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GEORGIA'S CONFLICTS: WHAT ROLE FOR THE EU AS MEDIATOR?

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ACRONYMS

ENP	European Neighbourhood Policy
ESDP	European Security and Defence Policy
EU ISS	Institute for Strategic Studies of the European Union
EUMM	Monitoring Mission of the European Union
EUSR	Special Representative of the European Union
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
IIFMCG	International Independent Fact-Finding Mission on the Conflict in Georgia
IPRM	Incident Prevention and Response Mechanism
JCC	Joint Control Commission
JPKF	Joint Peacekeeping Force
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OSCE	Organisation for Security and Cooperation in Europe
UNOMIG	United Nations Observer Mission in Georgia
USSR	Union of Soviet Socialist Republics

EXECUTIVE SUMMARY

The EU has taken on a robust conflict-resolution role in Georgia since August 2008, but its mediation efforts have had limited results to date. Assorted political and bureaucratic hurdles have constrained them. The EU has also failed to develop effective strategic links between its mediation efforts on Georgia's conflicts and its separate bilateral negotiations with each of Georgia and Russia. Its determination to respect Georgia's territorial integrity, while politically understandable, has impacted on the EU's acceptability as a mediator to some of the parties. The EU should seek to engage in a more nuanced and strategic way, while not necessarily compromising on its political positions.

The security and political landscape in Georgia and the South Caucasus has been transformed by the August 2008 war and Russia's subsequent recognition of both regions. Security remains precarious: the 16-year-old security mechanisms led by the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE) have been dismantled, and there are many more Russian soldiers in Abkhazia and South Ossetia than prior to the conflict, in violation of the August and September 2008 agreements. The multi-party peace talks in Geneva, where the EU acts as one of mediators, focus on security and return of displaced people. But insider observers say they see few opportunities for substantive progress, given the parties' differences and intransigence.

The EU has significantly upgraded its role in the conflict-resolution process since August 2008. The then Presidency of its Council brokered a ceasefire in 2008 and since then the EU has offered strong political backing to Georgia's territorial integrity; pledged significant aid for Georgia's reconstruction; created an additional EU Special Representative position for the Georgia crisis, and deployed a monitoring mission in the Georgian-controlled territories. It also set up an international fact-finding mission into the circumstances of the war. Concurrently, it launched an Eastern partnership initiative to support its ties with Georgia, Ukraine, and other countries on Russia's periphery.

While this appears on the face of it to be a robust third-party intervention, the EU's achievements have been mixed. There are many objective factors that limit the scope for a breakthrough in the mediation – such as Russia's security and political stakes in the region, including in Abkhazia and South Ossetia; the intractability of the Georgian-Abkhaz and Georgian-Ossetian conflicts; the absence of a mutually hurting stalemate or of “ripeness” for resolution on all levels. But the problems are not just external – many political and bureaucratic factors within the EU undermine the effectiveness of its engagement. Most importantly, its member states are deeply divided over Russia, which results in different states favouring divergent approaches to the region. On the bureaucratic front, the different EU institutions involved have not always been on the same page; their mandates and policy lines should be better coordinated.

The Lisbon Treaty reforms should improve this, but will not be sufficient on their own. The EU institutional reforms will not address the differences between state interests of EU members. On the institutional front, the planned re-design and the External Action Service that is being established should solve some of the bureaucratic hurdles in the longer term. But the current state of flux and planned staffing and portfolio changes are likely to have an adverse effect in the short to medium term.

The EU's engagement in the context of Georgia's conflicts can best be characterised as negotiation-cum-mediation. The EU negotiates with Russia and Georgia independently on a wide range of bilateral issues, many of which have direct relevance to the EU's mediation efforts between all parties involved in these conflicts. But the EU has not taken robust enough policy positions in these bilateral settings to play a truly effective role and has allowed its internal divisions to undermine the leverage it could bring as mediator.

Conflicts involving Georgia are playing out at three different levels: the local, regional and geopolitical. The local Georgian-Abkhaz and the Georgian-Ossetian conflicts are deeply interconnected with the regional Georgian-Russian conflict. Both of these levels, framed by geopolitical standoffs between Russia and the United States/European Union, are more entrenched than ever and not “ripe” for resolution. But the EU’s overarching primary focus on the Georgian-Russian conflict ignores deep-seated grievances and the intractability of the Georgian-Abkhaz and Georgian-Ossetian conflicts. Unless all levels of conflict are addressed at the same time, with strong strategic incentives and disincentives applied to each side, EU’s mediation efforts will not be as efficient as they could be.

The EU’s strong bias in favour of Georgia’s territorial integrity makes it an actor whom neither the Abkhaz nor Ossetians trust or accept when it comes to some of the potential peacebuilding roles it could play. Although partial mediators may, in theory, be more successful than impartial ones, this has not proved to be the case here. The EU, while partial, should try to build its credibility as being even-handed. It should foster further engagement with constituencies in Abkhazia and South Ossetia to provide an alternative to their ever-speedier drift into Russia. Technical support to engagement policies will have limited impact if not coupled with strong political backing.

These recommendations seek to draw on the EU’s experiences to date to illustrate what the EU can do to strengthen its mediation efforts in this context and elsewhere. Specifically:

- The EU should seek to foster a deeper strategic link between its bilateral negotiations and its mediation efforts.
- The EU should explore interest-based approaches to its mediation efforts as much as possible.
- The multitude of actors representing the EU (from member states to the various EU institutions) should seek to address coordination challenges in a more substantive way.
- The deeply divergent interests and positions of the different member states have significantly limited the EU’s institutional mediation role in the Georgian context: the EU should develop strong unified approaches to back up its political positions, at a minimum, on clear-cut issues such as ceasefire implementation or security in the ceasefire line areas.
- The EU’s own capacity to implement transformative approaches to conflict resolution should be bolstered. The EUSRs involved in conflict-related work should benefit from specific conflict-resolution/mediation expertise.
- In complex conflicts, the EU should focus on all levels of conflict simultaneously on parallel tracks. In this case, it should seek to address both the Georgian-Russian as well as the Georgian-Abkhaz and Georgian-Ossetian conflicts.
- In protracted conflicts, the EU should work to substantively address the deep-seated causes of intractability and the root causes of the conflict, in addition to security, livelihoods or displacement issues.
- If and when the EU adopts a position partial to one side, while also acting as a mediator, it needs to develop creative policies that will facilitate its acceptability to the other side.

Keywords: Georgia, Abkhazia, South Ossetia, conflict, mediation, European Union

BACKGROUND

Facing a deep security crisis in its neighbourhood due to the August 2008 Georgian-Russian war, the EU has stepped up its engagement in Georgia's conflicts: it brokered a ceasefire of the August 2008 war and has taken on a stronger mediation role between the parties to conflict. But the security remains fragile, with some of the ceasefire regime's provisions unfulfilled, and there has been little substantive progress in the EU-mediated negotiations.

CONFLICT OVERVIEW

Georgia's conflicts are playing out on three different levels – the local, the regional and the geopolitical.¹ These layers of conflict are deeply interwoven. Each party tends to emphasise an analysis and aspects of the conflict that reflects its primary political and security considerations – and strengthen its political arguments. The question of what these conflicts are about and even who constitutes a party has reflected one of the key dimensions. This deeply affects the sides' conflict-resolution strategies and has an impact on the type of resolution each of them pursues.

THE GEORGIAN-OSSETIAN AND GEORGIAN-ABKHAZ CONFLICTS

The Georgian-Ossetian and Georgian-Abkhaz disputes are deeply rooted in Soviet history, which all sides interpret in different ways, and the Union's nationality policies. Both conflicts erupted into large-scale violence as the USSR fell apart and competing claims – Tbilisi's for territorial integrity, versus the national self-determination claimed by the Ossetians and Abkhaz – could no longer be reconciled within the disintegrating empire.

Warfare in South Ossetia lasted from January 1991 to June 1992 and brought about some 1,000 deaths, the displacement of tens of thousands, and extensive destruction of the region.² Ossetian forces gained control of large parts of South Ossetia although ethnic Georgian villages in the zone of conflict remained under the control of Tbilisi. A chessboard-like pattern of mixed settlements resulted, whose security and governance has posed challenges to both sides.

The Russian-brokered Sochi Agreement of June 1992 produced a ceasefire, safeguarded by joint Georgian, Ossetian and Russian forces under Russian command. It also established a quadripartite negotiation mechanism, the Joint Control Commission (JCC) with Georgian, South and North Ossetian and Russian participation³

The August 1992-September 1993 fighting in Abkhazia left some 8,000 dead, 18,000 wounded and Abkhazia's infrastructure in shambles.⁴ Some 250,000 people,⁵ mainly ethnic Georgians, were displaced and have been unable to return except to Abkhazia's southernmost district, Gali. Abkhaz troops established control of the entire former autonomy, except the Kodori Gorge. Negotiations between the sides took place in the United Nations-led Geneva process up until the August 2008 conflict. A broader Geneva multi-party negotiation mechanism was launched in late 2008 to further talks between Tbilisi, Moscow, Sukhumi and Tskhinvali, as described below.

1 The analysis in this section was set out in greater detail in M. Fricova (May 2009). *Transitional justice and Georgia's conflicts: Breaking the silence*, ICTJ. Its contextual parts are based on research conducted in the region during my work with International Alert, the High Commissioner on National Minorities, the OSCE Mission to Georgia and International Crisis Group in 1999-2009.

2 International Crisis Group (26th November 2004). *Georgia: Avoiding war in South Ossetia*, Europe Report N°159, 4.

3 Ibid., 4.

4 International Crisis Group (15th September 2006). *Abkhazia Today*, Europe Report N°176, 5.

5 Ibid., 5.

During the 1990s, a status quo was established which effectively managed the political and security situation and ensured that the conflicts remained relatively benign, or “frozen”, as many have called them. Ceasefires largely held in the first decade since their conclusion, although the security and human rights situation in both conflict zones remained precarious.

THE GEORGIAN-RUSSIAN CONFLICT

The Georgian-Russian conflict overlaps with the above described conflicts to a great extent and has often played out in Georgia's breakaway areas. Prior to the August 2008 war, Russia's interventions in Georgia's breakaway regions and Georgia's assertive conflict-resolution policies added new sources of conflict to existing root causes, deep-seated grievances and tensions between Georgians, Abkhaz and Ossetians. But the Georgian-Russian conflict reaches well beyond the conflict areas alone.

Tensions between Georgia and Russia have festered, with varying degrees of intensity, since Georgia seceded from the Soviet Union and declared independence in 1991. Aggrieved by lethal violence against anti-Soviet Georgian demonstrators in Tbilisi on 9th April 1989, Georgia sought the speediest possible separation from the USSR. Its autonomous republics and regions, weary of growing Georgian nationalism, hoped for Moscow's support. When conflicts in South Ossetia and Abkhazia broke out, an array of actors – from North Caucasian volunteers to the independent-minded military in Russia's Southern region – contributed to the victory of separatists in both wars. Moscow brokered ceasefires and assumed a peacekeeping role. But as time progressed, its political economic and military investment in Abkhazia and South Ossetia undermined its impartiality and irritated and threatened Tbilisi.

Relations between the two countries plummeted to unprecedented lows shortly after Mikheil Saakashvili came to power. The new president pressed to change the status quo in the conflict-resolution processes and sought a speedy integration into NATO and the EU. The period from 2004-2008 was marked by security and diplomatic incidents between the two countries. Moscow tried to pressurise Georgia by imposing a trade embargo and closing land, air and postal links. Antagonistic rhetoric accompanied repeated disruptions of diplomatic relations. Bitter relations between presidents Saakashvili and Putin added personal stakes. The unilateral deployment of additional Russian troops, allegedly peacekeepers, and of military equipment in Abkhazia in April and May 2008 caused unparalleled security concerns in Tbilisi⁶

A full-out conflict broke out in August 2008. Following a build up of Russian troops in the North Caucasus and dramatically deteriorating security in South Ossetia, on 7th-8th August, Tbilisi launched a military operation against Tskhinvali and Moscow shortly afterwards rushed 'to help Russian citizens' in South Ossetia. Russia moved large numbers of troops first into South Ossetia and Abkhazia, and later deep into Georgia's territory. The Georgian army was dispersed. Russia occupied areas within Georgia proper, until pulling back into Abkhazia and South Ossetia, pursuant to ceasefire agreements signed on 12th August and 8th September 2008.⁷

The conflict had tragic consequences: hundreds of civilians were left dead; some 30,000 remain unable to return to their homes with displacement having peaked at close to 150,000 at the height of fighting.⁸ The Russian, Georgian and Ossetian sides violated the laws of war, leaving behind thousands of victims of abuse and violence. There was severe damage to infrastructure and civilian property. Tbilisi lost control of additional territories in and around the zones of conflict.⁹ With inter-ethnic relations damaged beyond short-term repair, it likely also lost prospects of reaching its aim of reuniting Georgia in the foreseeable future. The country's economy, trade relations and foreign investment suffered a severe blow.

In late 2008, the Geneva consultations on security and stability were launched, bringing together representatives of Tbilisi, Moscow, Sukhumi and Tskhinvali. Co-mediated by the EU, UN and OSCE, the talks got off to a slow start and are still a loose mechanism. They are yet to produce any substantive results. But it is arguably a significant achievement that the parties/sides to conflict continue to participate in the process, especially

6 M. Frichova (May 2009). *Op.cit. Also, Georgia: Sliding towards authoritarianism?* Europe Report N°189, 19th December 2007.

7 International Crisis Group (22nd August 2008). *Russia vs. Georgia: The fallout*, Europe Report N°195, <http://www.crisisgroup.org/home/index.cfm?id=5636&l=1>

8 Interview with Georgian Ministry for Refugees and Accomodation official, Tbilisi, December 2008.

9 Human Rights Watch (23rd January 2009). *Russia/Georgia: All parties in August/South Ossetia conflict violated laws of war*, Human Rights Watch report.

given the impasse of the current conflict-resolution context and given that the JCC and UN mechanisms were insufficiently effective during the 16 years of their existence.

RUSSIA AND THE WEST

These conflicts have festered in the context of a geo-strategic dispute between Russia and the US/EU, players whose intentions for and interests in the South Caucasus have often been at cross purposes.

NATO's extension plans to include Georgia and Ukraine, as formulated in spring 2008 in Bucharest, have deeply angered Moscow. So has the Western recognition of Kosovo's independence which Russia has viscerally protested. Competition over economic influence in the region, especially over energy supply routes, has also been fierce: the Caucasus region is the only real alternative corridor for Caspian oil and gas to reach Europe circumventing Russia.

The Western endorsement of Saakashvili's leadership was unreserved until Georgia's domestic crisis in November 2007 made authoritarian leanings difficult to ignore.¹⁰ The failure on the part of the US, and to a lesser degree also the EU, to invite the Georgian leadership to full accountability and transparency on democratisation, and to constructive responsibility on conflict-resolution policies, helped shape the crisis.¹¹

Moscow's use of harsh coercive diplomacy against Georgia had fuelled hawkish sentiments among some NATO allies; all of them judged the military intervention in August 2008 shocking and unacceptable. Still the West has struggled to muster political unity and resolve in response to the crisis. Faced with Moscow's moves to limit sovereign choices of countries in its vicinity, Western countries have been torn by deep divisions over security and divergent expectations of the NATO and the ESDP, and their preferred approaches to Russia.

The degree to which these different conflict levels overlap has increased since the 2003 Rose Revolution, and especially since August 2008. After the August war, international focus has shifted from a conflict between Georgia's territorial integrity claims and Abkhaz/Ossetian self-determination aspirations to protecting Georgia's territorial integrity against Russian aggression and recognition of what hitherto even Russia acknowledged were Georgia's *de iure* territories. But the three levels of conflict need to be addressed simultaneously. The complexity of inter-connected claims otherwise risks stalling any conflict-resolution efforts and democratic transition in the South Caucasus, as well as paralysing aspects of relations between Russia and the EU.

THE EU'S TRANSFORMED ROLE

EU SUPPORT TO UN AND OSCE-LED PROCESSES

The EU significantly stepped up its engagement in the South Caucasus in 2003-2005. In 2003, it established the post of an EU Special Representative for the South Caucasus under the CFSP/ESDP. He was tasked to further relations between the European Union (EUSR) and the three South Caucasian countries, to encourage regional cooperation and to support conflict resolution. The mandate was adjusted in 2006 to increase the role which in terms of the official processes remained largely in support of the UN and OSCE-led processes.

In 2005, the EU also set up a small Border Support team to monitor the Georgian-Russian border as the OSCE Border Monitoring Mission was discontinued in 2005 due to a Russian veto against the mechanism. This EU operation was set up as part of the EUSR's efforts (not as a full ESDP mission per se).

In 2004/2005 the EU integrated Georgia, Armenia and Azerbaijan in its European Neighbourhood Policies (ENP) to further cooperation with countries on its flanks. The 2003 Rose Revolution was a strong signal to Brussels that Georgia was not as far removed, stagnant and uninterested in a genuine pursuit of European values as the country's failing reforms during the Shevardnadze times had indicated.¹²

¹⁰ ICG (19th December 2007). *Georgia: Sliding towards authoritarianism?* Europe Report N°189.

¹¹ *Ibid.*

¹² W. Kaufmann (June 2009). *A European path for Abkhazia: Yesterday's pipe dreams.* Caucasus Analytical Digest.

The EU has favoured a regional approach to the ENP. It signed ENP action plans with the three Caucasus countries, Armenia, Azerbaijan and Georgia, simultaneously in 2006. But each country may have had different expectations: Georgia for one tried to get a “fast-track” accession under way, much in line with its post-Revolutionary ambitions to speedily become a full-fledged member of the Euro-Atlantic community.¹³ It also emphasised its identity as a Black Sea littoral state rather than one with a strong South Caucasus identification.

In the ENP Action Plan that Georgia negotiated with the EU, conflict resolution occupied a prominent place. The Commission has implemented projects in Abkhazia and South Ossetia on the basis of the Action Plans and funded by the ENPI. Their main focus has been on post-conflict reconstruction, mainly in areas along the administrative boundary lines. (This is in stark contrast to the overwhelming lack of focus of Armenia’s and Azerbaijani’s ENP Action Plans on the Nagorno-Karabakh conflict. No EU-funded conflict-related projects currently exist in Nagorno-Karabakh, though Commission funding for civil society peacebuilding there is being discussed.)

It was in Georgia’s interest to see a greater EU role – at the time the EU seemed like just the possible third party that could get involved in the conflict resolution and play a relatively less politicised role to navigate between the then unequivocal backing by the US and Russia of Tbilisi and Sukhumi/Tskhinvali respectively, although politically the EU also gave unequivocal backing to Georgia’s territorial integrity.

Two years after the Rose Revolution, Tbilisi started to favour the internationalisation of its conflict-resolution processes. In summer 2006, it circulated a memorandum calling for the internationalisation of conflict-resolution formats and for EU’s direct involvement at the negotiating table.¹⁴ In the JCC, the European Commission already had the status of an unofficial observer and it was already represented in negotiations about rehabilitation matters as a member of the steering committee of the OSCE-run Economic Rehabilitation Programme. (Although South Ossetian counterparts at times blocked the attendance of EU officials in sessions dealing with political or security developments.)¹⁵

Until 2008, the EU was mainly furthering conflict resolution in Georgia through rehabilitation, development of conflict areas and confidence-building programmes, including support to second and third-track level conflict transformation initiatives.

MEDIATING THE CEASEFIRE

As the Georgian-Russian war broke out, the French President Nicolas Sarkozy took the lead in brokering a ceasefire on behalf of the French EU presidency. He shuttled between Moscow and Tbilisi to secure agreement to a six-point ceasefire plan. Its main points were the following:

- No recourse to the use of force;
- A lasting cessation of hostilities;
- Unfettered access for humanitarian aid providers;
- Georgian forces must withdraw to their usual barracks;
- Russian forces must go back to positions they held prior to the outbreak of hostilities. Pending an international peace monitoring mechanism, Russian peacekeepers will take additional security measures; and
- Launch of international discussions on security and stability arrangements for Abkhazia and South Ossetia.¹⁶

The plan secured a cessation of hostilities but it was fraught with challenges – among others, its wording was vague and open to competing interpretations by sides and there were no time frames. Russia’s occupation of towns deep in Georgia, despite the plan’s provisions, and the continued lack of security in the “buffer zone”¹⁷ around South Ossetia then controlled by the Russian Federation proper prompted Sarkozy’s second mediation effort. On 8th September, the sides signed a second ceasefire plan which set some specific benchmarks for the implementation of both agreements.¹⁸

13 Interviews with Georgian officials, Tbilisi, 2005-2007.

14 ‘Basic principles on conflict resolution’, a non-paper circulated by Government of Georgia in August 2006.

15 Personal observation, JCC Negotiations, 2004-2006.

16 The six-point ceasefire agreement, RFI on RFI website, 16th August 2008, and in French on the Georgian State Ministry for Reintegration website, http://www.smr.gov.ge/uploads/file/Six_Point_Peace_Plan.pdf

17 HRW (29 August 2008). *Georgia: Satellite images show destruction, ethnic attacks*, Human Rights Watch Report.

18 ICG (22nd June 2009). *Georgia-Russia: Still insecure and dangerous*, Europe Briefing No. 53: 3. Brussels/Tbilisi. International Crisis Group.

Sarkozy's plan has been flaunted by Russia since. Moscow pulled its troops back from Georgia proper by 15th October 2008 – but it has failed to comply with the provision that forces would have to withdraw to positions held prior to the conflict. Far higher numbers of Russian troops, and now also border guards, remain in Abkhazia and South Ossetia than had been the case prior to the conflict. Moscow has now signed military cooperation agreements with the regions it considers independent and has been beefing up its military presence in both regions.¹⁹ In February 2010, a landmark agreement allowing Russian troops to station a military base in Abkhazia's Gudauta was signed. A naval base in Ochamchira is reportedly under consideration as well.

The EU has been very meek in its responses – and is yet to strongly challenge Moscow on its non-compliance with both ceasefire documents. But there has been little political will to do this. Moscow's course of solidifying its military presence in both regions has now been firmly established and is likely to strengthen further.

During the French presidency of the EU Council, observers thought Sarkozy's priority was to “manage” EU's relationship with Moscow despite the war.²⁰ Retrospectively, Sarkozy has made this seem more like a French – and less of a European – achievement: ‘If Georgia was not wiped from the map, if a ceasefire was achieved in Gaza... that's because France, while it held the presidency of the European Union, shouldered its responsibilities so that Europe could take action’.²¹ Georgian President Saakashvili still sees President Sarkozy personally as ‘the guarantor of the ceasefire treaty’.²²

THE EU'S ROLE TODAY

With the outbreak of the Georgian-Russian-Ossetian war, the EU took on a new role of an actively mediating third party. It has also mobilised impressive financial resources for relief and post-war reconstruction efforts in Georgia. In October 2008, the EU co-organised a donors' conference where up to €500 million was pledged for these goals.²³

The EU has ambitions to play an influential role in the conflict-resolution process, but there are limitations to what it has been able to achieve, given the deeply divergent interests and positions of member states, especially on relations with Moscow, and given the multitude of institutional players representing it. Some of these challenges are discussed below.

A number of EU institutions have been seeking to address Georgia's conflicts, each of them in compliance with its different mandate and in very different ways.

The Commission

The Commission's delegation, operating in Tbilisi since 1995, ‘presents, explains and implements the EU policy; analyses and reports on the policies and developments in Georgia and conducts negotiations in accordance with a given mandate’.²⁴

19 Interviews with Abkhaz interlocutors and European diplomats, Sukhumi, December 2008, and Brussels, May 2009.

20 Ibid.

21 Sarkozy's statement at a pre-election meeting in Nimes, 5th May 2009, cited in “Sarkozy: Europe's ‘peacemaker’ or was it all a spin?”, in *Charlemagne's Notebook Blog*, the Economist Website, 8th June 2009.

22 ‘Saakashvili says EU wants louder reaction’, *Civil Georgia*, 10th November 2009.

23 ‘Overview of EC assistance to people affected by conflict in Georgia’, EC Delegation to Georgia website, <http://www.delgeo.ec.europa.eu/en/programmes/rehabilitation2.html>.

24 The EUMM website, http://www.eumm.eu/en/eu_in_georgia/delegation_of_the_eu_commission

The EUSRs

The role of the EU's Special Representative (EUSR) for the South Caucasus was instituted in 2003 with the aim of assisting the three countries in carrying out political and economic reforms; contributing to the prevention and the peaceful settlement of conflicts; and encouraging further cooperation between states of the region.²⁵ The EUSR has no explicit negotiation or brokerage mandate although his office has consistently sought to promote confidence-building initiatives, especially in the Georgian-Abkhaz case.

The EU Council appointed a new Special Representative for the Crisis in Georgia on 25th September 2008. According to his mandate, he has been tasked to prepare the international negotiations foreseen under the settlement plan of 12th August 2008, represent the EU at these talks and further the implementation of the agreements of 8th September 2008 and of 12th August 2008.²⁶

Especially in the initial phase of the two EUSRs' co-existence and despite their mandates being quite clearly defined to separate areas of work, overlaps between the two institution's activities and perceptions of their roles have caused a degree of confusion on the ground and for outside interlocutors. Some EU insiders have commented that the initial phase was marked by internal turf battles.

Speculations about the reasons for the "double-barrelled" EUSR presence have abounded. Many observers say that the South Caucasus EUSR's mandate has been too weak, and its implementation without sufficient heavy-weight political backing by member states. Others point out perceptions of partiality on the part of both EUSRs and their seconding member states. In this situation, perceptions matter whether or not they may be warranted. The current EUSR for the South Caucasus, Peter Semneby, is a Swedish national and the perception that his office has been inclined to support Tbilisi has been widespread. The current EUSR for the Crisis in Georgia is French and might be seen as someone who could balance that perception out (though his backing of Georgia's territorial integrity has been fierce). The then French presidency of the EU Council also appointed its own national for this role to keep a close watch on the conflict-resolution process.

The ESDP Mission

In September 2008, the EU Council established an autonomous civilian monitoring mission in Georgia. Over 200 monitors were deployed in Georgia on 1st October 2008. The unarmed monitors have been equipped with a mandate to observe 'the implementation of the Agreements of 12th August and 8th September, in particular the withdrawal of Russian and Georgian armed forces to the positions held prior to the outbreak of hostilities'.²⁷ The goals to further the 'stabilisation and normalisation of the situation in the areas affected by the war, to monitor the deployment of Georgian police forces and to observe the compliance with human rights and rule of law' are also in their remit.²⁸

Although the EUMM says its mandate extends over the entire territory of Georgia, including the breakaway regions, in practice it has only been able to gain access to Georgian-controlled territories. Its effective impact on the security situation across the conflict divides is therefore limited. It is nevertheless significant in the sense that the mission provides a conflict-prevention mechanism, be it imperfect, and an international institutional presence on the ground. It also, to a degree, dampens the Georgian side's security fears.

The EUMM also implements the Incident Prevention and Response Mechanism, which facilitates regular talks between representatives of parties to both conflicts to promote dialogue on security issues and prevent escalation. It hence has a limited mediation role in its own right, though it has no formal mediation or executive mandate.

The EU ISS

The EU Institute for Security Studies, a Paris-based think tank, is another EU institution furthering the goals of the Common Foreign and Security Policy. It researches issues relevant both to Georgia and Russia but also provides a forum for dialogue on conflict-related issues. The Institute has the intellectual freedom of a think tank but as an EU agency, it provides analytic input to the EU Council. Much more flexible than other EU institutions, it has run a project of EU policy debate-focused roundtables in Abkhazia since spring 2009.

25 The EUMM website, http://www.eumm.eu/en/eu_in_georgia/eu_special_representative_for_the_south-caucasus

26 The EUMM website, http://www.eumm.eu/en/eu_in_georgia/eu_special_representative_for_the_crisis_in_georgia

27 See the EUMM website, http://www.eumm.eu/en/about_eumm

28 Ibid.

Eastern Partnership

To further formalise cooperation with its eastern neighbours, the EU launched its Eastern Partnership (EAP) initiative in May 2009.²⁹ It aims to step up EU's political support to six countries: Armenia, Azerbaijan, Georgia, Moldova, and Ukraine, and to a lesser degree also Belarus. The upgrading of political engagement and economic and energy security cooperation will also be matched by increased aid and assistance in reform efforts. But expectations and assessments also vary within the 27-member club. Some, more than others, are keen on a speedy progression to Association and Free Trade Agreements and visa facilitation.³⁰ The EU's line that it has 'a growing responsibility to the partners to help them address the political and economic challenges they face and support their aspirations for closer ties, not least in the light of the conflict in Georgia last summer'³¹ sets off alarm bells in Moscow, however. Some European officials consider this a way of countering Russia's influence in the region.³²

29 'EU launches Eastern Partnership', *European Voice*, 8th May 2009.

30 Interview with European official, June 2008, Brussels.

31 'The Eastern Partnership –an ambitious new chapter in the EU's relations with its Eastern neighbours', EUROPA Press Release, 3rd December 2008, Brussels.

32 Discussion with a Czech MFA official, Prague, November 2008.

CURRENT CHALLENGES

The EU plays a major role in and around the conflicts involving Georgia. But there are numerous political and bureaucratic limitations that curtail its impact. The following section explores these limitations.

POLITICAL DIVISIONS

As with many issues of its Common Foreign and Security Policy (CFSP), the European Union has been divided over Georgia – but especially over Russia. Divisions between the political positions of different member states run deep and are motivated by different bilateral preferences on issues ranging from the states' own national or energy security, to what vision of the EU's foreign policy each member state has, to NATO enlargement and the recognition of Kosovo. Often, varied agendas, such as democratisation, human rights or conflict resolution, are subject to these considerations. Security overlays have had the biggest impact.

The following issues have caused the deepest rifts between member states.

Approaches to Russia

Broadly speaking, two camps within the EU favour different approaches to Russia. Their divergent historical experiences and security priorities are reflected in the policy lines they tend to take. “Newer” members, especially the Baltic States, Poland and the Czech Republic, backed by Sweden and to a degree also Finland, favour a broad policy of containment vis-à-vis Russia. An official in Prague explained these countries still perceive Russia as a great threat to European security, rely on their trans-Atlantic relations, and feel obliged to support countries like Georgia in their struggle against perceived Russian imperialism.

Germany and France as well as South European countries such as Italy whose trade with Russia is significant, or Greece with its Christian orthodox affinity, have traditionally been more in favour of dialogue with Moscow. In particular, Germany has voiced strong concerns about European energy security.³³

Perspectives on Georgia's conflicts

In a continuation of their approaches to Russia, member states also deeply differ in their approaches to Georgia's conflicts. The “Russia-containment” camp tends to emphasise the geo-strategic and the Georgian-Russian levels of conflicts. Especially East European member states are prone to seeing the breakaway regions as ‘mere Russian protectorates’.³⁴ The “older” member states vary in their approaches: many in the German diplomacy, for instance, tend to regard Georgia as the aggressor in 2008; the UK on the other hand seeks to strike a middle ground in addressing all levels of conflict.

Not all member states seem to have an in-depth analysis of conflict dynamics on all levels. Many focus predominantly on the Georgian-Russia level and relatively few have a deeper understanding of the “local” Georgian-Abkhaz and Georgian-Ossetian dimensions. Some cooperate with NGOs engaged in peacebuilding and conflict transformation work and seek the NGOs' input to further deepen their understanding of the dynamics on the ground. The UK in particular has taken an active decision to support substantial civil society peacebuilding

³³ These differences have been strongly reflected also in NATO. At the Bucharest summit in April 2008, the Eastern European countries supported the US-driven proposal to grant Georgia and Ukraine the Membership Action Plan, whereas France and Germany were much more cautious.

³⁴ Discussion with a Czech MFA official, Prague, December 2008.

and conflict transformation work in a way no other bilateral donor has, although some others (including Germany, Sweden, Netherlands) have made contributions. One can assume that the decision to fund such initiatives in part derives from the analysis of some within the foreign policy/aid structures that this is an effective strategy, but it does not necessarily reflect a coherent state strategy on the issues.

Differences on Georgian domestic reform assessment

Another division which has caused a host of difficulties for EU's Council and Commission is the variation in assessments different member states have been prepared to give Georgia on its democratisation and human rights record, as well as on its conflict-resolution policies.³⁵ A leading Georgian opinion-maker has complained that by offering unmitigated political support to Saakashvili's regime up until 2007, the US and new European member states undermined genuine democratisation in Georgia over the past years.³⁶ Although their hitherto unquestioning support became somewhat more nuanced after the government's November 2007 crack-down on demonstrators, rigorous reviews of Georgia's performance have often been silenced by those who see relations between Georgia and the West through the prism of relations with Russia.³⁷

Unequivocal support to territorial integrity

All EU member states have, however, unequivocally supported Georgia's territorial integrity. The EU continues to provide the strongest possible political support to Tbilisi's reintegration attempts. Since the August war, the debate has shifted away from the Georgian-Abkhaz and Georgian-Ossetian dilemmas of self-determination versus territorial integrity. The focus is on 'Russia not being allowed to redraw international boundaries by using military force'.³⁸ However, the understanding that Abkhazia and South Ossetia are very different cases and that a differentiated approach may be needed is starting to appear.

BUREAUCRATIC HURDLES

According to diplomats in Tbilisi and the European capitals, the EU institutions' coordination and cooperation in Georgia has not always been smooth. At times they work at cross purposes.³⁹ Especially in the period following the war, diplomats complained of "turf battles" between the different institutions.

There have been ongoing attempts to address these challenges. Consultations between the EU's different outfits have been underway to increase and improve coordination, and many report improvement in their "co-habitation", given that the post-August mechanisms have now settled, and the withdrawal of the OSCE and UN Missions to Georgia has created a much clearer operational space for the EU bodies.

Still, the applicable adage is that of bureaucratic politics theory, namely 'where you stand is where you sit'.⁴⁰ While sharing the same broad objectives, these actors have different interests, in accordance with their mandates and approach. This has often resulted in suboptimal performance or scattered perceptions of the EU's role on the ground.

With the Lisbon Treaty in force and the EU's External Action Service in the process of being established, a re-design of the institutional structure is underway. EUSR mandates have been rolled over for a period of six months and it is yet to be seen what structural and mandate-related changes will follow. This may well solve some bureaucratic hurdles in the long term. In the short-to-medium term, the de facto mandates of the relevant EU institutions are further weakened by the current state of flux as well as portfolio and staffing changes.

Institutional approaches

Perhaps inevitably, there has been a degree of overlap and a lack of clarity over the remit of each of the EU institutions. This has in some cases led to operational or political challenges. The most common complaint has been that the EU has too many varied faces with varied agendas, formulations of policy lines and approaches. These can

35 Interviews with Council and Commission officials, Brussels, April 2008.

36 Interview, Georgian opinion leader, Tbilisi, November 2008.

37 Interviews with EU Commission officials, Brussels, spring 2008.

38 Interview, UK official, April 2009, London.

39 Interviews, EU, OSCE, and UN officials, Tbilisi, November 2008 and February 2009; interviews in Brussels and London, spring 2009.

40 A. Graham and P. Zelikow (1999). *Essence of decision: Explaining the Cuban Missile Crisis*. New York: Longman.

be easily played against each other or are perceived as inconsistent or even incompatible by other players. There is a major difference regarding options for engagement of the conflict regions. While the EU supports Georgia's territorial integrity and does not recognise these entities, different institutions have engaged them differently.

The Commission's delegation seeks a very practical engagement in the conflict areas via support predominantly to humanitarian and some development activities. In 2009, through the Instrument for Stability, the delegation also supported several international NGOs (Saferworld/CR, International Alert, Berghof/Pax Christi) to undertake explicitly peacebuilding/conflict-transformation initiatives.

Projects worth several million Euros are implemented in Abkhazia, either directly by the delegation and through international organisations and international NGOs. This is done as part of support to conflict resolution, which also includes significant funding and assistance to projects on different aspects of IDP issues on the Georgian side. Yet some of the work on the Abkhaz side has been difficult to negotiate with both Tbilisi and Sukhumi: several million Euros earmarked for Abkhazia's development were unimplemented as of late 2009 as the Government of Georgia sought greater control over implementation mechanisms. This trend was reversed in late 2009 as Tbilisi drafted its "State Strategy on Occupied Territories: Engagement through Cooperation". Sukhumi after Russia's recognition, on the other hand, has expectations of being treated as an independent partner – an approach the EU cannot offer.

The EC's work is done in a conflict-sensitive manner and the Commission has also taken on the informal task of seeking to sensitise the international community in Georgia to working in conflict areas. Conflict-sensitivity and conflict-mapping workshops have been organised by the EC delegation officers who also coordinate efforts of international actors working on Georgian-Abkhaz and Georgian-Ossetian issues. The EC delegation staff in Tbilisi, in addition to bilateral actors, have also been instrumental in influencing the Georgian State Ministry for Reintegration's policies towards more transformative approaches.

Operating in a less humanitarian/development-oriented and more political space, the EUSR Semneby's office has been pressing the line of "non-recognition and engagement". This has been not very viable in practice and any practical engagement has dragged on. Semneby's team is now emphasising "smart engagement" that could get around some of the practical pitfalls linked to status issues (such as on which passports participants should travel to bilateral meetings in neutral places or to pursue study opportunities). But EU's technical support to engagement should be distinguished from strong political backing.⁴¹ In order to succeed, the "smart engagement" strategy should be underpinned by both these components.

The Abkhaz de facto leadership seems sceptical of the EUSR's engagement so far – an indicator that sufficient confidence in this institution has yet to be built. The EUSR Semneby's team is currently seeking external expert mediation support, a step that may help bridge some of the existing engagement pitfalls. A test for such approach will be whether the engagement strategy can be designed in a way that is not seen 'as on Tbilisi's terms only' by the Abkhaz and Ossetians.

Statements made in the region by the EUMM's leadership were vocally supportive of Georgia's territorial integrity soon after the 2008 conflict. A widespread perception was that the EUMM's approach was, especially in the first months after deployment, very positional and almost blind to some of the conflict realities on the ground. The EUMM's mandate extends to the entire territory of Georgia. But as Georgia has not controlled the separatist parts of this territory for more than a decade and a half, an insistence on the right to access Abkhazia and South Ossetia based on a mandate agreed with Tbilisi only has been a non-starter for Ossetians and Abkhaz. That mission's initial 'knocking-on-the-door policy' has also helped condition the de facto leaderships against the EUMM. Many observers say the EUMM has adopted a more nuanced approach since the IPRM mechanisms were launched earlier this year, and their impartiality in the every day operational sense has increased.

41 Jonathan Cohen, Presentation at the Foreign Affairs Committee of the European Parliament, 'The Role of the EU in Frozen Conflicts', 27th January 2010.

Personnel issues

The above differences in approach of the various institutions have to do also with the specific areas each institution focuses on – from humanitarian/development to political and security issues. But a number of other bureaucratic difficulties complicate the picture.

Diplomats with a nuanced appreciation of the dynamics of the Georgian-Abkhaz and Georgian-Ossetian conflicts are relatively few. The general focus is, in line with the Georgian government's current analysis, on the Georgian-Russian level of conflict. Abkhazia and South Ossetia have not been a regular destination for a majority of the staff of Tbilisi-based EU member state embassies or the EC delegation. There are multiple reasons for this: they range from purely bureaucratic ones which have to do with how staff portfolios are organised, to more political reasons – such as caution of some embassies or agencies to send staff to the conflict regions prior to August 2008 – to further political difficulties after August 2008. The Ossetian flat refusal and the Abkhaz occasional reluctance to meet with staff from Tbilisi-based foreign institutions have not helped develop the much-needed contacts.

This hampers the development of creative, nuanced and calibrated approaches to conflict-resolution efforts on the part of the different EU institutions and member states. Efforts by the EC delegation to sensitise international staff working in Abkhazia and South Ossetia to conflict issues are a much-needed start. The EC delegation's role in the coordination of international efforts in the conflict regions is also highly impactful.

A relatively high turnover of staff in some of the institutions has also been criticised by many, although a handful of key advisers and officers have been in place in the South Caucasus EUSR's office and the delegation. High turnover is not conducive to continuity in a region where personal relationships with parties matter a great deal.

Appointments of staff with vocal political preferences that reflect the political preferences of their member states have also been an issue. Although the EU operates within a non-status-neutral paradigm in support of Georgia's territorial integrity, appointments seen as vocally pro-Georgian or reflexively anti-Russian do not inspire confidence on the Abkhaz/Ossetian sides.

Institutional coordination

Coordination between the institutions has been challenging although ongoing consultations in Brussels are seeking to address this.

Coordination on different levels is now built into the inter-institutional modus operandi. The EUMM participates in the Geneva talks, co-chaired by the EUSR Morel. The EUSR for the South Caucasus does not participate in those discussions, but is briefed on them. Representatives of the South Caucasus EUSR and the EUMM now also participate in EC delegation coordination meetings. Nevertheless, a deeper strategic coordination of efforts and policy lines between these institutions is needed.

Prior to the phasing out of the United Nations Observer Mission in Georgia (UNOMIG), another challenging area was the coordination between the EUMM and the two international missions which had a far superior operational experience, institutional memory and institutional capacity for conflict resolution in general and on the ground. The OSCE and UN missions, despite their dispatching organisations being politically constrained by Russia's veto potential given its P5 status and seat on the OSCE Permanent Council, could not be matched by the EUMM in the relatively short time of its deployment in terms of monitoring and analytic capacity. Since the OSCE and UN withdrawals, the EUMM remains the only international security presence on the ground, be it only on the Georgian side of the Administrative Boundary Lines.

EU AS EFFECTIVE MEDIATOR?

The following section explores aspects of third-party mediation theory that are relevant to the EU's engagement in conflicts involving Georgia. It highlights some limitations of state-centric power-based mediation approaches that dominate the EU's current engagement, especially given that the EU is too divided on the Georgia-Russia issue to muster the desired incentives and disincentives for both sides. It emphasises the need to expand more energy on the interest-based approach to mediation that would, in a comprehensive strategic way, address root causes of the conflict as well as legacies of past abuse, and seek to transform the overall conflict-resolution environment.

EU'S ENGAGEMENT IN CONTEXT

NEGOTIATION CUM MEDIATION

The EU engagement in and around conflicts involving Georgia is best described as negotiation cum mediation. In a negotiation setting, parties bear the sole responsibility for the outcome of the negotiation exercise.

In mediation, a third party works to facilitate or promote a way out of the impasse between the two disputants,⁴² by guiding the process and supporting parties to come to a mutually acceptable solution. The Initiative for Peacebuilding (IfP) has used the term “international peace mediation” to describe engagement both in interstate and intrastate conflicts by an outside actor’ but as only one aspect of a wider ‘peace process which includes other mechanisms to resolve conflicts, maintain and keep peace, and build peace in the aftermath of violence’.⁴³

Broadly speaking, the EU negotiates with Georgia and Russia independently on their bilateral agendas with the EU, including on questions relevant to the conflicts. In addition to this, the EU mediates between the sides to Georgia's conflicts. The negotiation exercise has in a sense framed the context of these mediation efforts. The EU's strength is in its multiple roles, mandates and engagement on different levels – although the EU has not always been able to capitalise on this.

The two processes, negotiation and mediation, have so far been insufficiently strategically coordinated. The EU's sets of positions and interests vis-à-vis one conflict have at times hampered efforts in dealing with other levels of conflict. Mapping these out systematically in each case and strategically developing a calibrated engagement would be beneficial.

Another broad dispute settlement mechanism, an inquiry, is at play when a third party is invited to provide “an objective assessment” between parties, be it in terms of resolving “disputed issues of fact” or having issues independently investigated by an international tribunal, the commission of inquiry.⁴⁴ Hundreds of cases have been filed by Georgia and Russia with the International Criminal Court, European Court of Human Rights and International Court of Justice. These are a basis for formal judicial proceedings which will consider discrete questions and are unlikely to have significant bearing on the overall course of the conflict-resolution process.

42 J. G. Merills (1998), *International dispute settlement*. Cambridge, UK; New York: Cambridge University Press, , ix. Other dispute settlement mechanisms which also involve third parties include inquiry, conciliation and arbitration.

43 A. Herrberg with C. Gündüz and L. Davis (2009). *Engaging the EU in mediation and dialogue, Synthesis paper*, Initiative for Peacebuilding, p.12.

44 J. G. Merills, Op. cit.

The EU launched the International Independent Fact-Finding Mission on the Conflict in Georgia (IIFMCG) in 2008, which published its comprehensive report on the conflict and its context in autumn 2009. Although the in-depth report attracted much media and political attention, with each side selectively emphasising points that seemed to support its political positions and arguments, a strategy for using the report and its findings to inform or fit into the negotiation-mediation equation does not appear to be on the agenda of EU institutions. Some civil society organisations have organised public debates around the report, but a formal use of the findings of this inquiry process in promoting the search for peace and justice in Georgia's conflicts is yet to be discussed.

While the negotiation, mediation and inquiry mechanisms are interconnected, it is beyond the scope of this paper to explore all of them in detail. The following sections focus predominantly on the mediation mechanism and how it addressed issues on the Georgian-Abkhaz and Georgian-Ossetian, as well as on the Georgian-Russian levels of conflict.

FROM STATE-BASED TO INTEREST-BASED MEDIATION

Different approaches to "international peace mediation" have been described by IFP:

- *Power-based, deal-brokering mediation*, or one to which mediators bring "carrots and sticks" in order to broker an outcome;
- *Interest-based, problem-solving mediation*, or one which uses a facilitative style and furthers the ownership of the process by parties and the development of creative approaches that respond to interests and needs of parties; and
- *Transformative, long-term mediation*, or one in which mediators intervene at different levels to seek a change in relationships between parties and their perceptions of each other.⁴⁵

The EU's approach to the mediation process has been dominated by power-based, not interest-based, logic. Yet it has not effectively leveraged the incentives and disincentives it has at its disposal through its bilateral negotiations with Russia and Georgia to speed the process up. It has taken some, so far unconvincing, steps in the direction of the interest-based, problem-solving mediation. But given its internal divisions, insufficient coordination and strong political partiality, the EU is yet to promote local ownership of the official peace process and foster creative options for resolution. As these differences relate primarily to different state interests, not different institutional approaches within the EU, the EU institutional reforms under the Lisbon Treaty will not significantly improve this aspect of the situation.

The EU has strongly supported unofficial peacebuilding efforts that are conducive to both interest-based mediation approaches and transformative, long-term mediation. These should in turn inform the EU's own interest-based mediation efforts.

MEDIATION: THEORETICAL UNDERPINNINGS AND THE GEORGIAN-ABKHAZ CONFLICT

Many international conflicts over political and security issues are subject to mediation.⁴⁶ Mediation is a third-party led 'form of accommodation directed at conflict settlement and possibly resolution'.⁴⁷ It is 'a political process with no advance commitment from the parties to accept the mediator's ideas',⁴⁸ or one where the mediator does not substantively guide the outcome.⁴⁹

Third-party mediation efforts have greatly increased in number since the end of the Cold War. But mediation does not always bring the desired settlement. A host of "protracted" or "intractable" conflicts have continued to fester as third parties intervene to mediate solutions in complex peace processes. Conflicts in the Middle East, Kashmir, Cyprus or in the South Caucasus have defied the search for settlement or resolution, many despite having been

45 A. Herrberg with C. Gündüz and L. Davis, *Op. cit.*, p.12.

46 Conflict over trade issues may be solved through WTO dispute settlements, and other conflicts, such as trade or environment-related matters, rarely escalate to violent stages (although there have been violent clashes in fisheries disputes for instance).

47 G. Evans and J. Newnham (1998). *The Penguin Dictionary of International Relations*. London, England; New York: Penguin Books.

48 S. Touval and W.I. Zartman (1996). 'International mediation in the post Cold War era', in C. Crocker, F. Hampson and P. Aall (Eds.) *Managing Global Chaos*. Washington, DC: United States Institute of Peace Press, p.427.

49 *Engaging the EU in mediation and dialogue*, p.3.

'the subject of prolonged and sustained international efforts to end them, including diplomacy, mediation, military intervention, peacekeeping, humanitarian and development assistance and other kind of intervention'.⁵⁰

International mediation efforts have often been anchored in a power-based paradigm with main focus on positions rather than on interests or fears and needs – and ways of addressing them. Limitations of the power-based approach have been evident in the Georgian case, both prior to and after the 2008 war. Some of them are outlined below. Exploring a genuinely interest-based mediation paradigm could help the different EU institutions involved guide the peace process towards further progress.

MEDIATOR'S CALCULATIONS

Motivations of third parties to engage in mediation are likely to affect their performance as mediators. Unlike unofficial mediators, states or multilateral international organisations have to typically consider their broader foreign policy agendas. States have varied motives and can use mediation as an instrument of foreign policy.⁵¹ The declared aim of reduction of violence and conflict resolution is certain to be linked to the mediator state's other foreign policy objectives.⁵² Touval and Zartman emphasise that 'motives for mediation must be found as much in domestic and foreign policy self-interest as in humanitarian impulses'.⁵³

Defensive and offensive goals can be a part of a mediator's calculations. A mediator's action is defensive when a continuing conflict between others threatens the mediator's interests (such as relations with either or both parties) or risks destabilising regional peace and security.⁵⁴

The EU's speedy attempts to negotiate a ceasefire in the Georgian-Russian war in August 2008 are an example of a defensive motivation: in addition to the EU's wish to stop violence and bloodshed, its motivation was to ensure stability and security in its neighbourhood; and to manage its relations with both countries, one being a vital supplier of energy resources and a crucial trading partner; the other being a recipient of much aid and looking to Europe for values as well as protection. Another consideration may have been that protracted violence in a notoriously volatile region may lead to further escalation, including in Georgia's minority areas, Nagorno-Karabakh or in the North Caucasus.

Offensive motives, on the other hand, are conditioned by the desire to project influence. In such cases, 'the solution of the conflict has no direct importance for the mediator and is only a vehicle for improving relations with one or both parties'.⁵⁵ Some aspects of these motivations may also be at play in the EU's engagement in the Caucasus, although there is a mixture of motives and offensive ones are certainly not primary. Russia's mediation efforts in Georgia's conflicts prior to August 2008, or what Russia presented as such, seem to be more rooted in offensive than defensive reasons. Although stability and security of its "near abroad" have been important, Russian leadership has also been outspoken about the "privileged interests" it has and wants to have with states in the former Soviet space.⁵⁶

CALCULATIONS OF PARTIES

Touval and Zartman have considered motivations of parties to accept mediation, and by which third party.⁵⁷ Parties accept mediation when their cost-benefit calculation leads them to believe that it is in their best interest to do so, or 'that mediation will gain an outcome more favourable than the outcome gained by continued conflict'.⁵⁸ In the Caucasus, this was very much applicable to efforts needed for the negotiation of ceasefires (the Sochi agreement of 1993; the Moscow agreement of 1994; the 2004 South Ossetia ceasefire agreement; and the 2008 'Six-Point Plan').

50 C. A. Crocker, F. O. Hampson, P. Aall (2008). 'Why mediation matters: Ending intractable conflicts', in *The Sage Handbook of Conflict Resolution*, eds. Jacob Bercovitch, Victor Kremenyuk and William I. Zartman. Thousand Oaks, CA: SAGE Publications, p.493.

51 S. Touval and I.W. Zartman (1996). *Op.cit.*, p.428.

52 This declarative aim may or may not be genuinely pursued – some would argue that Russia's actions in its capacity of mediator in the Georgian-Abkhaz and Georgian-Ossetian conflicts prior to August 2008 defied its declared peacemaking goals.

53 S. Touval and I.W. Zartman (1996). *Op.cit.*, p.428.

54 *Ibid.*, p.428.

55 *Ibid.*, p.429.

56 S. Lavrov, 'Russian foreign policy and a new quality of the geopolitical situation', in the Russian MFA's *Diplomatic Yearbook 2008*, 15th December 2008, on the Russian MFA website.

57 S. Touval and I.W. Zartman (1996). *Op. cit.*, pp.432-434.

58 S. Touval and I.W. Zartman (1996). *Op. cit.*, p.432.

The dynamics of negotiations in protracted conflicts can also result in what many in the region call an “imitation” of a peace process. This term has been frequently used in reference to Nagorno-Karabakh and Georgian-Ossetian negotiations after the Georgian side launched policies in 2004 to “unfreeze” the conflicts. In a variation on Touval and Zartman’s argument, parties may believe that consenting to a mediated process may be less costly than not engaging in it (politically and in terms of continued relations with the international community), while the outcome gained by continued conflict remains to be seen as more favourable. This type of “bad faith” logic may be one of many reasons for intractability and for apparent inefficiency of mediated processes.

ACCEPTABILITY AND ACCEPTANCE

Initially, third parties can be accepted because they are perceived as being able to deliver an acceptable outcome; whereas they continue to be accepted because they are already a part of that relationship.⁵⁹ This was the case in Georgia-Abkhazia and Georgia-Ossetia in the early 1990s when the UN and OSCE missions were established to observe ceasefire arrangements and effectively act as mediators in the broadest sense. However, from accounts of Georgian and Ossetian officials who witnessed the hasty and chaotic signing of the 1994 Sochi agreement that established this OSCE presence,⁶⁰ it appears its acceptance was hardly based ‘on the promise of attractive outcomes for the parties’.⁶¹

Over the years of the OSCE’s and the UN’s mediation efforts in Georgia-Ossetia and Georgia-Abkhazia, the two organisations went through deep ups and downs in relationships with both conflict parties, as well as with Russia. At different times, they were more or less acceptable to either side. Sides often tried to undermine or discredit these organisations’ efforts when they did not favour the direction or substance of their activity or reporting.

The EU’s mediation was acceptable to parties and the EU was accepted as a broker of the Georgian-Russian ceasefire in the summer of 2008 because President Sarkozy took a strong initiative, because the EU’s interests appeared to be sufficiently balanced, and few alternatives for external engagement existed. The US, for one, was consumed by its pre-election campaign; the then Bush administration with its hardline NATO expansion preferences would have hardly been acceptable to Moscow. Other players, such as Canada, Switzerland or some of the “Second World” leaders wouldn’t have had enough convening power and leverage over Russia or enough trust from the Georgian side.

But how acceptable is the EU as a mediator that “can deliver” results in the long run? The dynamic changed after Russia’s recognition of Abkhazia and South Ossetia. Moscow vetoed the continuation of OSCE and UN mandates in their previous form: they were no longer acceptable to Moscow, Tskhinvali and Sukhumi unless they reflected Abkhazia’s and South Ossetia’s “new realities”, or unless they were, at a minimum, status neutral and not endorsing Georgia’s territorial integrity. Tbilisi had long regarded these outfits as inefficient – and pressed for EU’s increased role.

The EU’s acceptability to and acceptance by Georgia is very strong for the very reason that the EU fully backs Georgia’s political positions and has been providing generous funding. The EU officials representing different institutions say they have strongly challenged Georgia’s leadership on its conflict-resolution policies and goals. There clearly has been some impact, as manifested for instance by the Georgian pro-engagement strategy towards Abkhazia and South Ossetia, although challenges coming from non-political figures can only go so far. The EU’s acceptability to sides opposing Georgia remains at a minimum common denominator. It appears that their confidence in the EU’s capacity to mediate or deliver an acceptable outcome is very low.

Touval argues that the notions of a mediator’s acceptance and acceptability are much more significant than his or her impartiality – and that the assumption that a mediator should be impartial is not relevant.⁶² It is typical for mediators – with the exception of independent non-state agencies – to bring their own strategic interests into the peace process, which will to a varying degree, determine the mediator’s preferred outcome. But what are the limits of this partiality – and what impact can partiality have on a peace process?

59 S. Touval and I.W. Zartman (1996). *Op. cit.*

60 Interviews with Georgian and Ossetian negotiators in Tbilisi and Tskhinvali, summer 2004.

61 *Ibid.*, p.433.

62 S. Touval and I.W. Zartman (1996). *Op. cit.*

IMPARTIALITY

Mediators are not – and possibly cannot be – entirely impartial and/or neutral as to outcomes. But they must be perceived as favouring a resolution that is acceptable to both sides.

Their partiality should not put them firmly in the camp of one side, while precluding any substantive outcomes that are along that party's current red lines. This could powerfully demotivate one side from engaging in the negotiations in good faith. Although again, a cost-benefit calculation may lead that side to conclude that formally adhering to the mediated process may be less costly than withdrawing due to the mediator's partiality.

The UN's and the OSCE's unequivocal support to Georgia's territorial integrity in the years of negotiations prior to the August 2008 war demotivated Abkhaz and Ossetian sides. They underscored that the framework had a pre-determined outcome and there was little sense in engaging in an exercise whose outcome they saw very differently from the UN and OSCE. But the then status quo and focus on non-status issues made it possible for these agencies to continue engaging.

Status issues came to the forefront as global security overlays brought the focus on status to a head after 2006. Prior to that, the peace processes were focused on substantive but non-status issues, such as security in conflict zones, economic and other confidence-building measures, and possibly return and human rights issues. Although earlier negotiating documents focused on status (including the Boden document proposed by the UN which contributed to derailing the talks in 2001-2005), the status preferences of the OSCE and UN were not as acutely perceived as detrimental to the mediation exercise as the EU's firm political position in the current context.

After the August 2008 crisis, Russia's invasion of Georgia and its recognition of Abkhazia and South Ossetia, status questions became critical. From the perspective of Western players, self-determination has become a secondary game – and it is crucial 'not to allow Russia to re-draw borders with the use of force'.⁶³ From Tbilisi's perspective, Russia's former "annexation" policy has become a full-fledged occupation. For Russia, Abkhazia and Ossetia, there are new realities and it is impossible to go back to the status quo prior to the August war.⁶⁴

In that context, status neutrality has, in practice, become next to impossible for Western actors, including for the EU. Nevertheless, some solutions have been found: for instance, the Geneva talks are technically almost "status neutral" due to careful use of sensitive wording and formats. Wording differentiating between parties to conflict and sides to conflict has allowed getting beyond status differences for the purposes of the negotiating format: Georgia and Russia are the main parties, whereas Abkhazia and South Ossetia are referred to as the sides (this difference does not translate into Russian, however, a point much emphasised by those participants that are keen on the equality of participants' status).

Working format choices have also had significance. The Georgian side does not accept that the Abkhaz and Ossetians have a status equal to other parties, whereas the Abkhaz and Ossetians do not accept working in an unequal status: in a plenary setting, these differences come to the surface whereas group work can be framed as "expert consultations" in which status issues are not the primary focus. Plenary sessions have, in practice, been put on hold for the time being, to avoid status-related confrontations. This at least allows the talks to proceed.

In the UN and OSCE, internal divisions over status issues trickling down to operational aspects undermined the very existence of these mechanisms. They were reflected in profoundly politicised, albeit essentially process-related issues, such as the name of a mediating mission. For the EU, its status partiality infers its insufficient acceptability to some of the sides.

"Delivering the party"

Zartman and Touval further stress the potential advantage of "biased" mediators in the sense that they can "deliver" the party they are close to.⁶⁵ They argue that 'the party closer to the mediator may soften its stand for the sake of preserving its favoured relationship with the would-be mediator' and may be more likely than an impartial mediator to 'extract concessions from its friend'.⁶⁶

63 Interview with a UK official, London, March 2009.

64 'Lavrov: UN should consider new realities in Georgia and Abkhazia', *Abkhaz World* website, 12th June 2009.

65 I.W. Zartman and S. Touval (2007), 'International mediation', in *Leashing the dogs of war*, United States Institute of Peace Press, p. 443.

66 *Ibid.*, p. 443.

While in some cases⁶⁷ this proposition has applied, it has not improved the dynamic in conflicts involving Georgia. Prior to the August 2008 war, the EU and the US in a sense “failed to deliver” Georgia:⁶⁸ their pressure on Saakashvili’s government to focus on peaceful conflict resolution was answered by Tbilisi in form, but not in substance. The power-based approach failed to prompt parties to substantively tackle the issues at the heart of the peace process.

Tbilisi tabled several peace plans in 2004-2008, which offered the widest possible autonomous arrangements for the two regions, but were substantively and process-wise a non-starter for the Abkhaz and Ossetians. Their focus on political status first, and in some cases a megaphone diplomacy-type delivery, further strengthened the widespread perception in the conflict regions that Georgia is only interested in a peace process on its own terms, and that some of these peace initiatives are directed at a Western audience more than at the Abkhaz or Ossetians. European pressure on Georgia to curb defence spending and make it more transparent, and to refrain from aggressive policies in the zones of conflict, brought next-to-no results: incidents in those zones increased in intensity and frequency, often due to aggressive behaviour of Georgian defence and interior personnel, according to Western diplomats and military observers.⁶⁹

After summer 2008, the EU has attached more conditionality to its aid to Georgia and is arguably better placed to prompt Georgia to reconsider its conflict-resolution policies. Different EU institutions have been working to this end. Significant incremental progress has already been secured: different EU actors, together with some member states and NGOs, have exerted considerable pressure on the SMR’s strategy towards Abkhazia and South Ossetia. The strategy is arguably a substantially different document as a result. However, longer-term results are yet to be seen. The EU’s own political divides on Georgia’s conflicts are not necessarily conducive to achieving them.

Since the greater intertwining of the local-regional-global levels of Georgia’s conflicts as of summer 2008, partiality of mediators has become a greater problem for the outcomes of a mediated process than the mediator’s formal acceptability. Status partiality now impacts on the degree of mediator’s acceptability and acceptance. Although this was a great problem for effective mediation even prior to the 2008 war, the non-recognition of Abkhazia and South Ossetia by all players and the focus on non-status issues that the UN and OSCE championed made it possible, to a degree, to work around that issue.

The EU is acceptable as a joint chair of the multi-party talks in Geneva, together with the OSCE and the UN. But its partiality is not conducive to effective mediation. It may well be the soundest policy line for the EU and for Georgia, but from a mediation perspective, it undermines – at least to a degree – its substantive acceptance by the Abkhaz, Ossetian and Russian sides. A crucial question is how to mitigate possible negative effects of status-related partiality on genuine progress in issues which do not address status per se (refugees, IDPs; security; reparations). A focus on interest-based mediation may produce more creative ways of getting beyond the current political deadlock.

THE EU: “READY FOR PRIME TIME”?⁷⁰

Much has been written about the timing with respect to conflict resolution in general and mediation in particular. Zartman’s concept of “ripeness” presupposes that sides “hurt enough” from the intractable status quo to pursue a mediated settlement. Some authors have also emphasised a timing dimension regarding the mediating party: whether the mediator is ‘ready for prime time’, as Chester, Hampson and Aall formulate it. According to these authors, mediator readiness is critical for mediation carried out by governmental, intergovernmental and non-governmental actors alike, and it encompasses the following key dimensions: operational and political readiness; strategic and diplomatic readiness; and readiness ‘in terms of being the right mediator with the right

67 Some mediations in the Middle East and also the 1976-1979 mediation in Zimbabwe/Rhodesia, for instance. *Ibid.*, p.443.

68 In a parallel development, Russia ‘failed to deliver Abkhazia and South Ossetia’. Whether Russia was ever genuinely interested in a resolution is questionable.

69 Observation in zones of conflict, and interviews with diplomats while employed in the political-military section of the OSCE Mission to Georgia and ICG, Tbilisi, 2004-2008.

70 C. A. Crocker, F. O. Hampson, P. Aall (April 2003). ‘Ready for prime time: The when, who and why of international mediation’, in *Negotiation Journal*.

relationships'.⁷¹ The following section will examine the EU's role in light of this mediator readiness paradigm. (The focus is on the EU as a whole, with its different institutions, and separate specific mandates, pursuing a third-party conflict resolution intervention.)

Aspects of mediator readiness

Operational and political readiness refers to the practical task of sustained peacemaking with the required bureaucratic and staffing support as well as institutional political backing.⁷² The EU has arguably demonstrated an extraordinary readiness to dedicate many levels of resources to its conflict-resolution efforts following August 2008.

President Sarkozy made an ambitious pitch to broker a ceasefire as hostilities were underway; when the ceasefire was reached, the Council designated a Special Representative for the Crisis in Georgia to take the lead on Geneva negotiations; an ESDP mission was deployed to Georgia in record time to support the implementation of the ceasefire plan.

Politically, the crisis was a priority for the EU's Council and Commission. They have worked to support its de-escalation and management, including by devoting major financial resources to mitigate its humanitarian impact while facing staffing shortages in institutions in Brussels and the field alike. It is in the EU's interest to promote security and stability in the region and safeguard partnerships with both Russia and Georgia – as well as to be seen as a resolute player. This is what seems to drive this aspect of “readiness” on the part of the EU.

The downside is that EU's mandate for third-party intervention is not solid and durable enough. The EUMM's mandate is an interesting example – it aspires to extend over the entire territory of Georgia – but in reality the monitors have no access to conflict regions and are clearly not desired there. Other EU institutions also face half-hearted acceptance by the Abkhaz and Ossetian parties, let alone by Russia.

Strategic and diplomatic readiness refers to the bigger picture strategic policy context in which mediation takes place: 'The chances of the mediator being able to develop effective leverage and build the necessary staying power are directly affected by the place the conflict holds in the overall policies of the mediator's home base'.⁷³

The EU has not demonstrated a full-fledged strategic and diplomatic readiness to support its mediation efforts by deeply anchoring them in its wider policy context. The political divisions within the EU prevent it from taking a strong policy line that would effectively impact on the dynamic of the conflict-resolution process in general, bilateral negotiations with Russia and Georgia respectively, and the mediated intervention in particular. These divisions complicate – if not block – progress of the mediation, but in some cases also undermine the type of engagement that could help “ripen” the conflict or help prepare grounds more conducive to a negotiated settlement. These divisions also account for a lost opportunity to maximise on the EU's influence in bilateral negotiations and to use this potential in the mediated intervention.⁷⁴

The EU is firm on certain red-lines (the support to Georgia's territorial integrity; non-recognition of Abkhazia and South Ossetia; the unacceptability of the use of force in conflict resolution). Many of these red-lines are tantamount to strong positions, but they risk being positions in words only. The unacceptability of the use of force has not been backed by even as much as strong protests against Russian military presence in Abkhazia and South Ossetia, which is in breach of the ceasefire arrangements of August and September 2008. The focus on Georgia's territorial integrity has not been backed by creative policies that would work in the direction of securing it in the long run: the emphasis on the non-recognition of the two conflict regions has in practice made most of EU's attempts at engagement with them very difficult – which in turn contributes to their speedier drift into Russia.

An additional consideration is that conflicts involving Georgia are one of a large number of international issues that the EU is dealing with. Since the Georgian-Russian dispute became violent in summer 2008, it has had serious security implications and therefore naturally gets more prominent attention and a longer attention span

⁷¹ *Ibid.*, p.152.

⁷² *Ibid.*, p.152.

⁷³ C. A. Crocker, F. O. Hampson and P. Aall (April 2003). 'Ready for prime time', *Negotiation Journal*, , p.156.

⁷⁴ Some argue that the EU should have opted to appoint and support a genuinely impartial professional mediator, and supported such a mediated process to really secure progress. It is questionable whether an EU-appointed mediator (figure or state) could be separate from the EU's structural and systemic partiality.

than the intractable conflicts in Abkhazia and South Ossetia used to get. But European diplomats also cite a degree of “Georgia fatigue” in Brussels.⁷⁵ Some say they have agreed with Moscow to disagree over Georgia but have otherwise wished to regularise relations.

Readiness *in terms of relationships*, “reach”, “cultural connectivity” implies a fit between parties and a third party. ‘The mediator’s identity, image, cultural and geographic links, and overall relationship to the parties’⁷⁶ are at the heart of this category.

The EU has a mixed record in this respect. It certainly has a good reach to the Georgian side, but its “compatibility” with the Abkhaz/Ossetians and with Russia is less straightforward. As detailed above, the Abkhaz and Ossetians perceive the EU as deeply biased in Georgia’s favour and the EU has also had relatively little opportunity to build relationships in these regions, save for the two EUSRs and staff at the Commission’s delegation in Tbilisi responsible for funding that has benefited these regions. The EU’s cultural values and image is attractive perhaps to some in Abkhazia. But the sense that the EU has not been even-handed towards them often overrides this potential link. Perceptions of the EU in Russia on the other hand are generally less positive – the EU’s values do not appeal to the Russian leadership’s “sovereign democracy” thinking and Moscow elites know better than anyone how deeply the Union is divided.

Perceptions do play a strong role and so it is perhaps beneficial that the two EUSRs dealing with Georgia are French and Swedish nationals. They represent countries which are at different ends of the spectrum of EU’s approaches to Russia – and this has been noted in Moscow and Tbilisi,⁷⁷ although both EUSRs may not be typical representatives of their respective countries’ positions.

Another difficulty the EU is facing is that it is yet to develop a grounded institutional basis to further the mediation. The OSCE and the UN had a depth of institutional experience, capacity and memory. Unlike, for instance, the UN with its DPA’s mediation support unit, the EU has no institutionalised capacity to support its staff working on peace process issues with formal professional conflict-resolution/mediation trainings, etc.

MEDIATION WITH MUSCLE VERSUS SOFT POWER?

Mediators who “exercise rewards or coercive powers” are sometimes referred to as mediators “with muscle”. This resonates with the power-based mediation paradigm referred to above. Incentives like economic support, and disincentives from “sanctions to coercive threats or even the use of force”, can be used to condition parties’ approach to the dispute.⁷⁸ Using incentives and disincentives can be useful when mediators want to achieve a change in the cost-benefit calculations of parties in conflict⁷⁹ and thus influence parties’ positions.

In its mediation cum negotiation exercise in Georgia’s conflicts, the EU has not used the little muscle it has effectively. It may not be able to exercise any unless its internal constraints are overcome. Especially given these limitations, it should seek to employ more of an interest-based approach to mediation.

What is the EU’s “muscle” with regard to these parties?

In Georgia’s case, this is a relatively straightforward exercise of incentives. Georgia is currently very dependent on EU aid and political support, ranging from endorsement of territorial integrity to possible future trade and visa facilitation. This potentially gives the EU leverage to extract concessions from Tbilisi. Incentives for Tbilisi to keep implementing democratic and institutional reform are in place and seem to have a positive effect. While prior to the August war, these incentives failed to produce the desired outcome in terms of curbing Saakashvili’s aggressive conflict-resolution policies, it is fair to say that risks of rash action on the part of Tbilisi are now also mitigated by the Georgian leadership’s understanding that any risks would lead to a discontinuation of aid flows.

75 Interviews, EU diplomats, spring 2009.

76 C. A. Crocker, F. O. Hampson and P. Aall (April 2003). ‘Ready for prime time’, *Negotiation Journal*, , p.156.

77 Interview with European diplomat, Brussels, June 2009.

78 C. A. Crocker, F. O. Hampson, P. Aall (2002). ‘Two’s company, but is three a crowd? Some hypotheses about multiparty mediation’, in J. Bercovitch (Ed.). *Studies in international mediation*. New York: Palgrave Macmillan. Published in association with the Program on Negotiation, Harvard Law School, p.242.

79 Ibid.

In practice, these incentives have perhaps worked to soften Tbilisi's plans of strict implementation of the first draconian version of the law on occupied territories.⁸⁰ They may also have contributed to the end 2009/early 2010 move by the State Minister for Reintegration to develop a strategy for engaging the conflict regions.

In case of Abkhazia and South Ossetia, potential incentives exist but the EU has not been ready to deploy them fully due to its own political position. As discussed above, there is an interest in Abkhazia to foster ties with Europe, but the EU's hesitation in terms of what engagement is "permissible" given its position on territorial integrity has dampened Abkhaz expectations.⁸¹ An Abkhaz opinion leader has commented that "by the time Europe decides on what to do, the train will be gone"⁸² especially in light of how quickly and decisively Russia can act.

With respect to Russia, the EU has not had the unified political will to press for a change in its behaviour. It has very few effective carrots and realistic sticks – it has in fact not even mustered the unity required to call on Russia regarding its non-compliance with the 2008 ceasefires.

Actors involved in the Geneva process, including the EU, seem to operate in the power-based, not the interest-based paradigm. Yet the EU has very little effective leverage that it can use to further the current power-based mediation. It should favour interest-based mediation to get around at least some substantive hurdles. Regardless, it should seek to unify its positions on clear-cut issues, especially security.

"Soft power" incentives?

The EU has often been described as "a soft power", especially considering its lack of efficiency in terms of using coercive resources and its divided foreign and security policy visions. But there are merits to wielding soft power and the EU should use this quality as much as possible.

'Power is the ability to affect the behaviour of the others...The ability to influence others by attraction rather than coercion or payments, is soft power'.⁸³ Countries may exert this influence because their values, openness, prosperity or goals are attractive to other countries which would like to follow their example⁸⁴ or deepen partnerships with them. Co-option and appeal, rather than coercion are at the heart of a soft-power strategy.⁸⁵ In practice, behaviours often 'range along a spectrum from coercion to economic inducement to agenda setting to pure attraction'.⁸⁶ Soft and hard power approaches are often combined and can complement each other; but can also work at cross purposes.

The EU's common values with its emphasis on democratic standards, human rights, and the rule of law, social justice and environmental sustainability are what make Europe profoundly attractive as a socio-political space and a potential partner. Its inclination to pursue dialogue-based solutions and employ diplomacy to settle disputes is another aspect of this appeal.

However, benefits that are on offer are attractive in a very abstract way and many in the societies in the Caucasus have a very vague understanding of how these values underpin the real societal life in European countries. The compliance that is required to get to these benefits has often been taken in a very laissez-faire manner by political elites in the Caucasus. Moreover, it is difficult to separate these values from Europe's economic attraction.

There are also other pitfalls. Soft power is usually more impactful in terms of general goals than specific effects.⁸⁷ Additionally, in contexts where hard power is also employed, soft power is likely to have a limited impact. This is arguably the case in the conflicts involving Georgia as Moscow is currently solidifying its long-term military presence in the breakaway regions. The EU's values do appeal to some in these regions, but there are great limits on Abkhaz/Ossetian constituencies to actively explore cooperation options pursuant to soft power, especially if

⁸⁰ Interview, diplomat, Tbilisi, February 2009.

⁸¹ Interviews with civil society, Sukhumi, December 2008, and Istanbul, June 2009.

⁸² Ibid.

⁸³ J. S. Nye, Jr. (2007). "The place of soft power in state-based conflict management", in *Leashing the dogs of war*, p.389.

⁸⁴ Ibid, p.391.

⁸⁵ Ibid, pp.391-392.

⁸⁶ Ibid, p.392.

⁸⁷ Ibid, p.394.

the Georgian side continues to condition a potential EU dimension for Abkhazia/Ossetia with extending an EU membership offer to Georgia first.⁸⁸

Another consideration is that value-based attraction can be fragile in contexts where the soft power in question may be complacent regarding the implementation of the very values that are the basis of its attractiveness. Complacent election observation or evaluation of reform efforts is a good example. While opposition and civil society activists in Georgia, Armenia and Azerbaijan continue to see European values as appealing, they are critical of the EU for not requiring deeper reform compliance, therefore damaging its credibility.⁸⁹

88 Temuri Yakobashvili's presentation 'Strategy towards de-occupation of Abkhazia and South Ossetia', 28th November 2009, Tbilisi.

89 Interviews with NGO leaders from Tbilisi, Yerevan and Baku, 26th June 2009, London.

ADDRESSING INTRACTABILITY

Much scholarly and practice-based effort has gone into the exploration of why intractable conflicts are so difficult and how best to address their multiple underlying dynamics. Key aspects of this debate are considered below. For the purposes of this paper, I limit this to characteristics relevant to Georgia's conflicts.⁹⁰

Intractability

In intractable conflicts, such as the Georgian-Abkhaz and Georgian-Ossetian conflicts, all sides believe their aspirations are irreconcilable. Negotiated political alternatives to the status quo do not appear desirable to them due to a number of reasons. The period of the conflict's non-resolution (often lasting for decades) can add to the sides' sense of grievances, elevating sunk costs and making compromise less attractive.⁹¹ In such circumstances, costs of resolution typically grow with time, while vested interests in the continuation of conflict may increase as well. In a cost-benefit analysis of one or both sides, costs of a compromise political solution are higher than those of a continued absence of settlement. In William Zartman's words, these conflicts are not "ripe" for resolution, as they have not reached what he calls the "mutually hurting stalemate".⁹²

Ripeness

As Aall points out, ripeness is a contested theoretical notion: according to critics 'it can be identified only by its results – if a conflict is settled, it must have been ripe; if it failed to settle then it was not ripe'.⁹³

For the purposes of assessing "ripeness" in the case of conflicts involving Georgia since last summer's escalation, the only aspect that seems to have been ripe was the wish by all sides to cease hostilities in August 2008. The EU's robust intervention soon after fighting broke out was perhaps not surprising, given the direct security threats the escalation posed to its neighbourhood. As Crocker, Hampton and Aall point out, changing conditions may change the dynamic of third party intervention: "for instance, if an intractable conflict is escalating and shows signs of spilling over its traditional boundaries, third party intervention may focus on controlling the conflict or preventing further escalation".⁹⁴

A ceasefire after the August 2008 flare-up seems to have been in the interest of all sides and the continuation of open hostilities would have, in fact, been tantamount to a "mutually hurting stalemate": the Georgian side was first and foremost interested in seeing the Russian army occupying areas of Georgia well beyond the zones of conflict, disengage from hostilities and leave its territory. Moscow, on the other hand, broadly achieved its apparent goals of punishing Georgia for attacks against Ossetians, if not for its pro-Western foreign policy choices and unbending leadership, and making assertive points to the US and EU about its regional and geopolitical ambitions by invading Georgia. It had little interest in a hardly sustainable and internationally costly protracted occupation of Georgia proper. South Ossetians, having gained security guarantees, a demographic balance favourable to them (at a cost of mass human rights violations) and even "an opportunity to pay back" for past Georgian aggressive behaviour, were also happy enough to see hostilities stop, and to seal borders.

90 I will refrain from describing general trends – such as increase in intra-state intractable conflicts or their different violence patterns, as described for example by Crocker, Hampson and Aall.

91 C. A. Crocker (2007). 'The place of grand strategy, statecraft and power in conflict management', in C.A. Crocker, F.O. Hampson, P. Aall (Eds.). *Leashing the dogs of war*. Washington, DC: United States Institute of Peace, p.363.

92 S. Touval and I. W. Zartman (1985). *International mediation in theory and practice*. Boulder, Colo.: Westview Press, pp.258-260.

93 P. Aall (2007). 'The power of non-official actors in conflict management', in *Leashing the dogs of war*, p.487.

94 C. A. Crocker, F. O. Hampton, P. Aall (2005): "Conclusion: From intractable to tractable – The outlook and implications for third parties", in C. A. Crocker, P. Aall (Eds.) *Grasping the nettle: Analyzing cases of intractable conflict*. Washington, DC: United States Institute of Peace, p.382.

The fact that short-term interests coincided, which led to curbing of the violent stage of the conflict, does not imply a focus of all sides on a long-term peaceful settlement, especially one involving compromises. After the ceasefire was reached, sides have not seen eye to eye on almost any substantive issue, from security to return of displaced people.

On the local, regional and geopolitical levels of conflict, the cost-benefit analysis of sides to conflict does not favour compromises. Interest-based approaches that could well make “compromise” solutions seem palatable or even desirable, as opposed to the current stalemate, have hardly been explored. The stalemate since the August and September 2008 ceasefires and since Russia's recognition of Abkhazia and South Ossetia has had far-reaching effects on each side, but it is not “mutually hurting”. In fact, the conflicts risk being frozen over another time around in the positional zero-sum game.

Russia has next to no motivation to change its policy course – it has gained control over Georgia's non-recognised territories, with the Black Sea access and resources that go with it and the opportunity to build its security positions in the South Caucasus. Moscow has changed the power dynamics in its backyard, regaining a position of assertive political power in the region. It has also sent powerful messages to its Western partners that Moscow will not compromise its influence in the region and that unilateral moves à la Kosovo's Western-orchestrated independence or intentions of extending NATO membership accession plans to Ukraine and Georgia will not be left without strong reactions. Russia's international image may have suffered somewhat, but business is now almost back to normal between Russia and the EU and NATO, with the US working hard to reset US-Russian relations and seeking to capitalise on common interests in other foreign policy areas.

Having suffered further territorial losses during the August war, Georgia is set on restoring its territorial integrity. With the trauma of the August war and its ongoing political disorder, the country is clearly hurting from the current stalemate. But the August war has also, in the Georgian interpretation, fully vindicated the analysis prevalent in Georgian policy circles that the Georgian-Ossetian and Georgian-Abkhaz conflicts are essentially of Russia's doing. Tbilisi has relatively few options in terms of changing the dynamics of the relationship with Moscow while the current leadership is in place in both countries, given their deep political and ideological differences and mutual personal hatred. But Tbilisi could unilaterally address the Georgian-Abkhaz and Georgian-Ossetian level of conflict by genuinely – and without strings attached – working to foster confidence and initiating mutually beneficial practical cooperation. If done in a constructive way, without fanfare or a focus on political status, this could gradually change the context of the conflict-resolution process and contribute to its “ripening”. Tbilisi should also explore options for dealing with legacies of past abuse.

Abkhazia and South Ossetia have both gained the security guarantees and – to a limited degree – the recognition they had long desired. But with Russia's *de iure* endorsement of their independence, their *de facto* independence is backsliding as Russia is strengthening its military, economic and – especially in South Ossetia – also political positions. The integration into Russia may well be acceptable for most Ossetians who would like to see a unification of the “two Ossetias”. But for most in Abkhazia, this is not a desirable outcome of their independence struggle. But while Russia poses long-term risks to this self-determination agenda, it has also responded to short-term security and economic needs. Not even fears of Russian imperialism have changed – or are likely to change – the Abkhaz views of options proposed by Tbilisi, unless Tbilisi deeply transforms the dynamic of interaction and offers solutions appealing to Sukhumi.

Europe has been unable to offer Abkhazia an alternative course of engagement: it too is basing its policies on positions rather than interests. It has shied away from the interest-based discourse even in terms of exploring creative options for addressing some of the deep-seated grievances that have little to do with the perennially difficult political and security issues. This approach has been counter-productive: the EU's simultaneous unwillingness to confront Moscow and its emphasis on non-recognition first – which has in practice typically blocked the “engagement” prong of the EU's policy towards Georgia's conflict regions – has helped Russia deploy its resources and solidify its positions there.

The set of conflicts is not ripe for a negotiated settlement. The EU should focus on “ripening the situation” and on “actions away from the negotiating table”⁹⁵ that can change the context of the conflicts, perceptions held by sides and their analysis of the situation, and hence strategies. A focus on interests first should inform mediation strategies on all levels of EU engagement. Deeper strategic coordination between the different prongs of its mediation engagement would be beneficial.

External actors changing cost-benefit calculations

Many have noted the role of external actors in preventing full direct effects of mutually hurting stalemates (Zartman 1985; Haass 1991; Crocker, Hampson, Aall 2008). Crocker et al. cite “geography and geopolitics” as one of the considerations underpinning intractability.⁹⁶ External actors may in that way become a part of a structure that “manages” the conflict without facilitating its resolution. It can also become a part of the conflict through a deeper involvement or during a renewed escalation. In such cases, additional complexity is layered over the original conflict – and in that way intractable conflicts become structurally linked to other regional or global disputes. This is directly relevant to the Georgian-Abkhaz and Georgian-Ossetian conflicts.

Prior to the August 2008 war, Russia’s support to Abkhazia and South Ossetia served as a buffer to the two breakaway entities against the full direct effects of the stalemate while Russian troops provided backing to both regions. In a parallel development, political and aid support offered to Tbilisi by the EU and US (whose aid also included military cooperation) may have helped mitigate effects of the stalemate on Georgia. This has likely contributed to the peace processes freezing. It has arguably delayed a political resolution. The August 2008 escalation and Russia’s recognition of Abkhazia and South Ossetia further entrenched the intractability due to added security and political complexity. Third party mediation efforts need to be pursued on different political levels at the same time – and that is difficult to achieve.

Resources

In many conflicts, resources can be a powerful driver of intractability. Resources can transform from the means of a conflict to its “end”.⁹⁷ Smuggling across the Georgian-Ossetian conflict divide would have been a very good example of that prior to the August 2008 war. Saakashvili’s crack-down on the Ergneti market in Spring 2004 disrupted some of the post-conflict resource allocation patterns – but also disrupted the process of confidence building between communities, and sent a powerful negative message from Tbilisi to Ossetian communities. This “collateral damage” to what Tbilisi saw as a legitimate attempt to clamp down on tax evasion due to lack of control over state border with Russia may have been too high a cost to pay.

Deep-Seated Grievances and Justice Issues

Deep-seated identity grievances are cited as a powerful cause of why traditional diplomatic interventions have had limited success.⁹⁸ ‘In other words, the grievances driving intractable conflicts tend to involve experiences of gross injustice and threats to identity and security, thus making the conflict existential – a struggle for survival’.⁹⁹ These issues are among the most crucial considerations in the Georgian-Abkhaz and Georgian-Ossetian conflicts, with existential identity grievances claimed by the Abkhaz and Ossetian sides. In addition to that, legacies of past abuse affect all sides, having occurred during different historical periods prior to, during and after the conflicts of the 1990s. Legacies of past abuse have remained largely unaddressed in these conflicts. They contribute to stalemates in negotiations and to a lack of trust in the possibility of a negotiated settlement. A genuine mediation effort should, among others, focus on addressing these issues.

Crocker et al. have noted that identity grievances can also become deeply politicized or instrumentalised¹⁰⁰ – thereby adding another dimension to existing intractability. New generations who grow up in a conflict situation without having any real first-hand experience of dealing with the other side, but are exposed to their own side’s

95 D. Chigas, with E. McClintock and C. Kamp (1996). ‘Preventive diplomacy and the OSCE: Creating incentives for dialogue and cooperation’, in Chayes and Chayes (Eds.). *Preventing conflict in post-communist world*, Washington, DC: The Brookings Institution, p.29.

96 C. A. Crocker, F.O. Hampson, P. Aall (2008). *Op.cit.*, p.494.

97 I.W. Zartman (2001). “Negotiating internal conflict: incentives and intractability” in *International Negotiation*, Volume 6, Number 3 (Martinus Nijhoff Publishers, 2001), pp.297-302.

98 D. Chigas (2005). ‘Negotiating intractable conflict: The contributions of unofficial intermediaries’, in *Grasping the nettle: Analyzing cases of intractable conflict*, C. Crocker, P.Aall (Eds.). Washington, DC: United States Institute of Peace, pp.123-154.

99 *Ibid.*

100 C. A. Crocker, F. O. Hampson, P. Aall (2008), *Op. cit.*, p.495.

myths about “the other”, can be radicalised. Entrenched conflicts have a self-perpetuating character – as new realities become institutionalised and interests vested in the continuation of conflicts become long-standing and are not addressed, further alienation between the sides is as natural as it is advantageous to those that profit from the status quo. New generations can be radical due to the lack of contacts as well as due to political propaganda typical of conflicts where sides are deeply divided.

CONCLUSION

While the EU appears to be well placed to play a robust mediation role in the different conflicts involving Georgia, its limited achievements to date illustrate the constraints and limitations on it having truly effective impact. The conflicts are complex, intertwined and far from “ripe” for resolution. The EU is deeply divided over Russia, and to a degree also over Georgia. It has not made effective strategic links between bilateral negotiations in which it is involved with Georgia and Russia, and its mediation effort regarding Georgia’s conflicts to press for progress in the mediation.

The EU’s mediation efforts are further weakened by the fact that it is a partial actor, fully backing the position of Georgia’s territorial integrity. Although partiality is not necessarily a problem in mediation, the EU’s partiality goes against the red-lines of the Abkhaz, Ossetian and Russian sides, and accounts for the fact that the EU has managed to secure only a half-hearted acceptance by them. The EU can counter some of their reservations by a deeper and more even-handed engagement, while not necessarily compromising on its political positions.

There is no realistic likelihood that any other international actor is available to play a more efficient and more robust role in the official mediation process at this point. The best solution is for the EU to engage in a more nuanced and strategic way.

These recommendations seek to draw on the EU’s experiences to date to illustrate what the EU can do to strengthen its mediation efforts in this context and elsewhere. Specifically:

- The EU’s mediation efforts typically take place in a deeply politicised context, involving its other bilateral or other multilateral engagements. The EU should seek to foster a deeper strategic link between its bilateral negotiations and its mediation efforts. It should also use all credible incentives and disincentives available to it in its mediation efforts to encourage parties’ good-faith engagement.
- The EU’s mediation efforts are often rooted in a power-based paradigm. Views vary as to the effectiveness of this paradigm, and many prefer an interest-based approach to mediation. Regardless, and given that the EU’s effective power in the power-mediation efforts is often insufficiently impactful – typically due to member state differences and bureaucratic hurdles – the EU should explore interest-based approaches as much as possible.
- The multitude of actors representing the EU (from member states to the various EU institutions) is both an opportunity and a challenge from a mediation point of view. If all these actors worked in a strategic and concerted way, the EU’s mediation impact could be much greater than that of many external actors. As it is, bureaucratic and political challenges still plague the cooperation of these different actors.

Although the different EU players are making an effort to address this, and while the Lisbon Treaty will result in better EU institutional coordination over time, the EU actors are not necessarily perceived as integral parts of one body in the context of Georgia’s conflict. The EU should seek to address coordination challenges in a more substantive way.

- The deeply divergent interests and positions of the different member states have significantly limited the EU's institutional mediation role in the Georgian context in many ways:
 - This has been especially so in the case of issues that involve Russia. Military and energy security, trade interests and historical experiences have prevented consensus on Russia-related positions.
 - The member states' broader foreign and security policy agendas tend to influence their assessments of conflict resolution as well as, in some cases, transition agendas in the countries in question. In the case of some, Russia-related foreign policy issues have overshadowed their analysis of regional and local issues. Security interests have at times also overridden human rights and democratisation concerns. In the case of Georgia, a key Eastern Partnership player, democratisation, human rights and conflict-resolution records have been insufficiently scrutinised, especially by the Central Eastern European states.

Although it is unrealistic to expect that these differences will be bridged in the short-to-medium term, the EU should seek an issue-based consensus on points relevant to its mediation efforts. It should develop strong unified approaches to back up its political positions, at a minimum, on clear-cut issues such as ceasefire implementation or security in the ceasefire line areas.

- The EU's own capacity to implement transformative approaches to conflict resolution should be bolstered. The EUSR's involved in conflict-related work should benefit from specific conflict-resolution/mediation expertise. Advisors on these issues and experts with an in-depth knowledge of the conflict context should be a part of each EUSR's team.

In turn, the EUSR's should find ways to work closely with both the Georgian and Abkhaz/Ossetian sides, if possible, to support them in the development of conflict-resolution strategies that look beyond status issues and focus on interests. This might be through direct engagement or through support to other actors to fulfil this role.

- In complex conflicts, the EU should focus on all levels of conflict simultaneously on parallel tracks. In this case, it should seek to address both the Georgian-Russian as well as the Georgian-Abkhaz and Georgian-Ossetian conflicts.
- In protracted conflicts, the EU should work to substantively address the deep-seated causes of intractability and the root causes of the conflict, in addition to security, livelihoods or displacement issues. To help "ripen" the conflict-resolution environment for settlement, the EU should provide additional backing to broader conflict-transformation processes financially and politically (including civil society dialogue efforts, dealing with the past and transitional justice initiatives, and conflict awareness-raising and internal conflict-transformation activities on each side of the conflict divide). The EU should draw on the findings of these processes and where possible, incorporate them into its mediation strategies.
- If and when the EU adopts a position partial to one side, while also acting as a mediator, it needs to develop policies that will facilitate its acceptability to the other side.

In this case, given its backing of Georgia's territorial integrity, the EU needs to substantively engage the non-recognised territories so that they see the EU as an even-handed player. It should be flexible and creative in implementing its "non-recognition and smart engagement" policy. Providing mere technical support without real political backing will have limited results.

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MAP OF GEORGIA/THE SOUTH CAUCASUS



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