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The Status-Neutral Approach as a New Impetus for the Conflicts in Eastern Ukraine and in Transdniestria

Introduction

Protracted or frozen conflicts still represent one of the greatest security concerns in the wider European context: The conflict between Moldova and Transdniestria, the unsettled question around Nagorno-Karabakh, and the independence aspirations of Abkhazia and South Ossetia are all shaped by hardened fronts and decades of limited progress between the parties. The outbreak of the conflict in eastern Ukraine in 2014 even increased the number of disputes of this kind. Therefore, it is hardly surprising that there is still a need for new approaches to conflict resolution, or at least for first steps in this direction.

What all these conflicts have in common is that a possible solution is directly interconnected with the unresolved question regarding the status of the so-called *de facto* regimes and their integration into the framework of conflict settlement negotiations, whether on a large-scale or only in relation to selected issues. *De facto* regimes can be described as “quasi-states that exert effective control over a certain geographic area, but are not recognized as states by the majority of states.”¹ In conflicts where one side is an internationally recognized state that does not recognize the seceding regime on the other side, the fundamental condition for the successful resolution of the conflict, or even confidence and security building measures (CSBMs) – the mutual recognition as equals by both sides – is not met.

However, CSBMs in particular are generally the major preconditions for sustainable pacification and later resolution of these conflicts. The *status-neutral confidence- and security-building measures* approach has been proposed as a useful basis for the solution of frozen conflicts and dealing with *de facto* regimes. Simply put, a status-neutral approach suggests that CSBMs should be implemented before the status of the secessionist entities is discussed. This would be an alternative to CSBMs that are tailored to internationally recognized state actors, like the *Treaty on Conventional Armed Forces in Europe* (CFE) or the *Vienna Document* (VD).

Note: This contribution is based on Kaan Sahin, *Status-Neutral Confidence-Building and Arms Control Measures: Options for Transdniestria and Ukraine*, CORE Working Paper 29, Hamburg 2018.

1 Sergi Kapanadze/Ulrich Kühn/Wolfgang Richter/Wolfgang Zellner, *Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context*, CORE Working Paper 28, Hamburg 2017, p. 7.

The initial step towards applying this status-neutral approach was the *Stabilizing Measures for Localized Crisis Situations*² document adopted in 1993 by the Conference on Security and Co-operation in Europe (CSCE, since 1995: Organization for Security and Co-operation in Europe, OSCE). However, it seems that it took over 20 years for the concept to be taken up again. In 2017, the Centre for OSCE Research (CORE) published the working paper “Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context”, which recommended the application of the concept in the Georgian context.

This chapter provides a follow-up by outlining the feasibility of the status-neutral approach for the conflicts in eastern Ukraine and between Moldova and Transdniestria. It analyses the potential utility of the approach for protracted conflicts. Both case studies also tackle the lingering question regarding the incorporation of de facto regimes in conflict settlement negotiations.

The 1993 CSCE Document: Stabilizing Measures for Localized Crisis Situations

The only multilateral security document referring to a status-neutral approach in conflict situations was adopted on 25 November 1993 at the 49th plenary meeting of the Special Committee of the CSCE (OSCE) Forum for Security Co-operation in Vienna (FSC). The politically binding document, titled *Stabilizing Measures for Localized Crisis Situations*, proposes a catalogue of stabilizing measures for localized crisis situations.

The document consists of a section entitled “Concept and Principles of Application” and the “Catalogue” of specific measures. The “Concept and Principles of Application” section explains that the document is intended to facilitate decision-making processes in the OSCE context, even though it does not claim to offer an all-encompassing list of measures. Furthermore, it is not intended to rule out any other measures, which might be considered in particular cases (paras 1 and 2). The document also emphasizes that it does not oblige OSCE participating States to automatically implement the measures contained in the document in a situation of localized conflict. Nonetheless, OSCE participating States should consider the proposed measures in conflict situations of this kind (para. 3). In paragraph nine, the document touches upon the crucial nature of the status issue:

The parties involved in a particular crisis situation will be identified in each case in accordance with the relevant norms of international law and CSCE provisions. When such parties are not States, their identification

2 Organization for Security and Co-operation in Europe, *Stabilizing Measures for Localized Crisis Situations*, DOC.FSC/2/96, 25 November 1993, at: <https://www.osce.org/fsc/41316>.

and subsequent participation in a crisis prevention, management and/or settlement process does not affect their status.

In essence, this paragraph suggests that status-neutral arms control can still be conducted in conflicts between states and de facto regimes whose status is debated. However, this can only be achieved if all conflict parties follow such an approach. In the next paragraph, the document states that the “implementation of some of the measures may require the good offices or the mediating function of a third party, trusted by all the parties involved in a particular crisis situation”. According to the document, the third party role could be assumed by the OSCE, a state or group of states or other organizations.

The “Catalogue” presents a set of measures:³

<p>“A. Measures of Transparency”:</p> <ol style="list-style-type: none">1) extraordinary information exchange2) notification of certain military activities3) notification of plans for acquisition and development of major weapon and equipment systems <p>“B. Measures of Constraint”:</p> <ol style="list-style-type: none">1) introduction and support of a ceasefire2) establishment of demilitarized zones3) cessation of military flights4) deactivation of certain weapon systems5) treatment of irregular forces6) constraints on certain military activities <p>“C. Measures to Reinforce Confidence”:</p> <ol style="list-style-type: none">1) public statements on matters relevant to a particular crisis situation2) observation of certain military activities3) liaison teams4) establishment of direct lines of communication5) joint expert teams in support of crisis management6) joint coordination commissions or teams <p>“D. Measures for Monitoring of Compliance and Evaluation”:</p> <ol style="list-style-type: none">1) evaluation of data provided under extraordinary information exchange2) inspections3) observation of compliance with demilitarized zones4) verification of heavy weapons5) challenge inspections6) aerial observation regime
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Source: Kapanadze et al. 2017, pp. 14-15.

3 The measures are presented in a shortened form. Cf. Kapanadze/Kühn/Richter/Zellner, cited above (Note 1), pp.14-15.

Overall, the catalogue avoids almost any status-related language; the only exception is the reference – twice – to irregular forces, which are defined as “forces not under the command of the regular forces”. This, however, could constitute a problem for de facto regimes who are unlikely to be satisfied with the description of their military formations as “irregular”. Furthermore, Kapanadze et al. also point to the problematic wording of the 1993 document, which remains problematic and could lead to de facto regimes rejecting the application of these “Stabilizing Measures”:

There are reasons why the “Stabilizing Measures” instrument has never been used. The explicit recognition that a party “is not a state” already has a status-related implication and would probably not be accepted by the entity in question.⁴

This is an important indication of how delicate the issue of appropriate wording can be in this context and how difficult it is to find the right conceptual or geographical terms, even if a document attempts to avoid status-related definitions. In sum, the document does not go into great detail and should be understood as a starting point for a status-neutral approach. Nonetheless, this is advantageous for the actual implementation of this approach because the document does not alienate conflict parties from the outset. However, the *Stabilizing Measures for Localized Crisis Situations* document is referred to as an “almost forgotten document”,⁵ and for good reason, since most of the OSCE participating States are not even aware it exists.⁶

The Status-Neutral Approach and Protracted Conflicts in Europe

Against this backdrop, Kapanadze et al. apply this approach to the entangled situation in Georgia between the Russian-backed entities in Abkhazia and South Ossetia on the one side and the central government in Tbilisi on the other. In contrast to state-centric arms control and CSBM agreements, the status-neutral approach has certain advantages for protracted conflicts like that in Georgia:⁷

- It avoids any “problematic” language such as “States Parties” and “participating States” (terms which are used, for instance, in the CFE Treaty or the VD) or conceptual terms (e.g. “region”, “side/party to the conflict”, “border”, etc.). Instead, it uses status-neutral terms (e.g. using the name

4 Kapanadze/Kühn/Richter/Zellner, cited above (Note 1), p. 15.

5 Sergi Kapanadze/Uli Kühn/Wolfgang Richter/Wolfgang Zellner, Status-neutral Arms Control: Promises and Pitfalls, *Security Community* 3/2016, at: <http://www.osce.org/magazine/285606>.

6 Author's interview with a former OSCE officer, 24 February 2017.

7 The points listed are selected from Kapanadze/Kühn/Richter/Zellner.

of the capital instead of the name of the state) in order to achieve an agreeable common language.

- Since the status-neutral approach is not state-centric, it also tackles the problem of dealing with arms control and CSBMs in the context of paramilitary, irregular, and armed police forces in disputed territories, often used by de facto regimes. By leaving the status issue aside, certain obstacles can be evaded. For instance, after declaring independence, de facto regimes often argue that they are not obliged to adhere to certain arms control agreements or CSBMs since they have never signed them. Conversely, internationally recognized states decline to acknowledge de facto regimes as equal negotiation partners and are not willing to give them “the role, rights and responsibilities of a State Party to international agreements”.⁸
- By avoiding a state-centric approach, the area of application for arms control and CSBM mechanisms can also be more restricted and does not have to cover complete territories. By covering the whole territory, the internationally recognized state could consider this as a move to confer the de facto regime a kind of state sovereignty. The status-neutral approach avoids this.

Theoretically, there are three key areas where status-neutrality can be beneficial: promoting CSBMs without pre-empting the result of status talks; avoiding status-related terminology; and a status-neutral third party facilitating discussions. A status-neutral approach thus has three major features: The communication aspect, finding a “common language”; separation between “CSBM”/“security-related”, and “politically related” formats or documents; and the replacement of status-related facilitators by status-neutral facilitators.

Since the above issues represent obstacles to conflict resolution in the Georgian conflict, and the existing state-centric measures are not helpful for providing a remedy, Kapanadze et al. see the status-neutral approach as a new impetus for the parties involved in the dispute. Other protracted conflicts in Europe also feature similar issues, namely dealings with de facto regimes/breakaway regions and the lingering question regarding how to achieve progress without delicate and unresolved status deliberations automatically causing delays. Hence, it is useful to examine whether the status-neutral approach could be also beneficial in other contexts. This contribution therefore examines the feasibility of the approach for the conflicts in eastern Ukraine and in Transdnistria.

8 Ibid., p. 17.

The Conflict in Eastern Ukraine

In the aftermath of the Russian annexation of Crimea in March 2014, clashes between Ukrainian forces and Russian-backed separatists broke out in the Donbas region, situated in eastern Ukraine. The self-proclaimed Lugansk People's Republic (LPR) and Donetsk People's Republic (DPR) emerged as a result, and both are at the point of becoming de facto regimes. Although the LPR and DPR are backed by the Russian Federation, the Kremlin has not recognized them as states.

As a reaction to the hostilities, the Trilateral Contact Group (TCG), established in June 2014 and consisting of representatives from Ukraine, the Russian Federation and the OSCE, agreed on the so-called Minsk Protocol, which was signed on 5 September 2014, to halt the fighting in the Donbas; it was complemented on 19 September by a Memorandum specifying some of the steps agreed in the Protocol. The agreed ceasefire collapsed in January 2015 due to newly erupted clashes. In order to revitalize the measures agreed under the Minsk Protocol, the "Package of Measures for the Implementation of the Minsk Agreements" (also known as "Minsk II"), was signed on 12 February 2015. This features a 13 point plan which comprises issues ranging from CSBM measures to decentralization plans, which would give Luhansk and Donetsk special status. In other words, the document contains political issues, as well as issues relevant to security.

The Minsk Agreements are, however, still a long way from being implemented: None of the 13 stipulations contained in the "Package of Measures" have been successfully realized. For instance, according to Alexander Hug, the Principal Deputy Chief Monitor of the OSCE Special Monitoring Mission to Ukraine, the ceasefire violations were three-digits on every day in June 2018. In the same month, the UN Security Council condemned the continuous ceasefire violations in the eastern part of the country and their severe impact on civilians in a presidential statement.⁹ Consequently, on 22 August 2018, the TCG agreed on a ceasefire mechanism, the so-called "school ceasefire", which guaranteed that students could attend classes safely at the start of the school year. However, as soon as the school ceasefire came into effect, "more than 70 ceasefire violations"¹⁰ were recorded by the OSCE the following day.

Since June 2014, the prime negotiation frame for this conflict has been the so-called "Normandy Format", which consists of senior representatives from Ukraine, Russia, France, and Germany. The last meeting was convened on 11 June 2018, after a break of 16 months. Below the Normandy Format,

9 Cf. United Nations, Security Council, Condemning Continuous Ceasefire Violations in Eastern Ukraine, Security Council Presidential Statement Expresses Grave Concern about Severe Impact on Civilians, SC/13367, 6 June 2018, at: <https://www.un.org/press/en/2018/sc13367.doc.htm>.

10 Ukraine "school truce" ceasefire allows students back to class, *Deutsche Welle*, 29 August 2018, at: <https://www.dw.com/en/ukraine-school-truce-ceasefire-allows-students-back-to-class/a-45263736>.

and interlinked with it, is the TCG, “in which representatives of Ukraine, Russia and the OSCE consult one another and negotiate concrete steps towards implementation of the Minsk agreements”.¹¹ In the former, the interests of the LPR and DPR are advocated by the Russian Federation, in the latter they negotiate with members of the TCG. Subsequently, the Minsk Agreements, which resulted from the negotiations, were signed by representatives of the OSCE, Ukraine, and Russia, as well as by representatives of the LPR and DPR.¹²

The OSCE Special Monitoring Mission to Ukraine (SMM) monitors the ceasefire agreements and the withdrawal of heavy weapons as well as the withdrawal of all foreign armed forces, military equipment, and mercenaries from Ukraine, even though these tasks are not explicitly mentioned in the SMM mandate. The SMM just assumes these monitoring functions since no actor has raised objections to this.

In contrast to most other protracted conflicts in the European context, the status question in this conflict is quite different in nature. In fact, the question of whether the breakaway regions should be completely independent or not is, on paper, beyond discussion. Paragraph nine of the “Package of Measures for the Implementation of the Minsk Agreements” postulates:

9. Reinstatement of full control of the state border by the government of Ukraine throughout the conflict area, starting on day 1 after the local elections and ending after the comprehensive political settlement (local elections in certain areas of the Donetsk and Luhansk regions on the basis of the Law of Ukraine and constitutional reform) to be finalized by the end of 2015, provided that paragraph 11 has been implemented in consultation with and upon agreement by representatives of certain areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group.¹³

The local elections mentioned envisage a decentralization reform described in paragraph eleven of the document:

11 Federal Foreign Office,: OSCE crisis management in Ukraine, 9 January 2017, at: http://www.auswaertiges-amt.de/EN/Aussenpolitik/Laender/Aktuelle_Artikel/Ukraine/OSZE_node.html.

12 The Package of Measures for the Implementation of the Minsk Agreements was signed by Swiss diplomat and then OSCE representative, Heidi Tagliavini, former president of Ukraine and Ukrainian representative, Leonid Kuchma, Russian Ambassador to Ukraine and Russian representative Mikhail Zurabov, as well as the DPR and LPR leaders Alexander Zakharchenko and Igor Plotnitskiy.

13 Package of Measures for Implementation of the Minsk Agreements, Minsk, 12 February 2015, para. 9, in: Bundeszentrale für politische Bildung [Federal Agency for Civic Education], *Dokumentation: Das Minsker Abkommen vom 12. Februar 2015* [Documentation: The Minsk Agreement of 12 February 2015], 26 February 2017, at: <http://www.bpb.de/internationales/europa/ukraine/201881/dokumentation-das-minsker-abkommen-vom-12-februar-2015>.

11. Carrying out constitutional reform in Ukraine with a new constitution entering into force by the end of 2015 providing for decentralization as a key element (including a reference to the specificities of certain areas in the Donetsk and Luhansk regions, agreed with the representatives of these areas), as well as adopting permanent legislation on the special status of certain areas of the Donetsk and Luhansk regions in line with measures as set out in the footnote until the end of 2015.¹⁴

Both paragraphs clearly state that – despite the self-declaration as “People’s Republics” by the de facto authorities in Donetsk and Luhansk – the aim is to incorporate Luhansk and Donetsk into a unified, but, to some extent, federalized Ukrainian state.

However, in practice, the situation is quite different. There is still disagreement over how the special status of these two entities should look. Thus, it is no surprise that the decentralization steps scheduled for completion by the end of 2015 never materialized. The local elections were postponed several times and a concrete date for holding the elections is still not foreseeable today. The current limbo situation is characterized by a lack of perspective, so the status question is subject to interpretation, and potentially gradual change.

The leaders of the self-declared “People’s Republics” of Luhansk and Donetsk regularly declare that they see their future exclusively with Russia and only pay lip service to the Minsk agreement. [...] Three years later [after the signing of the Minsk agreement], the “People’s Republics,” despite being recognized by nobody except separatist South Ossetia, are on their way to becoming de-facto states with their own governments (Luhansk alone boasts 19 ministries), passports, vehicle number plates, school curriculums, diplomas, and so on. Their currency is the Russian ruble, and clocks are set according to Moscow time.¹⁵

Furthermore, the Ukrainian side is unlikely to signal any concessions concerning the status question since politicians will tend to shy away from such risky endeavors due to the presidential and parliamentary elections in 2019. In the past, certain moves have had the potential to undermine the substance of the Minsk Agreements, for instance the temporary imposition of a trade blockade on the two eastern breakaway regions by the authorities in Kiev back in 2017.

When it comes to arms control measures, including CSBMs, the Package of Measures does not go into detail. The document only mentions the following measures:

14 Ibid., para. 11.

15 Nikolaus von Twickel, *Shadow States*, *Berlin Policy Journal*, 28 June 2018, at: <https://berlinpolicyjournal.com/shadow-states/>.

2. Withdrawal of all heavy weapons by both sides by equal distances in order to create a security zone of at least 50 km wide from each other for the artillery systems of caliber of 100 and more, a security zone of 70 km wide for MLRS and 140 km wide for MLRS “Tornado-S”, Uragan, Smerch and Tactical Missile Systems (Tochka, Tochka U):

- for the Ukrainian troops: from the de facto line of contact;
- for the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine: from the line of contact according to the Minsk Memorandum of Sept. 19th, 2014;

The withdrawal of the heavy weapons as specified above is to start on day 2 of the ceasefire at the latest and be completed within 14 days.

The process shall be facilitated by the OSCE and supported by the Trilateral Contact Group.

3. Ensure effective monitoring and verification of the ceasefire regime and the withdrawal of heavy weapons by the OSCE from day 1 of the withdrawal, using all technical equipment necessary, including satellites, drones, radar equipment, etc.¹⁶

The document remains too vague and provides opportunities for the conflicting parties to use other equipment beyond “heavy weapons”. However, even the withdrawal of heavy weapons has never been realized, since “they have been deployed nearly every time fighting has escalated since 2015”.¹⁷ As the agreement mentions “the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine”, it also includes the breakaway regions in CSBM arrangements. Therefore, the CSBMs in the Package of Measures are, strictly speaking, status-neutral. Furthermore, the question of using the right wording, acceptable for all sides, does not appear to play a major role.

The Status-Neutral Approach and the Ukrainian Conflict

Even though the de facto authorities in Luhansk and Donetsk have named themselves “People’s Republics”, all conflict parties have, at least rhetorically, agreed that these two regions remain integral parts of the Ukrainian state. Therefore, there is a basic common understanding concerning the status question, at least on paper. As mentioned before, the disagreements concerning status issues lie more in the detail. Even though the de facto authorities in Luhansk and Donetsk are not part of the Normandy Format or the Trilateral Contact Group, they signed the Minsk Agreements, which include CSBMs. Therefore, status-neutral arms control measures and CSBMs are, in a limited fashion, already employed in the conflict constellation in eastern Ukraine.

16 Package of Measures for Implementation of the Minsk Agreements, cited above (Note 14), paras 2 and 3.

17 Von Twickel, cited above (Note 15).

However, the CSBMs provided by the Minsk Agreements are not sufficiently comprehensive and, to a large extent, have not been implemented. Furthermore, as the conflict in eastern Ukraine does involve de facto regimes, it is not a typical dispute between two states. Thus, the application of state-centric arms control and CSBM arrangements, such as the CFE Treaty or the VD, would not be suitable and could even cause confusion between the conflict parties. In addition, Russia, as the protecting power, has suspended the CFE Treaty. Consequently, a status-neutral CSBM arrangement could be a useful alternative. Furthermore, with a more comprehensive and detailed list of instruments, it could give fresh impetus for conflict facilitation and could substantiate the relatively vague regulations of the Minsk Agreements. This is especially important since there has been little progress made with respect to compliance with the CSBM elements (e.g. the withdrawal of heavy weapons) and the proposed decentralization stipulations of the Package of Measures. In addition, it could help to prevent the status issues of the Minsk Agreements being further undermined by the conflict parties. Since a political solution is not achievable in the medium-term, it is particularly important to stabilize the security situation in eastern Ukraine. A status-neutral CSBM approach could contribute to this. Another advantage is that a CSBM arrangement could provide for increased inspection quotas.¹⁸

Nevertheless, there are also some pitfalls in terms of the applicability of a status-neutral CSBM arrangement to the conflict in eastern Ukraine. One precondition of the status-neutral approach is to separate CSBM agreements from agreements aiming at the political resolution of the conflict. However, the Minsk Agreements comprise both elements, if not in detail. This leads to the current situation that the two elements are pitted against each other by the parties to the conflict; this is especially evident with the question of which elements should be implemented first in order to implement the others.

Furthermore, the conflict in eastern Ukraine is characterized by hybrid forces that blur the differentiation between military, paramilitary, and even stationed forces.¹⁹ The “little green men” stemming from neighbouring Russia are symbolic of this. On the other side, the Ukrainian security forces consist of volunteer units, such as the Azov and Donbas battalions, which also elude classification. This situation hampers the implementation of CSBMs, since it gives the parties to the conflict the possibility of undermining the agreement by turning militias or unmarked fighters into members of the regular army and vice versa for their purposes. However, drawing up a status-neutral CSBM arrangement would be the most appropriate way to deal with this challenge. In

18 Cf. Ulrich Kühn, Three Crises Threatening the European Security Architecture, *European Leadership Network*, 24 February 2015, at: <http://www.europeanleadershipnetwork.org/commentary/three-crises-threatening-the-european-security-architecture>.

19 Cf. Wolfgang Richter, Rüstungskontrolle und militärische Transparenz im Ukraine-Konflikt [Arms Control and Military Transparency in the Ukraine Conflict], Stiftung Wissenschaft und Politik (SWP), SWP-Aktuell 59, September 2014, at: http://www.swp-berlin.org/fileadmin/contents/products/aktuell/2014A59_rrw.pdf.

addition, it is difficult for the conflict parties to agree on a trusted third party. The Russian Federation and the pro-Russian separatists are especially skeptical about the role of the OSCE. For instance, Russia has repeatedly blocked the expansion of the OSCE's observation activities on the Ukrainian border.²⁰

Further disagreements between the two sides could be seen in the context of the Russian proposal made in September 2017 concerning the dispatch of a lightly armed UN peacekeeping mission to eastern Ukraine to assure the safety of the OSCE monitors. The Russian side would only agree to the deployment of peacekeeping forces along the demarcation line between Kiev-controlled Ukraine and the Russian-backed separatist areas of Donbass – at least an indirect recognition of this separation line as a border. The Ukrainian side, however, argued that the UN forces should assume their observation tasks throughout the whole of the eastern area of the country, including the Russian-Ukrainian border, which would underline the territorial integrity of Ukraine.²¹

Against this backdrop, a status-neutral initiative could constitute an effective remedy, with one significant advantage: the Minsk Agreements have already created a basic understanding about the status question. However, activities conducted by both sides that undermine the stipulations of Minsk II are steadily progressing. The latest of these developments was the incident in the Crimean port of Azov near the Black Sea in November 2018, when Russian vessels opened fire at and seized Ukrainian ships.²² As a response, the Ukraine Parliament decided to bring in martial law which lasted 30 days. In this context, a more comprehensive and detailed status-neutral arrangement could help to push back these developments.

The Conflict in Transdnistria

During the dissolution of the Soviet Union, the military conflict between Transdnistrian forces, supported by the Russian 14th Army, and Moldovan troops started in November 1990. The hostilities reached their peak in spring 1992. A ceasefire agreement, the so-called “Moscow Agreement”, was signed on 21 July 1992 and has held ever since. The signing parties were the presidents of Russia, Boris Yeltsin, and Moldova, Mircea Snegur. In contrast to other protracted conflicts in the region, the dispute in the early 1990s was shaped by rather low-level hostilities without severe ethnic or religious grievances between the conflict parties.

20 Cf. U.S. Mission to the OSCE, Russia Blocks Expansion of OSCE Observation on Ukraine Border, 30 August 2018, at: <https://osce.usmission.gov/russia-blocks-expansion-of-osce-observation-on-ukraine-border-2/>.

21 Cf. Mathieu Boulégué, Putin's Plan for a Ukraine UN Force is a Poison Pill, *Newsweek*, 17 October 2017, at: <http://www.newsweek.com/putins-plan-un-force-ukraine-devilish-ruse-687077>.

22 Russia claimed that these ships illegally entered its territorial waters. However, this was denounced by the Ukrainian side.

As a consequence of the conflict, the “Pridnestrovian Moldavian Republic” (PMR) declared independence in 1990. In 2006, the authorities in the PMR held a referendum on formally joining Russia, which was approved by 97 per cent of the population. However, no United Nations member state, including Russia, has ever recognized the sovereignty of the PMR.²³

As a result of the ceasefire agreement, a Joint Control Commission was established between Russia, Moldova, and the Transdniestrian authorities. The purpose of the Commission is to monitor a trilateral peacekeeping force that includes Russian, Moldovan, and Transdniestrian battalions under a joint military command structure and controls posts at the main crossing points of the river Dniester. Since 2005, the prime negotiation platform has been the so-called 5+2 format, officially titled the “Permanent Conference for Political Questions in the Framework of the Negotiating Process on the Transdniestrian Settlement”. The participating parties are Moldova, Transdniestria, Russia, Ukraine, and the OSCE, as well as the United States and the European Union as observers. The talks stalled in 2006, but were resumed in 2011. The latest round of negotiations concluded shortly before the 2017 Vienna Ministerial Council Meeting and led to “agreements on five of the priority issues: apostilization of educational documents issued in Transdniestria; interaction in the fields of telecommunications; functioning of the Latin Script Schools; use of farmlands in Dubasari region; and the opening of the bridge across the Dniester/Nistru River between the villages of Gura Bicilui and Bychok”.²⁴

The OSCE Mission to Moldova, established in 1993, is an additional measure aimed at resolving the conflict. The goal of the mission “is to help achieve a lasting, comprehensive political settlement of the Transdniestrian conflict based on the territorial integrity and sovereignty of the Republic of Moldova, within its internationally recognized borders, with a special status for Transdniestria within Moldova”.²⁵ At the OSCE Summit in Istanbul in 1999, the mandate of the mission was extended to cover arms control measures. Part of this is ensuring “transparency of the removal and destruction of Russian ammunition and armaments and the co-ordination of financial and technical assistance for this.”²⁶

The status issue in this conflict is less thorny than in the other protracted conflicts since “the Transdniestrian authorities are fully recognized as a party to the conflict in the 5+2 negotiations”.²⁷ Furthermore, the region is characterized by a relatively open border with “hundreds, perhaps thousands cross[ing] from one side to the other every day for tourism, shopping, transit, education,

23 In 2011, only the de facto regimes of Abkhazia, Nagorno-Karabakh, and South Ossetia recognized its independence.

24 Organization for Security and Co-operation in Europe, Ministerial Council, Vienna 2017, Ministerial Statement on the Negotiations on the Transdniestrian Settlement Process in the “5+2” Format, MC.DOC/1/17, 8 December 2017, p. 1, at: <https://www.osce.org/chairmanship/361586>.

25 OSCE Mission to Moldova, Mandate, at: <http://www.osce.org/moldova/105894>.

26 Ibid.

27 Kapanadze/Kühn/Richter/Zellner, cited above (Note 1), p. 9.

business or family visits”.²⁸ A solution to the status issue is connected to the question regarding whether Transnistria should be granted a special status, integrated on this basis into a somehow federalized Moldovan state and, if so, how deep the integration should be. This is also reflected in the mandate of the OSCE Mission to Moldova when it comes to state the aims of the mission:

Consolidation of the independence and sovereignty of the Republic of Moldova within its current borders and reinforcement of the territorial integrity of the State along with an understanding about a special status for the Trans-Dniester region.²⁹

Nevertheless, the authorities of the self-proclaimed PMR hoped, after the outbreak of the Ukraine conflict, that incorporating Transnistria into the Russian Federation would be feasible in the near-term. In 2016, the then president of the self-proclaimed PMR, Yevgeny Shevchuk, signed a law that foresaw the implementation of the referendum result, to accede to Russia, in 2006. Nevertheless, in “view of the frequent calls [by the PMR] to join the Russian Federation [...] a real will to pursue a permanent existence as an independent state is not discernible in Transnistrian politics and society”.³⁰ Against that background, as Klemens Büscher puts it, reintegrating the breakaway region of Transnistria into the Moldovan state is not unrealistic:

“There are neither unbridgeable differences of mentality between the societies nor deeply-rooted hatred between the two sides of the Dniester. For an autonomy arrangement a compromise based on existing federal or autonomy models is conceivable.”³¹

However, this does not mean that there are no disagreements with regard to the status issue. This is apparent when it comes to the issue of arms control measures and CSBMs. The OSCE Mission to Moldova has conducted a number of arms control measures in the past. In 2000 and 2001, “the Russian Federation withdrew 141 self-propelled artillery and other armoured vehicles by rail and destroyed locally 108 T-64 tanks and 139 other pieces of military equipment limited by the Treaty on Conventional Armed Forces in Europe

28 Philip Remler (Principal Drafter) et al., *Protracted Conflicts in the OSCE Area. Innovative Approaches for Co-operation in the Conflict Zones*, OSCE Network of Think Tanks and Academic Institutions, Hamburg 2016, p. 13, at: http://osce-network.net/file-OSCE-Network/documents/Protracted_Conflicts_OSCE_WEB.pdf.

29 CSCE Mission to the Republic of Moldova, CSCE/19-CSO/Journal No. 3, 4 February 1993, Annex 3, available at: <https://www.osce.org/mission-to-moldova/105894>.

30 Klemens Büscher, *The Transnistria Conflict in Light of the Crisis over Ukraine*, in: Sabine Fischer (ed.), *Not Frozen! The Unresolved Conflicts over Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh in Light of the Crisis over Ukraine*, SWP Research Paper, RP 9, September 2016, pp. 25-42, here: p. 39, at: <https://www.swpberlin.org/en/publication/not-frozen-conflicts-in-the-post-soviet-area/>.

31 *Ibid.*, p. 41.

(CFE).³² These withdrawals were observed and verified by the OSCE Mission. However, since March 2004, there have been no further withdrawals, and 20,000 tons of ammunition and some military equipment still remain in Moldova. Furthermore, there are still 2,000 Russian troops stationed in Transdniestria that are not part of the official tripartite peacekeeping force.³³

In 2004/2005, the OSCE Mission to Moldova, with the support of Russian and Ukrainian experts, elaborated a detailed and individualized package of arms control measures and CSBMs. However, this package was never implemented, “partly because the equal application of the measures throughout the entire territory of Moldova (including Transdniestria) led to Moldovan concerns about the appearance of status equality for Transdniestria, and thus allowed the status question to intrude”.³⁴ Furthermore, the Transdniestrian side was reluctant to share military-related information with the other side because this was seen as too sensitive. A third important reason for the failure of this CSBM proposal was the “Kozak Memorandum”, an unsuccessful attempt to resolve the conflict tabled by the Russian side in November 2003. The failure of the Memorandum has hardened the dispute and Transdniestria even temporarily cut off political contacts with Chişinău.

However, it seems that discussion of the status issue has gained a new dynamism recently. During a meeting with the then OSCE Chairperson-in-Office, Sebastian Kurz, in February 2017, the Moldovan side committed itself to creating a policy and vision for a special status for Transdniestria.³⁵ This is especially important because, prior to this announcement, there was “little sign of a clear Moldovan vision as there is a realistic strategy for reintegrating the eastern part of the country”.³⁶ In June 2018, the UN General Assembly even adopted Resolution GA/12030, urging the Russian side to undertake an immediate withdrawal of all its troops and armaments from the territory of the Republic of Moldova.³⁷ This resolution was strongly rebuked by the Russian Federation, questioning the reputation of the UN General Assembly.³⁸

32 OSCE Mission to Moldova, Factsheet. p. 2, at: <http://www.osce.org/moldova/85681?download=true>.

33 Cf. Transnistrien als zweite Krim? [Transdniestria – the Second Crimea?], *IPG*. at: <http://www.ipg-journal.de/aus-dem-netz/artikel/transnistrien-als-zweite-krim-348/>; Stefan Wolff, The Transnistrian Issue: Moving beyond the Status-Quo, European Parliament, Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2012, pp. 16-17, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224472/evidence-stefan-wolff-the-transnistrian-issue.pdf.

34 Remler et al., cited above (Note 28), p. 18.

35 Cf. OSCE, Transdniestrian Settlement Process a priority for Austrian Chairmanship in 2017, 6 February 2017, at: <http://www.osce.org/cio/297981>.

36 Büscher, cited above (Note 29), p. 37 (author’s translation).

37 Cf. United Nations, General Assembly, General Assembly Adopts Texts Urging Troop Withdrawal from Republic of Moldova, Strengthening Cooperation in Central Asia, GA/12030, 22 June 2018, at: <https://www.un.org/press/en/2018/ga12030.doc.htm>.

38 Cf. Moldova’s president criticizes UN resolution on Russian troops’ pullout from Transnistria, *TASS*, 15 July 2018, at: <http://tass.com/world/1013208>.

In general, however, the main stumbling blocks for progress in the overall talks are still status issues.³⁹ It also remains to be seen how the domestic friction between the pro-Russian Moldovan President Igor Dodon and Chişinău's pro-European government will develop. Dodon, who, in January 2017, even handed the Russian authorities a road map for 2017-2019 setting out a plan for resolving the conflict, criticized the UN resolution on the pullout of Russian troops from Transdnistria.⁴⁰

The Status-Neutral Approach and the Transdnistrian Conflict

Even though the dispute between Moldova and Transdnistria is almost a textbook example of a frozen conflict (in terms of the lack of ongoing hostilities), the implementation of CSBMs has not yet been successful. Thus, before initiating a new CSBM package in this conflict, it is important to understand the political environment and the mistakes made in the 2004/2005 attempt by the OSCE Mission to Moldova. First, the political situation was not ripe at that time because the Kozak Memorandum had failed shortly before in 2003, leading to a demoralization of the conflict parties. Second, the plan included the whole area of Moldova and Transdnistria, which represented equal treatment of both entities. It was precisely this that was opposed by the central government in Chişinău.

Against this backdrop, the recent developments concerning the conflict could provide the appropriate "ripeness" to make headway. To enhance trust between the two sides, a new CSBM package could contribute to further facilitation. In that context, there are four reasons why the status-neutral CSBM arrangement could be beneficial for this conflict: *First*, the conflict between Moldova and Transdnistria is not a conflict between internationally recognized states. *Second*, in contrast to the package in 2004/2005, a status-neutral approach should include a clear definition of a limited area of application, which could be tailored to the satisfaction of all parties involved. *Third*, a status-neutral approach could have a positive impact on the Transdnistrian conflict setting since it could also cover military units beyond standard conventional armed forces. This is of primary importance because the military potential of Transdnistria's army contains a wide range of paramilitary units.⁴¹ In addition, a status-neutral CSBM arrangement could also cover the Russian troops stationed in Transdnistria. Furthermore, a comprehensive CSBM package is relevant because the PMR is itself capable of manufacturing small arms, mortars, and multiple rocket launchers, which could be used in a

39 Cf. Thomas de Waal, Enhancing the EU's Engagement with Separate Territories, *Carnegie Europe*, 17 January 2017.

40 Cf. Moldova's president criticizes UN resolution on Russian troops' pullout from Transdnistria, cited above (Note 38).

41 Cf. Büscher, cited above (Note 30), p. 31.

future conflict.⁴² *Fourth*, status-neutral CSBMs could enhance the chances for progress by building trust between the sides.

Another advantage is that, as in eastern Ukraine, the third state party that exerts special influence on a de facto regime, namely Russia, has not recognized the PMR. In addition, state-centric arms control measures, such as the CFE Treaty, only had an impact for a limited time (1999-2004) and were only related to Russian withdrawals, because the Transdniestrian authorities did not see themselves as being part of the CFE.

However, since the last hostilities between the two sides occurred back in 1992, this raises the question as to whether there is an urgent need for CSBMs. The parties to the conflict could be reluctant to consider this approach since they may have difficulties seeing the immediate benefits. In addition, it would be a challenge to persuade the Russian Federation to participate in this kind of arms control activity. Russia would still be reluctant to accept conflict resolution and a new CSBM package unless Moldova were to abandon potential NATO membership.

Nevertheless, there is still a need for arms control and CSBMs since the stationed forces and the military devices constitute an obstacle to potential conflict resolution. Therefore, it could be useful to encourage the parties to accept a status-neutral approach, as there have been signs of a possible momentum in the conflict since 2016/2017. Furthermore, despite the disagreement between the parties, the recent UN Resolution GA/12030 can be used as an impetus for new arms control talks. In addition, even though the resolution was only adopted with a relatively small majority and the sides in the conflict are not in agreement, it can be concluded that this “frozen conflict” received global attention recently. If skillfully framed and handled by third-party facilitators, the UN resolution can be taken up as a new starting point for a new mechanism for taking steps towards reconciliation.

The Status-Neutral Approach as a New Impetus for the Conflicts in Eastern Ukraine and Transdniestria

The aim of status-neutral approaches is to provide an effective alternative to existing state-centric arms control and CSBM arrangements to deal with de facto regimes or breakaway regions. Concerning the principles of status-neutral approaches, two distinctive features stand out: the promotion of CSBMs without pre-empting the results of status talks, and the avoidance of status-related terminology.

Interestingly, when it comes to the cases of eastern Ukraine and Transdniestria, the terminology aspect does not play an obstructive role. Since

42 Cf. Bernard Aussedat, How Can Confidence and Security Be Restored in Moldova? In: Institute for Peace Research and Security Policy/IFSH (ed.), *OSCE Yearbook 2009*, Baden-Baden 2010, pp. 191-199, here: p. 192.

the positions on status do not differ greatly between the conflict parties, it was relatively straightforward to find common language. However, both cases also show that the issue of CSBMs and the question of political status are still tightly interconnected. In the Minsk Agreements, both are mentioned in the same document without providing clarity on the order in which the stipulations should be implemented. In the Transnistrian context, the CSBM proposals of 2004/2005 failed due to the status question and the unfortunate political environment.

Nevertheless, the desires for state independence or joining the Russian Federation on the part of the DPR and LPR in eastern Ukraine and the PMR in Transnistria are unrealistic. Since neither conflict is characterized by a state-to-state constellation, state-centric CSBMs are not optimal for creating tailor-made arms control packages. A status-neutral CSBM arrangement would therefore be a more suitable alternative. Yet, irrespective of the more or less favorable political environments for a status-neutral approach, if the conflict parties have no greater interest in creating more trust and a stable environment than insisting on status questions, this approach cannot yield fruit. Or, in the words of the authors of the CORE Working Paper, “the instrument itself is always tied to the political interests that frame the overall situation.”⁴³

43 Kapanadze/Kühn/Richter/Zellner, cited above (Note 1), p. 35.