

ILLUSTRATION: RAGNIVENSSON



NORD STREAM, MEDIATION, AND THE COUNCIL OF BALTIC SEA STATES

by **Levke Aduda & Stefan Ewert**

abstract

The Russian–German gas pipeline project Nord Stream is still high on the agenda of regional politics in the Baltic Sea Region. Recent discussions on expanding Nord Stream highlight the fact that this unilateral effort by Russia and Germany has stirred further unrest among the other littoral states. Furthermore, an expansion of Nord Stream seems off limits due to EU regulations. Nevertheless, it is continuously pursued by Russia and Germany out of national interests. We argue that the EU, which has been repeatedly proposed as a mediator of the conflict, is unsuitable because its claim of direct legislative competence strongly affects the conflict. Based on existing mediation research, we suggest that regional political organizations, such as the Council of Baltic Sea States (CBSS), are more likely to be accepted as mediators, and more likely to be successful in that role. Their perceived weakness is a strategic advantage because the parties involved in the conflict do not have to fear being overruled by the CBSS. Furthermore, the CBSS can remain engaged for an extended time.

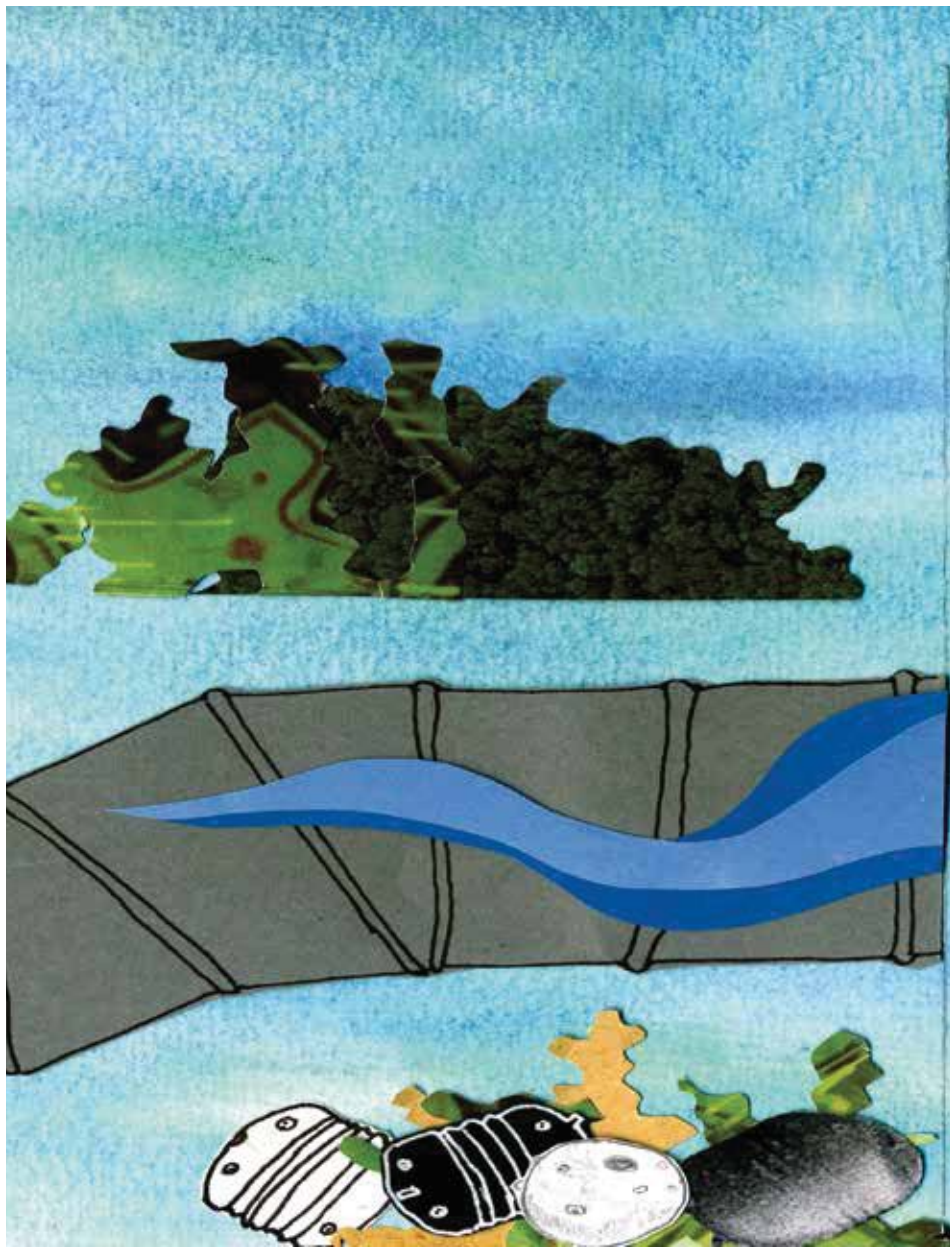
KEYWORDS: Nord Stream, mediation, CBSS, credibility leverage, regional mediator.

Around 10 years ago, the Russian–German gas pipeline project Nord Stream triggered a public and academic debate in the Baltic Sea Region.¹ The discussion had at least four dimensions. In addition to political and security concerns, economic, legal, and ecological aspects were referred to. The public debate reopened in 2015, when the Russian company Gazprom, together with several West European partners, decided to found the consortium Nord Stream 2. Under the framework of Nord Stream 2, two more gas pipelines are supposed to be built across the bottom of the Baltic Sea. Controversial discussions on the project have split the region. The governments of Germany and Russia are in favor of Nord Stream 2. The German government supports the project, in spite of some critical arguments in particular by the Green Party. It is mainly the Social Democrats who advocate Nord Stream 2 and have pushed the German government to build an alliance with Gazprom and Russia.² The remaining Baltic Sea littorals oppose the project.

To date, the question how to govern the conflict over Nord Stream 2 remains unresolved even though construction is sup-

posed to start in February 2018.³ Meanwhile, the importance of regional cooperation is even more pronounced in light of recent events such as the Ukraine crisis and Russia's involvement in Syria, which indicate tensions in the international system that are likely to have an influence on the Baltic Sea Region. Particularly in times like these, regional cooperation is crucial because it contributes to regional stability. To encourage flawless cooperation, conflict management on Nord Stream 2 is necessary. This paper examines the question how the conflict on Nord Stream 2 can be successfully addressed.

TO ANSWER THE question, we first summarize the debate on Nord Stream and Nord Stream 2. Second, we introduce different conflict management tools with a focus on mediation. Drawing on the literature on international mediation, we seek to highlight the benefits of comparably weak mediators who can credibly promise to act as mediators without using sticks and carrots to pressure the conflict parties towards an agreement. Hence, the conflict parties remain in control of both the mediation outcome



and the mediation process. Moreover, we discuss the benefits of regional mediators who hold crucial insider information on the conflict parties. Third, we propose the Council of Baltic Sea States (CBSS) as a mediator. We argue that it can make use of its relative weakness, and thus act as the type of third party that can bring the conflict parties to the mediation table. As a regional actor, it is likely to stay engaged for an extended period and thus not rush towards an agreement, but, through persistence and endurance, broker a lasting agreement.

The public and scientific discourse on Nord Stream

In 2005, the Russian energy company Gazprom and the German energy companies E.ON Ruhrgas and BASF/Wintershall founded the consortium *North European Gas Pipeline Company*, renamed *Nord Stream AG* in 2006. The purpose of this consortium was the creation of an offshore natural gas pipeline from Russia to Germany. Unlike other offshore gas pipeline projects, such as the *Langeled* pipeline from Norway to the UK, Nord Stream was the subject of controversy and debate from the very beginning.⁴ The project was promoted by Russia's president Vladimir Putin and Germany's former chancellor Gerhard Schröder, while several Baltic Sea littorals objected to it for different reasons. The arguments of the proponents and opponents are outlined below. Despite the voices against Nord Stream, the pipeline from Vyborg, Northwestern Russia, to Lubmin, Northeastern Germany, was inaugurated in 2011. From an economics point of view, proponents of the project in Western Europe, and especially in Germany, argued that the pipeline ensures the gas supply from Russia to Europe. They referred to the crucial role of natural gas in the Western European energy mix and its status as a bridging technology for a climate-friendly energy supply in the future. Ecologically, the construction and operation of the pipeline will influence the marine environment only marginally,⁵ and it will substantially contribute to reductions in CO₂ emissions. Moreover, by enhancing the dependency between Russia and Europe, the pipeline project would guarantee peace in the region.⁶ However, opponents of the pipeline have argued that the consortium never took an onshore alternative into consideration, although such a solution might be less costly than an offshore pipeline.⁷ In fact, opponents argued that the project is motivated by political reasons⁸ and that it enables Russia to use the pipeline as political leverage on neighboring countries including the Baltic States, Poland, and Ukraine.⁹ The offshore project allows Russia to sell and deliver its natural gas to its most important customer, Germany, while retaining the power to stop gas deliveries to neighboring countries if it so chooses.¹⁰

The discussion of the political dimension

and the fear of Russia's regional empowerment has strongly shaped the public discourse among the other Baltic Sea littoral states.¹¹ For example, one concern, expressed mainly by Swedish politicians, refers to Sweden's national security: by crossing the Swedish exclusive economic zone, the pipeline might lead to a Russian naval presence along the Swedish coast, which could lead to political frictions. Moreover, the pipeline and possible related platforms might provide infrastructure for Russian spy attacks.¹² Additionally, to some political scientists, the pipeline project is part of the explanation of Prawo i Sprawiedliwość's (PiS) 2015 election victory in Poland. The national conservatives in Poland gained popularity, while the pro-Europeans parties, arguing for EU solidarity, lost their persuasive power due to the German-Russian bilateral effort.¹³

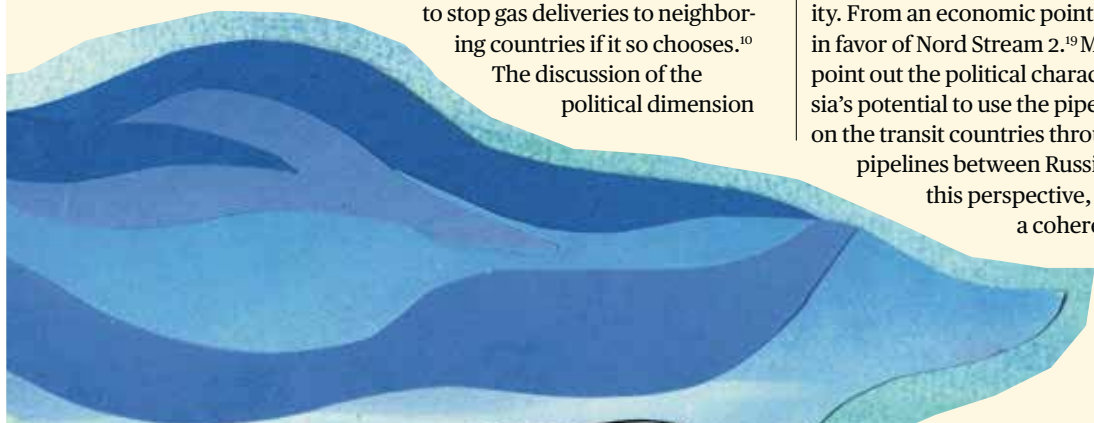
A LAST GROUP OF counterarguments is related to environmental concerns. These concerns have mostly referred to the setup process of the pipeline. Opponents have expressed fear that toxic bottom sediments will be released by laying the pipeline and that dumped ammunition and weapons from the Second World War will be exposed and disturbed in the process – with unpredictable consequences for the ecosystem of the Baltic Sea.¹⁴ After the pipeline is laid, accidents in operation and gas leaks would probably have a negative impact on fish stocks.¹⁵ The pipeline has been argued to be “prolonging European use of and dependence on fossil fuels”.¹⁶

Finally, critics have complained of a lack of transparency in the project and the personal connections behind it. Analysts have viewed the friendship between Putin and Schröder as a “key explanation behind the Nord Stream project”.¹⁷ The lack of transparency raised suspicions with regard to the underlying aims and dangers behind the given economic rationales, and the registration of the Nord Stream Corporation in Switzerland heightened these suspicions.

Nord Stream 2: Highly controversial again

After the inauguration of Nord Stream in 2011, the debate calmed down. Yet in September 2015, Gazprom and several European energy companies founded the consortium *Nord Stream 2* to lay two more pipelines, running parallel to the two existing ones, doubling the capacity from 55 to 110 billion cubic meters of gas per year. The two streams are supposed to be built in 2018 and 2019.¹⁸

This new project has reignited the debate in the EU. Germany, as the strongest proponent of the project, emphasizes the commercial character of the pipeline and regards it as a market activity. From an economic point of view, there are several rationales in favor of Nord Stream 2.¹⁹ Meanwhile, opponents in the EU point out the political character of the project and highlight Russia's potential to use the pipeline as an instrument for pressure on the transit countries through which the existing overland pipelines between Russia and Western Europe run.²⁰ From this perspective, the pipeline undermines the aims of a coherent European energy policy, energy diversification²¹ and security of



energy supply.²² Furthermore, the high cost can only be amortized by long-term use of the pipeline, and hence long-term use of fossil fuels, which will undermine the expansion of renewable energies.²³

ON THE LEGAL LEVEL, the Nord Stream 2 consortium and the German *Bundesnetzagentur* (Federal Network Agency for Electricity, Gas, Telecommunications, Post, and Railways) on the one hand and the EU Commission on the other have debated the question of the pipeline project's legal basis. This dispute marks a crucial stumbling block for the project's execution due to the strong requirements, outlined in EU regulations on transparency, for other firms' access to the project and for the separation of gas production and supply. While the EU Commission insists on the implementation of EU law as the regulatory framework, the Nord Stream 2 coalition and the *Bundesnetzagentur* argue that the offshore project between an EU member state and a non member is not governed by the European Single Energy Market Package.²⁴ In order to ensure a coherent European energy policy, the European Commissioner for the Energy Union, Maroš Šefčovič, called for a leading role of the Commission in the pipeline negotiations with Russia.²⁵ However, the Legal Service of the European Council published an opinion in September 2017 and rejected the Commission's intention to engage in negotiations with Russia because the pipeline comes from a third country and thus does not fall within EU jurisdiction.²⁶ Hence, this expert opinion denied a direct role of the EU Commission as a negotiating partner in the dispute.

As a first conclusion, the pro and contra arguments brought forward on Nord Stream 2 are similar to the arguments on Nord Stream. In balancing the pros and cons, there is no "objective" way of understanding all of the underlying reasons for or against the project.²⁷ Because regional stability is of major importance in a time of increasing instability in the international system, and because the scheduled starting date of the construction of Nord Stream 2 is approaching very quickly, timely management of the dispute is crucial. In the following, we briefly introduce a range of conflict management tools before proposing mediation as the most suitable tool for managing the conflict over Nord Stream 2.

Which conflict management tool to choose?

There are a range of peaceful conflict management tools available. Listed in Article 33 of the UN Charter are tools such as "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their [the conflict parties'] own choice". In the conflict on Nord Stream 2, different tools can be considered as viable options. Sanctions have already been issued,²⁸ while demands have been made to have the European Court of Justice

settle the dispute.²⁹ Both negotiations and mediation have been suggested as tools by different actors.

In August 2017, the US issued sanctions related directly to the Nord Stream 2 project and thereby took an active part in the conflict. The US Congress has authorized the president to impose sanctions on persons and firms involved in Russian energy export pipeline projects.³⁰ In fact, the "Countering America's Adversaries Through Sanctions Act" allows the US president to restrict the access of individuals or companies involved in the Nord Stream 2 project to US financial institutions and to prohibit procurement contracts between the sanctioned parties and the US government.³¹ Germany's foreign minister Sigmar Gabriel accused the US of using sanction policy to promote its own gas

export interests to Europe.³² So far, these sanctions have not had a notable impact. Research has shown that a mix of conflict management strategies is often very effective, though,³³ and the question is what other tools might be used to address the conflict.

Legal measures, such as arbitration and adjudication, would provide binding solutions to the conflict.

They are often considered to be the "most effective means of produc-

ing long-lasting settlements on contentious issues".³⁴ However, states often refrain from engaging in legal forms of dispute resolution, particularly when their national security is at stake, because they lose control over the outcome.³⁵ Especially because the disputants in the conflict on Nord Stream 2 do not agree on which legal measures apply, the hurdle before legal proceedings seems relatively high. In keeping with the EU Commission's position, most Baltic littoral states claim the project falls under EU jurisdiction, while Germany and Russia claim it falls under national jurisdiction.³⁶ Nevertheless, the European Court of Justice has been suggested as an institution that should address the conflict.³⁷

THE EUROPEAN COMMISSION has shown a strong interest in bilateral negotiations with Russia. However, not only did the Legal Service of the European Council reject the European Commission's decision to engage in negotiations with Russia,³⁸ but Russia also stated that it does not want to negotiate Nord Stream 2 with the EU because it does not fall within EU jurisdiction.³⁹ Hence, bilateral talks between the EU and Russia do not seem to be an option. However, if the conflict parties do start to consider it as an option, it would be sensible to include all key disputants in talks.

Another option for conflict management is mediation, which is "a process of conflict management where disputants seek the assistance of, or accept an offer of help from, an individual, group, state, or organization to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law."⁴⁰ It is a process throughout which the conflict parties remain in control of the outcome.⁴¹ While this

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can jeopardize talks, and can allow conflict parties to pursue “devious objectives”,² it offers security to the conflict parties. Because there is no clarity on whether EU or national jurisdiction is applicable in the case at hand, mediation might be the key to addressing the conflict. Some political analysts have suggested EU mediation,⁴³ and Šeřčovič himself declared the Commission’s willingness to act as a mediator in the conflict.⁴⁴ In the following, we argue that mediation is a viable conflict management tool for addressing the conflict on Nord Stream 2. However, due to the EU Commission’s strong position in the conflict, and its claim to juridical authority, we propose that another third party – the Council of Baltic Sea States (CBSS) – mediate the conflict instead of the EU. Before we outline our proposal on CBSS mediation, we introduce some key notions on mediation in the following section.

On mediation

Mediation is a voluntary process. Thus, the conflict parties have to agree to mediation for it to take place.⁴⁵ This is particularly true when the conflict parties are unable to solve a conflict unilaterally, i.e. by one side forcing the other to concede, and a continuation of the conflict becomes too costly but no way out seems apparent.⁴⁶

In the conflict at hand, the costs are increasing as the conflict continues. With the scheduled starting date of the construction of Nord Stream 2 fast approaching, the pressure on Germany and Russia to have certainty that the project can be implemented is increasing. Meanwhile, the other Baltic Sea littorals and the EU would prefer the project to be stopped, mainly due to the concerns outlined above. Nevertheless, not only Germany and Russia, but also the other Baltic Sea littorals and the EU are likely to be interested in a solution to the problem because this would reduce political tensions in the area.

MEDIATION IS A RELATIVELY cost-effective conflict management tool that can be employed ad hoc.⁴⁷ This is crucial to note, especially assuming not only the conflict parties but also third parties are rational actors. Still, some third parties are more apt to mediate conflicts than others. While the UN often mediates protracted, high-intensity conflicts, and the US intervenes in numerous conflicts as well,⁴⁸ third parties with less leverage tend to intervene in conflicts of lower intensity.⁴⁹ In addition, in some conflicts several third parties mediate at the same time. These efforts are most likely to be successful if mediators of different types (or “tracks”) intervene in a coordinated fashion.⁵⁰ If this is the case, they can combine their strengths and carry the costs of mediation together.⁵¹ Which third party is chosen to mediate a conflict ultimately depends on many factors. Among others, the conflict parties’ relations with the third party can be decisive.⁵²

Subjective or objective criteria can be drawn on to define the success of mediation. On the one hand, mediation might be

considered successful if the conflict parties are satisfied with the process. However, more objective measures are often used to evaluate mediation success.⁵³ The most commonly used objective measure of mediation success in the literature on international mediation is whether an agreement was reached.⁵⁴ Such an outcome is more likely if the mediator is able share private information passed to it by the parties in the conflict.⁵⁵ Because some third parties are more likely to encourage private information sharing than others, it is not only vitally important to account for mediator identity when analyzing mediation onset, but also when seeking to analyze the likelihood of mediation success.

Inherently linked with a mediator’s identity is the mediator’s leverage. Depending on how the conflict parties perceive a mediator’s capabilities, and to what extent they are interested in these capabilities, a third party holds more or less leverage.⁵⁶ In their pursuit of mediation success, third parties employ different mediation strategies, which are dependent on the mediator’s leverage. These strategies range from communication facilitation and procedural strategies to taking on a more influential role through directive mediation. Thus, stronger third parties are able to use directive measures, such as sticks and carrots,

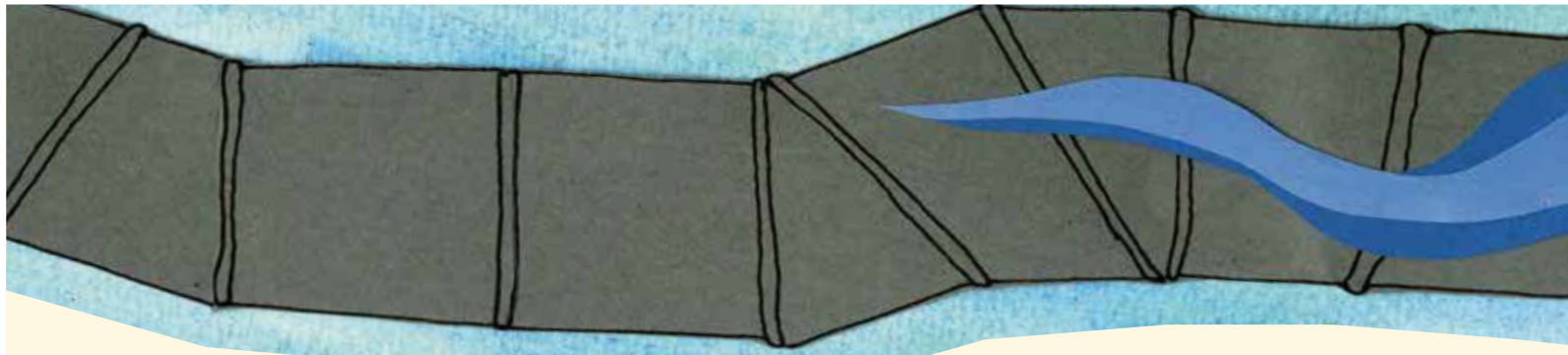
while weaker third parties are for the most part unable to pressure the conflict parties in a preferred direction. Instead, they seek to clarify the situation and share private information through communication facilitation or to establish a protocol and outline an agenda through procedural strategies.⁵⁷ The success rate of these mediation strategies varies. In the short term, mediators using directive strategies are

more likely to produce agreements.⁵⁸ However, in the long run, time-inconsistency problems arise. As the presence of the third party wanes over time after the agreement is reached, the deal that was struck can seem less beneficial and the conflict parties may deviate from the agreement.⁵⁹ Although time-inconsistency problems can arise regardless of the strategy the mediator uses, less directive mediation is more likely to produce more lasting agreements due to increased ownership by the conflict parties.⁶⁰

MOREOVER, A DEBATE in the literature on mediator bias highlights the benefits of mediators who take sides.⁶¹ Not only may third parties biased to the stronger conflict party be able to convince them to engage in mediation in the first place,⁶² but these mediators are also expected to share information more reliably.⁶³ They are also more likely to refrain from rushing towards an agreement, instead seeking to ensure that the interests of the conflict actor they are biased towards are met.⁶⁴ Thus, while the initial expectation is often that mediators are impartial, this is not always the case.

Due to the voluntary nature of mediation, we argue that it is a suitable conflict management tool to address the dispute

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over Nord Stream 2. If the conflict parties are allowed to remain in control of the outcome, we are convinced that mediation is a viable conflict management tool for the conflict at hand. If the conflict parties remain in control of the mediation outcome, they may engage in talks, and eventually the conflict around Nord Stream 2 may be solved. Moreover, mediation can be employed ad hoc. Considering that the expected starting date of the construction of Nord Stream 2 is fast approaching, the timely manner in which mediation can get started could be an important benefit of mediation in comparison to legal procedures that often demand more time than mediation. Although the lasting success rate of arbitration and adjudication is high, mediation has the capacity not only to address the position of the conflict parties, but also to account for the actors' interests and needs, especially when strategies of communication facilitation and procedural mediation are employed. Considering the different fronts (Russia and Germany vs. the Baltic Sea littorals), it is crucial to opt for a conflict management tool that permits a positive-sum solution. Because mediation provides for solutions that are more than a compromise, and because it allows the conflict parties to own the process and to remain in control of the outcome, we argue that the conflict parties are likely to accept a mediation offer and that a well conceived mediation process is also likely to be lastingly successful.

The strength of weak, insider mediators

As has become apparent, the third party's identity is crucial for mediation onset and mediation success. While strong third parties are often more successful in the short term, weak third parties are more likely to broker lasting agreements.⁶⁵ Moreover, they are able to credibly promise "pure" mediation, that is, communication facilitation, or, at a maximum, procedural mediation.⁶⁶ Hence, weak mediators can credibly promise not to push the conflict parties in a direction they do not want to go. Through the numerous tactics available to them, weak third parties are able to guide the mediation process. By contributing to a clarification of the situation by identifying the interests behind the positions,⁶⁷ and thereby providing the grounds for reaching an agreement, weak mediators are likely to be stronger than they may seem to be at first glance.

Furthermore, mediators with cultural or historical ties often have a crucial impact on the conflict parties. In fact, although regional mediators often do not hold as much "capability leverage" as, for example, the US or the UN, they hold "credibility leverage" in the form of crucial context knowledge. They often have cultural or historical ties to at least one of the conflict parties, and therefore they are able to credibly share information. Besides, they usually have a genuine interest in conflict resolu-

tion. The agreements brokered by mediators with credibility leverage are likely to last because these mediators draft settlements that usually lie within the natural bargaining range of the conflict parties. Thus, the mediator does not extend the bargaining range through sticks and carrots, and even in the absence of the mediator, the agreements reached often endure.⁶⁸ Moreover, because insider mediators come from within a community, they cannot easily withdraw from the process. Therefore, they have strong incentives to be honest and are unlikely to push for agreements that do not match the capability distribution between the conflict parties.⁶⁹

IN SUM, ALTHOUGH weak third parties may be perceived to be inefficient mediators at first glance, they often hold crucial credibility leverage, particularly when they come from within the conflict community. Especially in conflicts in which the stronger party does not want to come to the mediation table, weak third parties may be able to convince them to engage in talks because they do not have anything to fear from the mediator.⁷⁰ By being able to promise "pure mediation", they increase the likelihood of mediation onset. Because they are often a part of the community the conflict takes place in, they are likely to stay engaged for a longer time and thereby allow the conflict parties room to identify a deal that they can wholeheartedly agree to and are likely to implement. Thus, weak mediators with credibility leverage hold crucial advantages over strong mediators – especially in low-intensity conflicts.

Mediating the conflict on Nord Stream 2: Calling upon the CBSS

Because the conflict between Russia and Germany on the one hand and the Baltic Sea littorals on the other is ongoing, we seek to underline the benefits of mediation for the case at hand. The literature review on the different positions towards Nord Stream and Nord Stream 2 has shown the diversity of arguments, which at first seem to be incompatible. To resolve the conflict, disentangling the positions of the conflict parties from their needs and interests is crucial.⁷¹ With the assistance of a third party, the conflict parties might share yet unrevealed information, for example, on their security concerns or on their intentions with Nord Stream 2. Once these concerns are identified, a settlement that accounts for the concerns, interests, and needs of the conflict parties might be drafted, thus allowing a resolution of the conflict.⁷²

One third party that has been repeatedly suggested as a mediator is the EU, which has increased its engagement in conflict management as a mediator since the early 2000s. For example, it brokered settlements between Serbia and Kosovo during the Belgrade-Pristina dialogue with the help of its leverage and a mix of mediation strategies.⁷³ However, as outlined above, the EU

Commission is an opponent of the Nord Stream 2 project in the ongoing dispute and it holds a strong position in the question of the project's jurisdiction. While the EU argues that the project falls under EU regulations, Germany claims that it falls under national jurisdictions – just as Nord Stream did.⁷⁴ Moreover, EU Commissioner Maroš Šefčovič has stated repeatedly that, according to the Commission, “Nord Stream 2 does not contribute to the Energy Union's objectives.”⁷⁵

WHILE SOME MIGHT argue that the EU would be a suitable mediator because it is a strong organization in the region and because it is an established and internationally renowned and recognized organization that has gathered experience in mediating conflicts – including conflicts of higher intensity – we argue that the EU is not the most suitable third party to mediate the conflict on Nord Stream 2: it plays an active role in the conflict by claiming authority over the legal status of Nord Stream 2 and explicitly argues against the pipeline. It is unlikely that all conflict parties, especially Russia and Germany, would agree to EU mediation because they will expect the EU to try to pressure them towards an outcome the EU prefers. Although there is a debate in the literature on whether mediators need to be impartial, it is certainly difficult for a third party to engage as a credible mediator if it makes a contested claim to legal authority over the dispute.

Instead of EU mediation, we suggest mediation by the CBSS, which has so far refrained from publicly positioning itself in relation to the conflict on Nord Stream 2. The CBSS is an intergovernmental organization founded in 1992 that seeks to encourage economic, political, and cultural cooperation among the Baltic littoral states as well as Norway and Iceland.⁷⁶ It is commonly regarded as a rather weak institution because it is not based on an international treaty, but on a declaration by the Ministers of Foreign Affairs.⁷⁷ According to the declaration, the decisions of the Council are not legally binding. The CBSS claims to act as an overall institution of regional cooperation between the north-eastern part of the EU and Russia, providing an intergovernmental umbrella for regional activities.⁷⁸ For some analysts, the CBSS's main task was the region's preparation for the EU's eastern enlargement in 2004. Hence, when Poland and the Baltic States joined the EU, the continued existence of the CBSS was questioned.⁷⁹ Nevertheless, after some structural reforms and institutional changes, it still exists today.

Because it was set up in the aftermath of the Cold War to encourage,

enable, and improve political cooperation, among other goals, the CBSS suggests itself as a mediator in the region. Particularly because the continued conflict over Nord Stream 2 has a negative impact on the member states' relations and on regional stability and security, the CBSS should have a genuine interest in engaging with the conflict. The interpretation of PiS's electoral victory in Poland in light of the debate may serve, as outlined above, as one example of how the conflict influences regional politics and member state relations.⁸⁰ In fact, as early as 1997, the general idea of an offshore gas pipeline from Russia to Western Europe was on the agenda of the CBSS.⁸¹ After Nord Stream became operational, Angela Merkel, as head of a CBSS summit in Stralsund, Germany, successfully reduced the differences between the disputants at the CBSS meeting in May 2012.⁸² With regard to Nord Stream 2, no CBSS activities can be noted, though, and no official document or statement of the CBSS on the second

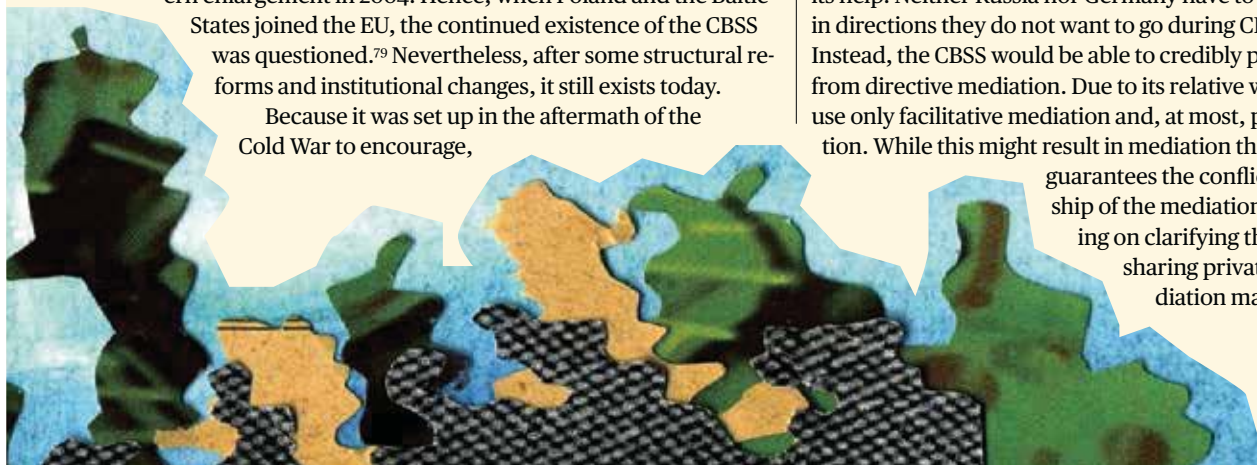
Nord Stream project exists to our knowledge. Thus, the CBSS can claim neutrality in the dispute.

NEVERTHELESS, THE CBSS has several interests in the conflict. Since one of the main areas of regional cooperation is the protection of the Baltic Sea ecosystem, the pipeline's influence on the marine environment can be assumed to be one of the CBSS's priorities. Furthermore because all conflict parties are members of the CBSS,

the CBSS would be an insider mediator whose genuine interest should be the resolution of the conflict. Additionally, the CBSS is under pressure to prove its relevance to the region, which it would be able to do by mediating the conflict on Nord Stream 2. To underline its diplomatic importance, it would have a strong incentive to be successful in this endeavor. Thus, it can be assumed that the CBSS would try to broker an agreement at all costs. However, it does not have the ability to use directive mediation. In addition, the CBSS would probably remain engaged for an extended period because it is an insider to the conflict. Therefore, it would be likely to continuously work towards mediation success, and, if need be, agree to multiparty mediation rather than risk failure.⁸³

Russia and Germany may also be more likely to engage in mediation if a comparably weak third party, such as the CBSS, offers its help. Neither Russia nor Germany have to fear being pushed in directions they do not want to go during CBSS mediation. Instead, the CBSS would be able to credibly promise to refrain from directive mediation. Due to its relative weakness, it could use only facilitative mediation and, at most, procedural mediation. While this might result in mediation that takes longer, it guarantees the conflict parties' ownership of the mediation process. By focusing on clarifying the situation and sharing private information, mediation may eventually reach

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a settlement the conflict parties can agree to.

As outlined in the previous section, the perceived weakness of the CBSS can be interpreted as its strength. In fact, due to its insider position, the CBSS is likely to hold more knowledge on the different conflict parties' interests than other mediators. Because of its direct contact with its members, it can hold informal face-to-face talks without the other side feeling neglected. Moreover, due to its insider position, it is likely to have gathered private information on the conflict parties' stances in the course of the conflict. It is likely to have picked up on security concerns voiced by its member states, political and environmental issues, and economic interests that it can make use of once mediation gets underway. Bringing this information to the table provides the CBSS with leverage that stronger third parties who are not insiders to the conflict are unlikely to hold. Because the CBSS is reliable and able to share private information, the conflict parties can be expected to trust its ability to mediate. Hence, eventually, they are likely to share the information necessary for reaching agreements that both sides can commit to. Thus, the CBSS is not only likely to be accepted as a mediator, but also to broker a lasting agreement.

THE QUESTION REMAINS, THOUGH, which organ of the CBSS should take on the role of mediator. While the permanent secretary of the CBSS would be one option, we propose that the Committee of Senior Officials, which is appointed by the Council of Foreign Ministers, should appoint a Special Ambassador of the CBSS to mediate the conflict. Although political considerations are highly likely to influence the appointment, we strongly support the appointment of a mediator who is experienced because this will not only benefit the mediation process, but also increase the CBSS's likelihood of succeeding. One option would be to appoint a Norwegian diplomat – if Norway is willing to send one. Norway is experienced in conflict management, particularly in mediation,⁸⁴ and also has experience in pipeline construction.⁸⁵ Besides, it is not directly affected by Nord Stream 2. While one might ask why Norway should not simply mediate directly instead of being appointed through the CBSS, we argue that the engagement of the CBSS would increase the conflict parties' ownership, since they are all members of the CBSS. This would be crucial for embracing mediation wholeheartedly, and would encourage the mediator and especially the conflict parties to stay engaged for an extended time.

Conclusion

Nord Stream and Nord Stream 2 have caused conflict in the Baltic Sea Region between Russia, Germany, and the other Baltic Sea littorals. While EU mediation and legal proceedings conducted by the European Court of Justice have been suggested, and sanctions have been issued by the US, the conflict remains unresolved, and to date no third-party diplomatic effort has got underway. However, particularly because “many governments



in the region have only limited control over energy decisions in their countries”, there is a need for cross-border governance with regard to the pipeline project.⁸⁶ Moreover, the conflict adversely affects the political and economic situation in the region.

Thus, to enable cross-border governance and to improve relations between the states in the region, we argue that peaceful conflict management tools need to be employed to address the conflict. We strongly advocate using mediation as a conflict management tool.

However, instead of agreeing with recent propositions of EU mediation, we suggest the CBSS as mediator. Due to the central role the EU has taken on in the conflict, and in particular the different standpoints the conflict parties have on whether EU or national jurisdiction applies, we argue that EU mediation is unlikely to work. Being perceived as a rather weak institution, the CBSS can make use of its insider knowledge and turn its weakness into a strength. Because it can credibly offer pure mediation, Russia and Germany in particular would have incentives to engage in talks without fear of being pushed towards an agreement they cannot commit to. Meanwhile, to prove its relevance to the region, and due to the fact that the CBSS is an insider, the CBSS is likely to stay engaged for an extended time, thus allowing the conflict parties to own the process and brokering a lasting agreement.

In a next step, the CBSS should discuss the option of whether to engage as a mediator. We propose that the Committee of Senior Officials appoint a Special Ambassador, who ideally would have prior mediation experience. Because mediation can be employed ad hoc, it could get started soon, which is crucial considering that the conflict has been smoldering for several years now, the starting date for construction is fast approaching, and recent instabilities in the international system have led to a demand for greater regional stability. ✖

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