powers have collaborated to "carve up" the world, as at the Congress of Vienna or the Yalta Conference.

A Return to Diplomacy: How to Overcome the OSCE's Political Stalemate

Although the OSCE has been able to stage an impressive crisis management response with regard to the crisis in and around Ukraine, the Organization remains deeply divided over the violation of Ukraine's sovereignty and territorial integrity and the illegal annexation of Crimea. As an inclusive institution, the OSCE finds itself in a political stalemate, in which a large number of participating States feel that the violation of the Helsinki principles is making it difficult, if not impossible, to engage with Russia in a dialogue on confidence-building and European security.

One consequence of this was that the OSCE's "Helsinki +40" reform process came to a grinding halt towards the end of 2014. In this difficult situation, the Swiss OSCE Chairmanship, in close co-operation with the other two members of the 2015 OSCE Troika, launched the "Panel of Eminent Person on European Security as a Common Project" in order to find common ground and define conditions under which dialogue and co-operation on European security could resume. The Panel produced its interim report "Lessons learned for the OSCE from its engagement in Ukraine" in June 2015 and the final report "Back to Diplomacy" in late November 2015.

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10 Cf. Organization for Security and Co-operation in Europe, Permanent Council, *Statement by the Delegation of France (also on behalf of Germany)*, PC.JOUR/1070, 8 October 2015.

11 *Back to Diplomacy. Final Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project,* sine loco, November 2015, p. 13, at: http://www.osce.org/networks/205846; also reprinted in this volume, pp. 377-408, here: p. 385.

The final report presents the OSCE community with a number of recommendations that could pave a way to a robust diplomatic process that would conclude with a summit meeting. The goal would be to "re-establish security on a co-operative basis, within the framework of the OSCE principles".[12] Yet the Report argues that there is a more urgent need to address the dangerous situation in Europe in the short term. For this purpose, Russia and the West should engage in risk-reduction measures that would prevent military accidents or dangerous incidents such as the shooting down of a Russian military plane by Turkey in late November 2015. Another key short-term measure is the full implementation of the Minsk Agreements, which the Report describes as the "starting point for the development of a sustainable political, military and economic settlement of the crisis in and around Ukraine".[13]

The Report makes a strong plea for a robust diplomatic process that would lead to the long-term objective of a summit, thereby putting European security on a more stable foundation. It specifies five thematic clusters that the Panel believes need to be addressed by participating States in a process of this kind and could serve as signposts on the journey towards an OSCE summit, where the leaders would recommit themselves to the Helsinki Principles. These clusters include: reaching agreement on the security status of "states in-between", such as Ukraine, Moldova, and Georgia; renewed efforts to resolve protracted conflicts in the OSCE area; strengthening the human dimension; enhancing economic connectivity; and expanding partnerships with the OSCE's neighbouring countries in the Mediterranean and Asia as well as other multilateral actors.

The Report focuses on the uncertain security status of "states in-between" and underlines the tension between the sovereign right to freely choose alliance membership and the security concerns of states neighbouring an enlarging NATO: "The applicant country and NATO collectively as well as their neighbouring states have a collective responsibility to work together to strengthen the security of Europe as a whole where legitimate security interests of everyone are protected."[14] It offers numerous options to be examined, such as a treaty on European security, alliance membership, and various forms of neutrality. In view of the centrality of the fate of these ex-Soviet republics and the impact of this on European security at large, the Report proposes to support the future security arrangements of those states by strengthening agreements supporting military transparency and confidence-building measures.

The Report has shown that in order to overcome the current political stalemate and to regain its capacity to act, the OSCE needs to be able to tackle the absence of a common understanding of the past. In three short and

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12   Ibid., p. 14 (p. 385).
13   Ibid., p. 13 (p. 385).
14   Ibid., p. 14 (p. 386).

three long narratives, it illustrates clearly that Russia, the West, and the "states in-between" disagree over how the OSCE community came to be in a deep crisis of European security. To overcome the current divisions, a common and inclusive process of reconciliation is required. This is not possible with the current deficit of trust and confidence. Without a minimum of trust, many countries may fall back to Cold War reflexes and power politics. To overcome the "normative" and political crisis of the OSCE, a return to the Helsinki spirit may be required, yet without ignoring the important *acquis* the OSCE has created in all of its three dimensions. The Panel's Report shows that "new thinking" may be required, but it does not call for new institutions or rules to be created: The key is to make the existing rules work in a new and rapidly changing political and security environment.

Conclusion

With the conflict in and around Ukraine continuing, it is premature to draw conclusions about its impact on the role and position of the OSCE in general. However, one can already identify a couple of trends and lessons learned for future crisis prevention and conflict management.

The first lesson is that early warning is only useful when it can lead to early action for the prevention of armed violence. In the case of Ukraine, there was early warning, but the OSCE was not empowered by the participating States to take early action, nor could the OSCE Chairmanship offer its good offices until Kyiv agreed to international support. In the early stage of a conflict, time is of the essence, and short of formal engagement, it is important to increase the probability that early action will be taken and will succeed by measures such as dialogue facilitation and strengthening the presence on the ground to create a better understanding of the conflict for information sharing, analysis, and network-building.

The OSCE has faced a new challenge, but possibly also a new opportunity, in the form of its intensified interaction with external high-level policy groups such as the Normandy format. A preliminary lesson learned here is that the OSCE needs to be involved in the preparation of such meetings and to be able to ensure regular information-sharing with the Troika and the Permanent Council. The implementation of tasks handed down to the OSCE requires openness as well as a clear understanding on the sequence of practical steps to be taken. The high-level groups should ensure that the concerned states take ownership of the implementation plan. This is not always an easy task, as decisions by high-level policy groups are often vague and reflect disagreements among their various members.

Finally, while the operational response of the OSCE to the conflict in Ukraine can be considered a success, the political stalemate inside the Organization continues. To overcome this challenge, the participating States

have to engage in an open, long-term, and systematic political process to address their differences. The Panel of Eminent Persons has prepared a credible roadmap with signposts for a robust diplomatic process to help participating States get out of the current political stalemate and re-consolidate the European security architecture.