Status-Neutral Confidence-Building and Arms Control Measures: Options for Transdniestria and Ukraine

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Hamburg, March 2018

Acknowledgements

About the Author

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Executive Summary

Status-related issues pose a challenge for the implementation of arms control and confidence- and security-building measures (CSBMs) in disputed areas. The status of *de facto* regimes – quasi-states which are, however, not recognized by the majority of the international state community – is a particular point of contention. Discrepancies regarding the status of these regimes have hampered the development of arms control and CSBMs in areas of protracted conflicts. State-centric agreements, such as the Treaty on Conventional Armed Forces in Europe (CFE) or the Vienna Document (VD) are not helpful in establishing arms control in the territory of *de facto* regimes.

There are proposals to overcome this challenge. The 1993 CSCE document "Stabilizing Measures for Localized Crisis Situations" introduces a status-neutral approach for arms control mechanisms. Building on that, in January 2017, the Centre for OSCE Research published the working paper "Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context", elaborated by a working group supported by the Swiss Federal Department of Foreign Affairs. This paper promotes a status-neutral approach to arms control in disputed territories and designs a prototype of a status-neutral CSBM arrangement, which is applied to the areas of the protracted conflicts in Georgia.

The present paper suggests that the status-neutral approach can also be applied to other protracted conflicts in the European context. For instance, the conflicts in Eastern Ukraine and between Moldavia and Transdniestria also need an alternative concept, which is not state-centric. Compared to the Georgian context, the political environment in these areas is even more convenient for such an approach. Nevertheless, here too, the crucial prerequisite for the implementation of status-neutral CSBMs is the political will of the parties.

1. Introduction

There are a number of protracted conflicts in the European context. These conflicts are nearly invariably interconnected with the question of how to deal with so-called *de facto* regimes. Those regimes are "quasi-states that exert effective control over a certain geographic area, but are not recognized as states by the majority of states." (Kapanadze et al. 2017: 7) Needless to say, if an internationally recognized state faces a *de facto* regime in a conflict setting, the former usually tries to thwart the international legitimization of the latter and is reluctant to recognize it as a legitimate negotiating party.

Hence, the issue of status often represents the main stumbling block in negotiations or even in initiating serious talks between conflict parties. This constitutes a severe challenge for reaching a conflict resolution or establishing confidence- and security-building measures (CSBMs). To overcome this challenge, a *status-neutral approach* can be seen as a way to make progress: A status-neutral approach amounts to a solution of a substantial conflict issue without considering the status of the conflict parties' governance structures. In other words, "the interest in reaching a solution to the substantial issue must be higher than the interest in defending or putting forward one's own status." (Ibid. 2017: 10).

Interestingly enough, even though the status-neutral approach has not yet been widely discussed in the European security community, the Organization for Security and Co-operation in Europe (OSCE) proposed this approach for conflict situations in its "Stabilizing Measures for Localized Crisis Situations" document adopted in 1993. Furthermore, in 2017, the Centre for OSCE Research published the working paper "Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context", which advocates a status-neutral approach and outlines a proposal for a status-neutral CSBM arrangement tailored for the Georgian context.

Against that background, the question arises of whether the status-neutral approach could be an effective method to be applied in other protracted conflicts. In principle, this approach could be used in several territorial disputes in the European context, such as the conflict in Eastern Ukraine, the attempts of Abkhazia and South Ossetia to secede from Georgia, the conflict around Nagorno-Karabakh or the dispute between Moldova and Transdniestria.

This paper aims at contributing to the debate regarding the status-neutral approach and is organized as follows: *First*, it deals with the status-neutral approach in general and with the proposal of employing such an approach in protracted conflicts by considering the 1993 CSCE "Stabilizing Measures for Localized Crisis Situations" and the 2017 CORE Working Paper "Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context". *Second*, the paper applies the status-neutral approach to the conflicts in Eastern Ukraine and between Moldova and Transdniestria. Against that backdrop, some recommendations on how to use the status-neutral approach in an efficient manner are formulated in the last chapter.

2. The 1993 Document "CSCE Stabilizing Measures for Localized Crisis Situations"

The only multilateral security document referring to a status-neutral approach in conflict situations was adopted at the 49th Plenary Meeting of the Special Committee of the CSCE (now OSCE) Forum for Security Co-operation in Vienna on 25 November 1993. The politically binding document, with the title *Stabilizing Measures for Localized Crisis Situations*, proposes a catalogue of stabilizing measures for localized crisis situations. The document is classed in the sections "Concept and Principles of Application" as well as the "Catalogue" of specific measures.

The "Concept and Principles of Application" section explains that the document serves as a facilitating tool for decision-making processes in the OSCE context, even though it does not claim to feature an all-encompassing list of measures. Furthermore, it does not intend to rule out any other measures, which might be regarded in particular cases (see paragraphs 1 and 2). The document also emphasizes that it does not oblige OSCE participating States to automatically implement the measures contained in the document in a situation of localized conflict. Nonetheless, the proposed measures should be considered by the participating States in such kinds of conflict situations (para. 3). In paragraph four, it states that "the participation of observers and/or monitors for verification purposes" would benefit the implementation of the measures. The following paragraphs point to the need to take the specific requirements of the conflict into account (para. 5) and that the conflict parties have to agree to these measures (para. 6). Concerning measures of a military nature (para. 7), it is stated that the establishment of a ceasefire and/or the situation that an armed conflict is not taking place are prerequisites for effective implementation.

In paragraph nine, the document touches upon the crucial aspect of the status issue:

> "The parties involved in a particular crisis situation will be identified in each case in accordance with the relevant norms of international law and CSCE provisions. When such parties are not States, their identification and subsequent participation in a crisis prevention, management and/or settlement process does not affect their status."

In essence, this paragraph suggests that status-neutral arms control can be conducted including states and *de facto* regimes without any deliberations on the status question. Yet, this can only be materialized if all conflict parties follow such an approach (see above). In the next paragraph, the document states that the "implementation of some of the measures may require the good offices or the mediating function of a third party, trusted by all the parties involved in a particular crisis situation." According to the document, the third party role could be assumed by the OSCE, state(s) or other organizations.

When it comes to the "Catalogue", the document divides the measures into sections "A. Measures of Transparency", "B. Measures of Constraint", "C. Measures to

Reinforce Confidence" and "D. Measures for Monitoring of Compliance and Evaluation". A set of measures are assigned to every section[1]:

'A. Measures of Transparency':

1) Extraordinary information exchange
2) Notification of certain military activities
3) Notification of plans for acquisition and development of major weapon and equipment systems

'B. Measures of Constraint':

1) Introduction and support of a ceasefire
2) Establishment of demilitarized zones
3) Cessation of military flights
4) Deactivation of certain weapon systems
5) Treatment of irregular forces
6) Constraints on certain military activities

'C. Measures to Reinforce Confidence':

1) Public statements on matters relevant to a particular crisis situation
2) Observation of certain military activities
3) Liaison teams
4) Establishment of direct lines of communication
5) Joint expert teams in support of crisis management
6) Joint coordination commissions or teams

'D. Measures for Monitoring of Compliance and Evaluation':

1) Evaluation of data provided under extraordinary information exchange
2) Inspections
3) Observation of compliance with demilitarized zones
4) Verification of heavy weapons
5) Challenge inspections
6) Aerial observation regime

Source: Kapanadze et al. 2017: 14-15.

Overall, the catalogue avoids almost any status-related language: The only exception is the reference – two times – to irregular forces, which are defined as "forces not under the command of the regular forces." This, however, could constitute a problem for *de facto* regimes that most probably do not want to have their military formations called "irregular forces". Furthermore, the authors of the CORE Working Paper also point to the still-problematic wording in the 1993 CSCE document, which could lead to the rejection of the application of these "Stabilizing Measures" by *de facto* regimes:

> "There are reasons why the 'Stabilizing Measures' instrument has never been used. The explicit recognition that a party "is not a state" already has a status-related implication and would probably not be accepted by the entity in question." (Kapanadze et al 2017: 15)

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1   The sections are presented in a shortened form. The form of display is obtained from the CORE Working Paper.

This is an important indication of how delicate the issue of appropriate wording can be in that context and how difficult it is to find the right conceptual or geographical terms, even if a document tries to avoid status-related meanings.

In sum, the document does not go into too much detail and should be understood as a starting point for a status-neutral approach. Nonetheless, this is advantageous for the actual implementation of this approach because the document does not alienate conflict parties from the outset for considering these measures. In other words, as put forward by the authors of the CORE Working Paper concerning that issue, the OSCE document, "Stabilizing Measures for Localized Crisis Situations" "provides both the basic option of status-neutral arms control and a rich menu of measures to implement it." (Ibid. 2017: 15) However, the "Stabilizing Measures for Localized Crisis Situations" is, for a reason, referred to as an "almost-forgotten document" (Kapanadze et al. 2016) since most of the OSCE participating States are not even aware of the document.[2]

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2   Interview with OSCE Officer, 24 February 2017.

3. The CORE Working Paper "Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context"

The CORE Working Paper *Status-Neutral Security, Confidence-Building and Arms Control Measures in the Georgian Context* (Kapanadze et al. 2017) takes up the approach mentioned above in order to design status-neutral measures in general and, in particular, for the protracted conflict in Georgia. In a first step, the paper examines the delicate position of *de facto* regimes in the context of international law by inferring that, in fact, "there are no compelling obstacles to including *de facto* regimes in international arms control agreements". (Ibid: 8) However, it also points to the diverse approaches towards *de facto* regimes by states, which have led to different conditions in the current protracted conflicts in the European context: For instance, the *de facto* regime in Nagorno-Karabakh is not recognized by the authorities in Baku at all and is not part of the negotiation format, whereas the authorities of Transdniestria constitute a party at the negotiation table.

Furthermore, according to the authors, arms control and CSBM agreements are generally state-centric, and, thus, are not status-neutral in that sense. Here, the Treaty on Conventional Armed Forces in Europe (CFE) and the OSCE Vienna Document (VD) on CSBMs are used as examples, since both documents exclusively refer to "States Parties" and "participating States". In addition, even conceptual terms (e.g. "region", "side/party to the conflict", "border", etc.) and geographical terms (e.g. the usage of different spellings of towns by the conflict parties) can also have a status-related meaning, depending on the respective context.

Concerning the conditions and principles (section three), the paper contends that a status-neutral approach is always possible, but difficult to achieve since "states and *de facto* regimes usually consider their status to be a higher priority than solutions to practical problems." (Ibid: 11) Nevertheless, the paper establishes *conditions* for the realization of a status-neutral approach. One condition could be that there is a compelling interest of one or several parties that overrides all status deliberations. According to the authors, this was the case in the Georgian-Russian World Trade Organization agreement. Furthermore, another condition could be that the state from which the *de facto* regime wants to secede adopts a generous and pragmatic approach. Moreover, cases where there are ambiguities or even open contradictions in the underlying status assumptions provide good conditions for such an approach, which is illustrated by the case of the OSCE Mission in Kosovo.

In addition to the conditions, certain *principles* are suggested for status-neutral approaches. The replacement of status-oriented terms by status-neutral terms (e.g. instead of using the name of the state, using the name of the capital) and the replacement of status-bound personnel by status-neutral personnel (from impartial third party states, IOs, or even private companies) can serve as tools for facilitating a status-neutral constellation. Another principle is the establishment of mediation mechanisms conducted by a neutral third party.

Furthermore, the working paper emphasizes the limitations of existing arms control and CBSM agreements related to protracted conflicts (section four) with a focus on three issues. *First*, the conceptual deficiencies of multilateral arms control and CSBM instruments dealing with paramilitary, irregular and armed police forces in disputed territories are analyzed. As mentioned above, current arms control and CSBM arrangements (CFE, VD, etc.) are solely orientated to states and thus to inter-state

conflicts. Consequently, these instruments are, in fact, not applicable to disputed areas and to conflicts with non-state actors or non-recognized *de facto* regimes/entities.

This situation leads to different positions of the conflict parties in disputed areas. *De facto* regimes of breakaway regions, for instance, do not feel obliged to have limitations on holdings or provide relevant data for information exchanges according to international arms control agreements. After declaring independence, these regimes also usually insist that they have not signed any arms control and CSBM treaties which, in turn, means that they do not have to comply with these treaties. By the same token, internationally recognized states are not inclined to share with *de facto* regimes "the role, rights and responsibilities of a State Party to international agreements" (Ibid:: 17) since they are more than reluctant to acknowledge any status of those breakaway regions related to state sovereignty. As a consequence, third State parties to international agreements are confronted with the challenge of obtaining the approval of the *host country* in order to carry out inspections in breakaway regions.

Second, the conceptual deficiencies related to forces stationed in disputed territories constitute another problem according to the authors. Internationally recognized states regard stationed forces in breakaway regions as illicit occupiers who violate international law. Hence, arms control mechanisms, such as inspections of those stationed forces, are rejected since the governments of internationally recognized states fear that their acceptance of those mechanisms could lead to the legitimization of the stationed forces and the breakaway regions.

When it comes to the stationing states that are states parties to arms control/CSBM arrangements, the situation and the positions on those measures are even more complicated. If those states have not recognized the independence of breakaway regions, they "cannot, in principle, deny implementation of such measures." (Ibid: 20) For instance, before the Russian Federation suspended the CFE Treaty in 2007, it had always provided information on its stationed forces in the breakaway regions of Georgia. In turn, however, if stationing states, which are States Parties to arms control/CSBM arrangement, have recognized the independence of those *de facto* regimes, the argumentation can be quite different: They can contend that the disputed territories, which are independent states in their eyes, are not part of arms control treaties and those mechanisms are not valid for them:

"[W]hile Georgia considers that all Russian forces must withdraw from Georgian territory, including from Abkhazia and South Ossetia, Russia argues that, after the recognition of the independence of Abkhazia and South Ossetia […], its military presence in these two breakaway regions is legitimized by their granting of 'host nation consent' without contradicting the cease-fire agreement." (Ibid: 23-24)

Third, there are also conceptual deficiencies of ceasefire-related CSBMs in terms of mutual and reciprocal obligations of conflicting parties. Internationally recognized states are often reluctant to agree to reciprocal measures of arms control and CSBMs mechanisms including the authorities in breakaway regions. To overcome the problem, the authors suggest that the area of application (AoA) should be defined in a more restricted way. The whole national territory should not be used as a reference point, but only a limited area, because the inclusion of the whole territory might already imply some sort of recognition of the *de facto* regime concerned.

Current ceasefire agreements also "define a *limited area* in which the conflict materialized and for which certain restrictions, CSBMs and control mechanisms, with the good offices and under the observation of third parties or regional/international organisations, apply ('*security zones*')" (Ibid.: 23). Yet, those ceasefire arrangements also entail conceptual problems: In many cases, police forces are allowed to stay in those security zones. However, parties to the conflicts often seek to transform police forces into military forces by providing them with military equipment.

According to the authors, another issue stems from forces stationed in disputed areas and the different interpretations of the host nation consent: In sum, status is seen as the stumbling block in many ways. Current arms control and CSBM arrangement are too state-centric and thus, not helpful tools to deal with conflicts involving *de facto* regimes.

3.1. The CORE Working Paper – The Construction of an Ideal-Type CSBM Arrangement

Against the background of the conceptual problems of current status-related arms control measures and CSBMs, the authors suggest a status-neutral CSBM arrangement of their own. The purpose of this status-neutral proposal should be the promotion of "information, observation and limitations (as far as possible) of military holdings and activities in disputed territories, without giving any indications that could be misinterpreted as pre-empting the outcome of negotiations on their eventual status." (Ibid: 29) By examining past attempts to conduct CSBMs in disputed territories (e.g. in Transdniestria in the early 2000s or in Georgia in 2012), the paper infers that the parties to the conflict would be more likely to accept status-neutral observations if those were conducted by non-partisan third parties.

The authors postulate eight principles and elements of a status-neutral CSBM arrangement:

(1) Promotion of CSBMs (information, verification, etc.) in territorial conflicts without pre-empting the result of status talks.

(2) Avoidance of status-related terminology, such as "inspecting state", "host state", etc.

(3) Instead of re-opening negotiations on agreements, the status-neutral concept should be applied within the framework of current ceasefires.

(4) A minimum of reciprocity of agreed measures is necessary.

(5) Status-neutral agreements should be military meaningful, i.e. provide the full demilitarization of the AoA or effectively prevent any destabilizing accumulation of forces or ensure transparency and provide for early warning of all participants in case of a breach.

(6) Usage of third parties (preferably the OSCE and a state/a group of states acting in a status-neutral way) to construct the status-neutral approach.

(7) Usage of third parties (preferably the OSCE, a state/a group of states or even trusted private companies acting in a status-neutral way) to manage information gathering, observe holdings in objects of verification and of military activities outside of garrisons.

(8) Usage of third parties (preferably the OSCE and a state/a group of states acting in a status-neutral way) to continuously evaluate the functioning of the status-neutral CSBM arrangements and the compliance of the parties to the conflict.

In light of these principles and elements, this paper designs an ideal-type status-neutral CSBM arrangement, which could be applied to various territorial conflicts. This arrangement is structured in following categories:

"Consultation processes, documents and review of compliance"

(1) The third party
— conducts exploratory (proximity) talks in order to ascertain mutual risk perceptions and security objectives,
— assesses complementary or compatible elements of such perceptions and objectives in order to define common grounds of interest in promoting stability and confidence by enhancing transparency and mutual contacts,
— suggests concrete measures related to information, observation and limitations of military capabilities and activities of regular, paramilitary, irregular and stationed forces as well as compliance and consultation mechanisms.

(2) Representatives of the parties indicate their consent in principle and restrictions applicable to
— the Areas of Application (AoA), possibly complemented by special restrictions in defined sensitive border areas ("security zones"),
— the kind of information on military structures and holdings of defined weapon systems they are willing to provide,
— limitations on the permanent stationing of units and weapons in the AoA/the "security zones", prior information and restrictions on unusual military activities in the AoA/the "security zones",
— conditions, quotas and procedures for observation visits, confidentiality requirements, consultation mechanisms.

(3) All agreements will be set forth in identical protocols, which are signed by the third party and – separately, if necessary – by the conflicting parties. They are of a political rather than legally binding character. Protocols can contain
— delineation of the area of application and, if applicable, of zones of special restrictions (including maps), referring to geographical coordinates rather than contentious names for certain regions,
— existing types of weapons, information/notification requirements and mechanisms, observation procedures, limitations of holdings, restrictions of unusual military activities, incident prevention mechanisms and regular consultations and review processes.

(4) The third party ensures the proper functioning of the CSBM arrangements and compliance by the parties involved through continuous monitoring and evaluation, regular impartial compliance reports and suggestions for how to improve the mechanisms. Consultations on assessments and proposals will be held with the participants on a regular basis or at their special request.

"Definitions"

Definitions will have to specify:
— the areas of application and, possibly, security zones with special restrictions and information requirements, referring to geographical coordinates rather than using contentious names for certain regions,
— military structures subject to information exchanges,
— categories of weapon systems subject to limitations and information requirements, complemented by a protocol on existing types of weapons,
— sites and objects of observation (garrisons, storage sites, maintenance facilities),
— specified areas or observation of military activities, preferably comprising the whole area of application, and, possibly with an enhanced regime in defined security zones.

"Information and notification"

Information and notification requirements should include:
(1) Semi-annual information on
— military structures (e.g. command levels and units down to regiments, battalions), locations of units and sites/objects of observation in the AoA/in the "security zone",
— overall numbers, types and locations of weapon systems subject to limitations, information requirements, and observation rights in the AoA,
— weapons holdings in objects of observation (garrisons, storage sites, maintenance facilities);
(2) Short-term notification of significant changes to (1);
(3) Prior information on military activities outside garrisons above certain threshold values;
(4) Initial information on defense/procurement/withdrawal planning, with annual notification of changes;
(5) Rules and procedures on distribution and confidentiality of information, notification, observation reports and consultation records.

"Observation"

Rules on observations by the third party should include:
(1) Quota, general procedures and conditions for observation visits;
(2) Procedures for observations of holdings in objects of observation (garrisons, storage sites, maintenance facilities);
(3) Procedures for observations of notified military activities outside garrisons above certain threshold values;
(4) Procedures for challenge observations of specified areas at the request of a participating party or at the third party's own initiative;
(5) Content, distribution and confidentiality of observation reports.

"Limitations"

Limitations could pertain to:
(1) Permanent holdings of defined weapon systems and military personnel in the area of application;
(2) Sub-limits on the permanent stationing of such weapons and active military personnel in "security zones" (preferably a complete prohibition of heavy weapon systems);
(3) Upper limits on out-of-garrison deployments of such weapons and unusual military activities in the area of application;
(4) Special restrictions on out-of-garrison deployments of such weapons and unusual military activities in the "security zones", preferably a complete ban.

Source: Kapanadze et al. 2017:32-34.

The authors of the paper admit that the ideal-type status-neutral CSBM arrangement[3], as outlined above, is difficult to put into practice. However, by constructing such a conceptual status-neutral approach, the authors want to demonstrate that such an approach "can enhance stability without compromising the positions of principle held by the parties involved and without pre-empting the outcome of status talks." (Ibid: 28)

To persuade the parties to the conflict to apply such a status-neutral CSBM arrangement, the paper highlights certain potential benefits, which can be shown to the conflict parties. *First*, status-neutral arms control should not have the aim of resolving the conflict; it should rather serve as an instrument to tackle specific unsolved issues in a protracted conflict. The question of whether the use of such an approach is feasible also depends on the specific conflict constellation. *Second*, as mentioned above, the parties to the conflict must have the view that resolving a specific problem is more important that insisting on one's own status position. Those direct incentives could ensure that a status-neutral approach is seen as a confidence-building measure (in the early phase of negotiations) or as a tool to generate mutual confidence (in the late phase of difficult negotiations). *Third*, economic incentives could help to persuade the sides concerned.

In addition, indirect incentives are also conceivable. The authors suggest that the presence of IOs conducting status-neutral arms control can help certain breakaway regions to reduce their international isolation. Besides, economic incentives, such as triggering mutual trade between the conflict parties, could serve as potential benefits. Finally, cultural and educational interests (e.g. joint vocational training programmes, etc.) can be seen as benefits for the parties involved.

3.2. The CORE Working Paper – a New Tool to Resolve Protracted Conflicts?

This paper convincingly demonstrates that a status-neutral arms control/CSBM arrangement is conceptually feasible. However, as mentioned by the authors, the essential precondition for the adoption of this approach is the political will by the parties to the conflict. To achieve this, third parties, such as the OSCE or impartial states, as well as civil society groups (national and international ones), must credibly show the benefits to the conflict parties.

Indeed, it is a mistake to think that one "single extant document is likely to serve as an agreement on confidence- and security-building measures for all the conflicts" (Remler et al. 2016: 7) Nevertheless, the CORE Working Paper adds a new CSBM arrangement, which can help facilitators to use this proposal in order to design individualized agreements on CSBMs.

When it comes to the principles and elements of the status-neutral CSBM arrangement (see above), there are three distinctive aspects referring to status-neutrality: The promotion of CSBMs without pre-empting the result of status talk,

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3   This ideal-type status-neutral CSBM arrangement is applied to the breakaway regions of Georgia in the CORE Working Paper.

the avoidance of status-related terminology and the facilitation by a third party acting in a status-neutral way. Thus, it could be argued that the distinctiveness of a status-neutral approach could be broken down into three major features: The communication aspect of finding a 'common language', the separation between 'CSBM'/'security-related' and 'politically related' formats or documents and the replacement of status-related facilitators by status-neutral facilitators.[4]

However, even the blueprint of the ideal-type status-neutral CSBM arrangement contains potentially delicate wording: The usage of terminologies, such as 'regular, paramilitary, irregular and stationed forces' could also be interpreted as status-related descriptions. For instance, a *de facto* regime would rather describe its forces as military or conventional ones than paramilitary or irregular ones since it sees itself as a legitimate state. Furthermore, in conflicts with so-called hybrid armies and forces, which are often related to non-state actors, a clear distinction between the units is difficult to achieve. However, by contrast to the CFE Treaty, which reflects warfare between states at a late period of the Cold War, the CORE Working Paper can be seen as a starting point for discussing arms control including *de facto* state actors.

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4   The conflict-related mechanisms in the context of the Syria conflict are a good example to illustrate this differentiation: The prime purpose of the UN-brokered Geneva talks is negotiations on a political solution and a transition plan. The aim of the Astana talks, which were initiated by Turkey, Russia and Iran, is to find ways to develop confidence-building measures and to maintain the ceasefire.

4. Protracted Conflicts in Europe

Currently, protracted conflicts in Europe are closely intertwined with the question of how to deal with *de facto* regimes/breakaway regions or with other unresolved status questions. Hence, this section deals with the question of whether the status-neutral approach can make a significant contribution to other protracted conflicts. To explore that, the application of this approach to the conflicts in Eastern Ukraine and in Transdniestria will be investigated.

4.1. The Conflict in Eastern Ukraine: The Minsk Agreements

In the aftermath of the Russian annexation of Crimea in March 2014, clashes between Ukrainian forces and Russian-backed separatists broke out in the Donbass region, situated in Eastern Ukraine. As a consequence, the self-proclaimed Luhansk People's Republic (LNR) and Donetsk People´s Republic (DNR) have emerged, which are both at the point of becoming *de facto* regimes. Both self-proclaimed republics compose the non-government controlled areas of Ukraine (NGCA). Although the LNR and DNR are backed by the Russian Federation, the Kremlin has not recognized them as states.

As a reaction to the hostilities, the Minsk Protocol was signed on 5 September 2014 to halt the fighting in the Donbass. As the agreed ceasefire collapsed in January 2015, due to newly erupted clashes, the "Package of Measures for the Implementation of the Minsk Agreements", was signed on 11 February 2015 to revitalize the prior agreed-to measures under the first Minsk Protocol. The Minsk Implementation Agreement features a 13 point-plan, which comprises issues ranging from CSBM measures to decentralization plans, which would give Luhansk and Donetsk a special status. In other words, the document contains political as well as security-relevant issues.

Up to the present, however, the Minsk agreements are a far cry away from being put into practice. In fact, none of the 13 stipulations have been successfully realized. For instance, the observers of the OSCE Special Monitoring Mission to Ukraine (SMM) still do not have complete access to the conflict areas to monitor ceasefire violations (OSCE 2017a). Furthermore, in 2017, OSCE observers of the SMM were threatened 17 times at gunpoint by fighters (Boy 2018). Newly erupted clashes at the end of 2017 have also crippled the chances of full implementation of the Minsk agreements in the near future. In January 2018, the ceasefire violations were temporarily in four-digits on some days (Boy 2018).

4.1.1 Current Formats

Since July 2014, the prime negotiation frame for this conflict is the so-called 'Normandy format', which consists of representatives from Ukraine, Russia, France, and Germany. The leaders of these countries negotiated the two Minsk agreements in September 2014 and February 2015 respectively and meet from time to time to discuss the implementation of these agreements. Against the background of the serious breaches of the Minsk agreements it would be important to convene a top-level Normandy meeting to achieve progress.

Below the Normandy format, and interlinked with it, is the Trilateral Contact Group (TCG) established in June 2014, "in which representatives of Ukraine, Russia and the OSCE consult one another and negotiate concrete steps towards implementation of the Minsk agreements." (Federal Foreign Office 2017) The TCG, which is politically supported by the Normandy members, has four subgroups dealing with politics, security, economic issues and humanitarian affairs. These subgroups meet regularly. Representatives of the LNR and DPR are not part of either the Normandy Format or the TCG. In the former, their interests are advocated by the Russian Federation, in the latter they negotiate with members of the TCG. Subsequently, the results of the negotiations, the Minsk Agreements, were signed by representatives of the OSCE, Ukraine and Russia as well as by the LNR and DNR.[5]

The OSCE Special Monitoring Mission to Ukraine (SMM) monitors the ceasefire agreements and the withdrawal of heavy weapons as well as the withdrawal of all foreign armed forces, military equipment and mercenaries from Ukraine, even though these tasks are not explicitly mentioned in the SMM mandate. The SMM just assumes these monitoring functions since no actor has raised objections to this. Started in March 2014, following repeated extensions, the SMM mandate expires on 31 March 2018. As it has, up until now, been continuously extended, there is reason to believe that it will be extended again after that date.

4.1.2 Status

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

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

The local elections mentioned point to an envisaged decentralization reform which is explained in paragraph eleven of the document:

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

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5   The Minsk Implementation Agreement was signed by Swiss diplomat and then OSCE representative, Heidi Tagliavini, former president of Ukraine and Ukrainian representative, Leonid Kuchma, Russian Ambassador to Ukraine and Russian representative Mikhail Zurabov, as well as the DPR and LPR leaders Alexander Zakharchenko and Igor Plotnitsky (OSCE 2015).

and Luhansk regions in line with measures as set out in the footnote until the end of 2015." (Bundeszentrale für politische Bildung 2015)

Both paragraphs clearly state that – despite the self-declaration as 'People's Republics' by the authorities in Donetsk and Luhansk – the aim is to incorporate Luhansk and Donetsk into a unified, but, to some extent, federalized Ukrainian state. In other words, the breakaway regions and the Russian Federation, as its protecting power, do not officially aim at completely separating the disputed territory from Ukraine.

However, there is still disagreement over how the special status of these two entities should look. Thus, it is no surprise that the scheduled decentralization steps by the end of 2015 never materialized. The local elections were postponed several times and, as of today, a concrete date for holding the elections is not foreseeable. Nor is the prospect for this at all good. The central government in Kiev has several objections to holding local elections anytime soon. *First*, it demands that the other side fulfil its obligations, especially those concerning the issues of the ceasefire, the withdrawal of heavy weapons and the exchange of prisoners, before any decentralization measures can be carried out. *Second*, it argues that the current security environment does not provide conditions for such steps (Stewart 2016). In sum, the central government in Kiev demands complete control of the Ukrainian-Russian border before any of those measures can be implemented (Scherba 2017). Overall, the conflict parties disagree on the sequence in which the stipulations of the Minsk agreements should be implemented.[6] From the perspective of early 2018, it is highly questionable whether the political parts of the Minsk Agreements will be implemented at all in the foreseeable future.

Since the current situation is in limbo and is characterized by a lack of perspective, the status question is subject to interpretation, potentially gradual change: The decision by the Russian Federation to recognize documents issued by the separatist LNR and DPR is seen as an additional impediment to the implementation of the agreed stipulations in the Minsk Implementation Agreement (Flückiger 2017). Then OSCE Secretary General Lamberto Zannier even said that this could lead to "Abkhazia-like situations" (Gutterman 2017).

Furthermore, on 15 March 2017, the authorities in Kiev declared a trade blockade on the two eastern breakaway regions (Bremmer 2017). On the other hand, in the same month, the authorities of the LNR and DPR started to use the Russian rouble as its official currency and confiscated around 40 private enterprises, among them the businesses of the influential oligarch Achmetov (Benz 2017). These moves have the potential to undermine the substance of the Minsk agreements.

When it comes to arms control measures including CSBM, the Minsk Implementation Agreement does not go into detail. The document only mentions the following measures:

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6   Another point of contention is the duration of the special status: In September 2014, the parliament in Kiev adopted a law which allowed a special status for Luhansk and Donetsk. However, the law envisaged such a status for only three years.

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

– for the Ukrainian troops: from the *de facto* line of contact;

– for the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine: from the line of contact according to the Minsk Memorandum of Sept. 19th, 2014; The withdrawal of the heavy weapons as specified above is to start on day 2 of the ceasefire at the latest and be completed within 14 days.
The process shall be facilitated by the OSCE and supported by the Trilateral Contact Group.

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

Compared to the CSBM arrangement presented by the CORE Working Paper, the arms control measures and CSBMs in the Minsk Implementation Agreement are far from being all-encompassing. The document remains too vague and provides opportunities for the conflict parties to use other equipment beyond 'heavy weapons'. However, since it mentions "the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine", it includes the breakaway regions in CSBM arrangements. Therefore, the CSBM contained in the Minsk Implementation Agreement are, strictly speaking, status-neutral. Furthermore, the question of using the right wording, acceptable for all sides, does not, apparently, play a major role.

4.1.3 The Status-Neutral Approach and the Ukrainian Conflict

Even though the authorities in Luhansk and Donetsk have named themselves people's republics, all conflict parties have, at least rhetorically, agreed that these two regions remain integral parts the Ukrainian state. This is also approved by the Russian Federation. Therefore, there is a basic common understanding concerning the status question, at least on paper. As mentioned before, disagreements concerning the status issues lie more in the detail. Even though the authorities in Luhansk and Donetsk are not part of the Normandy Format or the Trilateral Contact Group, they signed the Minsk Agreements which include CSBMs. Therefore, status-neutral arms control measures and CSBMs are employed in the conflict constellation in Eastern Ukraine.

However, the CSBM measures provided by the Minsk Agreements are not sufficiently comprehensive and, to a large extent, not implemented. Furthermore, as the conflict in Eastern Ukraine does involve *de facto* regimes, it is not a typical dispute between two states. Thus, the application of state-centric arms control and CSBM arrangements, such as the CFE Treaty or the VD would not be suitable and could even cause confusion between the conflict parties. Apart from that, Russia as protecting power, has suspended the CFE Treaty.

Consequently, a status-neutral CSBM arrangement, such as in the CORE Working Paper, could be a useful alternative. Furthermore, with a more comprehensive and detailed list of instruments, it could give fresh impetus for conflict facilitation and could substantiate the relatively vague regulations of the Minsk agreements. This is

especially important since there has been little progress made with respect to the compliance of the CSBM elements (e.g. the withdrawal of heavy weapons) and the proposed decentralization stipulations of the Minsk Implementation Agreement. In addition, it could help to avoid further undermining of the status issues of the Minsk Agreements by the conflict parties. Because a political solution is not achievable in the medium-term, it is particularly important to stabilize the security situation in Eastern Ukraine. A status-neutral CSBM approach could contribute to this end. Another advantage is that a CSBM arrangement could provide for increased inspection quotas (Kühn 2015).

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

Furthermore, the conflict in Eastern Ukraine is characterized by hybrid forces, which blur the differentiation between military, paramilitary and even stationed forces (see Richter 2014). The 'little green men' stemming from neighboring Russia are symbolic for that. On the Ukrainian side, the National Guard of Ukraine also consists of volunteer units, such as the Azov and Donbass battalions, which could also elude classification. This situation hampers the implementation of CSBMs, since it gives the parties to the conflict the possibility of undermining the Agreement by turning militias or unmarked fighters into members of the regular army and vice versa for their purposes. However, a status-neutral CSBM arrangement would be the most suitable document to deal with this challenge.

In addition, it is difficult for the parties to the conflict to agree on a trusted third party. The Russian Federation and the pro-Russian separatists are especially sceptical about the role of the OSCE. Most strikingly in this context are attacks by separatists on observers of the SMM, which happened over the course of 2017. On 23 April 2017, a SMM member died after a landmine explosion (OSCE 2017b).

Further disagreements between the two sides could be seen in the context of the Russian proposal made in September 2017 concerning the sending of a lightly armed UN peacekeeping mission to Eastern Ukraine. This plan envisages the assurance of the safety of the OSCE monitors. However, the Russian side just wants to deploy peacekeeping forces along the demarcation line between Kiev-controlled Ukraine and the Russian-backed separatist areas of Donbass. This could be seen at least as an indirect recognition of this separation line as a border. Contrary to that, the Ukrainian side argues that the UN forces should assume their observation tasks throughout the whole Eastern part of the country, including the Russian-Ukrainian border, which would underline the territorial integrity of Ukraine (Boulegue 2017). It is difficult to see how these two approaches could be reconciled. Against this backdrop, a status-neutral approach could constitute an effective remedy.

In this case, the political will of the parties to the conflict is also the most crucial factor for accepting any new initiatives. However, one important advantage for introducing status-neutral CSBM arrangements is that the Minsk Agreements have already created a basic understanding about the status question.

4.2. The Conflict in Transdniestria: The 1992 Ceasefire Agreement

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

As a consequence of the conflict, the 'Transdniestrian Moldovan Republic' (TMR) declared independence in 1990. In 2006, the authorities in the TMR held a referendum on formally joining Russia, which was approved by 97 per cent of the population. However, no United Nations member state, including Russia, has ever recognized the sovereignty of the TMR and the region is considered by all states as being part of Moldova. In 2011, only the *de facto* regimes of Abkhazia, Nagorno-Karabakh and South Ossetia recognized its independence.

4.2.1 Current Formats

As a result of the ceasefire agreement, a Joint Control Commission was established among Russia, Moldova and the Transdniestrian authorities at the initiative of the-then Russian President, Boris Yeltsin. The purpose of the Commission is to monitor a trilateral peacekeeping force that includes Russian, Moldovan and Transdniestrian battalions under a joint military command structure and controls posts at the main crossing points of the river Dniestr.

Since 2005, the prime negotiation platform has been the so-called 5 + 2 format, officially titled the "Permanent Conference for Political Questions in the Framework of the Negotiating Process for the Transdniestrian Settlement". The participating parties are Moldova, Transdniestria, Russia, Ukraine and the OSCE, as well as the United States and the European Union as observers. The talks stalled in 2006, but were resumed in 2011. The latest round of the negotiations was finished shortly before the 2017 Vienna Ministerial Council meeting and led to "agreements on five of the priority issues: on apostilization of educational documents issued in Transdniestria, interaction in three fields of telecommunications, functioning of the Latin Script Schools and use of farmlands in the Dubasari region, as well as the opening of the bridge across the Dniester/Nistru River between the villages of Gura Bicilui and Bychok" (OSCE 2017c).

The OSCE Mission to Moldova, established in 1993, is an additional tool to achieve conflict resolution. The goal of the mission "is to help achieve a lasting, comprehensive political settlement of the Transdniestrian conflict; to consolidate Moldova's independence and sovereignty; and to reach an understanding on Transdniestrian's special status." (OSCE 2017d) The mission also assumes an advising role in fields, such as human and minority rights, democratic transformation and gender equality.

At the OSCE Summit in Istanbul in 1999, the mandate of the mission was extended to cover arms control measures. Part of this is "ensuring transparency of the removal and destruction of Russian ammunition and armaments, and to co-ordinate financial

and technical assistance to facilitate their withdrawal and destruction." (OSCE 2017d) Furthermore, arms control measures aim at creating military transparency and trust between the parties to the conflict.

4.2.2 Status

The status issue in this conflict is less thorny than in the other protracted conflicts since "the Transdniestrian authorities are fully recognized as party to the conflict in 5+2 negotiations." (Kapanadze et al. 2017: 9) Furthermore, the region is characterized by a relatively open border with "hundreds, perhaps thousands crossing from one side to the other every day for tourism, shopping, transit, education, business or family visits." (Remler et al. 2016: 13) A solution to the status issue is connected to the question of whether Transdniestria should be granted a special status, and, on this basis, be integrated into a somehow federalized Moldavan state and, if so, how deep the integration should be. This is also reflected in the mandate of the OSCE Mission to Moldova when it comes to state the aims of the mission:

> "Consolidation of the independence and sovereignty of the Republic of Moldova within its current borders and reinforcement of the territorial integrity of the State along with an understanding about a special status for the Trans-Dniester region." (CSO Vienna Group 1993)

Nevertheless, the authorities of the self-proclaimed TMR hoped, after the outbreak of the Ukrainian conflict, that an incorporation of Transdniestria into the Russian Federation would be feasible in the near-term. In 2016, the-then President of the self-proclaimed TMR Schewtschuk, signed a law that foresees the implementation of the referendum result, to accede to Russia, in 2006. At the same time, some Transdniestrian armed agents and activists have even lent support to the fighters of the breakaway regions of Donetsk and Luhansk. (Büscher 2016: 36-37) As a reaction to this, the Ukrainian government has conducted a series of counter-measures against the TMR, which have had a negative impact on Transdniestria's economy and the freedom of movement for the TMR's authorities. Thus, it is no surprise that in "view of the frequent calls [by the TMR] to join the Russian Federation, however, a real will to pursue a permanent existence as an independent state is not discernible in Transdniestrian politics and society." (Büscher 2016: 39) Against that background, as Büscher puts it, a reintegration of the breakaway region of Transdniestrian into the Moldavan state is not unrealistic:

> "There are neither unbridgeable differences of mentality between the societies nor deeply-rooted hatred between the two sides of the Dniester. For an autonomy arrangement, a compromise based on existing federal or autonomy models is conceivable. Moldova takes minority protections seriously, and a constitutional right of secession for Transnistria and Gagauzia could be instituted for the unlikely eventuality of unification with Romania." (Büscher 2016: 41)

However, that does not mean that the status issue is devoid of disagreements. This is apparent when it comes to the issue of arms control measures and CSBMs. The OSCE Mission to Moldova has conducted some arms control measures in the past: In 2001/2002, "the Russian Federation withdrew by rail 141 self-propelled artillery and other armoured vehicles and destroyed locally 108 T-64 tanks and 139 other pieces of military equipment limited by the Treaty on Conventional Armed Forces in Europe (CFE)." (OSCE 2017e) These withdrawals were observed and verified by the OSCE Mission to Moldova. However, since March 2004, there have been no further

withdrawals and 20,000 tons of ammunition and some military equipment still remain in Moldova. Furthermore, there are still 2,000 Russian troops stationed in Transdniestria that are not part of the official tripartite peacekeeping force (IPG 2017 and Wolff 2012: 16-17).

In 2004/2005, the OSCE Mission to Moldova (with the support of Russian and Ukrainian experts) elaborated a detailed and individualized package of arms control measures and CSBMs. However, this package was never implemented, "partly because the equal application of the measures throughout the entire territory of Moldova (including Transdniestria) led to Moldovan concerns about the appearance of status equality for Transdniestria, and thus allowed the status question to intrude" (Remler et al. 2016: 18). Furthermore, the Transdniestrian side was reluctant to share military-related information with the other side because this was seen as being too sensitive. A third important reason for the failure of this CSBM proposal was the unsuccessful proposal to resolve the conflict, the so-called Kozak Memorandum, tabled by the Russian side in November 2003. The failure of this proposal has hardened the dispute and Transdniestria even temporarily cut off political contacts with Chisinau.

However, it seems that work on the status issue slightly gained new momentum over the course of the last year: During a meeting with the-then OSCE Chairperson-in-Office, Sebastian Kurz, in February 2017, the Moldavian side committed itself to creating a policy and vision for a special status for Transdniestria (OSCE 2018). This is especially important because, prior to this announcement, there was a "little sign of a clear Moldovan vision as there is a realistic strategy for reintegrating the eastern part of the country." (Büscher 2016: 35)

In general, however, the main stumbling blocks for progress in the overall talks are still status issues (de Waal 2017: 5). Also, it remains to be seen how the domestic friction between the pro-Russian Moldovan President Igor Dodon and Chisinau's pro-European government will develop. Dodon, who, in January 2017, even handed the Russian authorities a road map for 2017-2019, which envisages a plan for resolving the conflict, refused to appoint five ministers and two deputy ministers to join Prime Minister Pavel Filip's government. As a result of that, the constitutional court suspended his presidential powers in January 2018. Prior to that, Dodon also criticized the Filip government for recalling the Moldavian ambassador to Russia and expelling five Russian diplomats (Deutsche Welle 2018).

4.2.3 The Status-Neutral Approach and the Transdniestrian Conflict

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

Against this backdrop, the recent initiatives by the Moldavian side to find a new way for conflict resolution could provide the appropriate 'ripeness' to make headway. To enhance the trust between the two sides, a new CSBM package could contribute to further facilitation. In that context, there are four reasons why the status-neutral CSBM arrangement could be beneficial for this conflict. *First*, the conflict between Moldova and Trasndniestria is not a conflict between internationally recognized states. *Second*, by contrast to the package in 2004/2005, a status-neutral approach should include a clear definition of a limited area of application, which could be tailored to the satisfaction of all parties involved. *Third*, a status-neutral approach could have a positive impact on the Transdniestrian conflict setting since it could also cover military units beyond standard conventional armed forces. This is of primary importance because the military potential of Transdniestria's army contains a wide range of paramilitary units (Büscher 2016: 31). In addition, a status-neutral CSBM arrangement could also cover stationed forces that are in Transdniestria in the form of Russian troops. Furthermore, a comprehensive CSBM package is relevant because the TMR is itself capable of manufacturing small arms, mortars, and multiple rocket launchers, which could be used in a future conflict (Aussedat 2010). *Fourth*, status-neutral CSBMs could enhance the chances for progress by building trust between the sides.

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

Regarding the current situation, it can be useful to encourage the parties to accept a status-neutral approach, since there are signs of a possible momentum in the conflict since 2016/2017. However, it would be a challenge to persuade the Russian Federation to participate in this kind of arms control activity. Russia would be still reluctant to accept conflict resolution and also a new CSBM package unless Moldova were to abandon potential NATO membership. In addition, since the last hostilities between the two sides happened back in 1992, the question of whether there is an urgent need for CSBMs can be raised. With that in mind, the parties to the conflict could be reluctant to consider this approach since they might have difficulties seeing the immediate benefits of it.

5. Useful or Useless? Conclusions for the Status-Neutral Approach in General and for the Georgian Context

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

Interestingly, when it comes to the cases of Eastern Ukraine und Transdniestria, the terminological aspect does not play an obstructive role. Since the positions on status do not differ too much between the parties to the conflict, it was not a huge challenge to find common language. However, both cases also show that the issue of CSBMs and the political status questions are still tightly interconnected. In the Minsk Agreements, both are mentioned in the same document without providing clarity on the order in which the stipulations should be implemented. In the Transdniestrian context, the CSBM proposals of 2004/2005 failed due to the status question and the unfortunate political environment.

Nevertheless, the desire for state independence or joining the Russian Federation by the DNR and LMR in Eastern Ukraine and the TMR in Transdniestria lack a realistic perspective. Since neither conflict is characterized by a state-to-state constellation, state-centric CSBMs are not optimal for creating tailor-made arms control packages; thus, a status-neutral CSBM arrangement would be a more suitable alternative.

Against this background, the cases of Eastern Ukraine und Transdniestria show that a status-neutral approach is not only a tool for conflicts other than Georgia; they even offer a political environment that is more suitable than in the Georgian context, where agreements on substantive solutions are much harder to achieve. There are, in fact, four points that show why it is much more difficult to implement CSBMs in general and even status-neutral CSBMs in the Georgian conflict:

1. *Lack of common language.* Whereas the parties in the Eastern Ukraine conflict could agree on formulations, such as "armed formations from certain areas of the Donetsk and Luhansk regions", the search for the right terms constitutes a huge challenge in the Georgian context. As the authors of the CORE Working paper put it, status-related wording is highly controversial with respect to geographical and conceptual terms: "In the Georgian context, this applies to the terms "region", "conflict zone/conflict region", "agreement/treaty", "side/party to the conflict", "border", "IDPs/refugees" and other terms with status implications. […] In addition to the conceptual terms, geographical terms are usually extremely problematic because of differing spellings and pronunciations (Sokhumi vs. Sukhum; Tskhinvali vs. Tskhinval, Akhalgori vs. Leningor, Gali vs. Gal, etc.)." (Kapanadze et al. 2017: 15)

2. *Lack of any basic shared understanding of the status question.* By contrast to the other two conflicts, the positions on status are divided to a great extent. The breakaway regions of Abkhazia and South Ossetia are sincerely striving for independence or want to accede to Russia. The central government in Tbilisi takes the opposite position and still aims at incorporating the perceived 'occupied areas into the mainland.'

3. *Russia's recognition of Abkhazia and South Ossetia as independent states.* The CORE Working Paper rightly emphasizes the importance of influential third states for the breakaway regions and their position on status. For instance, the TMR wants to become an independent state, but has never been recognized by the Russian Federation. By contrast, Russia recognized Abkhazia and South Ossetia as independent states in 2008, which can be interpreted as a move to create a *fait accompli*. Furthermore, "Moscow has clearly stepped up its influence in both entities since 2014. Taking Abkhazia's and South Ossetia's political, economic and military integration to a point just short of annexation was a symbolic response to Georgia's EU association process." (Fisher 2016: 60) In sum, this leads to a situation where there is much less flexibility in negotiations over CSBMs and conflict resolution, in general.

4. *Vague ceasefire agreement.* Furthermore, the CSBMs listed in the Six-Points-Plan from August 2008 after the Georgia war, which constitutes the ceasefire agreement in the conflict, contain vague wording. This gives much room for interpretation, which is exploited by the parties to the conflict and has caused confusion from the beginning. Hence, it is no surprise that the agreement has remained unimplemented.

Against this background, the Georgian context has several disadvantages compared to the situations in Ukraine and Transdniestria, when it comes to the potential implementation of status-neutral CSBMs. However, this does not mean that status-neutral CSBMs are useless for the Georgian conflict. On the contrary, precisely *because* the status question is so contentious, a status-neutral approach would be a useful tool. Yet, irrespective of more or less favorable political environments for a status-neutral approach, if the conflict parties have no greater interest in creating more trust and a stable environment than insisting on status questions, this approach cannot yield fruit. Or, in the words of the authors of the CORE Working Paper, "the instrument itself is always tied to the political interests that frame the overall situation." (Kapanadze et al. 2017: 35)

Recommendations

To further develop the discussion on status-neutral approaches, the following steps are recommended:

– *Find the right balance between status-neutral approaches in localized conflicts and the pan-European security architecture in general.* Since the Russian annexation of Crimea and the outbreak of the conflict in Eastern Ukraine in 2014, the question of a future Pan-European security order has been raised again. However, it would not be helpful to view status-neutral CSBM arrangements either as a substitute for European arms control agreements or as a tool to revitalize the discussion on European security. Rather, it should be considered as a new approach, complementing others, which can help to provide appropriate measures for the creation of tailormade CSBM arrangements.

– *Achieving a realistic assessment of the impact of status-neutral CSBM arrangements.* It would be a mistake to view status-neutral CSBM arrangements as a new milestone

for conflict resolution. If the importance of this approach is exaggerated, this will lead to a disappointment. As the authors of the CORE Working Paper suggest, it should not be considered as a means to settle the overall conflict, but as a tool that enriches the menu of current CSBM options. In this context, the concept can contribute to a more stable security environment which provides ground for further talks. However, the crucial prerequisite is the political will by the parties to the conflict.

– *Propose status-neutral CSBM arrangements to conflict parties beyond the Georgian context.* The authors of the CORE Working Paper apply a status-neutral CSBM arrangement to the protracted conflicts in Georgia. However, the Georgian conflict is not the easiest case for proposing any new CSBM packages since the positions of the conflict parties are deeply divided on this issue. Thus, the conflicts in Eastern Ukraine and Transdniestria provide better chances for accepting such an approach.

– *Also promote status-neutral approaches as a tool to cover 'hybrid forces'. De facto* regimes are often characterized by using forces that cannot be called conventional armed forces. However, treaties, such as the CFE Treaty, focus exclusively on these kinds of forces. Therefore, it would make sense to also use status-neutral approaches as an instrument to deal with these 'new' hybrid forces. This is of special importance since there is trend of employing hybrid warfare, which has been the case in the conflict in Eastern Ukraine.

– *Introduce the concepts into other international organizations, think tanks, and NGOs.* Even though the OSCE is the main actor dealing with arms control measures in these conflicts, it closely collaborates with other organizations and with the EU and the UN. Therefore, it would be helpful to expand the discussion on status-neutral approaches to other platforms. Furthermore, this could help to shift the traditional thinking that arms control is just shaped by state-centric agreements.

– *Discuss the potential implementation of status-neutral CSBM arrangements beyond the European context.* Conflicts, which are shaped by the involvement of *de facto* regimes, hybrid forces and constellations that are more complicated than mere state-to-state settings, can be also found on other continents. Therefore, status-neutral arms control measures and CSBMs can also be considered for conflicts outside of Europe. Two possible examples are the Bougainville conflict in the Papua New Guinean context and the inner-state conflict in the Democratic Republic of Congo. These two conflicts are not waged between two states, but feature complex situations including states parties, paramilitary forces, rebel groups and stationed forces.

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Abbreviations

AoA	Area of Application
CBM	Confidence-Building Measure
CFE	Treaty on Conventional Armed Forces in Europe
CSBM	Confidence- and Security-Building Measures
CSCE	Conference on Security and Co-operation in Europe
DNR	Donetsk People's Repiblic
EU	European Union
LNR	Luhansk People's Republic
MLRS	Multiple Launch Rocket System
NGCA	Non-Government controlled areas of Ukraine
NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
TCG	Trilateral Contact Group
TMR	Transdniestrian Moldovan Republic
UN	United Nations
VD	Vienna Document
WTO	World Trade Organization

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The Centre for OSCE Research (CORE), founded in 2000, is the only institute specifically dedicated to research on the OSCE. Located in Hamburg, Germany, within the Institute for Peace Research and Security Policy (IFSH), CORE operates as a politically independent think tank, combining basic research on the evolution of the OSCE with demand-driven capacity-building projects and teaching. Addressing political actors, the academic community and the interested general public in Germany and abroad, CORE strives to contribute to the OSCE's development with analysis and critique that provide insight into the problems faced by and opportunities open to the Organization. For more information about CORE or this paper, please contact: