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Challenges of Third-Party Mediation in the Donbas Conflict

A Senior Integrative Project for the Department of Government and International Relations
and the Toor Cummings Center for International Studies and the Liberal Arts

Advised by Professor Andrew Levin

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I. Introduction

Negotiation has often been seen as a cumulative process, where smaller steps lead to greater ones as discussions move forward. However, some failures of the peace process in the Donbas war lead towards the challenging of this assumption. This paper identifies a number of factors which have become barriers to ongoing mediation by the Organization for Stability and Co-operation in Europe in the Trilateral Contact Group and the leaders of France and Germany in the Normandy Format and hopes to present them in an original manner, pointing towards greater implications for challenges faced by this process and the difficulty of resolving gray zone conflicts. The paper then recommends a direction for future research to dig deeper into many of these ideas.

This paper assumes some base knowledge of the situations which triggered the Donbas conflict and the creation of the Trilateral Contact Group (consisting of representatives of Ukraine, the Donetsk and Luhansk separatists, and the OSCE) and later the Normandy Format (consisting of the leaders of Ukraine, Russian, France, and Germany) to mediate the conflict. Due to time constraint, a fully summary of these events could not be provided.

II. Review of Mediation Theory

Mediation, as a tool for international conflict resolution, has been studied by a number of past authors and scholars of international relations. Though many concepts surrounding the factors that influence mediation success are generally agreed upon, there are some distinct exceptions where debate continues. Before moving on to the main arguments made by scholars explaining why mediation has failed to end the Donbas conflict, this section will briefly explore some of the key concepts surrounding mediation and its effectiveness as a tool for the negotiation process.

Defining Mediation

Synthesizing a number of existing definitions, this paper defines mediation as a form of intervention in which a third party, voluntarily and mutually accepted by the parties of a conflict, assists in guiding the ongoing conflict in the direction of a peaceful negotiated settlement in a non-violent manner and without enforcement ability over agreed-upon outcomes. However, it is critical to understand the complexities overlooked in a somewhat vague definition. In practice, mediation varies greatly in the interactions between the mediator, including their traits and resources, and the actors of a conflict, with their own contextual traits. The role of mediator can even change partway through conflict – as can many contextual variables of the conflict itself.¹ Mediation is meant to be moldable and is often conducted behind closed doors, so scholars often

¹ Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, eds., “Mediation and Conflict Resolution,” in *The SAGE handbook of conflict resolution*, (Sage, 2008), 342-43.

cannot identify every detail of the strategies employed.² However, there remain a number of unifying factors, and the main goal of this definition is to distinguish the practice of mediation from other similar strategies of conflict resolution.

Context Variables that Influence the Process and Outcomes of Mediation

Mediation efforts are defined by a number of context variables, which impact both the type of mediation strategy that must be chosen as well as the final outcome and effectiveness of the mediation. Jacob Bercovitch described mediation as consisting of four elements: (1) the parties; (2) the issues or the nature of the dispute; (3) the mediator; and (4) the context.³ There exist other frameworks of looking at these variables, but these frameworks tend to still agree on which factors are important to mediation. The impact of each of these elements seems generally accepted, though the individual impacts of characteristics of each of these factors on mediation outcome is up for debate.

Though this paper will not go into every single factor in the depth that it deserves, it will focus on the factors (especially those relating to mediator characteristics) that most correlate to the later analysis.

Nature of the Mediator

The nature of a mediator in many ways defines the effectiveness of the mediated negotiation process. Third-party mediators can be independent individuals or representatives of organizations or states, and their position relative to the conflicting parties may influence how a

² Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, eds., "Mediation and Conflict Resolution," in *The SAGE handbook of conflict resolution*, (Sage, 2008), 341.

³ Jacob Bercovitch, and Richard Jackson, *Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches*, University of Michigan Press, 2009, 35.

successful mediation must be carried out. Mediation by individuals – those not representing state or non-state organization – varies quite a bit depending on who the mediator is, what resources they have at their disposal, the formality of their involvement, etc.⁴ Mediation by organizations can be categorized by different types of organization: regional, international, and transnational. Regional and international organizations – intergovernmental organizations – are made up of states and are often called to mediate issues of their members, generally trying to do so with impartiality. Meanwhile, transnational organizations – non-governmental organizations – are made up of individuals with some common interest. What is common between these different types of organizations is a general lack of the necessary resources for successful mediation.⁵ Mediation by states is the most commonly seen form. States also vary depending on their power on the world stage and many other factors. The mediation efforts of the representatives of states are defined by their position, leeway in deciding on policy decisions, and the resources given to them.⁶ States that mediate may have other intrinsic traits that impact mediation success. It has been seen that there is a correlation between a democratic regime and the frequency and success rate of mediation, for example.⁷

There is no singular, perfect way to carry out mediation, and it is imperative that mediators tailor the format of their efforts according to the crisis they are trying to resolve.⁸ One such aspect that should vary from situation to situation is the use of leverage on the part of a mediator. Leverage can be used as a means to bring both parties of a conflict to a perspective of

⁴ Jacob Bercovitch, "Mediators and Mediation Strategies in International Relations," *Negotiation Journal* 8, no. 2 (1992): 99-100.

⁵ Ibid, 102.

⁶ Ibid, 101-102.

⁷ Molly M. Melin, "When States Mediate," *Penn State Journal of Law and International Affairs* 2, no. 1 (2013): 84-85.

⁸ Kyle Beardsley, "Using the Right Tool for the Job: Mediator Leverage and Conflict Resolution," *Penn State Journal of Law & International Affairs* 2, issue 1 (2013): 58.

mutually hurting stalemate, in which they then see a negotiated settlement as a better option to continued fighting. A mutually hurting stalemate is defined as a point in the conflict where both parties perceive that they have suffered noticeable losses and that the status quo will not yield a better situation for them.⁹ Leverage is used by mediators to cultivate a ripe situation for conflict resolution, presenting “sticks or carrots” to make a negotiated settlement preferable to either party’s best alternative to a negotiated agreement. Examples of this could be threat of military intervention or economic sanctions or the promise of aid. Leverage is often the best solution to resolving commitment issues that may arise during a negotiation process when its incentives are used to hold the actors to their agreement. However, leverage is not something a mediator can always credibly provide, and it needs to be tailored to the situation it is being used in. It has also been argued that an over-use of leverage may be detrimental to the natural progression of the peace process – creating artificial resolutions that do not have the same lasting strength without the presence of the third party.¹⁰ Such concerns have brought forward one perspective that use of leverage should be reserved for situations in which the immediate loss of human life is a risk.¹¹

Mediator rank is another factor that can have an influence on the respect involved parties will view their mediator with. The importance of rank is true not just for the individual carrying out the mediation but also the rank of the state and its position in regards to the other actors in the conflict, if the mediation is being carried out by a state actor. As keenly described by Jacob Bercovitch: “High ranking mediators, because of their legitimacy and resources, are more likely to balance power discrepancies, enhance cooperative behavior, and facilitate a settlement.”¹² If

⁹ I. William Zartman, "Ripeness: The hurting stalemate and beyond," in *International conflict resolution after the Cold War*, National Research Council, 2000, 228-232.

¹⁰ Kyle Beardsley, "Using the Right Tool for the Job: Mediator Leverage and Conflict Resolution," *Penn State Journal of Law & International Affairs* 2, issue 1 (2013): 60.

¹¹ *Ibid*, 60-61.

¹² Jacob Bercovitch and Allison Houston, “Influence of Mediator Characteristics and Behavior on the success of Mediation in International Relations,” *The International Journal of Conflict Management* 4, no. 4 (1993): 301.

the individual carrying out the mediation is not of a similar rank to the representatives of the conflicting parties, the mediator's statements may not hold the same respect as a seemingly more legitimate mediator's might. The differing level of resources a mediator of one rank might hold is also very relevant for giving credibility to the application of leverage.

One natural assumption is that a mediator should be neutral towards the conflict in order to best encourage a strong peace agreement. Some definitions of mediation go as far as specifying that a mediator must be non-biased. However, there has been significant research arguing that biased mediators can be used as a valuable tool for the peace process.¹³ They can encourage both sides to lower their expectations on where the negotiations will settle, since parties might not see their positions as achievable through biased mediation. Bias provides a mediator with a certain degree of leverage over the mediator that they are perceived as being biased towards – making their propositions to this actor more credible.¹⁴ It may also be the case that the most valuable aspect is due to the assumptions that parties may make in perceiving their mediator as biased one way or another, leading even the less-supported actor towards accepting a mediator as credible.¹⁵ When it comes to the long-term durability of peace brought about by mediation, some research shows that biased mediation proves more successful.¹⁶ Then again, not all scholars with this point on the effectiveness of bias, highlighting the dangers of parties not wanting to involve themselves in biased conflict resolution efforts and the fact that bias goes against many of the international ideals that developed conflict resolution concepts in the first

¹³ Isak Svensson, "Research on Bias in Mediation: Policy Implications," *Journal of Law & International Affairs* 2 no. 1 (2013): 17-26.

¹⁴ I. William Zartman, "Introduction: Bias, Prenegotiation and Leverage in Mediation," *International Negotiation*, 13, no. 3 (2008): 306.

¹⁵ Saadia Touval, and William Zartman, eds., *International Mediation in Theory and Practice* (Boulder, CO: Westview Press, 1985), 256-257.

¹⁶ Isak Svensson, "Who Brings Which Peace? Neutral versus Biased Mediation and Institutional Peace Arrangements in Civil Wars," *The Journal of Conflict Resolution* 53, no. 3 (2009): 446-469.

place.¹⁷ Though scholars disagree in this regard, the impact of mediator bias is visible in a number of differing cases.

Yet another variable which is worth considering is the personal traits of individuals and leaders involved in mediation. This paper will not go into great depth in this subject, and many scholars that lean more towards neo-realism do not see this as an important factor, but a newly developing body of research argues that specific individuals are simply better at carrying out mediation for one reason or another relating to their character and/or expertise.¹⁸

Nature of the Involved Parties

The power dynamics of the conflicting parties are particularly important, because they define the balance of power in the conflict and thus the direction negotiations are likely able to go when keeping in mind different parties' best alternatives to a negotiated agreement.

The characteristics of the parties and their similarities/differences will also shape how a mediation can take place. Political norms, culture, economic situation, social structures, religion, language all play a role in the perspective an actor will have towards resolution to the conflict. This can be relevant in many ways. For example, countries may be challenged to come to an agreeable settlement if they are founded on differing justice systems and principles.¹⁹ Because cultural factors vary a lot, the full spectrum of impacts these factors can have is very wide.

¹⁷ Scott S Gartner, "Third-Party Mediation of Interstate Conflicts: Actors, Strategies, Selection, and Bias," *Volume 6 Yearbook on Arbitration and Mediation* (2014): 278.

¹⁸ Joshua Paul Galliano, "The role of personal characteristics in international mediations," *LSU Master's Theses* (2002): 1127-.

¹⁹ John S. Odell and Dustin Tingley, "Negotiating Agreements in International Relations," in *Negotiating Agreement in Politics: Report of the Task Force on Negotiating Agreement in Politics, 144-182*, Edited by Jane Mansbridge and Cathie Jo Martin, American Political Science Association, Dec. 2013: 174.

The previous relationship and history of the involved parties plays a role both in their current perspectives towards each other as well as their ability to negotiate. When actors are able to understand how each other thinks, negotiations naturally play out differently than if there is less common logic to identify.

As already mentioned, mediation strategies should vary depending on the type of actors involved in the conflict. When mediation occurs in an intrastate conflict, there is also the challenge of recognizing rebel groups and non-state actors in negotiations. Simply by doing so they gain a certain degree of legitimacy which may be their main goal from the conflict – making compromise more difficult.²⁰ In such cases, the implications of mediation can be both positive and negative.

Nature of the Conflict and Context of mediation

There is no single, objectively best form of mediation, and the type of mediation a third-party actor may choose to conduct is influenced greatly by a number of factors in the conflict into which they are intervening. Whether a conflict is interstate, intrastate, or some hybrid (as we will see the case is with the Donbas war), mediation must be tailored to fit the conflict.

Conflicts of differing intensity will require different responses. The sides of a conflict will have more anger towards each other with the more damage they take from fighting. Higher levels of intervention may be needed by the mediator with a conflict of greater intensity. However, it has been argued that higher levels of conflict intensity mean a lower likelihood of mediation success.²¹

²⁰ Kyle Beardsley, *The Mediation Dilemma*, (Ithaca: Cornell University Press, 2011), 162.

²¹ Jacob Bercovitch and Jeffrey Langley, "The Nature of the Dispute and the Effectiveness of International Mediation," *The Journal of Conflict Resolution* 37, no. 4 (1993): 675.

The timing of an intervention may also be a factor – on top of the inherent voluntary acceptance of the mediation in the first place. The duration of the conflict at the moment of intervention is a variable that is likely to impact mediation success. There is, however, debate over whether earlier intervention – when positions may still be malleable before full escalation of the conflict – is more successful than later intervention – when the cost of the conflict becomes more visible and continued fighting is already less preferable than negotiation.²²

The issues at stake in a conflict may also define how a conflict must be mediated. It has been identified that when the issues involve territory and national security are present, mediation is less likely to be successful.²³ The difference between tangible and intangible issues is also worth specifying in research.²⁴ Complexity of issues at stake is also another factor that needs to be considered, as differing levels of complexity will allow for different amounts of flexibility in mediation efforts.

There is also the mediation environment – the diplomatic frame of goals that a mediator inserts themselves into. Established norms of mediator repeated over time can also develop a distinct mediation environment. Information from past mediators will impact how future mediation is carried out.²⁵ In general, mediation is seen as a cumulative process where each step forward can lead to greater success in future negotiation.

There are other perspectives of analyzing these contextual variables – such as looking at the pre-existing conflict context, concurrent mediation context, and background mediation

²² Jacob Bercovitch and Jeffrey Langley, "The Nature of the Dispute and the Effectiveness of International Mediation," *The Journal of Conflict Resolution* 37, no. 4 (1993): 676.

²³ Marvin Ott, "Mediation as a Method of Conflict Resolution: Two Cases," *International Organization*, 26, no. 4, (1972): 595-618.

²⁴ Jacob Bercovitch and Jeffrey Langley, "The Nature of the Dispute and the Effectiveness of International Mediation," *The Journal of Conflict Resolution* 37, no. 4 (1993): 676-77.

²⁵ Jacob Bercovitch and Allison Houston, "Why do they do it like this? An analysis of the factors influencing mediation behavior in international conflicts," *Journal of Conflict Resolution* 44, no. 2 (2000): 183.

context – according to their impact on mediation behavior decisions, rather than simply on the final mediation outcome.²⁶ Though this is a valuable perspective for understanding the process of how mediation is conducted and how mediators must adapt to the situation to which they are presented, this particular study will maintain its focus on mediation effectiveness and what factors get in the way of successful resolution to a mediated conflict.

The Practice of Mediation

A large part of what differentiates successful mediation from unsuccessful mediation is how a mediator can take the provided context of their mediation and mold a fitting process to it. Sometimes the resources, timing, and opportunities do not fit together, but other times they do. There is a large amount of research analyzing specific cases of mediation in datasets to identify which outcomes are likely.

When Does Mediation Occur?

Due to the voluntary nature of mediation, motivation is a key element both for the mediator and the consenting parties of the conflict. When is mediation chosen over other options? The truth is that motivation for the actors varies from mediator to mediator, but because mediation efforts are costly for governments to involve themselves in, it is hard to see a mediation effort take place without the mediator's own agenda playing a role.²⁷ Individuals may see benefit in mediation for their own gain from a political situation, for example. They could also use it as an opportunity to proliferate their own values and ideas. Meanwhile, representatives

²⁶ Ibid. 170-202.

²⁷ Saadia Touval, and William Zartman, eds., *International Mediation in Theory and Practice* (Boulder, CO: Westview Press, 1985), 8.

of a state or international organization may see it as their responsibility to intervene or that not intervening in some way would put their region of interest at risk.²⁸ Parties in the conflict will be motivated to seek out mediation when their own attempts at ending a conflict have failed and yet they don't see the status quo as a preferable option. They may see a mediator as a possible route to successful negotiated settlement or as simply a tool to represent their commitment to seeking out other options. They may also think of a mediator as someone to blame for failures in negotiation. This is a way that mediation allows parties to save face amid negotiations.²⁹ It is also importantly the role of mediators to oftentimes give more legitimacy to agreements and allow the parties to trust one another.³⁰ Civil wars represent a potentially risky situation for state actors accepting mediation. When a mediator intervenes in a civil war to guide negotiations between the government and non-state actors, those non-state actors are inherently given some legitimacy by their recognition.³¹ Another examples would be that states are more likely to accept mediation when the actor they face in their conflict is seen as a strategic rival.³² Many factors like this define instances when mediation takes place due to motivated parties willing to accept mediators into the negotiation process.

²⁸ Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, eds., "Mediation and Conflict Resolution," in *The SAGE handbook of conflict resolution*, (Sage, 2008), 345-346.

²⁹ D. G. Pruitt and D. F. Johnson, D. F., "Mediation as an aid to face saving in negotiation," *Journal of Personality and Social Psychology* 14 no. 3, (1970): 239-246.

³⁰ Jacob Bercovitch, Victor Kremenyuk, and I. William Zartman, eds., "Mediation and Conflict Resolution," in *The SAGE handbook of conflict resolution*, (Sage, 2008), 346.

³¹ Molly M. Melin, and Isak Svensson, "Incentives for talking: Accepting mediation in international and civil wars," *International Interactions* 35, no. 3 (2009): 249-271.

³² Molly M. Melin, "When States Mediate," *Penn State Journal of Law and International Affairs* 2, no. 1 (2013): 87.

Mediators as Actors in the Negotiation Process

When thinking of war as a bargaining interaction, as conceived by James D. Fearon,³³ the inclusion of a mediator can be defined as turning a diametric interacting into a triangular one – in which the mediator must now take part in the bargaining process.³⁴ This is integral when visualizing the impact of mediators in the peace process. After all, mediators themselves likely have a direction they want to see the conflict resolved, if they got involved in the first place.

The Mediation Process & Strategies Employed by Mediators

Mediators and the parties of a conflict must make a decision as far as how much they will intervene in the negotiation process and how much control they will have over the proceedings. Scholars have identified a number of ways to categorize the strategies employed by mediators. One such classification, as devised by Touval and Zartman and often employed by Bercovitch, splits the actions taken by mediators into three strategies: (1) communication-facilitation strategies, (2) procedural-formulation strategies, and (3) manipulation/directive strategies.³⁵ Communication-facilitation represents the least amount of leverage or control over the negotiation process – focusing on getting the conflicting parties to the negotiating table, providing neutral information, building trust, encouraging the articulation of interests, and similar tasks. Procedural-formulation builds past that, giving the mediator a more organizational role of determining meeting details as well as establishing and maintaining the environment in which mediation will take place – focusing on keeping the negotiation process moving.

³³ James D. Fearon, "Rationalist explanations for war," *International Organization* 49, no. 3 (1995): 379-414.

³⁴ Saadia Touval, and William Zartman, eds., *International Mediation in Theory and Practice* (Boulder, CO: Westview Press, 1985), 10.

³⁵ Saadia Touval, and William Zartman, eds., *International Mediation in Theory and Practice* (Boulder, CO: Westview Press, 1985), 10-13; Jacob Bercovitch, "Mediators and Mediation Strategies in International Relations," *Negotiation Journal* 8, no. 2 (1992): 103-105.

Manipulation/directive strategies are when a mediator takes a new level of involvement in the conflict, using leverage for positive incentives or deterrents to re-frame the negotiation process and the perspectives of the parties in dispute.³⁶ In addition to this, there has been much analysis of when each of these strategies work and when they are chosen.

The Effectiveness of Mediation

It is important to define what we mean when we are looking for mediation “success” or “effectiveness.” In many ways, the definition of success is not a straight-forward thing. Bercovitch argues outcomes of conflict resolution can be defined as being both successful and unsuccessful by different people. Furthermore, he argues that the more important factor to identify when it comes to mediation is whether the situation has changed for the better due to mediation efforts. Identifying change is equally challenging.³⁷ This perspective is a valuable one, though one could also define success of conflict management efforts like mediation by their ability to lead a conflict to “negative peace” and possibly closer to “positive peace” as well. The concepts of positive and negative peace were conceived by Johan Galtung and can be briefly summarized as an absence of direct violence and an absence of indirect violence respectively.³⁸ When asked in an interview how we can show that peace has been achieved, Galtung responded, “You will find that the violence starts disappearing. And not only the physical violence, but also the nasty feelings... What happens instead is that people start cooperating... There is a reason for it, and the theory is actually quite simple. You can say hatred is a psychological preparation

³⁶ Jacob Bercovitch and Su-Mi Lee, “Mediating International Conflicts: Examining the Effectiveness of Directive Strategies,” *The International Journal of Peace Studies*.

³⁷ Jacob Bercovitch, “Mediation Success or Failure: A Search for the Elusive Criteria,” *Cardozo Journal of Conflict Resolution* 7 (2005): 301.

³⁸ Johan Galtung, “Violence, peace, and peace research,” *Journal of Peace Research* 6, no. 3 (1969): 167-191.

for violence... [Hatred becomes unnecessary when] a conflict transformation has happened, and violence is now unlikely.”³⁹ Even something like an absence of hatred would be difficult for scholars to define, but a lessening of violence is generally more identifiable.

Because of the types of conflict in which mediation is employed, there may be a misperception at the ineffectiveness of mediation as a process rather than the difficulty in any sort of negotiation strategy when applied to certain situations.⁴⁰ Some scholars have argued that since mediation is generally employed in some of the toughest conflicts to resolve, it naturally has a lower success rate and the implication that peace brought about by mediation may be less durable than in other situations.⁴¹

There is also another perspective implying that mediated settlements are weaker than their naturally negotiated counterpart. As devised by Kyle Beardsley, the “mediation dilemma” essentially argues that mediation, due to its nature of applying temporary pressures in the negotiation process to ensure that peace would be preferable to an actor’s best alternative to a negotiated agreement, oftentimes leads to peace that does not last very long after a negotiated settlement.⁴² Beardsley writes that the vulnerabilities of mediation lead to a number of policy recommendations and implications including: (1) more sparing use of mediation there is a great potential for a costly failure, (2) awareness of legitimacy issues, (3) care in intervention when actors in the conflict can gain something simply through the mediation and not peaceful settlement, (4) third-parties should exercise care in intervening when coordination would prove difficult for the implementation of a peaceful settlement, (5) the attenuation of leverage limits the

³⁹ Ben Baruch, *An Interview with Johan Galtung*, Peace Insight, 2012,

<https://www.peaceinsight.org/ar/articles/interview-johan-galtung/?location=sudan&theme=peace-education>.

⁴⁰ Scott S. Gartner, "Deceptive Results: Why Mediation Appears to Fail but Actually Succeeds," *Penn State Journal of Law and International Affairs* 2, no. 1 (2013): 27-37.

⁴¹ Scott S. Gartner and Jacob Bercovitch, "Overcoming obstacles to peace: The contribution of mediation to short-lived conflict settlements," *International Studies Quarterly* 50, no. 4 (2006): 819-840.

⁴² Kyle Beardsley, *The Mediation Dilemma*, (Ithaca: Cornell University Press, 2011).

durability of negotiated settlements, (6) low-key involvement of a single mediator can be effective in the long-run, and concluding that (7) mediation is generally worthwhile when there is more to gain than potential downsides.⁴³ Though there is not the space nor context to go into each of these points in greater depth, many of these implications will be applied to the current mediation situation in the Donbas conflict, attempting to identify whether scholars and policy-makers involved in the conflict recognize the implications as well.

⁴³ Ibid, 183-192.

III. Mediation in the Donbas Conflict

Efforts to fully resolve the conflict in Donbas have been going on for over six years, but only limited successes have been achieved. There are less battlefield deaths than there were in 2015, high-caliber military weapons such as artillery have been moved from the frontline for the most part, but breaches of the ceasefire happen regularly, and people still die due to the conflict. In order to examine the lack of effectiveness of mediation efforts in Ukraine, scholars generally bring forward two categories of problems: (1) challenges carried by the conflict which prevent negotiation success and (2) issues in how mediation the negotiation process is able to be carried out without a conclusion to the conflict.

Barriers in the Conflict

There are a number of possible factors in the conflict itself that could lead to a difficulty in resolving it through mediation. One repeated perspective is simply that the conflict is not yet ripe for resolution – that a mutually hurting stalemate has not been reached and that parties to not yet perceive a reliable way out of the conflict. However, a number of scholars have still made the argument that such a mutually hurting stalemate has been reached.⁴⁴

The power dynamics of this conflict are yet another focal point of existing literature. Russia has one of the strongest militaries on the globe, which provides it with a strong amount of deterrence and kinetic diplomacy when it wishes to use it. However, Russia has not committed itself to the war – making it a strange hybrid between an interstate and intrastate conflict.

⁴⁴ Jakob Landwehr, “No Way out? Opportunities for mediation efforts in the Donbas region,” *East European Politics* 35, no. 3 (July 24, 2019): 294.

Not Quite a Civil War

One of the key complexities in the Donbas conflict is that it falls somewhere between an interstate and intrastate conflict. The involvement of Russian troops in the conflict is continually denied by the Kremlin, as there is no declared war between Russia and Ukraine, and yet Ukraine affirms that it will not budge from its positions until Russian troops are withdrawn from Donbas. The war is seen as a “gray zone” conflict, since details of the actors and their positions remain hidden.⁴⁵ Gray zone conflicts are especially difficult to resolve due to the higher-level tactics employed by the involved actors in the conflict.⁴⁶ As written by some scholars on the topic of the Donbas war: “A key reason mediation has proved ineffective in gray zone crises like this is that actors on both sides anticipate being able to use mediation to control the actions of their opponents within reasonable limits and thus engage in hostile interactions with bearable costs.”⁴⁷ One of the possible ways around this complexity is to address the conflict from a higher-level via track-two diplomacy before moving to track-one diplomacy.⁴⁸ However, many of the complexities of wars like this are only further entangled by new and developing technologies and ways states can interfere with each other. Because of this, there is still much to learn in how to resolve a gray zone conflict.

⁴⁵ David Carmen, Milana Nikolko, and Dani Belo. “Gray zone mediation in the Ukraine crisis: comparing Crimea and Donbas.” (2019): 124.

⁴⁶ Ibid, 126.

⁴⁷ Ibid, 125.

⁴⁸ Ibid, 139.

Political Challenges

Another perspective often brought up is that Ukrainian domestic politics are getting in the way of resolution of the conflict. In addition to Ukrainian political challenges such as corruption, Russian political influence over the country is also a dangerous factor.⁴⁹ Disinformation in the media is a challenge very closely tied to this conflict. The Ukrainian populace is still split on how they want to see the conflict resolved.

There are some that feel that Ukraine and Russia no longer have any common ground to find in the negotiation process and that they have only grown more politically separated.⁵⁰ However, more recent political shifts seem to show some hope. US Deputy Secretary of State Stephen Biegun said, “Deputy Prime Minister [Reznikov] and the Zelensky administration’s efforts have produced the most progress in six years. The strong leadership of the Ukrainian government engaging directly with Russia makes it that much easier for the US to play an important supporting role.”⁵¹ This message demonstrates the importance that the US recognizes in bilateral discussion between Ukraine and Russia rather than just mediated discussion, however.

Barriers in Negotiation

The format of the Trilateral Contact Group meant that at least initially there were rapid successes in the mediation process, possibly due to the link to very high political levels.⁵²

⁴⁹ “Russia’s War in Donbas: Ripe for a Resolution? (English),” United States Institute of Peace, Oct. 19, 2020, video, 1:16:38, <https://www.youtube.com/watch?v=hWAivgXwGDc>.

⁵⁰ Sabine Fischer, *The Donbas Conflict: Opposing Interests and Narratives, Difficult Peace Process*, (Berlin: Stiftung Wissenschaft und Politik, April, 2019), 32.

⁵¹ “Russia’s War in Donbas: Ripe for a Resolution? (English),” United States Institute of Peace, Oct. 19, 2020, video, 1:16:38, <https://www.youtube.com/watch?v=hWAivgXwGDc>.

⁵² Christian Schlöpfer, “Ukraine Crisis and Mediation: Not Business as Usual,” *Security and Human Rights* 27, (Sep. 2016): 334-336.

However, the actions of OSCE mediation and these high-level formats only fulfilled the conflict management portion of the peace process, and new actions need to be taken to move further along⁵³

Though not initially carried out by mediators of the conflict, western sanctions against Russia have since become a part of mediation leverage in enforcing Minsk II. In many ways, Minsk II filled a hole for US foreign policy to justify their continued sanctions against Russia and give them a purpose.⁵⁴ The full impact of these sanctions is difficult to factor.⁵⁵ Their effect becomes stronger as time progresses, however the economic challenge of reintegrating Donbas also becomes more costly as time progresses.⁵⁶

Flaws in Mediation

The OSCE is identified as the main mediator of the conflict, and it is obviously very closely tied to the European Union. Despite the importance of the OSCE in managing the conflict, the key decisions for the Minsk Agreements were not made through the Trilateral Contact Group format under OSCE mediation but rather through the Normandy Format,⁵⁷ but even its mediating members – the leaders of France and Germany – are obviously tied to the EU. There are some arguments that the actors involved in mediation are not fit for the job. For example, there is criticism of the EU for focusing too much on the short-term.⁵⁸ Since the EU has

⁵³ Ibid, 336-337.

⁵⁴ Michael Kimmage, *Getting Beyond Minsk: Towards a Resolution of the Conflict in Ukraine*, (Transatlantic Academy, 2017) 3-7.

⁵⁵ Jakob Landwehr, “No Way out? Opportunities for mediation efforts in the Donbas region,” *East European Politics* 35, no. 3 (July 24, 2019): 298-300.

⁵⁶ Peter Havlik, Artem Kochnev, and Olga Pindyuk, Economic Challenges and Costs of Reintegrating the Donbas Region in Ukraine, *Vienna Institute for International Economic Studies*, June, 2020.

⁵⁷ Stefan Lehne, *Reviving the OSCE: European Security and the Ukraine Crisis*, (Carnegie Europe, Sept. 2015), 8.

⁵⁸ Natalia Chaban et al., “Perceptions of EU Mediation and Mediation Effectiveness: Comparing Perspectives from Ukraine and the EU,” *Cooperation and Conflict* 54, no. 4 (Dec. 2019): 506-523.

its own interests involved in the conflict, it does thereby represent a biased mediator. This bias is perceived by Ukraine and presumably Russia, though data is less available for that perspective, and it is not seen as helpful to negotiations.⁵⁹ On the other hand, the EU has carried out a number of actions providing leverage to ending the conflict, such as imposing economic sanctions, applying diplomatic pressure, and taking a political stance against the armed conflict. These actions will not bring negotiation success on their own, however.⁶⁰

Flawed Agreements

Minsk II was the closest the mediation process got to an effective negotiated settlement to end the conflict, but there is also a perspective that the points presented in this treaty are now holding back further negotiations. Jakob Landwehr argues that in the instance when Minsk II was signed, the best alternatives to a negotiated agreement held by the parties of the conflict were less desirable than the agreement.⁶¹ However, not long after Minsk II was signed, this situation shifted such that the parties no longer felt the same pressure to end the conflict, but the points of the Minsk II agreement still continue to form the positions that the parties hold on to, without acknowledging the oppositions interests. People have begun to call this halt of successful negotiations “the Minsk II stalemate.” Landwehr presents the use of different leverages as a possible road forward to shifting the conflicting actors’ best alternatives to a negotiated agreement.⁶²

⁵⁹ Ole Elgström, Natalia Chaban, Michèle Knodt, Patrick Müller, and Sharon Pardo, "Perceptions of the EU's Role in the Ukraine-Russia and the Israel-Palestine Conflicts: A Biased Mediator?" *International Negotiation* 23, no. 2 (2018): 299-318.

⁶⁰ Mihaiela Buse, "The Role of the European Union in Conflict Resolution in Ukraine," *Annals: Series on Military Sciences* 7, no. 1 (2015): 65-66.

⁶¹ Jakob Landwehr, "No Way out? Opportunities for mediation efforts in the Donbas region," *East European Politics* 35, no. 3 (July 24, 2019): 292.

⁶² *Ibid*, 297-298.

A number of flaws in the Minsk agreements have been identified. Many of the actions asked for in the points of these documents are vague in their definitions of which actors should be carrying them out – phrasing things in a bilateral way but without putting enough pressure on the offending parties.⁶³ This approach is especially easy on Russia, as it further contributes to President Putin’s claims of Russian troops not being present in the Donbas region. Nothing in the Minsk agreements directly identifies Russian military action or the responsibility of Russia to act.⁶⁴

However, there is undeniable value to the existence of the Minsk agreements, even if many current scholars agree that their full implementation does not appear on the horizon. They ceased the full-scale combat that was occurring on the contact line between Donbas and the rest of Ukraine through 2014 and much of 2015. Current actors involved in the negotiations agree that Minsk is flawed and needs to be modernized.⁶⁵ The Minsk Agreements are not legal documents and have no force over Ukraine or Russia, but many see them as a jumping point to more legally-binding agreements.

Uncooperative Actors

Another very common perspective is that the different actors are not being fully cooperative with the peace process. There are a number of possible commitment issues which could be holding back the peace process. Russia is continuously blamed for uncooperative behavior, and much of this is accurate. President Putin continues to deny the presence of Russian

⁶³ Tim B. Peters and Anastasiia Shapkina, “The Grand Stalemate of the Minsk Agreements,” *Konrad Adenauer Stiftung*, country report, Feb. 2019, 3.

⁶⁴ Sabine Fischer, *The Donbas Conflict: Opposing Interests and Narratives, Difficult Peace Process*, (Berlin: Stiftung Wissenschaft und Politik, April, 2019), 12.

⁶⁵ “Russia’s War in Donbas: Ripe for a Resolution? (English),” United States Institute of Peace, Oct. 19, 2020, video, 1:16:38, <https://www.youtube.com/watch?v=hWAivgXwGDc>.

troops in Donbas and has since 2014. Because of this, Russia seems to have almost taken up a role as another mediator in the negotiations to end the conflict rather than the position Ukraine sees them in – their opponent. Ukraine perceives the rebels to some degree as Russian citizens (since they were given citizenship by the Russian Federation) and thus representatives of Russian ideas.⁶⁶ Meanwhile, Ukrainian officials continue a dialogue that they will hold fast to Crimea and not accept any bargain giving it away to Russia for a return of Donbas.⁶⁷ They also continue to frame Ukraine as completely cooperative in the negotiation process and never holding a lack of willingness to fulfil commitments involved in the Minsk Agreements – saying that the lack of willingness comes purely from Russia.⁶⁸ This rhetoric is also very common to see in Western news sources.

Continued Hope for Resolution

The recent COVID-19 pandemic and its implications should not be forgotten. Some have identified it as a possible ripe moment for resolution of the conflict, but no such success has occurred. The pandemic served as one of the greatest factors in stopping battlefield deaths recently. The Normandy Format has continued to hold meetings virtually through this global crisis.⁶⁹

Another idea that policy-makers are grasping to is the fact that the Novorossiya Confederation (a Russian-backed effort to create a joint government between the republics of

⁶⁶ “Russia’s War in Donbas: Ripe for a Resolution? (English),” United States Institute of Peace, Oct. 19, 2020, video, 1:16:38, <https://www.youtube.com/watch?v=hWAivgXwGDc>.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

Donetsk and Luhansk) was a failure, which should have implications towards Russia's continued intentions in Ukraine.⁷⁰

Whatever resolution might be able to occur must be pragmatic for all parties. One proposal in 2016 called the "Steinmeier Formula," named for German Foreign Minister and OSCE Chairperson-in-Office Frank-Walter Steinmeier who wrote it, recommends a possible compromise of how elections could be run in the Donbas (something Russia and the rebel groups want) while requiring a carefully managed removal of troops from the border (something Ukraine wants).⁷¹ Though there have been moments where both parties stated their approval of the Steinmeier Formula, none of its steps have been accomplished.

Summary of the Existing Literature

Though some of these points have been touched on, there has been much less emphasis than there should be on the effects of mediator bias, credibility, and leverage – or a lack thereof – on the failure of mediation efforts trying to end the Donbas conflict. Moreover, it seems that contemporary theories are only recently coming to see the negative effects of the interconnectedness between ongoing negotiations and those of the flawed Minsk agreements.

Much existing literature also seems to ignore the changing circumstances of the conflict and the damage that an over-reliance on failed agreements from over five years ago have on ongoing mediation attempts. Only more recent scholars seem to identify this as a challenge. It is not possible to challenge Russia's position of denying involvement in the conflict while acting as

⁷⁰ Ibid.

⁷¹ Sabine Fischer, *The Donbas Conflict: Opposing Interests and Narratives, Difficult Peace Process*, (Berlin: Stiftung Wissenschaft und Politik, April, 2019), 12-13.

if they are another mediator within the Normandy Format without also challenging the Minsk Agreements.

It is important to recognize that the majority of Western think-tanks and scholars writing about the conflict imagine success in terms of a situation that the West would be supportive of. There are countless examples of possible solutions to the conflict that rely on external parties applying pressure on Russia to accept a peaceful settlement that goes against the interests of the Kremlin. However, it is much harder to find anyone arguing for a solution which applies more pressure on Ukraine to accept a solution that benefits Russia. This may be for the best, and yet the fact that the existing Minsk Agreement does not apply any direct pressure to Russia in the first place makes that perspective somewhat nonsensical.

IV. Conclusions

Judging from the failure to implement the Steinmeier Formula, it is clear that the parties still see something to gain from this in-between stage of negotiations without complete negative peace. Russia does not have a strong enough reason to pull back its troops, since they technically have never been recognized outright by any part of the Minsk Agreements. Russia is able to use their troops as a spoiler to conflict resolution, since Ukraine cannot carry out elections without the removal of Russian troops. Russia is content with waiting until a proposal that they fully approve of comes their way. In many regards, this shows a failure of the leverage applied by the West in their use of sanctions. Other scholars have argued that the moment when Minsk II was signed was one moment when the conflict was ripe for resolution, but it is likely that this moment is now gone and the poorly structured agreement may have frozen all future attempts at resolving the conflict through the Trilateral Contact Group and Normandy Format.

Though Donbas is much safer than it was before Minsk II was signed, the conflict is far from over. Breaches of the ceasefire continue to occur, and the fear that Ukraine feels while holding on to the fragile Minsk II agreement demonstrates that there is the potential for more violence.

Though the influence of previous negotiations on future ones in a conflict is undeniable, whether those previous negotiations always present a positive impact should be challenged, especially when the effects of such negotiations have been limited in creating negative peace. Kyle Beardsley makes the recommendation that “outside actors should intervene more carefully

when the disputants could benefit from using mediation for ends other than peace.”⁷² This statement is meant to apply mainly to intrastate conflicts when non-state actors can gain the legitimacy that they are seeking even without seeking peace, but this situation of the Donbas War presents a new side to this problem. There are a number of reasons to argue that Russia has gained from the mediation process and the Minsk Agreements in that it has not been required to make any major concessions. These implications were not properly considered before the formation of the Trilateral Contact Group or the Normandy Format, and mediation efforts in Ukraine may have found themselves facing a new kind of “mediation dilemma.”

This paper hypothesizes that mediation efforts in Ukraine were doomed to failure ever since the signing of Minsk II not due to power asymmetries between Ukraine and Russia or the parties not reaching a mutually hurting stalemate, as argued by some past scholars, but instead due to the weak leverage that the OSCE and other mediators have been able to apply towards Russia and that their perceived bias towards Ukraine allowed for a situation where Ukraine has agreed to a settlement not directly addressing Russian involvement in the war. These two characteristics of the mediators have generated the third factor of the flawed Minsk Stalemate which goes against the idea that mediation efforts build cumulatively towards success.

This paper would also like to present the ongoing war in Donbas as a potential area for deeper research into mediation of gray zone conflicts. Though recent scholars have already begun the shift towards condemning the Minsk Stalemate, far less have identified the larger implications of this type of stalemate in other conflict scenarios to avoid similar failures in the future.

⁷² Kyle Beardsley, *The Mediation Dilemma*, (Ithaca: Cornell University Press, 2011), 185.

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