Synthesis of Common Challenges: Multifaceted Obstacle Course for the OSCE and all Parties Concerned

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The chapters in this edition have been compiled together in an effort to shed light on the complexities of the OSCE’s mediation work. Its aim has been to unpack the oversimplified narratives in light of the idiosyncrasies of the conflicts concerned, the peculiarities of respective peace processes, the institutional frameworks within which these processes unfold and the impact of geopolitical drivers on the conflict and peace process dynamics alike. A careful reading of the multiple experiences captured in this volume reveals a few common findings that cut across the diverse cases and can be summarised below in the following four main categories: (geo)political; institutional; process design related; and definitional.

1 (Geo)Political Context Factors

Effectiveness of any mediation process greatly depends on the environment within which it unfolds, be it institutional or (geo)political. Across the different contributions in this volume, we have identified key common challenges that are directly impacted by contextual factors such as conflict dynamics, geopolitical tensions and vested interests of third parties. The most obvious and frequent factor is the conflict parties’ lack of, or insufficient, political will, which can be impacted by their respective conflict dynamics. Third party will, in its turn, is directly linked to the geopolitical tensions and interests of the mediating states. At the risk of sounding redundant, it cannot be emphasised enough that there can be no political settlement without the necessary political will from all parties concerned.

Stalemate, Yet Not Hurting Enough – No Political Will, No Settlement

From Transdniestria, to Nagorno-Karabakh Ukraine and Georgia, the authors point to the lack of sufficient political will as being a major obstacle to
achieving political settlement. When parties make their decisions based on their perceptions of the balance of power, security dilemmas and the lack of perceived hurting stalemate, there seems to be very little that the OSCE mediation frameworks can do to advance political settlements. Lack of political will combined with lack of trust does seem to be an overarching issue across the wide spectrum of conflicts and relevant mediation processes, which begs the question: how can third parties, in our case the OSCE, work on ripening the parties’ political will?

Before thinking of potential avenues for ripening the political will of the parties, however, it will be important to unpack the whole concept of political will (of conflict parties, but also of third parties in some cases) and undertake the cumbersome work of building this up within the confines of existing political, geostrategic and institutional limitations. It is important to mention that hammering the “political will” card runs the risk of downplaying potential limitations the parties might be facing in their respective political realities. As Crocker, Hampson and Aall rightly point out, “the motivations and the calculus of the parties are not simply utilitarian, but are intimately related to the parties’ own sense [of] identity, personal honor and perhaps even wider apprehension of certain social and political norms. When non-tangible issues are at stake, the successful mediator is one who can devise resolving formulae and/or offer appropriate symbolic rewards.”

Friends or Foes – Impartiality of Mediators

The above-mentioned dynamics are further exacerbated by geopolitical tensions that reflect poorly on the mediation work of the OSCE. Classic mediation literature would challenge the fact that in almost all of the cases covered in this edition, mediators happen to have vested interests in respective contexts, which hinders their impartial facilitation and gives rise to doubts as to their credibility. Paradoxically, the third parties, with their vested interests in the conflicts and their solutions, have refrained from using their leverage and have not wielded pressure on the parties to accept political settlements. At least on the façade, they seem to lead those processes based on impartiality and carefully balanced objectivity.

It is worth noting that despite the increased tensions between Russia and the West, there seems to be at least a nominal and face value cooperation when it comes to the mediation processes related to the conflicts in Nagorno-Karabakh (NK), Transdniestria (TD) and Georgia. In the case of the conflict

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in and around Ukraine, these tensions are more acute and further exacerbated by the ongoing hostile narratives between Russia and the West. Thus, the common theme across the spectrum is that geopolitical tensions do play a role, yet by themselves alone do not block progress on conflict settlements.

2 Institutional Factors

Mediation processes are also conditioned by the nature of the organisational setups within which they are launched. Within the OSCE as a composite organisation, there are a number of institutional restrictions that impact the OSCE’s mediation work and pose certain challenges, some of which, inherent to the cases presented in this volume, are presented below.

*The Consensus Curse*  
Throughout the chapters we are confronted with challenges related to the normative frameworks of the OSCE, in particular the consensus based decision-making procedures. Conflict resolution mechanisms and the toolkit of the OSCE are of little use if participating States block their application in one or another context. This very same principle that allows for inclusivity and broad participation can be a stumbling block in many decisions that need to be taken to revive certain peace processes and to enlarge the possibilities for a political settlement. This is evident in the fate of the field operations of the OSCE, a number of which have been downgraded to become program coordinators’ offices (in Central Asia, see Pal Dunay in this volume), or completely shut down because one of the participating States blocked the continuation of their mandates. One of the most recent examples is Azerbaijan voting against the continuation of the OSCE Field Office in Yerevan, which has dire implications for the already volatile Minsk Group led process related to the conflict in and around Nagorno-Karabakh. With the closure of field offices, the OSCE no longer has a field presence in the entire South Caucasus area, a region still ridden with unresolved conflicts. Field offices, even if not directly implicated in the mediation processes, have traditionally served as “the eyes, ears and arms” for the OSCE on the ground. With no field presence in the entire region of the South Caucasus, the OSCE’s hands are tied, confining the Organization to a blurry mandated process in the Geneva International Discussions (GID) and to an unstructured negotiation process in the NK case. Without these indispensable sources of information for the Organization, the connection

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2 The subtitle is partially borrowed from Devderiani & Giuashvili article in this current volume.
between the mediators and the conflict dynamics on the ground becomes rather shaky.

Similar to the geopolitical context analysis, the institutional setup is characterised by an inherent paradox: throughout the special edition we have noticed that the strength of the OSCE as a consensus-based organisation can also be its weakness. While allowing equal participation and inclusivity to all its participating States, this is also the biggest handicap when it comes to moving certain processes forward, exercising leverage over conflict parties, or over a third party that might block progress on certain issues within a mediation process.

Even if the analysis of their work is beyond the scope of this edition, it is of particular interest to note that OSCE institutions like the High Commissioner on National Minorities (HCNM), Organization for Democracy and International Human Rights (ODIHR) and Freedom of Media (FYM) are not tied to consensus approval by the Permanent Council of the OSCE. This provides them relative flexibility over conflict settlement work, though their efforts focus more on the prevention phase rather than the settlement phase of the conflict cycle.

**Incompatible Principles**

Across the spectrum of the protracted conflicts, one key challenge is undoubtedly related to the competing principles of territorial integrity and right to self-determination enshrined in the Helsinki Final Act (1975), the normative foundation of the OSCE. To varying degrees, the clash between the two principles has caused a significant stalemate in settling core issues of contention in the protracted conflicts, in particular in NK and TD/Moldova. In the context of Georgia, status related questions have a ghost presence but are not discussed within the Geneva International Discussions (GID) mandate. Talking about the clash of these two fundamental principles in his account of the NK related Minsk Process, Cavanaugh quotes Baher Baser who has argued that “one of [the] OSCE’s biggest shortcomings is the presence of the right [to] self-determination, respect for territorial integrity and protecting minorities through autonomy in its founding principles.” In the TD case, Cristescu refers to the “OSCE’s pre-mandated [one] state solution with special status for TD, which makes TD parties increasingly unhappy.”

It is important to note that the problem is not necessarily the inclusion of these two key principles, but rather the procedures with which they are dealt

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with, and how they are arbitrarily prioritised. Here again, the strength of the OSCE becomes its weakness. Juggling between competing principles requires a serious choreography on the part of mediators and conflict parties alike.

**Rotation of Special Representatives of the Chairperson-in-Office (CiO SR)**

The constellation of the above-mentioned institutional restrictions is further burdened by the yearly rotation of the CiO SRs as mediators, particularly in the case of Transdniestria/Moldova and Georgia. Formerly annual, now two-year appointments, do not allow for continuity and sustainability of mediator engagement. As much as the mediation processes are institutionalised, the personality of the mediator and the role they play in leading the processes remains very crucial. As in many instances, here too advantages and disadvantages of this particular set-up go hand in hand. Frequent rotations of the CiO SRs challenge processes because it means resetting relationships and rebooting the process, thus hindering continuity (see Cristescu). However, on the positive side, it brings in fresh insights related to the importance of the mediator’s personality, their creativity and commitment and not least the political and institutional backing of their respective governments (see Devderiani and Giuashvili).

**Old Tools, New Conflicts?**

One of the common themes related to institutional setup that comes up throughout the publication is the issue of the mismatch between the OSCE’s toolkit that dates to the Cold-War period and most of the conflicts that erupted in the post-Cold War period. Stenner, Cristescu, Devderiani and Dunay refer to this mismatch in their respective articles. Devderiani and Giuashvili’s point in this regard is very telling – “OSCE mechanisms and procedures created specifically for confidence building and peaceful dispute resolution have proved cumbersome and ill adapted to the post-Cold War realities. Since they were designed to prevent continent-wide conflagrations, limits imposed on types of military actions, troops and ammunitions make it virtually impossible to meaningfully activate them during more limited crises.” Cristescu refers to this institutional challenge from the process design angle, highlighting that process design in the OSCE still reflects the Cold-War conflict dynamics and does not take into consideration the internal changes that states are undergoing. For the sake of fairness and capturing the most recent realities, however, it is important to highlight the degree of flexibility and adaptability that the OSCE has displayed in the wake of the Ukraine crisis, under the Swiss Chairmanship in 2014. Hilde Haug attests to this in her detailed overview of the Special
Monitoring Mission (SMM): “the conflict in Ukraine has prompted the OSCE and the SMM to adapt existing OSCE practices to a new situation, as well as to develop new practices and tools, including use of [new] technologies, to handle new challenges and tasks.” By displaying an impressive agility for a consensus-based organisation and setting up a civilian monitoring mission of that caliber in such a short period of time, the OSCE regained a certain degree of relevance in the eyes of OSCE observers. This leads us to our third set of factors, those of process design, as another common theme that came up throughout the special edition.

3 Process Design Factors

In this subset of factors, we move from the larger institutional and geopolitical constraints into the realm of technical process design. By looking at key elements that lie at the foundation of any process design, authors have offered insights into how those elements can either foster or block a mediation process. In particular, we have clustered elements together that are of relative importance for an effective process design and that have come up in some of the articles throughout this special edition. These elements include: conflict analysis; broadening participation; the role of third parties; and the perceptions and expectations of conflict parties.

Conflict Analysis

One of the classic recommendations mediation expert communities keep putting forward to practitioners is the need to have a solid and in-depth conflict analysis to allow for better process design. More often than not, however, political expediency takes over the need for a solid conflict analysis before engagement, resulting in a number of issues once the process is underway. Incomplete and hastily done conflict analysis can potentially lead to problems with agenda-setting (issues of contention might not have been captured in depth), broadening participation (relevant actors might not be identified beyond the visible ones), format and goals of mediation processes. In her article on the Ukraine National Dialogue, Mirimanova points to the divergent conflict analysis that had a direct impact both on participation and agenda setting of the short-lived National Dialogue effort. In her article on the Ukraine National Dialogue, Mirimanova points to the divergent conflict analysis that had a direct impact both on participation and agenda setting of the short-lived National Dialogue effort. One of the key recommendations that Mirimanova suggests in this regard is “to develop a clear agenda that resonates with the parties, preferably formed in broad consultation with the parties.”

Cristescu, in her turn, emphasises that conflict analysis needs to take into consideration not only the state-building challenges in post-Soviet contexts,
but also the multiplicity of actors, going beyond the visible issues and actors. Peace processes never happen in a vacuum and if mediators ignore the parallel state-building challenges that countries are undergoing, mediation processes are more likely to fail.

The often-quoted mismatch between perceptions as to who the conflict parties are and what the conflict is about, particularly in the case of Georgia and Ukraine, is more of a political issue, rather than one of technical analysis. This is closely-knit with the role of the third party, in these cases, Russia, which we will look at further down in the synthesis part.

**Broadening Participation**

In mediation processes, this is one of the key crosscutting themes relevant for process design, which looks not only at who gets a seat at the negotiation table, but also who has a say in the process beyond the table. Inclusivity is one of the mediation facets that both the United Nations (UN) and the OSCE Mediation Guidance have adopted as one of the key principles to make mediation more effective. Interestingly enough, throughout the special edition, the issue of broadening participation within the OSCE practices comes up more as a challenge than a factor enabling the sustainability of any peace deal. In most cases, inclusivity remains a concept on paper because the wider public have not been brought into the peace process. In the case of NK, the process has been confined to the two presidents from Armenia and Azerbaijan talking to each other, without direct representation from the de facto NK authorities and detached from the civil society initiatives, which have been decreasing over time. Excluding the public from the peace processes can potentially derail those processes, since without public support no peace agreement (if ever achieved) can be sustainable. Shiriev suggests that the Minsk Group should “pressure the governments to include their respective publics to prepare them for compromises.”

Stenner points to the dilemma mediators face when dealing with the challenge of broadening participation at the expense of efficiency. Opening up confidential processes in their fragile phases might jeopardise those very processes, as has been observed in the Ukraine case. Cristescu and Stenner pose relevant questions regarding civil society participation, rightly so, since in most post-Soviet contexts civil society might not be as open to the diversity of voices as one might expect. This by no means is meant to downgrade the importance of civil society, or exempt the mediator from the responsibility to ensure that the broader public is brought into the peace process. It is rather a word of caution to mediators to avoid falling into the trap of attracting the same people again (“usual suspect” phenomena, in which participants, over
time become detached from their wider constituencies). Broadening participation hence should be based on a better understanding of the “specific nature of civil societies in the post-Soviet context, where plurality and diversity of opinions are politically charged” (see Cristescu).

Broadening participation with the aim of obtaining wider inclusivity is an indispensable factor to guarantee sustainable peace in all contexts. However, to ensure effectiveness, third parties are better advised to customise this very essential principle to the needs, limitations and potential of a particular conflict. Otherwise, there is a risk of downgrading the principle of inclusivity by not moving beyond the normative requirements. This comes with the added risk of wasting the potential for support of political settlements from respective societies.

Third Party Role and Perception Gaps

More often than not, Russia is blamed for having an obstructive role in most of the processes related to the settlement of the protracted conflicts in the OSCE area. In the contexts of Ukraine and Georgia in particular, there is a clear link and mismatch of perceptions as to who the conflict parties are and what the conflict is about. While Russia clearly sees itself as a third party and mediator, conflict parties, in this case Ukraine and Georgia, see Russia as a direct conflict party. This is reflected in the respective formats that are set up for dealing with both conflicts, namely the Trilateral Contact Group (TCG), detailed by Schläffer, the Special Monitoring Mission (SMM) by Haug, and the Geneva International Discussions (GID) covered by Devderiani and Giuashvili.

When it comes to third party roles in the NK context, there seems to be a different gap between reality and perception. While Cavanaugh, a former mediator in the Minsk Process, states that the purpose of the Minsk Process “has never been to impose an agreement or outside solution, but to help the parties move toward a definitive settlement and a lasting peace”, Shiriev points to the disappointment of the Azerbaijani side in the Minsk Group’s work. He states: “The Minsk Group’s work has been viewed with increasing dissatisfaction by Azerbaijan during recent years. This lies in the perception gap: expectations versus reality. Azerbaijan would like to see the Minsk Group become more of an arbitrator, not only a neutral, balanced mediator, and ready to design a formula and framework to impose upon the parties based on principles of international law.”

This perception gap, as Shiriev mentions, is directly linked to the expectations the parties have of each other and of the mediators. It also comes across when evaluating the effectiveness of the mediation process led by the OSCE. While Azerbaijan sees the OSCE Minsk Group’s work as inefficient and
stagnant (Shiriev), Armenia views it as hostage to geopolitical drivers and conflict dynamics (Shirinian), and Cavanaugh evaluates the work of the OSCE Minsk Group in conflict management as rather successful by pointing to the “unprecedented high level engagement over the course of 20 years, with three UN Security Council members, that would have been the envy of many other processes.”

A perception gap of the same nature can be observed in the Central Asian context, even if peace processes are not comparable to those in the South Caucasus. Dunay points to the very different memories the Kazakh and Uzbek presidents have of the way the OSCE managed the crisis in 2010 in the South of Kyrgyzstan. “Karimov thought OSCE failed to prevent the conflict, while Nazarbayev thought Kazakhstan [had] tried to use all available OSCE instruments to prevent the escalation of the conflict.” As Dunay rightly concludes, this “indicates the difficulties the OSCE faces in effectively intervening in a fast-evolving acute crisis.” As we have seen, the same can be true for long-lasting conflicts. Perceptions and misperceptions as intangible as they are, have significant importance in either moving processes forward or blocking them.

**Format and Goal of Process**

When it comes to formats of negotiations, the OSCE mediation practice offers an interesting variety, from multifaceted and cumbersome (Ukraine, GID, TD), to rather simple formats (NK). Critics of the relevant processes have often pointed to the shape, size and adaptability of formats as not supportive enough for the much-needed breakthrough on political issues. The Trilateral Contact Group (TCG) for the settlement of the Ukraine conflict, with its links to the Normandy Format and the Special Monitoring Mission is said to be too cumbersome and inefficient that it runs the risk of collapsing under its own weight. The GID, in its turn, seems to be a static and complicated format, where parties meet regularly yet with no clearly defined goal for negotiations. On the other end of the spectrum, the Minsk Group led process for the NK conflict is viewed as opaque and exclusive, without structured negotiations or a supporting format. The trouble with all these critiques is that they are indeed valid, and are triggered by the conviction that well designed formats for negotiations enhance the chances for an effective and goal-oriented process. This may be true in other contexts and in process design literature, but the reality in the OSCE context defies the validity of that critique.

In a comparative analysis of the relevant articles by Schläpfer, Haug, Devderiani and Giuashvili, Cristescu, Mirimanova and Cavanaugh, we see that in contexts where there are negotiation formats in place, with the necessary flexibility as Schläpfer points out, tangible results are still lacking in terms of
a political settlement to the concerned conflict. In contrast to the NK process, the GID and the “5 plus 2” are full-blown processes that meet regularly. On the positive side, however, it is worth mentioning that even if political agreements are not in sight, both in the GID and “5 plus 2”, parties have been able to achieve tangible, if modest, results when it comes to issues of humanitarian concern and those of a practical nature. This does create a certain feeling of momentum in the short term, however without concrete steps toward a political settlement it is bound to cause frustrations among the parties and bring the process to a standstill in the long run.

The format related key findings outlined in this sub-paragraph have been not so much compared as contrasted. One common message that remains relevant for process design in all contexts is what Schläpfer suggests in his overview of the TCG: “Mirroring the conflicts they seek to mediate, negotiation frameworks are not static but dynamic processes and a mediator ought to take this into account and ensure that procedures and habits are established but not entrenched: an inflexible process will simply become part of the beast it seems to tame.”

4 Definitional Factors

One of the very first questions any mediation scholar would ask is whether the OSCE mediation work fits into any definition of mediation. The purpose of this edition is not to locate the OSCE’s mediation work into any mediation paradigm in the existing academic literature. The conceptual implications of the cases addressed in this volume deserve further analysis, which is an extensive research of a different scope and depth. Given the complex and messy reality outlined in this volume, efforts to fit the OSCE mediation work into any of the existing definitions of mediation would be an academic exercise beyond the scope of this publication.

For our purpose, it is important to offer definitional clarity for the sake of understanding the OSCE’s conflict management work and refraining from the oversimplified critique that the OSCE’s mediation work is not effective, or that it is not mediation at all. Furthermore, definitional clarity is important for enabling mediators to offer better designed processes, given the above-mentioned contextual, institutional and process design related limitations. For the sake of this exercise, the cases presented in this volume have all been launched with the purpose of bringing parties to a long-lasting conflict resolution, yet they fit more in the definitional realm of crisis management, conflict management and prevention. Almost all of the processes were launched
with the clear intention of mediation, however, the institutional, geopolitical and conflict specific dynamics have confined the processes to the definitional realm of conflict management.

One can try to fit the OSCE practice into an existing frame, or one can take the liberty of deriving a definitional frame from the work of the OSCE, a practice not particularly uncommon in social science research. For the sake of this volume, we refer to the UN definition of mediation: “Mediation is a process whereby a third party assists [two] or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements”.\(^4\) This definition captures the preventive and conflict management aspect of the mediation work of the OSCE, as compared to some other definitions that focus primarily on conflict resolution. Berkovich’s definition of mediation “as a process of conflict management”, adds to our definition by loosely suggesting that a “mediation system comprises (a) parties, (b) mediator, (c) a process of mediation and (d) the context of mediation”.\(^5\) These broad terms help us conceptualise the mediation processes in the OSCE.

The context and the institutional setup within which these processes occur, combined with the willingness of the parties to move to a political settlement have the potential to shape or deform a mediation process. Lawrence Susskind and Eileen Babbitt\(^6\) suggest that the following factors make mediation effective: “the cessation of violence, political agreements, arrangements that would allow for successful implementation of those agreements and better relationships between conflict parties.” Out of the five preconditions for effective mediation\(^7\) that the authors suggest, three are related to “motivation” of the parties, which in most of the cases we have observed is either lacking or insufficient. In summary, on the technical process side, what we see in the face of OSCE conflict related interventions is clearly mediation. However, if we refer to Susskind and Babbitt when thinking of the content and outcome of mediation, we observe that in almost all reviewed cases we have not seen results beyond the cessation of violence. If, as Pal Dunay says in this volume, “the OSCE is more of a process, rather than outcome oriented organisation”, then we can


\(^6\) Lawrence Susskind and Eileen Babbitt, “Overcoming the Obstacles to Effective Mediation of International Disputes in Mediation in International Politics”, Berkovich and Zubin, 1994, Hong Kong, Mcmillan Publishing.

\(^7\) Ibid.
comfortably identify the OSCE conflict related interventions as mediation efforts that have yet to go beyond the conflict management phase.

In conclusion, while trying to paint the OSCE mediation work with one brush, it is important to recall the wide spectrum of mediation roles that the OSCE has been playing since the 1990s. In his article, David Lanz categorises those diverse roles into five different mediation roles that go beyond leading a mediation process and include functions such as "convener of peace talks, dialogue facilitator, preventive diplomacy and conflict prevention."

The Ways Ahead
We have synthesised all of the above-mentioned key factors to shed light on the geopolitical, institutional, process design related, and definitional complexities of the OSCE led mediation efforts. By no means can any one of these factors alone be responsible for a lack of progress in any of the OSCE led processes. It is the combination of these key factors that render the OSCE mediation processes stagnant and in perennial struggle to gain momentum.

However, illustration of the key institutional and geopolitical limitations for mediation in the OSCE practice is by no means an attempt to exempt the OSCE mediators and the conflict parties of the enormous responsibility that they bear towards each other, and more importantly, towards their respective constituencies. The articles in this edition have aptly shown that even the most flexible process design cannot guarantee a political settlement if there are geopolitical drivers behind the processes and crucially, if the parties fail to demonstrate sufficient political will to put down arms and commit to a peaceful resolution to their conflicts. The key question that lingers in the background is: how does a consensus-based organisation cultivate enough political will to be able to avoid violence and destruction, particularly in conflict contexts such as Nagorno-Karabakh and Ukraine? In the cases of Georgia or Transdniestria, with no apparent danger of escalation, the conflict parties and mediators may be able to “afford” protracted peace processes, however, in extremely volatile contexts like Ukraine and Nagorno-Karabakh it would be a luxury to wait for a “hurting stalemate” to ripen. The costs of protracted mediation processes will be destructively high if parties resort back to full-scale violence, which seems to be the current tendency judging by the intransigence of the parties and the conflict dynamics.

It is precisely in these contexts when mediator leadership takes on a crucial importance. In an organisation hamstrung with institutional handicaps, the personality, charisma, political backing and creativity of the mediator is of paramount importance. Ripening the parties’ political will requires a great deal of third party will. “Creating conditions conducive to negotiations and promoting
and consolidating peace take work at many levels by many actors, both inside and outside a conflict.”⁸ By no means should the normative limitations, definitional boundaries and geopolitical interests stand in the way of effective mediation, even if it means applying a mix of broader dialogue facilitation, coercive measures, leverage and multiple incentives to stop bloodshed and to bring parties to the table. Reversing institutional hurdles, bypassing geopolitical obstacles, and ripening the political will of the parties with sufficient third party will are all tangible challenges, yet ones that can be overcome with enough determination, competence and commitment of everyone concerned. Otherwise political settlements will remain an unattainable goal and hostage to institutional and geopolitical boundaries.