Beyond Muddling Through: Towards an OSCE Interim Approach

Wolfgang Zellner[*]

Abstract

The Russian aggression against Ukraine represents a complete negation of everything for which the OSCE stands: a rules-based order, co-operative security, respect for state sovereignty, and the inviolability of borders. This raises the question as to whether the OSCE can exist and work in a political environment that contradicts its very *raison d'être*. This paper briefly outlines three factors that will likely determine the future of the Organization. Against this background, it presents an OSCE interim approach for the next three years and recommendations for areas of activity.

Keywords

OSCE, strategy, Ukraine, war

To cite this publication: Wolfgang Zellner, "Beyond Muddling Through: Towards an OSCE Interim Approach," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2023), https://doi.org/10.5771/9783748933625-05

Introduction

The basic principles on which the OSCE is structured entail a rules-based order, co-operative security, respect for the sovereignty of states, and the inviolability of their borders. The Russian invasion of Ukraine in February 2022 violated all these commitments. Consequently, a large majority of OSCE participating States have ceased co-operation with the Russian Federation and are asking themselves whether this should also include ending joint decision-making in the OSCE.

The OSCE therefore finds itself in an existential crisis. The overarching question is whether the OSCE can exist and work in a political environment that contradicts its very *raison d'être*. This paper seeks to answer this question by presenting a strategy for the OSCE—something that the Organization has always been missing.[1] It argues that the OSCE should be ready to resort to informal modes of running the Organization for the time being, replacing formal decision-making where necessary.

Finding a proper answer to the crucial questions of whether and how the OSCE can play a productive role in Euro-

* Wolfgang Zellner
Institute for Peace Research and Security Policy at the University of Hamburg (IFSH)
zellner@ifsh.de

pean security policy requires an assessment of broader political developments. "Wait and see" attitudes and "muddling through" approaches, frequently used by the Organization, are inadequate. This paper briefly presents three factors that will determine the OSCE's future as an international security organization. It then argues that the OSCE can overcome the "consensus trap"[2] by opting for informal decision-making procedures. The paper concludes with recommendations for a three-year interim strategy that focuses on political issues and aims to leave as many options open as possible.

Three factors shaping the future of the OSCE

The OSCE's future as a consensus-based organization will likely depend on the following three factors: the duration and outcome of the war in Ukraine, Russia's decreased strength and influence, and the speed and outcome of the EU accession process of the Western Balkans and Ukraine.

First, the outcome of the war in Europe will determine the OSCE's room for maneuver. It is unclear how long the war in Ukraine will continue, and experts fundamentally disagree on its likely outcome.[3] Equally unclear is what type of ceasefire or peace agreement will ultimately be adopted to terminate the war. One possibility is an unstable ceasefire agreement that constitutes an interim stage until the next round of war. The other possibility is a stable peace agreement that includes a ceasefire, a territorial accord, and guarantees. Depending on the outcome, the OSCE's political room for maneuver could either increase or decrease. It will likely decrease in the case of an unstable ceasefire and increase if a more comprehensive peace agreement is achieved and a more co-operative environment is established. In any case, the basic confrontational constellation between Russia and the West will remain in force until a favorable regime change of some sort occurs in the Russian Federation. But this is well beyond the horizon.

Second, the aggression against Ukraine has weakened Russia in every respect: politically, economically, militarily, and in terms of its ability to control its so-called "near abroad"—in institutional terms, the members of the Collective Security Treaty Organization (CSTO). Recent developments have exposed Russia's weaknesses: In September 2022, Armenian and Azerbaijani forces clashed, resulting in the death of about 200 soldiers. Soon after, Kyrgyz and Tajik forces began fighting, resulting in dozens of casualties. The Russian-led CSTO had nothing to offer but an observer mission and a call for peace. Russia's shrinking influence in the South Caucasus and Central Asia has opened up co-operative options for the OSCE, provided these states are interested in increased OSCE activity. At the same time, conflict potentials in these regions that were hitherto suppressed by the Russian Federation may now escalate. Thus, there is a new need for conflict prevention and management initiatives. The question is whether the OSCE can perform these tasks.

Third, some of the remaining non-EU Balkan states and Ukraine may approach and join the EU sooner than expected. This means that these states will fall within the sphere of competence of the EU, resulting in less need for OSCE activities. Russia's shrinking sphere of influence and EU expansion will result in an even clearer bipolar structure in Europe, with sharper dividing lines and fewer states lying in between. For the OSCE, this will mean less political room for maneuver.

Overcoming the "consensus trap"

According to Fred Tanner, one of the OSCE's weaknesses is what he calls the "consensus trap": "Russia, but also other countries, […] have used the refusal of consensus as [a] veto on agenda-setting, budget, reform efforts, crisis decision-making and this often as a bargaining chip on quarrels not related at all to the matters at stake."[4] Over the years, while it was difficult to work with this kind of trap, it was possible—albeit with great losses in terms of policy coherence and efficiency. Since the Russian invasion of Ukraine, however, it has been impossible to reach consensus. There are two options for dealing with the impasse created by this lack of consensus: either suspend Russia's participation in the OSCE based on the consensus-minus-one rule or bypass Russia's veto power by running the OSCE's policy operations on a more informal basis, governed by the Chairperson and the Troika.

The consensus-minus-one rule was formulated in the conclusions of the 1992 Prague Meeting of the Council of Ministers:

> The Council decided, in order to develop further the CSCE's capability to safeguard human rights, democracy and the rule of law through peaceful means, that appropriate action may be taken by the Council or the Committee of Senior Officials, if necessary in the absence of the consent of the State concerned, in cases of clear, gross, and uncorrected violations of relevant CSCE commitments.[5]

This stipulation has been used only once, on July 8, 1992, when the thirteenth meeting of the Committee of Senior Officials suspended Serbia and Montenegro from participating in the 1992 Helsinki Summit.[6] This suspension remained in force until November 7, 2000, when the former Republic of Yugoslavia rejoined the OSCE. Could the OSCE apply the same approach to Russia now? The suspension of the Russian Federation would be justified. The Russian aggression against Ukraine clearly represents a "clear, gross, and uncorrected" violation of OSCE commitments. The case looks different from a political point of view, however. It is doubtful whether a consensus-minus-one suspension decision against Russia could even be reached, as this would require the collaboration of Belarus and the other members of the Russian-led CSTO.

The other option, should attempts to reach consensus with Russia fail, is to run the OSCE on a more informal basis by applying an informal consensus-mi-

nus-one rule. This should be possible, as the OSCE has always been a highly informal communication network in its day-to-day business. This approach would require much consultation and discipline among the participating States, as well as strong leadership by the Chair and the Troika. Such a governance scheme would necessarily involve agreement on a budget, a Secretary General and heads of institutions, the continuation of at least some field operations, and, last and most difficult, a Chairpersonship.

Let us start with the budget. For the past few years, the adoption of the Unified Budget has generally not taken place until the summer; thus, the OSCE is already used to working with provisional budgets. The disadvantage of a provisional budget is that money can only be spent along already existing program and project lines; new projects must be funded by voluntary contributions. Should provisional budgeting come to an end, the same would be true of the entire budget: all funding would need to come from voluntary contributions. This would show Russia and other states that blocking the budget is no longer the sharp weapon it used to be. But again, such an approach requires great discipline, particularly among the larger Western participating States. If they do not provide the funds, everything will quickly come to an end.

The OSCE institutions—the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM), and the Representative on Freedom of the Media (RFoM)—should be continued at any rate, as should the field operations, as far as the host state agrees. As Jos Boonstra has suggested, one "way to do this is decoupling the OSCE decision-making bodies […] from the rest of the structures, missions, and bodies."[7] Thus, the institutions would be led as Chairperson projects with budgets based on voluntary contributions. The same would apply to field operations. The field operations' mandates were eventually extended at the end of 2022, apart from those related to Ukraine. However, as it is unclear whether this exercise can be repeated in 2023, it is worthwhile to consider other, more informal options. For example, Ian Kelly, former head of the US OSCE delegation, proposed: "If the field missions' mandates are not reviewed this year, which many fear, the Chairperson-in-Office […] can also use their authorities to maintain a type of field mission (for example, as an 'Office of the Special Representative of the CiO') in OSCE countries where the host supports their continuation. They can be funded by like-minded OSCE states."[8] The OSCE is already moving in this direction. In August 2022, the Chair and the Secretary General announced a support program for Ukraine, replacing the OSCE Project Co-ordinator in Ukraine, which was closed due to Russia's veto.[9]

While heads of missions are appointed by the Chair, things are more difficult when it comes to the heads of institutions, who are appointed by Ministerial Council decisions. The terms of office of Secretary General Helga Maria Schmid, the HCNM, the Director of ODIHR, and the RFoM expire in December 2023. At

that point—comparable to the situation from July to December 2020, when all four posts were vacant—their formal or informal deputies will take over their duties in an acting capacity. There is no time limit for such a solution.

The only really difficult task consists in securing subsequent Chairpersonships. The 2023 OSCE Chair is North Macedonia, to be followed by Finland in 2025, fifty years after the Helsinki Final Act (HFA). The Chair for 2024 has yet to be elected, which leaves the task of bridging this gap to diplomatic innovation. Extending North Macedonia's Chairpersonship and giving a stronger role to the Troika might at least provide a partial solution.

The question is whether the more informal approach to running the OSCE sketched above is legitimate and feasible. Admittedly, such an approach would be a major affront to the Russian Federation and would have been unthinkable under "normal" conditions. With its aggression against Ukraine, however, Russia has forfeited any right to be treated on normal terms. The OSCE must not allow itself to be destroyed by Russia, which is itself destroying the civilian infrastructure of a major neighboring country—a campaign which, according to the Geneva Conventions, constitutes a serious war crime. If Russia does not like this kind of treatment in the OSCE, it is free to leave the Organization. However, Russia will likely avoid taking this step insofar as most of its CSTO allies would not follow suit, which would expose its isolation.

If the informal model is to be run successfully, the transformation from formal consensus to a more informal governance scheme must be taken seriously. This would require close consultation with even the smallest states on a wide range of issues. This kind of diligence can only help the Organization, however. In this sense, as it would require a tremendous amount of political will and discipline, the informal interim approach proposed here goes far beyond the usual strategy of muddling through.

Elements of an OSCE interim agenda: Recommendations

In what follows, I offer suggestions for a three-year OSCE work program focused on key political issues and aimed at leaving as many options open to the OSCE as possible. Nothing is preventing OSCE participating States from developing such an agenda. As Walter Kemp has argued, "[t]here is no need to have a consensus-based decision to launch such a process."[10] The process could start in an informal manner co-ordinated by the Chair and the Troika, with or without Russia's participation. The agenda should include the following items.

Inclusive dialogue with or without Russia. The basis of the CSCE/OSCE's work has always been unconditioned dialogue on any relevant European security issue. Russia should not be excluded from such a dialogue a priori; rather, one of the dialogue's aims should be to force Russia to explain its behavior, again and again. Just as it is important for President Macron and Chancellor Scholz to talk to President Putin, it is important to include the

Russian OSCE delegation in discussions. Walk-outs of the sort that occurred in the first months of Russia's aggression against Ukraine are unproductive. The security dialogue should focus on two issues: first, how to contain the Russian aggression while at the same time laying the foundations for a more co-operative European order; and second, regional security issues in areas where Russia's influence is decreasing, leaving a security vacuum in its wake.

Implementation of OSCE norms. For a norm-based organization like the OSCE, it is imperative that it continue to monitor and discuss the implementation of its commitments in all circumstances. First and foremost, this means safeguarding and continuing the work of ODIHR, the HCNM, and the RFoM. If either Russia or Belarus blocks the budgets for these institutions, they should be continued as Chairperson projects funded by voluntary contributions. The same is true for the Human Dimension Implementation Meeting (HDIM), which did not take place in 2020 due to COVID-19 and in 2021 due to lack of consensus. In an important move, the Polish Chair organized a Human Dimension Conference in September and October 2022, the format of which was similar to the HDIM.[11] In this context, the Russian Federation's ongoing grave violations of human rights should be raised regularly. Apart from the three institutions, the Permanent Council should be the central platform for discussing the implementation of OSCE norms and commitments.

Reaching out to the South Caucasus and Central Asia has become more important than ever. First, Russia's decreasing influence could lead to a flare-up of previously suppressed violent conflicts. Therefore, it is important that the OSCE strengthen its conflict prevention efforts in these regions. Second, China is already the most important trade partner of the Central Asian states and the ultimate guarantor of their sovereignty against possible Russian attack. It should not be allowed to fill the Central Asian security vacuum alone, however. Third, since Central Asia is not a key focus of the main Western organizations, the OSCE could play a leading role in this respect. However, it remains to be seen whether the participating States would endorse such a role and whether the Organization would be able to perform it properly.

Implementation of a future Russian-Ukrainian ceasefire agreement. The OSCE is not well suited to the role of mediator in the Russian-Ukrainian war. As William H. Hill has remarked, "[t]he OSCE is too large, unwieldy, and diverse to serve as a direct mediator in the conflict."[12] This is underlined by the OSCE's weak record in resolving even much smaller conflicts, such as the Karabakh conflict, where the so-called OSCE Minsk Group under the three Co-Chairs France, Russia, and the United States no longer plays a role. However, the OSCE should attempt to play a role in the implementation of a future ceasefire agreement, as it did from 2014 to 2022 with its Special Monitoring Mission (SMM) to Ukraine. Two aspects demand attention in this regard. First, in view of the gravity and global significance of the conflict, it would be preferable to have a UN mission based on a UN

Security Council mandate. At the same time, this would imply the acceptance of the mandate by Russia. Second, it should be kept in mind that neither Ukraine nor Russia welcomed the SMM and the OSCE's role in Ukraine, for different reasons. Nevertheless, the OSCE should try to contribute its extensive experience in the implementation of a future Russian-Ukrainian ceasefire agreement.

Arms control. It may sound surprising in the current circumstances, but as Alexander Mattelaer has rightly remarked, "[o]ver the longer term, the conclusion of the Russian war against Ukraine is likely to impose new requirements in terms of arms control."[13] This is true for several reasons. First, any durable ceasefire or peace agreement will contain elements of arms control (ceilings in certain areas, information exchange, verification). Second, a peace agreement will likely contain territorial provisions that satisfy neither Ukraine nor Russia. Consequently, "Ukraine needs guarantees that Russia will not try to move the borders using force once again in the future, while Russia needs guarantees that Ukraine will not go to war to try to resolve the territorial issue, regardless of who is in power in Kyiv."[14] Part of this will likely be provided by arms control regulations. Third, there will be a need for sub-regional arms control for regions such as the South Caucasus and parts of Central Asia. Because of this potential agenda, it is advisable to keep the Forum for Security Co-operation workable.

Using the fiftieth anniversary of the HFA to discuss the future of the Organization. The fiftieth anniversary of the HFA will provide an opportunity to convene an informal Ministerial Council or Summit meeting in Helsinki focused on taking stock of where things stand and discussing strategies for ensuring a brighter future. The three years leading up to such an event should be used to organize a broad discussion process including participating States, other international organizations, members of parliament, civil society leaders, and academics. If anyone can co-ordinate such a process, it is Finland.

It is unlikely that the OSCE will be able to implement all elements of such an agenda. It is the participating States who will decide on the Organization's future tasks and role. Nevertheless, it is worth attempting to address a meaningful agenda that keeps political options open.

Notes

1 Walter Kemp, "Ending Up Somewhere Else: The Need for Strategy in the OSCE," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2023).

2 Fred Tanner, "The OSCE and European Security: Towards a Point of No Return?," in *Envisioning Peace in a Time of War: The New School of Multilateralism*, ed. Ursula Werther-Pietsch (Vienna: Facultas, 2022), 60.

3 The chairman of the US Joint Chiefs of Staff, General Mark Milley, said the following on November 16, 2022: "The probability of a Ukrainian military victory—defined as kicking the Russians out of all of Ukraine to include what they claim as Crimea—the probability of that happening anytime soon is not high, militarily." See "US-General: Baldiger Sieg

unwahrscheinlich," *ZDF*, November 17, 2022, https://www.zdf.de/nachrichten/politik/ukraine-russland-krieg-general-milley-usa-100.html. Much more optimistically, the Ukrainian deputy defense minister, General Wolodymyr Hawrylow, suggested that the war could be over by the end of spring 2023. He did not exclude an advance of Ukrainian forces to Crimea by the end of 2022 (see "Ukrainischer General: Krieg zum Frühlingsende vorbei," *NTV*, November 19, 2022, https://www.n-tv.de/politik/Ukrainischer-General-Krieg-zum-Fruehlingsende-vorbei-article23729746.html).

4 Tanner, cited above (Note 2), 60.

5 CSCE, Second Meeting of the Council, Summary of Conclusions, Prague Document on Further Development of OSCE Institutions and Structures, Declaration on Non-Proliferation and Arms Transfers (Prague: 1992), 16, https://www.osce.org/files/f/documents/7/b/40270.pdf

6 OSCE, "Serbia and Montenegro Suspended as a Participating State," July 8, 1992, https://www.osce.org/node/58332

7 Jos Boonstra, "The OSCE: Back to Square One?," in *Russia's War against Ukraine: Implications for the Future of the OSCE*, OSCE Network Perspectives I/2022, eds. Cornelius Friesendorf and Stefan Wolff (OSCE Network of Think Tanks and Academic Institutions, June 2022), 16, https://osce-network.net/fileadmin/user_upload/OSCE_Network_Perspectives_2022_20June_final.pdf

8 Ian Kelly, "Will the OSCE Devolve into the CSCE?," in *Russia's War against Ukraine: Implications for the Future of the OSCE*, OSCE Network Perspectives 1/2022, eds. Cornelius Friesendorf and Stefan Wolff (OSCE Network of Think Tanks and Academic Institutions, June 2022), 49, https://osce-network.net/fileadmin/user_upload/OSCE_Network_Perspectives_2022_20June_final.pdf

9 OSCE, "OSCE Chairman-in-Office and Secretary General Announce OSCE Support Programme for Ukraine," August 3, 2022, https://www.osce.org/Chairmanship/523754

10 Kemp, cited above (Note 1), 7.

11 OSCE, "Human Dimension Conference Concludes in Warsaw," October 7, 2022, https://www.osce.org/chairmanship/528399

12 William H. Hill, "The OSCE Approaching Fifty: Does the Organization Have a Future?," in *OSCE Insights*, eds. Cornelius Friesendorf and Argyro Kartsonaki (Baden-Baden: Nomos, 2023), 9.

13 Alexander Mattelaer, Keeping the OSCE Alive, Egmont Policy Brief 287 (Brussels: Egmont Institute, 2022), 3, https://www.egmontinstitute.be/app/uploads/2022/09/Alexander-Mattelaer_PolicyBrief287.pdf?type=pdf

14 Vladimir Frolov, "New Commander, New Goals for Russia in Ukraine," Carnegie Endowment for International Peace, November 1, 2022, https://carnegieendowment.org/politika/88301