

The OSCE's Special Monitoring Mission to Ukraine

The SMM's Work in the Donbas and Its Ukrainian Critique in 2014–2019

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*“While imperfect, the SMM is at least ‘a fact on the ground’ while a larger
peace operation is still only a hypothetical possibility.”*

RICHARD GOWAN, NEW YORK UNIVERSITY

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Abstract

The paper provides an analysis of the Organization of Security and Cooperation in Europe's (OSCE) Special Monitoring Mission (SMM) to Ukraine within the multilateral attempt to manage or resolve the conflict in the Donets' Basin (Donbas). It aims to tentatively assess the SMM's influence on the de-escalation of the conflict during the Presidency of Petro Poroshenko, as a relatively closed political period. We explore the Mission's mandate, various evaluations of its operations and effectiveness, as well as the conflict participants' interaction with the Mission. The nature and dimension of

the conflict have posed an, in its dimension, novel, yet, in its nature, not untypical challenge to the consensus-based OSCE. Despite the challenges of the Mission's specific scope and the limits placed on it by both Russian sabotage and a lack of resources, the SMM nevertheless managed, in 2014–2019, to contribute to de-escalation in the Donbas. Determinants of the net positive contribution of the SMM include its continued and large presence on the spot, the improvement of its reports on the situation in the conflict zone, as well as the development of more sophisticated monitoring methodologies and technologies over time.

Keywords

OSCE – Ukraine – Special Monitoring Mission – Donbas – Russian-Ukrainian war – conflict resolution – post-Soviet affairs – frozen conflict – low-intensity war

Introduction*

This paper explores the political role,¹ first achievements and public critique of the Organization of Security and Cooperation in Europe's (OSCE) Special Monitoring Mission (SMM) to Ukraine, within the multilateral attempt to manage or resolve the conflict in the Donetsk Basin (Donbas). Our central question is: What kind of influence did the SMM – negative, positive or neutral – have on the de-escalation of the conflict in Ukraine's Donetsk Basin during 2014–2019? In order to find an analytically satisfying answer to this question we explore the mandate, capacity, as well as context of the Mission, in particular in the framework of the so-called Minsk process. We will also, in light of this

* We are grateful to a number of OSCE officers who provided us with background information. None of them, however, is responsible for possible imprecisions or misrepresentations that this paper may still contain. The paper is a result of the project "Collective Action of Non-State Armed Groups in the Ukrainian Conflict: A Comparison of Pro-Russian and Ukrainian Non-state Armed Groups," led by Prof. Andreas Heinemann-Grüder (University of Bonn), funded by the Volkswagen Foundation in Germany, and jointly implemented by the Bonn International Conversion Center (BICC) and Institute for Euro-Atlantic Cooperation in Kyiv (IEAC). See: app.dimensions.ai/details/grant/grant.4974241. The paper has also benefited from support by "Accommodation of Regional Diversity in Ukraine (ARDU): A research project funded by the Research Council of Norway (NORRUSS Plus Programme)." See: blog.hioa.no/ardu/category/about-the-project/.

1 Richard Gowan, "Can the United Nations Unite Ukraine?" *Hudson Institute*, February 2018, p. 20, <https://www.hudson.org/research/14128-can-the-united-nations-unite-ukraine> (accessed 1 October 2019).

setting and of opinions of local observers, lay down the Mission's first relative successes and failures. Additionally, we will establish how the conflict's main opponents have been viewing and trying to impact the Mission.

The paper proceeds in four steps. The first part highlights the specific nature and subsequent challenges of the SMM compared to other OSCE missions. The second part analyzes the SMM's mandate, its limits and some debates on possible extensions or alternatives to the Mission. The largest and third part discusses the effectiveness of the Mission's operation while differentiating between positive and critical evaluations of observers over time. In the last and fourth part, a short analysis of the impact of the three major conflict participants – the Russian Federation, Ukraine and the representatives of the two Donbas de-facto entities – on the Mission's operation is provided. In the conclusion, we draw some tentative lessons for the Mission's future.²

In spite of the topic's high salience for all-European affairs, Ukrainian national security as well as Western-Russian relations, the body of academic literature on the OSCE SMM in Ukraine has, so far, been relatively small.³ An informative essay of 2015 on the OSCE SMM by the Polish historian and former Mission member Łukasz Adamski can still count as a good initial critique of

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- 2 Wolfgang Zellner, Frank Evers *et al.*, *The Future of OSCE Field Operations (Options)*, Hamburg 2014, osce-network.net/file-OSCE-Network/documents/The_Future_of_OSCE_Field_Operations_Options_.pdf. The assessment is informed by comments and critique by various Ukrainian analysts, see for instance Oleksandr Tytarchuk, "Strengthening the OSCE Special Monitoring Mission to Ukraine: A Way to Peacekeeping?" *East European Security Research Initiative Comment*, April 2015, eesri.org/wp-content/uploads/2015/04/Strengthening-OSCE-SMM-a-way-to-peacekeeping-2015-04-C-ENG.pdf; Maksym Khylyk and Oleksandr Tytarchuk, "Russia–Ukraine Conflict: What Can the OSCE Do? Proposals for Slovakia's 2019 OSCE Chairmanship," in: Klaudia Bánaiová and Samuel Goda (eds.), *Frozen Ground: Role of the OSCE in Protracted Conflicts – Recommendations for Slovak OSCE Chairmanship* (Bratislava: SFPA, 2018), p. 11–26.
- 3 E.g.: Fred Tanner, "The OSCE and the Crisis in and around Ukraine: First Lessons for Crisis Management," in: IFSH (ed.), *OSCE Yearbook 2015*, vol. 21 (Baden-Baden: Nomos, 2016), pp. 241–250; Hilde Katrine Haug, "The Minsk Agreements and the OSCE Special Monitoring Mission: Providing Effective Monitoring for the Ceasefire Regime," *Security and Human Rights*, vol. 27, nos. 3–4 (2016), pp. 342–357; Walter Kemp, "Civilians in a War Zone: The OSCE in Eastern Ukraine," in: IFSH (ed.), *OSCE Yearbook 2017*, vol. 23 (Baden-Baden: Nomos, 2018), pp. 113–123; Éva Remek, "The OSCE and the Crisis in Ukraine: Focusing on the Theoretical Characteristics of the European Crisis Management: Concepts, Players, Tools, Vision," *Academic and Applied Research in Military Science*, vol. 17, no. 2 (2018), pp. 95–110; Lesia Dorosh and Olga Ivasechko, "The OSCE Institutional and Operational Possibilities in the Modern Conflict Resolution: By Example of the Activity of the OSCE Special Monitoring Mission to Ukraine," *Security and Human Rights*, vol. 30, nos. 1–4 (2020), pp. 1–22.

the SMM's inceptive position and performance.⁴ In spite of the geopolitical and comparative-analytical salience of the Mission's set-up, operation and future, only few informative think-tank or academic papers have so far been published specifically on the SMM. We thus refer here primarily to journalistic accounts of the OSCE SMM's activities, interviews as well as articles authored by OSCE representatives including former members of the Mission.

In view of the novelty of the Mission, the ongoing evolution of its mode of operation, and scarcity of reliable data so far, this paper cannot evaluate the OSCE's activities in the Donbas as a whole. Instead, we focus here on international and Ukrainian journalistic, political and analytic assessments of this unique OSCE operation within an ongoing conflict. The period under investigation covers the first five years of the SMM's operation until 2019. We try to draw, from the evolving discourse around the SMM, first inferences that may have wider implications for civilian missions of international organizations in general.⁵ We are not yet dealing here with the SMM's active role as a dialogue facilitator in Ukraine's and Russia's disengagement efforts at three points along the contact line, at Zolote, Petrivs'ke and Stanytsia Luhans'ka. These sub-operations only started in earnest in 2019, and were thus too recent yet for us to informatively reflect upon them by early 2020 when research for this paper was completed.⁶

Finally, we have decided to focus here on the time of Petro Poroshenko's presidency from June 2014 to May 2019. This period represents a relatively closed era that ended with the triumphant victories of Volodymyr Zelens'kyy as presidential candidate and of his party "Sluha narodu" ("Servant of the People") in the parliamentary elections of 2019. In so far as Zelens'kyy had explicitly campaigned against many of Poroshenko's policies, including some of those related to the Donbas, his own and his followers' take-over of legislative and executive power in summer 2019 opened a new stage, within Ukrainian politics in general, and in terms of Kyiv's approach to the Donbas conflict, in particular. To be sure, the change of Ukrainian leadership in 2019 had no direct

4 Łukasz Adamski, "Beobachtung der Beobachter: Die OSZE und Russlands Aggression gegen die Ukraine," *Osteuropa*, vol. 65, nos. 1–2 (2015), pp. 43–56. See also the informative report by Nikolaus von Twickel, "Zwischen den Fronten: Was die OSZE-Beobachter in der Ukraine leisten können, und was nicht," *Internationale Politik*, vol. 72, no. 2 (2017), pp. 48–53.

5 Hylke Dijkstra, Petar Petrov and Ewa Mahr, "Learning to Deploy Civilian Capabilities: How the United Nations, Organization for Security and Co-operation in Europe and European Union Have Changed Their Crisis Management Institutions," *Cooperation and Conflict*, vol. 54, no. 4 (2019), pp. 524–543.

6 "Disengagement: OSCE is monitoring how sides in eastern Ukraine deliver on agreement," OSCE, 19 October 2016, www.osce.org/ukraine-smm/275521 (accessed 1 December 2019).

repercussions for the OSCE and SMM. Yet, it modified the overall context of their operation in Ukraine to a sufficient degree to warrant a limitation of this paper to the period of Poroshenko's presidency.

Challenges for an Observation Mission in the Conflict in Ukraine

The OSCE is an inclusive intergovernmental security organization whose work is officially claimed to follow consensual norms of its 57 participating states. Proceeding from these realities, the German OSCE expert Wolfgang Zellner argued already in 2016 that the continuously confrontational and still not post-conflictual environment for the OSCE's operation in Ukraine is an extraordinary challenge for the Organization:

“An impartial, inclusive and comprehensive approach to conflict management means a deeply norm-based approach – typical for the OSCE. As the example of the Special Monitoring Mission (SMM) to Ukraine has shown, such an approach does not have to be abandoned under conditions of a predominantly confrontational environment. However, it is more difficult to implement, and its implementation uses more resources than in a cooperative environment.”⁷

Under these especially demanding conditions, the OSCE's consensual mode of decision-making becomes a hindrance rather than an opportunity as it creates multiple collective action problems. On the one hand, the inclusiveness of the OSCE enhances the acceptance of its mandate. Yet, at the same time, it poses a threat to the Organization's impartiality as it allows stakeholders in the conflict to participate in the formulation of crucial conditions and directives, for instance, with regard to such operations as the SMM.⁸ Not only Ukrainian

7 Wolfgang Zellner, “Conflict Management in a Confrontational Political Environment,” in: Samuel Goda, Oleksandr Tytarchuk and Maksym Khylyko (eds.), *International Crisis Management: NATO, EU, OSCE and Civil Society*. NATO Science for Peace and Security Series – E: Human and Societal Dynamics. Vol. 127 (Amsterdam: IOS Press, 2016), pp. 47–53, here p. 49.

8 For a somewhat similar critique of the structure of the UN Security Council, see Pavlo Klimkin and Andreas Umland, “Coronavirus proves what Ukrainians already knew—the UN doesn't work,” *Ukraine Alert*, 21 April 2020, atlanticcouncil.org/blogs/ukrainealert/coronavirus-proves-what-ukrainians-already-knew-the-un-doesnt-work/ (accessed 25 April 2020).

critics of the OSCE's mode of operation have pointed out that *de facto* Moscow was the initiator and is a major party to the conflict (on which more below).⁹

Although Russia is a full participant of the Trilateral Contact Group (TCG) and Normandy Format negotiations, it is – unlike the Ukrainian state – not officially recognized, however, as representing one of the two sides in the Donbas conflict, by most international organizations including the OSCE. This gives the Kremlin the opportunity to participate, in different ways than Kyiv, in the decision-making process of the OSCE with regard to the conflict in the Donbas. Representatives of the Russian Federation and of states allied with Moscow are, for instance, included in the SMM albeit not in high numbers.¹⁰ Their inclusion is in so far helpful as this legitimizes the OSCE's presence in Eastern Ukraine, in the eyes of the pro-Russian “separatists,” and thus furthers the SMM's fulfilment of its mandate. At the same time, Russia's overall influence and the consensual character of decision-making in the OSCE prevents the Organization from taking fully adequate, timely and decisive actions that could contribute to the peaceful resolution of the conflict.

The OSCE's parallel role as provider of a framework for negotiation through the TCG makes it, moreover, not only an observing but also political actor of its own, in the conflict resolution process. To be sure, the TCG is, as such, seen positively by most observers simply because it is the “only inclusive consultative body,” at hand.¹¹ In spring 2020, its peculiar relevance for many Ukrainian experts was illustrated during a discussion in Kyiv, around a project for a new so-called “Consultative Council.” This advisory organ, so it was planned, would be attached to the TCG and include, in prominent and official roles, representatives of the “Donetsk People's Republic” (DPR) and “Lugansk Peoples Republic” (LPR).¹² The backlash from Ukraine's experts community and civil society made it clear that, for various Ukrainian politicians, diplomats and observers, the TCG's mere existence, in its current form, is symbolically, legally and

9 Paul Niland, “Russia has no place in the OSCE special monitoring mission in Ukraine,” *Atlantic Council*, 23 July 2018, <https://www.atlanticcouncil.org/blogs/ukrainealert/russia-has-no-place-in-the-osce-special-monitoring-mission-in-ukraine/> (accessed 1 October 2019).

10 “More Russians among OSCE observers in Donbas. Manipulations detected in reports,” *InformNapalm*, 9 January 2020, informnapalm.org/en/more-russians-among-osce-observers-in-donbas/ (accessed 9 January 2020).

11 Walter Kemp, “Civilians in a War Zone: The OSCE in Eastern Ukraine,” in: IFSH (ed.), *OSCE Yearbook 2017*, vol. 23 (Baden-Baden: Nomos, 2018), pp. 113–123.

12 For details on this project, a discussion of which is beyond the scope of this paper, see Vladimir Socor, “Kozak-Yermak Plan on Donbas: The Fine Print,” *Eurasia Daily Monitor*, vol. 17, no. 40, March 26, 2020 jamestown.org/program/kozak-yermak-plan-on-donbas-the-fine-print/ (accessed 25 April 2020).

geopolitically important.¹³ Its basic structure, i.e. two countries plus the OSCE, identifies Russia – at least, implicitly – as one of the two parties to the conflict. The 2020 Ukrainian discussion of the abortive project of a “Consultative Council” also highlighted the special role of the OSCE within the existing TCG.

On the other hand, however, the unusually heavy and two- or even threefold involvement of the Organization – as the SMM’s operator, a TCG member and overall dominating institutional roof for the resolution of the conflict between Russia and Ukraine – creates special challenges to the OSCE’s attempt to build and keep peace. This novel *modus operandi* entails contradictions and risks in those situations in which the OSCE’s monitoring function in the Donbas becomes incongruous with its general inclusivity in Europe and mediating role in Minsk. In view of this special multi-dimensional and prominent role, the OSCE’s presumably advantageous openness and inclusiveness has not always been seen as adequate to the conflict’s challenges.

For example, observational data made public by the SMM has, in the Ukrainian press, been alleged to trigger offensive military action by the Russia-led separatists, especially when such information was new or when it served as confirmation of unverified assumptions. Some armed forces maneuvering near the Donetsk filter station in early 2017, as a reaction to public statements made by SMM officials, have been alleged to represent such a case. An article in the leading news website *Ukrains'ka Pravda* argued:

“Perhaps, the actions of the militants could have been provoked by statements of the Deputy Chairman of the OSCE, Alexander Hug, who said on January 22 that he had seen the Ukrainian armed forces establishing new positions in the area where damage could be caused. Hug, in fact, revealed the positions of the Ukrainian military in this direction. ‘The settlement of Kruta Balka and DFS [Donetsk filter station] lie in the middle of these positions. If this process is not stopped, you know what will happen,’ – Russian media quoted Hug’s statements during his stay in occupied Donetsk.”¹⁴

Whether justified or not, such allegations hurt not only the image of the SMM. They indirectly also undermine the OSCE’s role as a mediator in the TCG and

13 E.g.: Pavel Klimkin, “Konsul'tatsii' o kapituliatsii: Osnovnye ugrozy sozdaniia 'konsul'tativnogo soвета,” *Zerkalo nedeli. Ukraina*, No. 1287, 25 March 2020, https://zn.ua/internal/konsultacii-o-kapitulyacii-349059_.html (accessed 25 April 2020).

14 Oksana Kovalenko, “Zamerznuty u vohni: Shcho vidbuvaet'sia v Avdiivtsi?” *Ukrains'ka Pravda*, 31 January 2017, <https://www.pravda.com.ua/articles/2017/01/31/7134026/> (accessed 1 October 2019).

as the international organization that is, in general, most heavily involved in attempts to contain and solve the Donbas conflict. One would have to add though, concerning the above case, that the hitherto critical situation caused by poor technical conditions of the mentioned Donets'k filter station was resolved, to considerable degree, thanks to help from the OSCE SMM – a fact also acknowledged and welcomed by Kyiv. A ceasefire regime was established in order to allow technicians to access and repair the station.¹⁵

The OSCE cannot help but to protect an official public image as an impartial organization and to follow neutral reporting instructions. By doing so, the Organization's representatives have, however, repeatedly triggered public discontent in the host country, Ukraine. Choosing, justifying and enforcing universally accepted formulations and terminology has, for the OSCE, become a considerable challenge under conditions of an ongoing low-intensity conflict. An illustration of this issue was an incident in 2018 with the influential US magazine *Foreign Policy*. The magazine was forced to amend one of its publications by removing Deputy SMM head Alexander Hug's contentious remark that "the OSCE had not seen direct evidence of Russian involvement in eastern Ukraine" since, as an after-note on *Foreign Policy's* website explains, "it did not convey his intended view."¹⁶

Finally, improvement of the technical equipment of the SMM has been a major challenge, and, even after considerable progress, remains a lasting issue. Over the previous years, significant steps have been made in this direction, such as the increasing use of Unmanned Aerial Vehicles (UAV) and long-range cameras. Still, Ukrainian negotiators have asked for further upgrading of the technical capacity of the SMM. Such a modernization could, for instance, enable the Mission "not only to record the consequences of night attacks, but also to have equipment that would allow it to observe the situation at the withdrawal line overnight."¹⁷

15 Alexander Hug, "Nadiia na myr u babusynkyh ochakh," *Dzerkalo Tyzhnia*, 15 February 2017, https://dt.ua/internal/nadiya-na-mir-u-babusynih-ochah-233452_.html (accessed 1 October 2019).

16 Amy Mackinnon, "Counting the Dead in Europe's Forgotten War," *Foreign Policy*, 25 October 2018, <https://foreignpolicy.com/2018/10/25/counting-the-dead-in-europes-forgotten-war-ukraine-conflict-donbas-osce/> (accessed 1 October 2019).

17 Oleksiy Koval, "Zustrich nezdiysnennyh idei," *Dzerkalo Tyzhnia*, 9 December 2016, https://dt.ua/international/zustrich-nezdiysnennyh-idey-nimechchina-pidbila-pidsumki-svogo-golovuvannya-v-obsye-_.html (accessed 1 October 2019). This has been an issue of critique before: Andrew Kramer, "Keeping Bankers' Hours, European Observers Miss Most of Ukraine War," *The New York Times*, 28 July 2016.

The SMM's Mandate and Role in the Minsk Process

Established already before the outbreak of armed confrontations in mid-April 2014, the OSCE SMM to Ukraine is the only international observer group permanently deployed to the conflict area in the Donbas. It has exclusive, yet limited access to both government- and separatist-controlled territories.¹⁸ The first monitors became deployed as early as spring 2014, within less than 24 hours after a consensual decision of all OSCE participating states, on March 21st, 2014, to establish such a mission.¹⁹

According to the Mission's original and, by early 2021, still valid mandate, the aim of the SMM is to “to contribute ... to reducing tensions and fostering peace, stability and security; and to monitoring and supporting the implementation of all OSCE principles and commitments.”²⁰ More specifically, its tasks, as set on 21 March 2014, are to:

“Gather information and report on the security situation in the area of operation; Establish and report facts in response to specific incidents and reports of incidents, including those concerning alleged violations of fundamental OSCE principles and commitments; Monitor and support respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities; [E]stablish contact with local, regional and national authorities, civil society, ethnic and religious groups, and members of the local population; Facilitate the dialogue on the ground in order to reduce tensions and promote normalization of the situation; Report on any restrictions of the monitoring mission's freedom of movement or other impediments to fulfilment of its mandate; Co-ordinate with and support the work of the OSCE executive structures, including the High Commissioner on National Minorities, the OSCE Office for Democratic Institutions and Human Rights and the OSCE Representative on Freedom of the Media, in full respect of their mandates, as well

18 Alexander Hug, “Pikuzy: koly zbyzhennia tilky viddaliaie,” *Dzerkalo Tyzhnia*, 3 November 2017, https://dt.ua/SOCIUM/osin-pikuzi-inshiy-svit-259076_.html (accessed 1 October 2019).

19 Johan Engvall, “OSCE and Military-Confidence Building in Conflicts: Lessons from Georgia and Ukraine,” *FOI Report*, no. 4750, March 2019, p. 40, https://www.academia.edu/38930042/OSCE_and_Military-Confidence_Building_in_Conflicts_Lessons_from_Georgia_and_Ukraine (accessed 1 October 2019).

20 “Permanent Council Decision No. 1117,” OSCE, 21 March 2014, <https://www.osce.org/pc/116747> (accessed 4 April 2020).

as co-operate with the United Nations, the Council of Europe and other actors of the international community.”²¹

Moreover, the SMM is only one part of a larger involvement of the OSCE in the international attempt to solve the Russian-Ukrainian conflict. Other elements of the international resolution effort include the meetings of the Normandy Four format (Ukraine, Russia, France and Germany) as well as the so-called Trilateral Contact Group (OSCE, Ukraine and Russia) and OSCE Permanent Council. The SMM has an annual budget of around EUR 100 million, and, in 2019, had approximately 1,300 staff members among whom more than 740 are monitors who not only observe, but also work to reduce tensions within an ongoing conflict.²²

The nature and shape of the SMM to Ukraine differs from previous as well as other currently operating OSCE missions. Being a former member of the SMM, Hilde Haug has, among others, pointed out that “it was the first time that the OSCE deployed a civilian field mission of this scope that would come to work in a high-risk environment in an active conflict stage.”²³ In the latter regard, the SMM is only partly comparable to some former operations in the Western Balkans, such as the OSCE Kosovo Verification Mission or OSCE Task Force for Kosovo. Together with the OSCE Project Coordinator in Ukraine and the OSCE Observer Mission at the Russian Federation checkpoints Gukovo and Donetsk,²⁴ the SMM in Ukraine constitutes a large presence of the OSCE, at an active conflict site. It is monitoring not a frozen conflict, but a low-intensity, yet almost daily ongoing, partly delegated inter-state war between Europe’s territorially two largest countries.²⁵

21 *Ibid.*

22 “Factsheet: What is the OSCE?” OSCE, 19 September 2019, <https://www.osce.org/whatistheosce/factsheet>.

23 Haug, “The Minsk Agreements,” p. 343.

24 Donetsk is here a Russian town not to be confused with the Ukrainian Donbas city of the same name that is the capital of Ukraine’s *Donets’ka oblast*. The Russian town is here written as Donetsk while the Ukrainian city is, in accordance with the different Ukrainian spelling, transliterated as Donets’k. Within the name of the “Donetsk People’s Republic” named after the Ukrainian city of Donets’k, however, the Russian spelling might have to be used in as far as this pseudo-state hardly uses Ukrainian language. Behind the abbreviation Donbas is the name Donets’ Basin and not, as one can read sometimes, “Donets’k Basin” in so far as it refers to the Ukrainian river *Sivers’skyi Donets’* (also flowing through the *Luhans’ka oblast*), and not the Ukrainian city of Donets’k.

25 Jakob Hauter, “Delegated Interstate War: Introducing an Addition to Armed Conflict Typologies,” *Journal of Strategic Security*, vol. 12, no. 4 (2019), pp. 90–103.

The Mission is also part and parcel of the OSCE's role as an intermediary between Kyiv and Moscow within the so-called Minsk process. This negotiation format was started in early autumn 2014, and brings Ukraine, Russia and the OSCE together, within the mentioned TCG. The Minsk process is based on various documents signed by Ukraine's and Russia's representatives at meetings in the Belarusian capital in 2014–2015. The 2nd and 4th points of the Minsk Protocol signed on September 5th, 2014, assign to the SMM special jurisdiction in exercising oversight over the withdrawal of heavy weapons.²⁶ The so-called second Minsk Agreement of February 12th, 2015, mentions the OSCE in its 2nd, 3rd and 10th points as having exclusive monitoring and oversight functions in the conflict zone.²⁷ Within the international negotiation process on the Donbas war, the OSCE's SMM and its reports play an important role as sources of legitimation for various negotiators' positions within the TCG, and Normandy Format.

Limitations and Discussions of the SMM's Mandate

The mandate of the OSCE SMM to Ukraine is at the center of the contention between supporters of a continued purely civilian nature of the Mission and those advocating a more robust presence of the OSCE in the Donbas. In spite of many changes on the ground by then, in spring 2019, 2020 and 2021, the SMM's mandate was extended each time for a year without any significant amendments.²⁸ As before, the observation mandate formally covers the entire territory of Ukraine. However, in reality, the Mission is significantly present only in Eastern Ukraine (as well as to a lesser degree in Kyiv), and continues to have incomplete access to the areas of the Donbas controlled by the Russia-led separatists.

Moreover, the SMM has no presence on the Crimean peninsula annexed by Russia.²⁹ As its decision-making is largely consensual, the Russian Federation

26 "Text of Minsk Protocol," OSCE, <https://www.osce.org/ru/home/123258?download=true> (accessed 5 October 2019).

27 "Package of Measures for the Implementation of the Minsk Agreements," OSCE, 12 February 2015, <https://www.osce.org/ru/cio/140221> (accessed 5 October 2019).

28 Permanent Council Decision No. 1323, OSCE, 29 March 2019, <https://www.osce.org/permanent-council/415988> (accessed 5 October 2019).

29 "Volodymyr Zelenskyy met with representatives of the Crimean Tatar people," *Official website of the President of Ukraine*, 9 August 2019, <https://www.president.gov.ua/en/news/>

was and is able to prevent the OSCE from expanding its presence to Crimea. A Ukrainian observer reports:

“In March 2014, 57 OSCE participating States approved by consensus the mandate of the OSCE Special Monitoring Mission to Ukraine. Since March 2014, the mandate of the mission has not changed. Any change to the SMM mandate requires a unanimous decision by all 57 OSCE participating states, including Ukraine and Russia. However, there was no consensus on access of the SMM to Crimea.”³⁰

As before, the SMM remains so far a purely civilian mission that only monitors the conflict, but cannot intervene into it – at least, not on the spot.³¹ In the words of a Ukrainian observer: “The role of the SMM in the de-escalation of the conflict is useful though limited. The OSCE mission is not peacekeeping. The mandate of the mission does not allow its staff to directly ensure separation of forces.”³² This *modus operandi* has been preserved to date although it was argued already in 2016 not only by Ukrainian observers that – particularly, during periods of conflict escalation – the SMM’s purely “civil mandate is not adequate for such a tense and violent situation.”³³

As the differing expectations of the conflict parties from the OSCE are not met by the existing mandate of the SMM, there were attempts to change the mandate of the Mission. Kyiv has always favored a far more robust mandate that would allow observers to, if necessary, also intervene into the conflict, on the spot. Such Ukrainian desires, however, encounter not only resistance from Russia and her allies among the OSCE participating states. They also face the general challenge that the OSCE has only limited experience with the deployment of armed missions to its participating states, and especially to those

volodimir-zelenskij-zustrivsyaz-predstavnikami-krimskotatar-56793 (accessed 5 October 2019).

30 Mykhailo Pashkov, “Poza zonoiu dostupu: chomu SMM OBSE ne pratsiuie v Krymu,” *Razumkov Centre*, 14 November 2018, <http://razumkov.org.ua/statti/poza-zonoiu-dostupu-chomu-smm-obsye-ne-pratsiuie-v-krymu> (accessed 1 October 2019).

31 Serhii Tolstov, “Diial'nist' mizhnarodnyh organizatsiy v Ukraini: zagal'ni tendentsii ta oryentyry,” *Viche*, no. 4 (2015), http://www.irbis-nbu.gov.ua/cgi-bin/irbis_nbu/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/viche_2015_4_4.pdf (accessed 1 October 2019).

32 *Ibid.*

33 Kostanyan Hrant and Stefan Meister, “Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process”, *CEPS Working Document*, no. 423, June 2016, p. 3, <https://biblio.ugent.be/publication/8514008> (accessed 1 October 2019).

suffering from ongoing low-intensity warfare – i.e. from a not yet fully frozen conflict.

This generic and not only Donbas-specific complication is acknowledged in Kyiv. In the analysis of Ukrainian foreign affairs commentator Olena Snyhir, for instance, an OSCE police operation could theoretically provide

“assistance in establishing control over the occupied territory of Donbas through control over the frontline and locations of heavy weapons deployment; restoration of control over the Ukrainian-Russian border; guarantees of security during the preparation and conduct of elections; transfer of power to legally elected representatives of local self-government. However, the OSCE has no experience in organizing a police mission with a mandate that meets the abovementioned requirements. All OSCE police-related missions were post-conflict missions and were limited to training of local police forces. The mandate of these missions in no way required involvement of the mission personnel in conflict management.”³⁴

Moreover, the OSCE lacks not only field experience with armed missions. It also has far lower organizational capacity than the UN – the world's prime international peacekeeping institution.³⁵ For instance, a transformation of the SMM into a police mission would entail not only multiple operational, but also various organizational challenges for the entire OSCE. In particular, Snyhir admits, the

“establishment of an international peacekeeping contingent under the auspices of the OSCE [...] requires a reform of the OSCE itself which is a long-term issue. Therefore, at this stage, the idea of an ‘armed police mission of the OSCE’ can only be a matter of dialogue to find more realistic options. In this context, the very fact of discussing the need to involve an international peacekeeping contingent in Ukraine is important.”³⁶

34 Olena Snihyr, “OBSE v Ukraini: rol' Rosii, SMM ta pytannia myrotvorchoho kontynhentu,” *Ukrains'ka pryзма*, 4 October 2016, <http://prismua.org/osce-ukraine-role-russia-smm-peacekeepers/> (accessed 1 October 2019).

35 Volodymyr Kravchenko, “Yuriy Sergyeyev: Ofis pidtrimki OON maye zaynyatisya problemoyu pripinennya vogniu, demilitarizaciyeyu Donbasu ta yogo podalshoyu reintegraciyeyu,” *Dzerkalo tyzhnia*, 15 May 2015, <https://dt.ua/internal/yuriy-sergyeyev-ofis-pidtrimki-oon-maye-zaynyatisya-problemoyu-pripinennya-vognyu-demilitarizaciyeyu-donbasu-ta-yogo-podalshoyu-reintegraciyeyu-.html> (accessed 1 October 2019).

36 Snihyr, “OBSE v Ukraini: rol' Rosii, SMM ta pytannia myrotvorchoho kontyngentu.”

Finally, continuing limitations to the Mission's current and future mandate are due to funding issues. The budget of the SMM to Ukraine is separate from the Organization's so-called Unified Budget.³⁷ It is linked to, and defined by, the Mission's specific mandate in the Donbas.³⁸ "The SMM in Ukraine is not part of the Unified Budget because of its sheer scale and because it was created as an urgent response to the escalating crisis. Planning of the SMM took place in January 2014 when the work on the Unified OSCE budget was already completed."³⁹

At various stages of the conflict, apart from a fundamental transformation of the SMM's mandate, other peace operations by different organizations were repeatedly discussed. This concerned especially the option of a UN peacemaking and -keeping mission.⁴⁰ Such debates also included the idea of an EU police force for Ukraine although none of the Donbas conflict parties is a member of the EU.⁴¹ The presupposition of most of these proposals was and is that a supplementary mission (or several combined missions) would complement the current purely civilian efforts of the SMM by additional – above all, military –

37 "Permanent Council Decision No. 1326," OSCE, 11 April 2019, <https://www.osce.org/permanent-council/417164> (accessed 5 October 2019).

38 "Permanent Council Decision No. 1323," OSCE, 29 March 2019, <https://www.osce.org/permanent-council/415988> (accessed 5 October 2019).

39 Hylke Dijkstra, Petar Petrov and Ewa Mahr, "Reacting to Conflict: Civilian Capabilities in the EU, UN and OSCE," *EU-CIVCAP Project*, 2 November 2016, p. 33 <https://ssrn.com/abstract=2864430> (accessed 1 October 2019).

40 The earliest such suggestions were already made in late 2014 and early 2015: Andrej Novak, "What's Peace in the Donbas Worth to Us? Why the International Community Should Propose a UN Protectorate," *Osteuropa-Plattform der Grünen*, 4 December 2014, grueneosteuropaplattform.wordpress.com/2014/12/04/whats-peace-in-the-donbas-worth-to-us-by-andrej-novak/ (accessed 1 October 2019); Volodymyr Kravchenko, "Blakytyni kasky u donets'komu stepu," *Dzerkalo tyzhnia*, 20 February 2015, https://dt.ua/internal/blakitnikaski-u-doneckomu-stepu-_html (accessed 1 October 2019). See also later: Carl Bildt, "Is Peace in Donbass Possible?" *European Council on Foreign Relations*, 12 October 2017 www.ecfr.eu/article/commentary_is_peace_in_donbas_possible (accessed 1 October 2019); Andreas Umland, "Re-Imagining and Solving the Donbas Conflict: A Four-Stage Plan for Western and Ukrainian Actors," *Foreign Policy Association*, 29 August 2018, foreignpolicyblogs.com/2018/08/29/re-imagining-and-solving-the-donbas-conflict-a-four-stage-plan-for-western-and-ukrainian-actors/ (accessed 1 October 2019).

41 Here too, the first such proposal was already made in 2014: Steven Blockmans and Daniel Gros, "The Case for EU Police Mission Ukraine," *CEPS*, 14 May 2014, <https://www.ceps.eu/ceps-publications/case-eu-police-mission-ukraine/> (accessed 1 October 2019). See also later: Oleksiy Melnyk and Andreas Umland, "Beyond the Minsk Agreements: Why and How a Combined UN/EU Peacekeeping Mission Could Disentangle the Donbas Conundrum," *European Council on Foreign Relations*, 30 March 2016, www.ecfr.eu/article/commentary_beyond_the_minsk_agreements.

means. However, until today these debates have remained hypothetical. For a variety of reasons, Western countries are not keen to send troops to Ukraine while Russia has remained disinterested in a sufficiently robust armed mission that would change the current status quo in the occupied territories.

Positive Evaluations of the SMM's Monitoring Activities and Development

According to the OSCE, the SMM's "main tasks are to observe and report in an impartial and objective way on the situation in Ukraine; and to facilitate dialogue among all parties to the crisis."⁴² The, perhaps, most important achievement of the OSCE SMM, so far, is the long continuation of its operation as such. The mere physical presence – "to see and be seen"⁴³ – of international observers from the very first days of the conflict has most probably prevented atrocities and escalation that could have happened without the SMM being in place.

Another success of no less importance are the constantly improving reports. In the words of a Ukrainian political analyst:

"[s]uch reports are important to us and to the world. The OSCE mission is not really a tool for solving the problem in the Donbas. However, even in such a format, we need an international presence in order to at least somehow see the whole picture of the shots fired and to deter shooting by the militants, mark the international presence there and record the mode of fire."⁴⁴

Marie Yovanovitch, US Ambassador to Ukraine in 2016–2019, emphasized, at the beginning of her term, in an interview to Ukrainian media the importance of the work of the OSCE monitors. She warned against excessive expectations from the Mission, and remarked:

"I cannot agree that the OSCE is not working. This organization has done a lot for Ukraine. [...] Let's take the SMM, which plays a truly heroic role, along with Ukrainian soldiers. For the international community they

42 "OSCE Special Monitoring Mission to Ukraine," OSCE, <https://www.osce.org/special-monitoring-mission-to-ukraine> (accessed 5 October 2019).

43 Kemp, "Civilians in a War Zone: The OSCE in Eastern Ukraine."

44 Mykhailo Pashkov, "Zavershennia roboty O BSE na Donbasi: chy e koryst' vid sposterihachiv?" *Razumkov Centre*, 20 March 2018, <http://razumkov.org.ua/komentari/zavershennia-roboty-obse-na-donbasi-chy-ie-koryst-vid-sposterihachiv> (accessed 1 October 2019).

provide much-needed information about what is happening, providing us with both facts and context. Yes, I know that it is popular to criticize the SMM.”⁴⁵

From the beginning of the conflict, a number of mainly Ukrainian non-governmental initiatives and organizations have been providing topical information and, partly, monitoring reports on conflict-related developments – sometimes via informal channels such as blogs and private profiles in social media. Some of these initiatives had or claimed to have had ties with international governmental organizations,⁴⁶ including the OSCE.⁴⁷ As the official Mission grew and its daily reports became ever more detailed and structured, the OSCE SMM has, however, gained a virtual monopoly as provider of the most comprehensive and timely updates. They are used by governmental institutions, international organizations, research centers and mass media as well as individual investigators as the main and most reliable source of conflict-related data. Some such investigative initiatives, like the Ukrainian NGO *InformNapalm*, base their publications on data (including visuals) extracted from OSCE reports that are interpreted and complemented by their own experts.⁴⁸

A comparison of the very first daily reports of April 2014 with those of, for instance, October 2019 reveals that the structure and contents of the SMM’s monitoring have undergone substantial change during this five-and-a-half-year period.⁴⁹ Whereas its early reports tracked a wide range of developments all over Ukraine, the later ones mostly provide extensive descriptions of the situation in the Donbas. Though often not assigning clear responsibility for this or that action, the reports treat such important topics as observed (seen or heard)

45 Serhiy Sydorenko, “Posol SSHA: Krym povernetsia do Ukrainy, ale koly? Moia vidpovid’ mozhe buty nepriyemnoiu,” *Ukrains’ka Pravda*, 15 September 2016, <https://www.pravda.com.ua/articles/2016/09/15/7120668/> (accessed 1 October 2019).

46 *Informatsionnoe sprotivlenie*, <https://sprotiv.info/o-nas> (accessed 1 October 2019).

47 “Informatsiyini sprotyv” Tymchuka khoche vidnovyti spivpratsiu z OSBE,” *Depo.ua*, 29 August 2015, <https://www.depo.ua/ukr/war/-informatsiyinyi-sprotiv-timchuka-hoche-vidnoviti-spivpratsyu-29082015112000> (accessed 1 October 2019).

48 *International Volunteer Community InformNapalm*, <https://informnapalm.org/> (accessed 1 October 2019).

49 “Latest from the Special Monitoring Mission to Ukraine,” OSCE, 14 April 2014, <https://www.osce.org/ukraine-smm/117777> (accessed 5 October 2019); “OSCE Special Monitoring Mission to Ukraine (SMM) Daily Report 236/2019,” OSCE, 5 October 2019, <https://www.osce.org/special-monitoring-mission-to-ukraine/434741> (accessed 5 October 2019).

violations of ceasefire agreements, weaponry movements, denials of access for the SMM to certain areas,⁵⁰ or the employment of minors as soldiers.⁵¹

The amount of data provided by the SMM is considerable and is, with every passing year, becoming more conclusive. The constantly growing number of observations allows for syn- and diachronic comparison, statistical analysis, as well as historic interpretation. For example, during the year 2018, the SMM recorded altogether 312,554 ceasefire violations. This number was almost 25% lower than it had been in 2017, and was largely similar to the amount of such violations recorded during 2016. Throughout 2018, the SMM also counted 1,176 cases of restriction of its movements in the conflict zone. Among the 3,818 recorded cases of weapons being observed at locations that violate the agreed-upon withdrawal lines, the distribution of such incidents between Ukrainian governmental and Russia-led separatist forces equaled 43% and 57% respectively.⁵²

According to the SMM-recorded cases of shooting or shelling, and regardless of provocations that preceded them, both sides – i.e. the Ukrainian government forces and Russia-backed irregulars – are responsible for violations of the ceasefire regime.⁵³ In 2017, the then Principal Deputy Chief Monitor of the OSCE Special Monitoring Mission to Ukraine, Alexander Hug, stated that

“[w]eapons, banned by the Minsk Agreements, namely tanks, mortars and artillery systems, including rocket-propelled systems, are still in use. Withdrawal of forces and resources, even at the three agreed pilot sites, is, at best, only partially accomplished; the Donbas territory is littered with landmines and explosive ammunition, and ceasefire remains the exception rather than the rule.”⁵⁴

50 O. Vonsovych, “Ramkove rishennia pro rozvedennia syl ta zasobiv na Donbasi: nehatyvni ta pozytyvni aspekty,” *Hileia: naukovyy visnyk*, no. 114 (2016), pp. 358–361, http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/gileya_2016_114_93.pdf (accessed 1 October 2019).

51 Serhii Zubchenko, “Dity viyny: iak Rosiia zaluchaie ukrains'ku molod' iz tymchasovo okupovanyh terytoriy do terorystychnoyi diial'nosti,” *Dzerkalo Tyzhnia*, 22 April 2016, <https://dt.ua/internal/diti-viyni-yak-rosiya-zaluchaye-ukrayinsku-molod-iz-timchasovo-okupovanih-teritoriy-do-teroristichnoyi-diyalnosti-.html> (accessed 1 October 2019).

52 “Trends and observations from the Special Monitoring Mission to Ukraine,” OSCE, <https://www.osce.org/special-monitoring-mission-to-ukraine/417620> (accessed 2 October 2019).

53 Oksana Kovalenko, “Oleksandr Hug: Nezalezhno vid togo, khto provokuie sytuatsiiu, obydv storony porushuiut' uhodu pro pryypnennia vohniu,” *Ukrains'ka Pravda*, 6 February 2017, <https://www.pravda.com.ua/articles/2017/02/6/7134551/> (accessed 1 October 2019).

54 Oleksandr Hug, “Fakty maiut' znachennia,” *Ukrains'ka Pravda*, 3 July 2017, <https://www.pravda.com.ua/columns/2017/07/3/7148560/> (accessed 1 October 2019).

Despite the relatively impressive scale of the Mission, some observers argue that it is still too small to adequately cover the more than 17 thousand square kilometers of the conflict zone.⁵⁵ While this point is hardly debatable, the effectiveness of the Mission's observation activity has over the years improved as a result of increasingly sophisticated monitoring methodology and technology. In early 2020, Dragana Nikolic-Solomon, Head of the Press and Public Information Unit of the OSCE SMM in Kyiv, stated:

“The SMM continues its monitoring at night, during which it listens, observes, and records ceasefire violations from its Forward Patrol Bases (FPBs) and with the help of technology. The SMM has around 28 cameras in multiple locations and uses unmanned aerial vehicles (UAVs), and satellite imagery, across the Donets'k and Luhans'k regions. Long-range UAVs, in particular, significantly increase the SMM's capabilities to conduct nighttime observations. The Mission plans to install additional technical equipment, including more static cameras, and to open additional forward patrol bases on both sides of the contact line, in particular in areas close to the sections of the Ukraine-Russian Federation border not controlled by the Ukrainian government.”⁵⁶

Lack of Political Leverage and Territorial Reach: Critical Evaluations of the SMM

Criticism of the SMM has been widespread. The Ukrainian critique can be mostly seen though as merely one national permutation of a more general discontent with the OSCE as an organization that includes all conflicting parties, yet has been failing “to resolve many protracted conflicts on the periphery of the Russian Federation, including Nagorno-Karabakh, South Ossetia, and Transnistria.”⁵⁷ The OSCE has particularly struggled “to respond to Russia's military interventions in Georgia and Ukraine.”⁵⁸ The SMM to Ukraine has been

55 Azad Safarov, “Novyi plan shchodo Donbasu: OON ta OBSЕ vidpovidaiut' za bezpeku, es – za vidbudovu,” *Deutsche Welle*, 29 January 2019, <https://www.dw.com/uk/новый-план-щодо-донбасу-оон-та-обсе-відповідають-за-безпеку-ес-за-відбудову/a-47276080> (accessed 1 October 2019).

56 Personal communication, Kyiv, 20 January 2020.

57 Matthew Levinger, “Forging Consensus for Atrocity Prevention: Assessing the Record of the OSCE,” *Genocide Studies and Prevention*, vol. 11, no. 3 (2018), pp. 60–74. Here p. 67.

58 *Ibid.*

labelled as yet “another peace operation operating without a clear political strategy” whose “teams play an important and courageous role in monitoring the still active conflict, but lack the leverage or top-level backup to resolve it.”⁵⁹ Ukrainian analyst Mariia Zolkina concluded that “the current ‘arbitrator’ represented by the OSCE SMM is absolutely powerless to influence the aggressor.”⁶⁰

It is a widespread perception that the SMM’s operation is severely constrained by the conflict’s larger geopolitical context – namely, the general crisis in relations between Russia and the West.⁶¹ Moreover, the peculiar alignment of forces and heavy involvement of the Russian state in the Ukrainian Donbas determine the tone of Ukrainian and other observers’ assessments of the OSCE’s relative failures and achievements. Not without reason, the Organization is – because of its prominence in all aspects of the conflict settlement efforts – seen as not only an observer of, but also active participant in, political processes between Russia, Ukraine and the West.

In any way, the OSCE’s SMM has only a very limited role to play as a peace-keeper as its only instruments are its unarmed presence on the spot, official observation reports, and certain non-public communication channels. The Mission’s tightly restricted authority is thus in dissonance with the OSCE’s high degree of responsibility for soothing the conflict in Eastern Ukraine. The structural incoherence of this setting appears to benefit Moscow and may have been consciously shaped this way. The OSCE’s deep involvement in the conflict’s resolution contradicts its largely consensual decision making and limited role as a mere mediator in the Minsk process. Often, this means that the OSCE functions as a platform of “last resort” for the conflicting parties once they fail to reach results via direct negotiations.

The tension stemming from this ambivalent situation is further aggravated by Ukraine’s and its international partners’ allegations that Russian influence in the OSCE is not limited to obstruction of the Organization’s decision-making processes. Moscow’s preferences are also reflected, so it is perceived in Kyiv and elsewhere, in the OSCE’s field operations. Russian citizens, as citizens of an OSCE participating state, are part of the SMM on a permanent basis.⁶² Some

59 Richard Gowan, “Can the United Nations Unite Ukraine?” *Hudson Institute*, February 2018, p. 11 <https://www.hudson.org/research/14128-can-the-united-nations-unite-ukraine> (accessed 1 October 2019).

60 Mariia Zolkina, “Pytannia Donbasu: orientyry dlia novoiy vldy,” *Ukrains’ka Pravda*, 23 August 2019, <https://www.pravda.com.ua/columns/2019/08/23/7224256/> (accessed 1 October 2019).

61 Fred Tanner, “The OSCE and the Crisis in and around Ukraine: First Lessons for Crisis Management,” in: IFSH (ed.), *OSCE Yearbook 2015. Yearbook on the Organization for Security and Cooperation in Europe*, vol. 21 (Baden-Baden: Nomos, 2016), pp. 241–250.

62 “More Russians among OSCE observers in Donbas.”

of them have been suspected of espionage and even claimed to be full-time spies.⁶³ Ukraine cannot compose the list of Russians that arrive to Ukraine as part of the SMM. It can, however, deny entry for certain persons if there is sufficiently substantiated suspicion of their unsuitability.

Some analysts have alleged that still most of the Russian monitors are affiliated with various Russian security services.⁶⁴ In the opinion of an Irish long-term resident of Ukraine writing for the Atlantic Council, for example:

“[t]he OSCE SMM has been compromised. It cannot serve in the unbiased way that it is meant to as long as there is a gaggle of Russian spies sitting in the heart of the mission that is designed to inform the world about events from a conflict that Russia itself has created. The only way around this problem, and the only appropriate sanction against Russia for its deliberate efforts to compromise the mission, not to say endangering the monitors involved, is the unanimity minus one principle.”⁶⁵

Apart from suspicion that it includes biased or even spying monitors, the OSCE SMM's inability to properly monitor parts of the separatists-controlled areas in the Donbas has been another main topic of Ukrainian criticism. This concerns, in particular, the Mission's frequent inability to fully record and report the movement of weaponry from Russia. To be sure, in recent years, the SMM has made increased efforts to provide such monitoring through, for instance, more usage of UAVs. However, the Russia-led separatist forces' sometimes abrasive counter-actions against the OSCE's UAVs observing movement of weaponry – i.e. its jamming or shooting of the drones – have hindered these efforts. The aggressive attempts to contain the operation of the UAVs also indicate that their employment and capabilities are seen as relevant by the observed.⁶⁶

63 Allison Quinn, “Russian OSCE monitor in Ukraine fired after drunkenly saying he was a Moscow spy,” *The Telegraph*, 30 October 2015, <https://www.telegraph.co.uk/news/worldnews/europe/russia/11965191/Russian-OSCE-monitor-in-Ukraine-fired-after-drunkenly-saying-he-was-a-Moscow-spy.html> (accessed 1 October 2019).

64 Oksana Kovalenko, “Heneral-mayor Kremenets'ky: Vpevnenyy, bud'-iaki rosiiys'ki ofitseri v misii OBSE – tse kadrovi spivrobotnyky abo GRU, abo FSB,” *Ukrains'ka Pravda*, 11 January 2017, <https://www.pravda.com.ua/articles/2017/01/11/7132111/> (accessed 1 October 2019).

65 Paul Niland, “Russia has no place in the OSCE special monitoring mission in Ukraine,” *Atlantic Council*, 23 July 2018, <https://www.atlanticcouncil.org/blogs/ukrainealert/russia-has-no-place-in-the-osce-special-monitoring-mission-in-ukraine/> (accessed 1 October 2019).

66 Halya Coynash, “The Facts speak for themselves re Russia's military involvement in Donbas – OSCE Chief Monitor,” *Human Rights in Ukraine*, 2 November 2018, khpg.org/en/index.php?id=1541107927 (accessed 1 October 2019).

In general, frequent outright restrictions to the movement of the SMM by the so-called DPR and LPR as well as other permanent limitations such as the grave danger to the monitors emanating from land mines, make direct around-the-clock observation of the area an arduous and often impossible task. These confinements are, to be sure, independent from the intentions of the OSCE's decision makers in Vienna and operating officers in Ukraine. Still, the SMM's incapability to fully cover the occupied territories and document certain relevant military as well as pertaining non-military (i.e. political, social and economic) developments continues to damage the SMM's reputation as an observation operation. Against the background that Russia, as a *de facto* party to the conflict, has not been officially recognized by the OSCE as such, the effectiveness and impartiality of some OSCE decisions and actions is bound to be met with reservation in Ukraine – and elsewhere too.

The OSCE's additional special Observer Mission at the Russian Checkpoints Gukovo and Donetsk (and not Donetsk), while being separate from the main OSCE mission, represents a peculiar facet of the overall monitoring efforts of the OSCE in the Donbas.⁶⁷ That is because, in contrast to these two relatively small locations, the Russia-led separatists deny permanent direct access to other parts of the Russian-Ukrainian border, where their irregular forces control Ukrainian territory. This continuing limitation of the SMM's reach constitutes a fundamental violation of the Mission's mandate. It prevents the OSCE from exercising a comprehensive monitoring of cross-border arms movement.

For many Kyiv observers, the Gukovo and Donetsk checkpoint observation missions mainly fulfil fig leaf and propaganda functions for Russia. In Ukraine, these two Russian checkpoints that cover around 40 km out of the approximately 400 km border with the separatist so-called “people's republics” are seen as mere façades. They and their officially permitted observation of certain points by a separate mission of the OSCE are used to support Russian claims of “non-involvement” in the conflict.

Still, Paul Picard, a former Chief Observer, revealed that even at those two checkpoints, OSCE observers have seen people in camouflage with no insignia or officer marks crossing the border:

“They called themselves volunteers, they said that they have families in Ukraine and in Russia, and that they are going to help their own. They said they were unable to cross the border with weapons, but from the

67 Olena Snihyr, “Rosiyis'kyi ekspansionizm u Moldovi, Hruzii ta Ukraini: paraleli ta vidminnosti,” *Dzerkalo Tyzhnia*, 19 May 2018, https://dt.ua/international/rosiyskiy-ekspansionizm-u-moldovi-gruziyi-ta-ukrayini-paraleli-y-vidminnosti-278236_.html (accessed 1 October 2019).

[other] side they could get it in certain organizations. [...] I explained each time that our mandate is very limited, that we monitor only two checkpoints: the Gukovo checkpoint and the Donetsk checkpoint, that we cannot talk about what is happening on the remaining 400 kilometers of the border. And what happens between the checkpoints, we can never see.”⁶⁸

Russian Diplomatic and Political Sabotage of the SMM's Operation

Looking back at the last 30 years, the above Ukrainian discontent with the OSCE can be seen as merely reflecting larger issues in the Organization's post-Soviet existence not specific to the Donbas conflict. There has always been ambivalence, in the stances of various post-Soviet states, about the CSCE's and later OSCE's role in post-communist Eastern Europe. The CSCE/OSCE was and is perceived differently by the opposing parties of the post-1991 political, diplomatic and military confrontations. This is especially so for those states that are in armed conflict with each other within frozen, simmering or hot territorial conflicts, in the region, yet are nevertheless all full and supposedly equal participants of the same regional organization.

The contradictory structure of this situation is a reason for the curious phenomenon that the OSCE has occasionally been simultaneously considered to be an ally of the confronting sides of such conflicts. This paradoxical situation is a result of, among others, the mentioned largely consensual mode of its decision making.⁶⁹ Thus, for example, during the 1990s,

“[t]he Russian government of Boris Yeltsin actively supported the OSCE's diplomatic engagement in Estonia and Latvia, because Yeltsin saw the missions as a means of protecting the rights of Russian minorities in both countries while defending his credibility against his own nationalist domestic critics. Government officials in Estonia, Latvia, and Ukraine, by contrast, viewed the OSCE's involvement as a means of

68 Oksana Kovalenko, “Iliuzia kontroliu: chomu misia OSCE ne bachyt' tankiv rosiian na kordoni,” *Ukrains'ka Pravda*, 2 April 2018, <https://www.pravda.com.ua/articles/2018/04/2/7176457/> (accessed 1 October 2019).

69 Lamberto Zannier, Christian Nünlist, David Svarin, Thomas Greminger, Pál Dunay, “Overcoming the East-West Divide: Perspectives on the role of the OSCE in the Ukraine crisis,” *ETH Zurich Center for Security Studies*, December 2014, <https://www.research-collection.ethz.ch/bitstream/handle/20.500.11850/93075/eth-47061-01.pdf> (accessed 1 October 2019).

strengthening their countries' ties to the West and breaking their dependence on Russia."⁷⁰

Partially similar ambiguity is detectable in the OSCE's current operation in Ukraine where its role and impact are also assessed differently by the parties to the conflict. The Ukrainian government relies on the SMM's observation reports of ceasefire violations to substantiate its allegations against Kremlin-led separatists that they are violating various agreements.

Russia also uses officially published observations of the OSCE. Yet, it refers more often to Observer Mission reports from the Ukrainian-Russian border checkpoints at Gukovo and Donetsk although, as mentioned, the observable area there only covers one tenth of the border that Russia shares with Donbas territory currently not controlled by Ukraine's government. The Kremlin employs these secondary OSCE reports to convince the Russian population and receptive international audiences that the Observer Mission's monitoring of these two checkpoints supposedly confirms Moscow's continuing claim that no Russian weaponry and servicemen are crossing the border.

Since 2016, the Russian Federation has been the only country in the Organization to vote against repeated proposals to extend the OSCE's permanent monitoring presence to the entire border between Russia and the two so-called "people's republics."⁷¹ The Kremlin's resistance to such an extension of the SMM's reach is part and parcel of Russia's concerted international and domestic effort to publicly misinterpret its delegated inter-state war against Ukraine.⁷² Against overwhelming evidence to the contrary, Moscow continues to portray the conflict as a domestic civil war within Ukraine.⁷³ In the

⁷⁰ Levinger, "Forging Consensus for Atrocity Prevention," pp. 65–66.

⁷¹ Oksana Kovalenko, "Iliuzia kontroliu: chomu misia OSCE ne bachyt' tankiv rosiian na kordoni," *Ukrains'ka pravda*, 2 April 2018, <https://www.pravda.com.ua/articles/2018/04/2/7176457/> (accessed 1 October 2019).

⁷² Hauter, "Delegated Interstate War."

⁷³ The Kremlin's official interpretation of the conflict is, one needs to add, partly shared by some Western-based scholars such as: Sergiy Kudelia, "Domestic Sources of the Donbas Insurgency," *PONARS Eurasia Policy Memos*, no. 351 (2014), www.ponarseurasia.org/memo/domestic-sources-donbas-insurgency (accessed 9 September 2018); Sergiy Kudelia, "Reply to Andreas Umland: The Donbas Insurgency Began at Home," *PONARS Eurasia*, 8 October 2014, www.ponarseurasia.org/article/reply-andreas-umland-donbas-insurgency-began-home (accessed 9 September 2018); Ivan Katchanovski, "The Separatist War in Donbas: A Violent Break-up of Ukraine?" *European Politics and Society*, vol. 17, no. 4 (2016), pp. 473–489; Serhiy Kudelia, "The Donbas Rift," *Russian Politics and Law*, vol. 54, no. 1 (2016), pp. 5–27. It should be noted, however, that these scholars can – unlike many Russian academics publishing on this topic – not count as Moscow's agents.

Kremlin's self-representation, Russia may be a political ally of the separatists. But it allegedly neither was an instigator nor is it an active participant of the armed conflict in the Donets' Basin – a claim that most specialized observers outside Russia and her allies reject.⁷⁴

The function of the civil war imagery in Kremlin-guided Russian and pro-Russian discourses is to provide Moscow with leverage vis-à-vis Kyiv and the West. The domestic conflict narrative is designed to increase tensions in Ukrainian society that would, from the Kremlin's point of view, ideally lead to state collapse. In view of this approach, it has been predicted that

“Russia will not agree to hand over border control to the Ukrainian authorities as long as it is not necessary in its cost-benefit calculation. It

74 E.g.: Nikolay Mitrokhin, “Infiltration, Instruktion, Invasion: Russlands Krieg in der Ukraine,” *Osteuropa*, vol. 64, no. 8 (2014), pp. 3–16; Andreas Umland, “In Defense of Conspirology: A Rejoinder to Serhiy Kudelia's Anti-Political Analysis of the Hybrid War in Eastern Ukraine,” *PONARS Eurasia*, 30 September 2014, www.ponarseurasia.org/article/defense-conspirology-rejoinder-serhiy-kudelias-anti-political-analysis-hybrid-war-eastern (accessed 9 September 2018); Nikolai Mitrokhin, “Grubye liudi: kak russkie natsionalisty sprovotsirovali grazhdanskuiu voinu v Ukraine,” *Forum noveishei vostochnoevropeiskoi istorii i kultury*, vol. 11, no. 2 (2014), pp. 53–74; Nikolai Mitrokhin, “Infiltration, Instruction, Invasion: Russia's War in the Donbass,” *Journal of Soviet and Post-Soviet Politics and Society*, vol. 1, no. 1 (2015), pp. 219–250; Ulrich Schneekener, “Hybrider Krieg in Zeiten der Geopolitik? Zur Deutung und Charakterisierung des Donbass-Konflikts,” *Politische Vierteljahresschrift*, vol. 57, no. 4 (2016), pp. 586–613; Oleksandr Zadorozhnyi, “Hybrid War or Civil War? The Interplay of Some Methods of Russian Foreign Policy Propaganda with International Law,” *Kyiv-Mohyla Law and Politics Journal*, no. 2 (2016), pp. 117–128; Anton Shekhovtsov, “How Alexander Dugin's Neo-Eurasianists Geared up for the Russian-Ukrainian War in 2005–2013,” *Euromaidan Press*, 26 January 2016, euromaidanpress.com/2016/01/26/how-alexander-dugins-neo-eurasianists-geared-up-for-the-russian-ukrainian-war-in-2005-2013/ (accessed 15 September 2018); Andrew Wilson, “The Donbas in 2014: Explaining Civil Conflict Perhaps, but not Civil War,” *Europe-Asia Studies*, vol. 68, no. 4 (2016), pp. 631–652; Tatyana Malyarenko and Stefan Wolff, “The Logic of Competitive Influence-Seeking: Russia, Ukraine, and the Conflict in Donbas,” *Post-Soviet Affairs*, vol. 34, no. 4 (2018), pp. 191–212; Andreas Umland, “The Glazyev Tapes, Origins of the Donbas Conflict, and Minsk Agreements,” *Foreign Policy Association*, 13 September 2018, foreignpolicyblogs.com/2018/09/13/the-glazyev-tapes-origins-of-the-donbas-conflict-and-minsk-agreements/ (accessed 15 September 2018); Nikolay Mitrokhin, “Im Namen des Staates: Russische Nationalisten im Ukraine-Einsatz,” *Osteuropa*, vol. 69, nos. 3–4 (2019), pp. 103–122; Oleksandr Melnyk, “From the ‘Russian Spring’ to the Armed Insurrection: Russia, Ukraine and Political Communities in the Donbas and Southern Ukraine,” *The Soviet and Post-Soviet Review*, vol. 47, no. 1 (2020), pp. 3–38; Vlad Mykhnenko, “Causes and Consequences of the War in Eastern Ukraine: An Economic Geography Perspective,” *Europe-Asia Studies*, vol. 72, no. 3 (2020), 528–560; Sanshiro Hosaka, “Welcome to Surkov's Theater: Russian Political Technology in the Donbas War,” *Nationalities Papers*, vol. 47, no. 5 (2020), pp. 750–773.

would practically mean losing influence over the DPR and the LPR, which is a very high price to pay for the Russian regime. Ukrainian forces would be able to regain control over the territories, thus denying Russia its leverage over Kyiv through separatist-controlled areas.”⁷⁵

For Ukraine and its supporters in the international community, the OSCE's unhindered observation of, if not full control over, the entire border with Russia is at the core of a sustainable conflict settlement. Once gained, it would allow to track and counter-act the illegal movement of weaponry, equipment and other supplies from Russia to the non-government-controlled areas of Donbas. The former Deputy Head of the Presidential Administration of Ukraine Kostiantyn Yeliseev has, among others, identified the OSCE's full access to the border as a crucial issue. He argued that “special emphasis should be made on obtaining permanent access for the OSCE SMM to the occupied areas, including the border.”⁷⁶ The EU too has explicitly come out in favor of expansion of the OSCE's access to the border. Among others, Federica Mogherini, the Union's former High Representative for Foreign Affairs and Security Policy, has repeatedly demanded unobstructed direct access for monitors to the non-government-controlled section of the Ukrainian-Russian border, and advocated the expansion of the geography of the OSCE SMM's ground operations.⁷⁷

However, were such a scenario ever to become real, a significant enlargement of the Mission's staff and resources would be required in order to enable the SMM to provide continuous on-the-spot monitoring of the 400-km-long border section in question. The political, financial and organizational dimensions of this issue are understood in Ukraine. Tetiana Sylina, foreign affairs editor of the Kyiv newspaper *Mirror of the Week*, asked in 2015:

“...[H]ow will the OSCE—if Russia suddenly agrees—control four hundred (!) kilometers of the border? How many people will be involved in this process? What kind of equipment will they be equipped with? What powers will be given to them? Will they be able to prevent the illegal

75 Kostanyan Hrant and Stefan Meister, “Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process”, *CEPS Working Document*, no. 423, June 2016, p. 5, <https://biblio.ugent.be/publication/8514008> (accessed 1 October 2019).

76 Kostiantyn Eliseev, “Bilorus'kyi Mins'k, frantsuz'ka Normandiia i myr dlia ukrains'koho Donbasu,” *Ukrains'ka pravda*, 6 July 2019, <https://www.pravda.com.ua/columns/2019/07/6/7220189/> (accessed 1 October 2019).

77 Oleksiy Koval, “Zustrich nezdiysnennyh idei,” *Dzerkalo tyzhnia*, 9 December 2016, <https://dt.ua/international/zustrich-nezdiysnennih-idey-nimechchina-pidbila-pidsumki-svogo-golovuvannya-v-obsye-.html> (accessed 1 October 2019).

crossing of the border, or will they only fix the cases noted? Will the Organization find funds [...]?"⁷⁸

In any way, as of early 2021, the Kremlin has not become interested in solving or, at least, freezing the conflict which would be a precondition for a heavier presence of the OSCE in the Donbas. Rather, Moscow seemingly wants to let the low-intensity war simmer on, and to keep in place its diverse levers of influence in the Donbas. Russia's unofficial military presence and close oversight of the DPR as well as LPR combined with her *de facto* veto power at the OSCE and partial influence on the SMM allows Moscow to control the political agenda in the region. The complexity of the Kremlin's mixed strategies to shape the situation in Eastern Ukraine encounters an insufficiently prepared international community that struggles to adapt the OSCE's mode of operation to Russia's wishes in order to secure, at least, a continuation of its observation activity on the spot.

As Matthew Levinger argued, the OSCE has yet to find a way to deal, in general, with such situations:

"Some of the most intractable conflicts in the OSCE region—e.g. those in Ukraine, the South Caucasus, Moldova, and Nagorno-Karabakh—are located in areas on the periphery of the Russian Federation where Russia has a strong vested interest in the outcome. Given the OSCE's lack of material instruments of leverage, the organization is unlikely to be able to successfully mediate such conflicts that have become locked into a 'security competition' frame."⁷⁹

While officially approving of its creation, Moscow was, from the beginning, unresponsive of the OSCE SMM, agreed only reluctantly to its creation, and tried to slow down its deployment. It understood that the Mission's operation would create obstacles for implementing Russian policies in the Donbas. That the Kremlin approved the set up of the Mission at all was apparently due to the fact that it wanted to prevent a possible arrival of other international monitors in the Donets' Basin. Johan Engvall details that

"for a while it appeared unlikely that the OSCE participating states would agree on the mission at all. Facing the risk of a stalled process, some EU

78 Tetiana Sylina, "Mins'ka khalabuda," *Dzerkalo tyzhnia*, 28 August 2015, <https://dt.ua/internal/minska-halabuda-.html> (accessed 1 October 2019).

79 Levinger, "Forging Consensus for Atrocity Prevention," p. 68.

member states in a parallel track pushed for an EU mission. On March 20, [2014] the day before the OSCE participating states agreed to the SMM, the European Council turned the heat on Russia by putting the option of an EU observer mission on the table: 'In the absence of an OSCE mission in the coming days, the European Union will launch an EU observer mission.' Moscow, fearing an EU mission, responded the next day by accepting the OSCE SMM, the size, geographical scope and management of which it had managed to constrain during the negotiations.⁸⁰

Conflicts of the SMM with the “DPR/LPR” and the Ukrainian Government

OSCE's reports are referred to by both sides of the conflict when they accuse each other of violating the Minsk Agreements.⁸¹ Both sides have also imposed restrictions to the freedom of movement of the special monitors. However, a disproportionately larger amount of such restrictions have been imposed by the so called “people's republics,” and a far smaller number by the Ukrainian government.⁸² One justification that Kyiv has given for such restrictions is that it fears that Russian or pro-Russian SMM members may use monitoring inspections for military reconnaissance purposes, and report relevant observations to Moscow.

Another recurring issue of the SMM's movements within the non-government controlled territories was and is that the monitors have been threatened or attacked while conducting their patrols.⁸³ At the early stages of the conflict, OSCE monitors were arrested and held by pro-Russian war lords. Sometimes, their cars were fired at.⁸⁴ Parked vehicles and monitoring equipment were

80 Engvall, “OSCE and Military-Confidence Building in Conflicts,” p. 40.

81 Andriy Karakuts, “OBSE na Donbasi: misia-zaruchnyk,” *Ukrains'ka Pravda*, 13 August 2015, pravda.com.ua/columns/2015/08/13/7077636/ (accessed 1 October 2019).

82 E.g.: “April – June 2019 Trends and observations from the Special Monitoring Mission to Ukraine,” OSCE, 11 July 2019, <https://www.osce.org/special-monitoring-mission-to-ukraine/425429> (accessed 5 October 2019).

83 Ihor Ievtushenko, “The role and place of international organizations in the settlement of armed conflicts in the southeast of Ukraine (legal aspects),” *Problems of Legality*, no. 131 (2015), pp. 124–132, https://www.researchgate.net/publication/311956231_The_role_and_place_of_international_organizations_in_the_settlement_of_armed_conflicts_in_the_southeast_of_Ukraine_legal_aspects (accessed 1 October 2019).

84 “OSCE Special Monitoring Mission patrol comes under fire in Donbas,” *Censor.net*, 10 June 2019, https://censor.net.ua/en/news/3131451/osce_special_monitoring_mission_patrol_comes_under_fire_in_donbas (accessed 1 October 2019).

purposefully destroyed.⁸⁵ In recent years, long-range cameras of the OSCE SMM have been frequently destroyed, turned off, or prevented from being installed by Russia-led separatists.⁸⁶ As mentioned, UAVs are jammed and have been shot at. Against this background, it has been argued that “there is little point in increasing the size of the SMM if it does not have the security and access needed to do its job. The OSCE should be cautious about expanding the Mission unless it is given better political support.”⁸⁷

The OSCE’s disagreements with the Ukrainian government are often related to Kyiv’s complaints about monitors’ – particularly, those with Russian citizenship – alleged sympathies for, or even involvement with, the Russia-led Donbas separatists’ ideas and activities. There was in 2016 a widely reported scandal around some monitors’ apparent attendance of a wedding of a separatist fighter – an incident that led to the OSCE’s dismissal of those monitors present there.⁸⁸ In 2019, another OSCE officer was dismissed after explicitly expressing his anti-Ukrainian views.⁸⁹ On the other hand, there have been distorted Ukrainian reports about the OSCE’s allegedly biased observations, and supposedly exclusive recording of crimes by the Ukrainian military.⁹⁰

85 Viktor Kotyhorenko, “Chy mozhlyve zhyttia poza Mins'kom?” *Dzerkalo tyzhnia*, 24 June 2016, <https://dt.ua/internal/chi-mozhlive-zhyttia-poza-minskom-.html> (accessed 1 October 2019).

86 “Neshchodavno vstanovlenu na shodi Ukrainy kameru SMM OBSE znyshcheno vognem zi strilets'koi zbroi,” OSCE, 10 August 2017, <https://www.osce.org/uk/special-monitoring-mission-to-ukraine/335281> (accessed 5 October 2019); “Boiovyky ‘DNR’ vidkliuchyly kamery OBSE v rayioni Donets'kogo aeroportu,” *Ukrinform*, 23 May 2016, <https://www.ukrinform.ua/rubric-ato/2021679-bojoviki-dnr-vidklucili-kameri-obse-v-rajoni-doneckogo-aeroportu.html> (accessed 1 October 2019).

87 “Lessons Learned for the OSCE from it’s engagement in Ukraine”, *Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project*, June 2015, https://www.academia.edu/22566217/Lessons_Learned_for_the_OSCE_from_its_engagement_in_Ukraine_-_interim_report_and_recommendations_of_the_Panel_of_Eminent_Persons_on_European_Security_as_a_Common_Project (accessed 1 October 2019).

88 “OBSE zvil’nyly sposterigachiv, yaki zasvitylys’ na vesilli u terorystiv,” *5.ua*, 7 April 2016, <https://www.5.ua/polityka/obsye-zvilnyly-sposterihachiv-iaki-pohulyaly-na-vesilli-u-boiovykiv-110898.html> (accessed 1 October 2019).

89 “V SMM OBSE zaiavili, chto ‘priniali mery’ v otnoshenii chlena missii, rossiianina Alekseeva, kotoryi zhelal ‘smerti ukropam,’” *Censor.net*, 12 August 2019, https://censor.net.ua/news/3142540/v_smm_obse_zayavili_cho_prinyali_mery_v_otnoshenii_chlena_missii_rossiyanina_alekseeva_kotoryi_jelal (accessed 1 October 2019).

90 “U SMM OBSE prokomentuvaly vstanovlennia videokamery u Krasnogorivtsi,” *Radio Svoboda*, 23 July 2018, <https://www.radiosvoboda.org/a/29385121.html> (accessed 1 October 2019).

While Kyiv has, in general, welcomed the activities of the SMM, it repeatedly demanded, via official statements of the Ukrainian delegation to the OSCE, that the Mission should put more effort into fulfilling its obligations, as Kyiv sees them, under the existing mandate. One such Ukrainian statement, for instance, said:

“We are fully aware of the security challenges, which the monitors face in these areas while trying to implement the SMM’s mandate, and we urge the Russian side to stop any threats or intimidation of unarmed civilian observers. Still, we expect the Mission to pay close attention to this part of its mandate. The SMM’s findings on the situation in Russia-occupied parts of Donbas related to religious communities or on a very limited scope for freedom of expression and limited access to information including TV channels, websites, books and publications in the Ukrainian language, are valuable for us. We encourage the Mission to provide more information on these issues, not only in the reports of the Chief Monitor to the Permanent Council, but in the daily and weekly reports as well.”⁹¹

With regard to increased activities of the Russian Federation in the Black Sea too, the Ukrainian government has criticized the OSCE for not sufficiently addressing this issue. The delegation of Ukraine to the OSCE has stated:

“A brief information on the ‘possible effects on the socio-economic situation’, included into your [Ambassador Çevik’s] report to the PC [Permanent Council], does not duly reflect the scope of security, socio-economic and humanitarian challenges stemming from the ongoing of Russia’s militarization of the Sea of Azov, the Black Sea and the occupied Crimean peninsula. As these challenges continue to affect the security situation, freedom of navigation and trade far beyond the Sea of Azov, we urge the SMM to enhance its monitoring activities in this field.”⁹²

91 “Statement by the delegation of Ukraine to the OSCE in response to Ambassador Martin Sajdik, Special Representative of the Chairperson-in-Office, and Ambassador Halit Çevik, Chief Monitor of the OSCE SMM to Ukraine,” *Ministry of Foreign Affairs of Ukraine*, 4 July 2019, <https://mfa.gov.ua/en/press-center/news/73644-zajava-delegaciji-ukrajini-v-obse-u-vidpovidy-na-dopovidy-specpredstavnika-dijuchogo-golovi-obse-martina-sajdika-tagolovi-smm-obse-v-ukrajini-khalita-chevika-movoju-originalu> (accessed 5 October 2019). Ambassador Yaşar Halit Çevik has been the Chief Monitor of the OSCE Special Monitoring Mission to Ukraine since June 1st, 2019.

92 *Ibid.*

Lessons Learned for Similar Future OSCE Missions

This article aimed to answer the question if the SMM so far has had a positive, negative or neutral influence on the de-escalation of the conflict in Ukraine's Donbas basin. We, first, briefly illustrated why the SMM in Ukraine works under the extraordinary circumstances of an initially high- and later low-intensity conflict and of having to monitor a territory far exceeding the scope of previous OSCE missions. We then partially reported and tentatively reflected upon the debate among Ukrainian and international observers related to the SMM's mandate and performance.

We find that the mandate's circumscribed nature, the SMM's lack of sufficient resources and the contradictions stemming from the simultaneous involvement of the OSCE in the Minsk Process are serious as well as objective challenges and sometimes plain hindrances for the Mission to fully implement its supposed task of soothing and ideally ending the conflict. The most obstructive effects on the SMM's performance are emanating from Russia's peculiar double-role as a *de facto* participant/instigator of the conflict and an, at the same time, major player within the OSCE. Moreover, a whole number of on-the-spot restrictions by the pro-Russian DPR/LPR satellite regimes, and, to a lesser degree, of the Ukrainian government have been and are today frequently hindering the fulfillment of the Mission's limited mandate. Despite such shortcomings, we have also found that the SMM's continuous presence, the gradual improvement of its monitoring efforts in the Donbas, and its methodological as well technological advancement have contributed significantly to the conflict's de-escalation. We therefore identify a clearly net positive contribution of the SMM in terms of partial peacekeeping in Ukraine. Without the SMM's de-escalating observation and reporting, some more or less prolonged cease-fires would have been much more unlikely to be sustained.

Which lessons can be drawn for the future of the Mission? In September 2019, Ukraine's then still new President Volodymyr Zelens'kyi stated: "We expect only one from [the OSCE]: that the verification will be honest and powerful. We want the OSCE mission to record every step, every violation, every shot, every life of our Ukrainian citizens."⁹³ Due to its heavy presence in Ukraine, particularly, in the shape of the SMM, the Organization's activities in the Donbas, Kyiv and other Ukrainian regions have come to define, to

93 "Zelensky wants OSCE monitors to be honest when record violations in Donbas," *Interfax-Ukraine*, 16 September 2019, <https://en.interfax.com.ua/news/general/613466.html> (accessed 1 October 2019).

considerable extent, the Organization's general image among its participating states and beyond, since 2014.

In view of the high attention and in order to provide more broadly informed assessment of OSCE activities within the entire Euro-Asiatic region, it has been even warned that "all discussions on OSCE peace operations should not be viewed through the prism of eastern Ukraine."⁹⁴ There are, for example, a number of generic challenges that the OSCE faces in various post-Soviet countries, in terms of Russia's engagement, direct or indirect, in armed or unarmed conflicts with her neighboring countries. The OSCE's challenges in the Donbas are merely local permutations of this larger issue, and their discussion illustrates more generally diverging views of Russia and the West on the purpose and function of the Organization.⁹⁵

The case of the OSCE's Ukrainian engagement is, nevertheless, especially important, first of all, due to the Organization's larger role as well as in view of the considerable scale and sophisticated structure of its presence in Ukraine. In the opinion of one Kyiv expert,

"[t]oday, Ukraine has actually become a litmus test for the OSCE's capacity, and the organization itself is undergoing a 'strength test' through the settlement of the conflict in Ukraine. This is well understood in Ukraine and that is why real changes in the OSCE to ensure its capacity and adherence to the Helsinki Principles are supported."⁹⁶

As outlined, the question of a transformation of the current civilian unarmed mission into something more robust remains open to date. A 2016 idea by then President of Ukraine Poroshenko to arm the Mission was resolutely rejected by all other relevant actors.⁹⁷ On the other hand, the structure, operation and publications of the OSCE SMM have been significantly improved since the

94 Walter Kemp, "OSCE Peace Operations: Soft Security in Hard Environments," *New York: International Peace Institute*, June 2016, p. 5, <https://ssrn.com/abstract=2893308> (accessed 5 October 2019).

95 Jana Puglierin, "OSZE dient Kreml als Feigenblatt," *Bundeszentrale für politische Bildung*, 6 September 2016, <https://dgap.org/de/forschung/publikationen/meinung-osze-dient-kreml-als-feigenblatt> (accessed 5 October 2019).

96 Vitaliy Martyniuk, "Perezavantazhennia OSBE – vyprovuvannia v Ukraini," *UCIPR*, no. 19(743), 15 February 2016, http://www.ucipr.org.ua/index.php?option=com_content&view=article&id=7:perezavantazhennya-obs-viprovuvannya-v-ukra-n&catid=8&lang=ua&Itemid=201 (accessed 1 October 2019).

97 Kateryna Bosko, "Die Debatte um eine bewaffnete OSZE-Mission in der Ostukraine," *Ukraine-Analysen*, no. 171, 2016, pp. 19–20.

start of the Mission's deployment. The Mission has gained solid rapid reaction capacity, new field operation experience, better technical equipment, and novel knowledge with regard to the use of modern technologies.

Walter Kemp therefore concludes, with regard to the OSCE's role in the conflict in Donbas and its larger effects, that

“[t]he deployment of the SMM—against the odds and under fire—has demonstrated that the OSCE can move quickly and deploy a sizeable mission of civilian monitors in a hostile environment. It raises both practical and political issues, provides a number of useful lessons (both for future OSCE operations and for the UN and Chapter VIII arrangements), and reopens the debate on the possibilities and limitations of the OSCE's operational contribution to the maintenance of peace and security. This is not an academic exercise. It will shape the future of the OSCE and could have an impact on the future of security and cooperation in Europe.”⁹⁸

At the same time, the OSCE remains stuck in its purely inter-governmental political set-up and consensual decision-making process. These features become especially dysfunctional when it is necessary, as in the cases of Russia's role in Transnistria, Abkhazia, South Ossetia or the Donbas, to clearly and officially identify a “hybrid” conflict party that is a member of the OSCE.⁹⁹ According to a Swedish observer, this defect has also to do with the Vienna Document which “is ill-equipped to handle the smaller armies and different force structures of the 21st century.”¹⁰⁰

To be sure, the OSCE has an instrument to temporarily abandon consensual decision making under certain conditions. However, this option is only rarely used due to various complications of such consequential intraorganizational conflicts, and the *de facto* veto-power of such large countries as Russia. Ukrainian expert Olena Snyhir has pointed out that “[t]he OSCE has the legal instrument to remove the aggressor state from its conflict resolution activities—a ‘consensus minus one’ principle that was adopted at the 2nd OSCE Council of Ministers Meeting at Prague in 1992 and employed only once in

98 Kemp, “OSCE Peace Operations: Soft Security in Hard Environments,” p. 5.

99 Schneckener, “Hybrider Krieg in Zeiten der Geopolitik?,” Hauter, “Delegated Interstate War.”

100 Engvall, “OSCE and Military-Confidence Building in Conflicts: Lessons from Georgia and Ukraine,” p. 53.

relation to former Yugoslavia.”¹⁰¹ So far, the OSCE has not been able or willing to use this mechanism with regard to Russia’s purposeful circumscription of the SMM’s role, mandate, size and operation. Moreover, Moscow has continued to be, so far, successful in its stubborn insistence that it is officially not treated as a party to the Donbas conflict by the OSCE.

A general lesson from the Ukrainian case is thus that it would be beneficial, for further OSCE activities, to develop a capacity to respond to challenges and threats which do not fit a traditional “explicit aggression” framework. In a 2015 so-called Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project, the following recommendations for future OSCE operations were made:

- give priority to conflict prevention;
- try to ensure the OSCE always has a capable Chairmanship both to prevent conflicts and to respond rapidly and effectively in a crisis;
- resolve the question of the OSCE’s legal personality;¹⁰²
- support an active political strategy to end conflict and strengthen operational capability.¹⁰³

First experiences from the OSCE’s relatively resolute and multi-dimensional response to the outbreak of the armed conflict in the Donbas in spring 2014 should, perhaps, be seen as all-in-all encouraging. The various new qualities of the SMM and other instruments developed by the OSCE in response to the conflict in Eastern Ukraine are positive signs. They showed that, even though these innovations have not yet led to a solution of the Donbas conundrum, the Organization is, in principle, able to transcend previously established modes of operation. This gives hope that, apart from monitoring elections and recording human rights violations, the OSCE might, in the future, be able to play a larger role, in Eurasia’s ever more complicated international affairs.

¹⁰¹ Olena Snihyr, “OBSE v Ukraini: rol’ Rosii, SMM ta pytannia myrotvorchoho kontyngentu,” *Ukrains’ka pryzma*, 4 October 2016, <http://prismua.org/osce-ukraine-role-russia-smm-peacekeepers/> (accessed 1 October 2019).

¹⁰² Sonya Brandner, “Making a credible case for alegal personality for the OSCE,” *OSCE Magazine*, March–August 2009, pp. 18–22; Anne Peters and Mateja Steinbrueck-Platise, “Transformation of the OSCE Legal Status,” *Max Planck Institute for Comparative Public Law & International Law Research Papers*, no. 23, 2018.

¹⁰³ “Lessons Learned for the OSCE from Its Engagement in Ukraine,” *Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project*, June 2015, https://www.academia.edu/22566217/Lessons_Learned_for_the_OSCE_from_its_engagement_in_Ukraine_-_interim_report_and_recommendations_of_the_Panel_of_Eminent_Persons_on_European_Security_as_a_Common_Project (accessed 1 October 2019).

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