

A photograph of an OSCE monitor in a white helmet and vest with 'OSCE' written on it, standing in a destroyed building. The building has a large arched opening and several windows. The ground is covered in rubble, including a large piece of red corrugated metal. The sky is clear and blue.

Achievements and Limitations of the OSCE's Special Monitoring Mission to Ukraine

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Executive Summary

Since the end of the Cold War, international organizations have struggled to fulfil the high hopes placed in them as backbones of a new rules-based world order, in particular the vision of an inclusive and peaceful European security order based on the Helsinki Final Act and the Paris Charter. The Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission (SMM) to Ukraine has become a critical instrument of multilateral attempts to observe, manage and eventually resolve the Russian-Ukrainian conflict in the eastern Donbas since 2014. This report briefly illustrates how this conflict has posed an especially complicated challenge to consensus-based intergovernmental institutions such as the OSCE, which have become increasingly characterized by internal normative divergences. Russian obstruction and the inability of the OSCE to properly define and label the confrontation an armed interstate conflict between two of its participating states have resulted in serious limitations on what a mission such as the SMM can achieve. Despite the limits placed on it by Moscow's constraints and the lack of sufficient resources, the SMM has contributed significantly to de-escalation in the Donbas. Among other things, the SMM has preserved a notable presence on the spot, improved its reporting on the situation in the conflict zone and employed increasingly sophisticated monitoring methodologies and technologies. Nonetheless, the report recommends a number of further improvements to increase the SMM's effectiveness, and thereby facilitate an eventual solution to the conflict.



Introduction

Since 2014, the Organization for Security and Cooperation in Europe (OSCE) has been playing a central role in attempts to resolve of the Russian-Ukrainian conflict in the Donets' Basin (Donbas), above all by virtue of its especially large and sophisticated Special Monitoring Mission (SMM). The OSCE is also the crucial mediator at the negotiation table of the Trilateral Contact Group (TCG), which until recently had been meeting in Minsk. The OSCE Chairperson-in-Office sends, and provides the mandate for, a Special Representative to the TCG, which comprises Russia, Ukraine and the OSCE.

In collaboration with the Normandy Four Format (which is not dealt with in detail here), the OSCE sets the dominant institutional context, among other things through its Permanent Council, for multilateral attempts to resolve the conflict between Russia and Ukraine. Certain relatively new technologies in the context of such a mission, such as unmanned aerial vehicles (UAVs), satellites and long-range cameras, have been used on an unusually large scale in Ukraine, making the SMM the world's leading operation of its type. Against this backdrop, inferences drawn from the Ukrainian case have wider implications for civilian missions by international organizations elsewhere.¹

¹ 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.

² Alexander Hug, "Pikuzi: koly zblizhennia tilky viddaliaie," *Dzerkalo Tyzhnia*, 3 November 2017,

The Mandate and Role of the SMM in the Minsk Negotiations

Established even before the outbreak of the first armed confrontations in the Donbas in mid-April 2014, the OSCE SMM is the only international monitoring group permanently deployed not only to the conflict area, but throughout Ukraine. The Mission has had only limited ground access to critical areas of the de facto occupied, non-government-controlled territories (see below) and has occasionally also been constrained in its access to certain installations in the government-controlled areas.² Nonetheless, it is by far the most important international actor on the ground, and acquired this position early on. The first monitors were deployed less than 24 hours after a consensual decision by all the OSCE participating states to establish the SMM on 21 March 2014.³

According to the Mission's original and, as of May 2021, still valid mandate, its aim is "to contribute ... to reducing tensions and fostering peace, stability and security; and to monitoring and supporting the implementation of all OSCE principles and commitments".⁴ The SMM has an annual budget of over €100 million, which in OSCE terms is a significant amount. The entire OSCE Unified Budget, which excludes the SMM, in 2019, for instance, was €138,204,100. Nonetheless, the SMM is still

https://dt.ua/SOCIUM/osin-pikuzi-inshiy-svit-259076_.html (accessed 1 October 2019).

³ Johan Engvall, "OSCE and Military-Confidence Building in Conflicts: Lessons from Georgia and Ukraine," *FOI Report*, no. 4750 (2019), p. 40.

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



a comparatively cheap operation in comparison with many United Nations peacekeeping operations. The SMM has in recent years had approximately 1,300 staff members, among whom more than 700 are monitors who not only observe developments on the spot, but also work to reduce tensions within the ongoing conflict.⁵

The nature and shape of the SMM differs from previous and other currently operating OSCE missions. A former member of the SMM, Hilde Haug has, among other things, highlighted 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”.⁶ By early 2020, for instance, more than 260 civilians had been killed by landmines along the so-called contact line. In 2017, the SMM medic Joseph Stone was killed while on patrol “when an SMM armored vehicle was struck by an explosion, most likely caused by an anti-tank mine in a non-government-controlled area near Pryshyb in the Luhansk region”.⁷

After this incident, the SMM began to further limit its already constrained

patrolling along the contact line to asphalted streets. Since the start of armed hostilities, the dilemma for the SMM’s management team has been to try to strike a balance between maximum access and forward-leaning operations, on the one hand, and full security for its monitors on the ground, on the other. Russia obviously wants a constrained and tame Mission that operates and reports in a way that fits – or at least does not undermine – its “civil war” narrative on the Donbas conflict.⁸

The SMM is thus only partly comparable to some former operations in the Western Balkans, such as the OSCE Kosovo Verification Mission or the 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,⁹ the SMM in Ukraine constitutes an especially heavy presence of the OSCE in an active conflict location. It is, moreover, monitoring a currently low-intensity and delegated, but still frightening, interstate war between Europe’s territorially two largest states.¹⁰

⁵ “Factsheet: What is the OSCE?” *OSCE*, 19 September 2019, <https://www.osce.org/whatistheosce/factsheet> (accessed 4 April 2020).

⁶ 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, here p. 343. Also quoted in: André Härtel, Anton Pisarenko and Andreas Umland, “The OSCE’s Special Monitoring Mission to Ukraine: The SMM’s Work in the Donbas and Its Ukrainian Critique in 2014–2019,” *Security and Human Rights*, vol. 32 (2021), forthcoming. This article is partly reproduced here and lists most of the previously published analytical as well as some first academic papers on the SMM, in its footnotes.

⁷ “OSCE SMM Chief Monitor Çevik pays tribute to SMM medic who died in the cause of peace,” *OSCE*, 23 April 2020, <https://www.osce.org/special-monitoring-mission-to-ukraine/450589> (accessed 2 May 2021).

⁸ Jakob Hauter, ed., *Civil War? Interstate War? Hybrid War? Dimensions and Interpretations of the Donbas Conflict in 2014-2020* (Stuttgart: *ibidem*-Verlag, 2021).

⁹ Donetsk is a Russian town on the border with Ukraine and should not be confused with the Ukrainian Donbas city of the same name, which is the capital of Donets’ka oblast’. The OSCE monitors are, in Russia’s Donetsk, observing Russian-Ukrainian border traffic at one checkpoint (and in Gukovo at another one).

¹⁰ Jakob Hauter, “Delegated Interstate War: Introducing an Addition to Armed Conflict



Russia, moreover, has the world's largest arsenal of nuclear warheads while Ukraine no longer has any nuclear weapons. Ukraine had for a short period in the early 1990s been the world's third largest nuclear-weapon state. Under pressure from both Washington and Moscow, Kyiv gave up its entire atomic arsenal in exchange for explicit security assurances provided at a Conference on Security and Cooperation in Europe summit in Budapest in December 1994 (when the CSCE was renamed into OSCE). These assurances were provided by the three depositary states of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) – the Russian Federation, the United Kingdom and United States – as well as, in separate statements, by the two other official nuclear-weapon states under the NPT, China and France.¹¹ Finally, it is sometimes forgotten that Ukraine is home to Europe's largest nuclear power plant, in the south-eastern Zaporizhshs'ka oblast', approximately 250 km from the current combat zone.

The Mission is part and parcel of the OSCE's role as an intermediary between Kyiv and Moscow in what in Ukraine is often called the Minsk process—a phrase that is actually reserved in internal OSCE parlance for another negotiation format concerning Nagorno-Karabakh. The Donbas-related Minsk format began in the early autumn of 2014 and brings together Ukraine, Russia and the OSCE in the above-mentioned TCG. The SMM Chief Monitor is also the

moderator/coordinator of the TCG Working Group on Security Issues.

The TCG meetings are conducted in the semi-official presence of representatives of what are termed “certain areas of the Donetsk Oblast” (CADO) and “certain areas of the Luhans'k Oblast” (CALO), or, as the Moscow-controlled pseudo-states label themselves and are known in Russia, the “Donetsk People's Republic” and the “Lugansk People's Republic” (DNR/LNR).

The negotiations are based on Minsk-1 (the Minsk Protocol) and Minsk-2 (the “Package of Measures”), two agreements signed by Ukraine's representative, former President Leonid Kuchma; Russia's representative, then Ambassador to Ukraine Mikhail Zurabov; and Ambassador Heidi Tagliavini of Switzerland on 5 September 2014 and 12 February 2015, respectively. However, the Minsk-2 Package of Measures was de facto negotiated by the presidents of Ukraine, Russia and France, as well as by Germany's Federal Chancellor within what became known as the Normandy Format.

Although the Normandy Four meetings were independent and had no formal mandate to task the OSCE, the documents emanating from them – somewhat paradoxically – mention the OSCE prominently. The second and fourth points of the Minsk Protocol assign the OSCE the task of monitoring the ceasefire and the Russian-Ukrainian border.¹² Minsk-2 mentions the OSCE in its second, third and tenth points, in

Typologies,” *Journal of Strategic Security*, vol. 12, no. 4 (2019), pp. 90-103.

¹¹ Mariana Budjeryn and Andreas Umland, “Damage Control: The Breach of the Budapest Memorandum and the Nuclear Non-Proliferation Regime,” in: Oxana

Schmies, ed., *NATO's Enlargement and Russia: A Strategic Challenge in the Past and Future* (Stuttgart: ibidem-Verlag, 2021), pp. 177-189.

¹² “Protokol po itogam Trekhstoronnei kontaktnoi gruppy otnositel'no sovместnykh shagov,



connection with the issues of monitoring the withdrawal of heavy weapons from, a ceasefire in and the demilitarization of the conflict zone.¹³ The arcane terminology that has evolved for diplomatic communications on the conflict, as well as the legally ambivalent status of the Minsk accords and Normandy Four in relation to the OSCE, can be seen as illustrations that for the Kremlin, these negotiations, their peculiar format and documents – including their definitions of the parties to the Donbas conflict – are part and parcel of Russia’s hybrid aggression against Ukraine.¹⁴

Challenges to and Discussions of the SMM’s Mandate

The nature, competencies and reach of the OSCE SMM to Ukraine have been at the centre of a seven-year long contestation. The monitoring mandate – unchanged since 2014 – formally covers the entire territory of Ukraine. However, since Russia no longer considers the Crimea peninsula to be Ukrainian territory, Moscow made it clear from the start of the Mission that the SMM will not be given access to Crimea. The OSCE’s original decision to establish the

SMM was accompanied by an “Interpretative Statement” by Moscow that violated some of the basic principles of the Organization—the territorial integrity and the political sovereignty of participating states:

In joining the consensus regarding the draft decision of the Permanent Council on the deployment of an OSCE Special Monitoring Mission to Ukraine, the Russian Federation proceeds from the assumption that the geographical area of deployment and activities of the mission in question is strictly limited by the parameters of the mandate as adopted today, which reflects the political and legal realities existing since 21 March 2014 as a result of the fact that the Republic of Crimea and Sevastopol have become an integral part of the Russian Federation.¹⁵

In response, Ukraine, the United States and Canada published their own official Interpretive Statements, remarking that Crimea is Ukrainian territory and that the SMM should therefore have access to the peninsula.¹⁶ The European Union (EU) issued no such additional note, a notable European failure that was apparently due to a lack of agreement on the issue among the EU member states.

napravlenykh na implementatsiiu Mirnogo plana Prezidenta Ukrainy P. Poroshenko i initsiativ Prezidenta Rossii V. Putina,” *OSCE*, 5 September 2014, <https://www.osce.org/files/f/documents/a/a/123258.pdf> (accessed 5 October 2020).

¹³ “Kompleks mer po vypolneniiu Minskikh soglashenii,” *OSCE*, 12 February 2015, <https://www.osce.org/ru/cio/140221> (accessed 5 October 2019).

¹⁴ Andreas Umland, “Why the EU Should Decouple Sanctions Against Russia from the Minsk Agreements,” *Harvard International Review*, 15 July 2016, www.academia.edu/27014352/Why_the_EU_Should_Decouple_Sanctions_Against_Russia_from_the_Minsk

Agreements (accessed 21 May 2021); Mark Galeotti, “The Minsk Accords: Should Britain Declare Them Dead?” *Britain’s World*, 24 May 2021, www.geostrategy.org.uk/britains-world/the-minsk-accords-should-britain-declare-them-dead/ (accessed 21 May 2021).

¹⁵ Organization for Security and Co-operation in Europe Permanent Council, “Decision No. 1117: Deployment of an OSCE Special Monitoring Mission to Ukraine,” *OSCE*, 21 March 2014, <https://www.osce.org/files/f/documents/d/6/116747.pdf> (accessed 15 May 2021).

¹⁶ *Ibid.*



The Mission therefore has a significant presence, with hubs and forward patrol bases, only on Ukraine's mainland (in the Donbas there were 578 monitors in the spring of 2021) and to a lesser extent in Kyiv, where it has a head office, and the cities of Chernivtsi, Dnipro, Ivano-Frankiv'sk, Kharkiv, Kherson, L'viv, and Odesa (187 monitors as of the spring of 2021). In this connection, the SMM has been occasionally also asked to observe situations unrelated to the Russian-Ukrainian conflict. In late 2020, for instance, Hungary publicly demanded the involvement of the SMM in the monitoring of a tense situation in some settlements of the Hungarian minority in western Ukraine's Transcarpathian region.¹⁷ With its strident rhetoric and largely unfounded accusations against Kyiv, Budapest has been implicitly supporting the official Russian narrative that ethnic tensions within Ukraine and the nationalist policies of Kyiv have led to an allegedly "civil" war in the Donbas.

The major problem of the SMM, however, is that, in spite of its mandate and clear task to monitor the entire Donbas conflict zone, the SMM still has incomplete access to large parts of the CADO/CALO. In an April 2021 report, the OSCE complained about the limitations on the movement of the SMM:

Almost all restrictions (93 per cent) occurred in non-government-controlled areas [i.e. the occupied and de facto Moscow-ruled territories of Ukraine's eastern Donets' Basin]. Half of the

restrictions were recorded at checkpoints of the armed formations along official crossing routes on the contact line, preventing the SMM from crossing it during patrolling. The Mission was also prevented from moving between non-government-controlled areas of Donetsk and Luhans'k regions almost entirely. The SMM's monitoring of border areas beyond government control continued to be systematically limited due to restrictions to the Mission's access both in the areas and on the routes leading towards them. As a consequence, the Mission's observations in such border areas could again not be fully categorized as comprehensive and independent monitoring. [...] SMM unmanned aerial vehicles (UAV) continued to be subjected to GPS signal interference and gunfire, which limited the SMM's monitoring and put Mission members and technological assets at risk. Despite repeated requests by the Mission and the raising of the issue by the OSCE Chairperson-in-Office and the SMM Chief Monitor at the OSCE Permanent Council (PC), these restrictions were not eased and problems remained throughout the entire reporting period. Failure to remove mines, unexploded ordnance (UXO) and other explosive objects, and the laying of new ones, also continued to restrict the Mission's freedom of movement. Furthermore, the SMM also continued to face impediments in establishing and reporting facts following specific incidents and reports

¹⁷ Stephanie Liechtenstein, "Outrageous and Unacceptable': Hungarian Foreign Minister on the Situation in the Transcarpathian Region," *Security and Human Rights Monitor*, 4 December 2020, [www.shrmonitor.org/outrageous-and-unacceptable-hungarian-foreign-minister-complains-about-situation-in-ukrainian-region-at-osce-ministerial-](http://www.shrmonitor.org/outrageous-and-unacceptable-hungarian-foreign-minister-complains-about-situation-in-ukrainian-region-at-osce-ministerial-meeting/)

[meeting/](http://www.osce.org/files/f/documents/6/f/476461.pdf) (accessed 27 May 2021); "Statement by the Delegation of Ukraine in Response to the Current Issue Raised by the Delegation of Hungary," *OSCE*, 29 December 2020, www.osce.org/files/f/documents/6/f/476461.pdf (accessed 27 May 2021).



of incidents in non-government-controlled areas.¹⁸

The SMM remains a purely civilian mission that monitors the conflict but cannot intervene, at least, not on the spot, as this would require a peacekeeping or -enforcing mandate. The SMM plays a dialogue facilitation role on the ground, while initiating and supporting, for instance, localized ceasefires to allow the repair of critical civilian infrastructure, humanitarian operations and demining.¹⁹ This modus operandi has been preserved even though Western analysts were already arguing in 2016 that – particularly during periods of conflict escalation – the SMM’s purely “civil mandate is not adequate for such a tense and violent situation”.²⁰

Such ideas, however, not only encounter resistance from Russia and its allies among the OSCE states, but also come up against the fundamental challenge that the OSCE has no experience of the deployment of

armed missions to a participating state, let alone one still facing an active conflict.²¹ A 2016 suggestion by then President of Ukraine Petro Poroshenko that the SMM should be armed was resolutely rejected by all the other relevant actors, among other things because that would expose the, thus far, unarmed civilian monitors to new threats.²²

In addition, further continuing limitations on the Mission’s current and future mandate are linked to funding issues. The SMM’s budget is not part of the OSCE Unified Budget,²³ but linked to and defined by its specific mandate in the Donbas.²⁴

At various stages of the conflict, alongside discussions of a fundamental transformation of the SMM’s mandate, peace operations by other organizations – notably the UN – have also been discussed (see below).²⁵ An EU police force for Ukraine was also suggested, even though neither of the parties to the Donbas conflict is a member of the EU.²⁶ The

¹⁸ *Thematic Report: Restrictions to the SMM’s Freedom of Movement and Other Impediments to the Fulfilment of Its Mandate, July-December 2020* (Kyiv: OSCE SMM, 2021), pp. i-ii.

¹⁹ Serhiy Tolstov, “Dial’nist’ mizhnarodnyh organizatsiy v Ukraini: zahal’ni tendentsii ta oryentiry,” *Viche*, no. 4 (2015), pp. 11-15.

²⁰ Kostanyan Hrant and Stefan Meister, “Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process”, *CEPS Working Document*, no. 423 (2016), p. 3, <https://biblio.ugent.be/publication/8514008> (accessed 1 October 2019).

²¹ The only case where the OSCE has mandated an armed mission regards Nagorno-Karabakh in a future situation to oversee a peace deal. Yet, this operation has never happened and may never happen as the OSCE Minsk Group was sidelined by Russia and Turkey in autumn 2020.

²² Kateryna Bosko, “Die Debatte um eine bewaffnete OSZE-Mission in der Ostukraine,” *Ukraine-Analysen*, no. 171 (2016), pp. 19-20.

²³ “Permanent Council Decision No. 1326,” *OSCE*, 11 April 2019, <https://www.osce.org/permanent-council/417164> (accessed 5 October 2019).

²⁴ “Permanent Council Decision No. 1323,” *OSCE*, 29 March 2019, <https://www.osce.org/permanent-council/415988> (accessed 5 October 2019).

²⁵ The earliest such suggestions were: 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/blakitni-kaski-u-doneckomu-stepu-.html> (accessed 1 October 2019).

²⁶ On the first such proposal: 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



supposition behind most of these proposals was, and still is, that a supplementary mission (or several combined missions) would complement the current purely civilian efforts of the SMM through additional – above all military – means. However, these debates, so far, remain hypothetical. Western countries have not yet been ready to send troops to Ukraine while Russia opposes this within the UN Security Council. At one point a proposal was circulated, by Russia, for a very small UN operation in Ukraine, but this was not a sufficiently robust armed mission that could have changed the status quo in the occupied territories, and was thus rejected by Ukraine as well as the West.²⁷

Successes and Hindrances of the SMM's Activities

Perhaps the most important accomplishment of the SMM so far is its longevity on the spot. The mere physical presence – “to see and be seen” – of international observers since the very early days of the conflict has raised the threshold for further armed conflict. It has most probably prevented escalations and atrocities that might have happened without

the SMM in place. The SMM functions as a kind of thermometer of the conflict. If it were forced out of the CADO/CALO or became more restricted in its operation, this would constitute early warning of coming violence.

The SMM daily reports provide a considerable amount of data that, with each passing year, becomes more conclusive. The constantly growing number of observations allows for synchronic and diachronic comparison, statistical analysis and historic interpretation. For example, the SMM recorded 312,554 ceasefire violations in 2018, a number that was almost 25% lower than it was in 2017 but largely similar to the number of such violations recorded in 2016.²⁸

Despite the relatively impressive scale of the SMM, it is too small and, as indicated above, too restricted in its mobility to adequately cover the more than 17,000 square kilometres of the conflict zone.²⁹ The SMM monitoring and reporting methodology also has limitations. For instance, the observations follow certain patrolling algorithms that are perhaps partly known to the combatants rather than the dynamics of the ceasefire violations. One shot – even if fired during an exercise rather than a

Melnik 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 (accessed 5 October 2019).

²⁷ Andreas Umland, “UN Peacekeeping in Donbas? The Stakes of the Russia-Ukraine Conflict,” *European Council on Foreign Relations*, 8 June 2018, ecfr.eu/article/commentary_un_peacekeeping_in_donbas_the_stakes_of_the_russia_ukraine_conf/ (accessed 5 October 2019).

²⁸ “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) as quoted in: Härtel, Pisarenko and Umland, “The OSCE’s Special Monitoring Mission to Ukraine.”

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



skirmish – may be counted as a violation in the same way as far more serious hostile artillery fire would be. If several monitors and/or sensors hear or see the same bullet or warhead, each observation could be counted as a separate incident and thus reported as allegedly constituting several ceasefire violations. In short, to rely solely on the SMM’s reporting for a depiction of reality can be misleading.

That said, the effectiveness of the SMM’s observation activity over the years has greatly improved as a result of increasingly sophisticated monitoring methodology and technology. A 2021 report by the SMM on developments in the second half of 2020 notes that:

The SMM continued to operate 27 cameras – deployed to 23 locations – 19 in government-controlled areas, four in non-government-controlled areas and four between government- and non-government-controlled areas. The lower number of SMM cameras in non-government-controlled areas is a consequence of the refusal of those in control of these areas to offer the necessary support and assistance for the installation of cameras. [...] The SMM’s ability to monitor the areas near the international border continued also

to be affected by the ongoing failure of those in control in non-government-controlled areas to offer the necessary security assurances to open forward patrol bases (FPBs) in settlements in the vicinity of border areas outside of government control.³⁰

Another fundamental oddity of the Mission is that Russian citizens, as citizens of an OSCE participating state, are part of the staff on a permanent basis, in spite of the fact that the Kremlin was the original instigator of and continues to drive the conflict.³¹

Some of the Russian monitors are suspected of espionage.³²

The OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk (but not Donets’k) is separate from the main OSCE mission and represents yet another peculiar facet of the overall monitoring efforts by the OSCE in the Donbas.³³ In contrast to these two small border locations, the Russia-led separatists deny permanent direct access to other parts of the Russian-Ukrainian border, where their irregular forces control the Ukrainian side. The area of the OSCE Mission at the two Russian checkpoints covers just 40 metres, of a 409-km border that is currently not under the control of Ukraine (i.e. the section between the separatist so-called people’s republics and Russia).³⁴ The

³⁰ *Thematic Report*, pp. 12 & 9.

³¹ “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).

³² 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).

³³ Olena Snihyr, “Rosiy’s’kyy 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).

³⁴ Yevheniia Filipenko, “Statement in response to Ambassador Gyorgy Varga, Chief Observer of the OSCE Observer Mission at two Russian checkpoints on the Russian-Ukrainian border,” *Ministry of Foreign Affairs of Ukraine*, 15 February 2018, mfa.gov.ua/en/news/62982-statement-in-response-to-ambassador-gyorgy-vargachief-observer-of-the



SMM's official mandate "task[s] observers, operating under the principles of impartiality and transparency, with monitoring and reporting on the situation at the checkpoints of Donetsk and Gukovo, as well as on the movements across the border".³⁵ The monitors on the spot, however, are not even allowed to move around freely on the territory of the very checkpoints they are supposed to observe. The partly irrelevant reports from this separate and circumscribed second OSCE mission in the war zone are used by the Kremlin to support Russia's claims of non-involvement in the conflict.

The main function of this separate border mission is to provide Moscow with a fig leaf argument that the Russian-Ukrainian state border is being monitored. The OSCE Mission at Gukovo and Donetsk is designed to distract rather than to inform the public, and to conceal rather than to document what is going on between the CADO/CALO, on one side, and Russia, on the other. What is really needed is comprehensive monitoring of the entire perimeter currently not controlled by Ukraine's government. This would, however, demand a significant

increase in SMM staff and resources to enable the SMM to provide continuous on-the-ground monitoring of this 409-km section of border.³⁶

One recurring problem of the SMM's movements in the non-government-controlled area in earlier periods was that the monitors were threatened or attacked while conducting their patrols.³⁷ In some cases, OSCE monitors were arrested and held by pro-Russian warlords. Sometimes, their cars were fired at.³⁸ Parked vehicles and monitoring equipment were deliberately destroyed.³⁹ In recent years, OSCE SMM long-range cameras have frequently been destroyed, turned off or prevented from being installed by Russia-led separatists.⁴⁰ UAVs have been jammed and shot at.

All this in spite of the fact all the signatories to the Minsk Protocol agreed to "ensure permanent monitoring on the Ukrainian-Russian state border and verification by the OSCE, together with the creation of a safety zone in the border regions of Ukraine and

osce-observer-mission-at-two-russian-checkpoints-on-the-russian-ukrainian-border (accessed 25 May 2021).

³⁵ "Permanent Council Decision No. 1130," *OSCE*, 25 July 2014, www.osce.org/pc/121826 (accessed 1 October 2019).

³⁶ Tetiana Sylina, "Mins'ka khalabuda," *Dzerkalo tyzhnia*, 28 August 2015, <https://dt.ua/internal/minska-halabuda-.html> (accessed 1 October 2019).

³⁷ Ihor Levtyushenko, "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.

³⁸ "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).

³⁹ Viktor Kotyhorenko, "Chy mozhlyve zhyttia poza Mins'kom?" *Dzerkalo tyzhnia*, 24 June 2016, <https://dt.ua/internal/chi-mozhlyve-zhyttia-pozaminskom-.html> (accessed 1 October 2019).

⁴⁰ "Neshchodavno vstanovlenu na skhodi Ukrainy kameru SMM OBSE znyshcheno vohnem 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 raiyoni Donets'koho aeroportu," *Ukrinform*, 23 May 2016, <https://www.ukrinform.ua/rubric-ato/2021679-bojoviki-dnr-vidklucili-kameri-obse-v-raiyoni-doneckogo-aeroportu.html> (accessed 1 October 2019).



the Russian Federation”.⁴¹ In April 2021, OSCE Secretary General Helga Schmid declared: “I am deeply concerned by recent incidents affecting the SMM, notably heavy interference with its technical assets and persistent freedom of movement restrictions. The SMM’s safe and secure access throughout Ukraine is more important than ever in the current circumstances of heightened tensions in the region”.⁴²

The OSCE is an intergovernmental organization that makes its decisions by consensus, which means that the Sword of Damocles of a veto by Russia and its allies always looms large. This constrains and even shapes the political agenda, daily behaviour and external communications of the Organization and its sub-units. Such defects become especially dysfunctional when it is necessary, as in the case of Russia’s role in Transnistria, South Ossetia or the Donbas, to clearly and officially identify a party to a “hybrid” conflict that is a member of the OSCE.⁴³ Not only Moscow-controlled and equipped paramilitary units, but also Russia’s regular army have been active in the CADO/CALO and large amounts of weapons have crossed the Russian-Ukrainian border, but none of this has ever been explicitly pointed out in the SMM’s reporting.

⁴¹ “Protokol,” point 4.

⁴² As quoted in: “OSCE Chairperson-in-Office Linde and Secretary General Schmid discussed recent developments in and around Ukraine,” *OSCE*, 18 April 2021, www.osce.org/chairmanship/483818 (accessed on 5 May 2021).

⁴³ Ulrich Schneckener, “Hybrider Krieg in Zeiten der Geopolitik? Zur Deutung und Charakterisierung des

As the Ukraine expert, Olena Snyhir, among others, has pointed out: “[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 Prague OSCE Council of Ministers in 1992 and employed only once in relation to former Yugoslavia”.⁴⁴ Thus far, however, the OSCE has not been willing or able to use this mechanism with regard to Russia’s deliberate circumscription of the SMM’s overall role, concrete mandate, size and operation.

Policy Recommendations on the SMM and Conflict Management

In spite of Russian resistance, Western policymakers and diplomats should attempt to improve the scope and efficiency of the SMM’s framework and operation in the following ways:

1. **Organizational set-up:** The SMM should be given as much autonomy, freedom and leeway as possible within the OSCE with regard to its internal conduct, operation on the spot, public performance and official reporting. At the same time, the SMM’s separate budget should be integrated into the OSCE’s general budget to secure its connection to

Donbass-Konflikts,” *Politische Vierteljahresschrift*, vol. 57, no. 4 (2016), pp. 586-613.

⁴⁴ Olena Snihyr, “OBSE v Ukraini: rol’ Rosii, SMM ta pytannia myrotvorchoho kontyngentu,” *Ukrains’ka pryзма*, 4 October 2016, <http://prismua.org/osce-ukraine-role-russia-smm-peacekeepers/> (accessed 1 October 2019), as quoted in: Härtel, Pisarenko and Umland, “The OSCE’s Special Monitoring Mission to Ukraine.”



the Organization and continued operation for as long as necessary. The SMM should cooperate more closely and ideally be unified with the OSCE's separate mission at Gukovo and Donetsk. Because of the especially high demands of the SMM, staff recruited to it should be required to have previous operational experience in other missions. Some SMM staff should have relevant civilian and not only military or police experience in order to improve social patrolling and comprehensive reporting by the entire Mission. Inept staff members should be swiftly replaced without politicization by the sending participating state. The gender balance could be improved among senior managers and in certain other personnel categories. This would, among other things, enhance diversity and facilitate more effective social patrolling.

2. **Modalities of observation:** Western politicians and diplomats should put pressure on Russia to allow the SMM full, permanent, unhindered and round-the-clock freedom of movement and access to all parts of the conflict zone, especially on the Russian-Ukrainian border and ideally to Crimea. More emphasis should be put on reporting and highlighting the presence of military equipment on Ukraine's territory that is not in the Ukrainian armed forces'

inventory (i.e. Russian-supplied weapons). In view of the recent build-up of the Russian military presence in the Black Sea, the SMM may want to increase its presence in mainland southern Ukraine, especially by the Azov Sea and Isthmus of Perekop. At the same time, the SMM should be shielded from engaging in non-core activities, such as monitoring the situation of the Hungarian minority in western Ukraine. The OSCE member states and the EU should continue to provide sufficient funding for the SMM to operate. The Mission's budget should be further increased in order to: (a) enlarge the number of monitors and other staff; (b) improve the SMM's current technical equipment, including UAVs and cameras; and (c) obtain new equipment such as artillery sensors and radar systems. The SMM's monitors should, to the extent possible, investigate and report military fatalities in addition to civilian casualties. At the same time, the Mission's monitors should more fully engage in observation and description of important humanitarian issues, especially in the non-government controlled areas, linked not least to the grave human rights violations in the two pseudo-republics' notorious detention systems and torture prisons.⁴⁵

⁴⁵ Stanislav Aseyev and Andreas Umland, "'Isolation': Donetsk's Torture Prison," *Harvard International Review*, 4 December 2020, hir.harvard.edu/donetsk-

isolation-torture-prison/ (accessed 2 May 2021); Halya Coynash, "Human Rights Violations in the Occupied Parts of Ukraine's Donbas since 2014," *UI Reports on*



3. **Content and style of reporting:**

Reporting from the SMM should be: (a) more reflective of the monitors' recorded observations on the spot (for example, the absence of unequivocal evidence for certain violations is often not evidence of an absence of such violations); (b) clearer and more transparent in terms of the political meaning of reported facts; and (c) more analytical and interpretative in its presentation. The filtering, redacting and coding of the information that flows from the monitors into the published reports should be reduced to a technical minimum. The political censorship and self-censorship linked to the consensus-based nature of organizations such as the OSCE need as far as possible to be avoided. As much as possible (in the light of various security and privacy considerations) of the large amount of raw oral, verbal, numerical, visual and auidial data collected by the SMM – especially the imagery from UAVs and satellites – should be made openly accessible to the public sooner rather than later. The current daily reporting format may not be necessary during times of low-intensity conflict, when approximately three – analytical rather than merely factual – reports per week from the SMM may be sufficient. The SMM's current

internal weekly reports should be made public immediately while a biweekly or monthly working paper series could publish scholarly and narrowly focused analyses of certain SMM-recorded events and developments by qualified internal or external experts. A future special reporting system for mainland southern Ukraine, in case of an escalation there, should perhaps already be being contemplated. The Mission's direct interaction with governmental institutions, interested media outlets, specialized think tanks, relevant NGOs and other international bodies, and individual academic researchers should be intensified in order to improve the verification, circulation and interpretation of the vast amount of information collected by the SMM.

4. **Accompanying measures:**

Discussion of a fundamental reformatting of the current Mission, such as an arming or a substantive extension, should be conducted cautiously so as not to endanger the continuing existence of the SMM as an OSCE operation for as long as the conflict exists. A qualitative upgrading of the current international engagement in the Donbas could be sought through other organizations and

Human Rights and Security in Eastern Europe, no. 1 (2021), <https://www.ui.se/globalassets/butiken/ui-report/ui-report-no.-1-2021.pdf> (accessed 2 May 2021); Stanislav Aseyev and Andreas Umland, "Prisoners as Political Commodities in the Occupied

Areas of the Donbas," *UI Reports on Human Rights and Security in Eastern Europe*, no. 2 (2021), www.ui.se/globalassets/ui.se-eng/publications/ui-publications/2021/ui-report-no-2-2021.pdf (accessed 2 May 2021).



institutions.⁴⁶ This would concern, above all, additional autonomous OSCE institutions explicitly mandated to cooperate with the SMM, such as the Office for Democratic Institutions and Human Rights (ODIHR) Representative on Freedom of the Media (RFoM) and High Commissioner on National Minorities (HCNM). These structures could become more involved in the monitoring and reporting of violations of OSCE commitments in the non-government-controlled areas while also cooperating more closely with the SMM, the United Nations, the Council of Europe (CoE) and other actors in the international community. The EU could, within its now fully functioning Association Agreement with Ukraine, return to the spring of 2014 idea of an EU police mission to eastern Ukraine, although such an operation would probably only get access to government-controlled areas. Within the EU's Eastern Partnership programme, or other Ukraine-related multilateral initiatives, a range of conflict-related initiatives might be possible to support the activities of the OSCE in Ukraine through, for instance, research and

publication projects based on SMM reports.

5. **Towards a conflict solution:** Ukraine and its Western partners should continue to raise the issue of a large classical UN-mandated, combined armed and civilian peacekeeping mission to the Donbas. The task of such an operation, in close cooperation with the Ukrainian state, the SMM, the ODIHR, ReoM, the HCNM and the CoE, would be to ensure Russian troop withdrawal and Ukraine's full control over its international border, as well as the necessary conditions for the eventual holding of legitimate parliamentary elections (within single-mandate districts), and regional as well as local elections in the currently non-government-controlled areas.⁴⁷ Western governments should already today be developing contingency plans for the deployment and funding of a full-scale and sufficiently armed UN mission as well as a temporary international civilian administration in eastern Ukraine, in the highly unlikely event that Russia agrees in the Security Council to such a solution to the Donbas conflict.⁴⁸

⁴⁶ Whether an attempt to fully re-establish the Joint Control and Coordination Commission, which consisted of Russian and Ukrainian military officers and existed between 2015 and 2017, would make sense is, in view of its ambiguous record as a bilateral organ and defunct initiative, contested. Walter Kemp, "Moving from War to Peace in Ukraine: The Role of a Joint Military Commission," *Security and Human Rights Monitor*, 29 April 2020, www.shrmonitor.org/moving-from-war-to-peace-the-role-of-a-joint-military-commission/ (accessed 2 May 2021).

⁴⁷ Michael Georg Link, "Die Wahlbeobachter müssen auf die Krim," *Neue Zürcher Zeitung*, 19 May 2015, www.nzz.ch/meinung/debatte/standards-nicht-zum-halben-preis-1.18544519?reduced=true (accessed 20 May 2021).

⁴⁸ 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).



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⁴⁹ Dimensions: Collective Action of Non-state Armed groups in the Ukrainian Conflict (a Comparison of Pro-Russian and Ukrainian Non-state Armed Groups). Available at: app.dimensions.ai/details/grant/grant.4974241 (accessed 8 June 2021).



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