THE OSCE IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

ROMA, 29-30/III/1996

IAI

THE OSCE IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Istituto affari internazionali
Åbo Academy University. Department of Law
Roma, 29-31/III/1996

a. Programme
1. "The role of the OSCE in the former Yugoslavia after the Dayton peace agreements"/ Mario Sica
2. "The United Nations and regional organizations: the role of regional organizations in carrying out peace-keeping operations"/ Andrea Gioia
3. "Osce peacekeeping"/ Natalino Ronzitti
4. "The relations of the Osce with European and Transatlantic organizations"/ Victor-Yves Ghebali
5. "Relations between the Osce and Nato with particular regard to crisis management and peacekeeping"/ Lamberto Zannier
6. "Relations between the Osce and Weu with particular regard to peacekeeping"/ Carlos Echevarria Jesus
7. "Third party peacekeeping"/ Ettore Greco
8. "Division of labour between the United Nations and the Organization for Security and Cooperation in Europe in connection with peace-keeping"/ Gian Luca Burci
9. "Financing Osce peace-keeping operations"/ Fabrizio Pagani
10. "The Osce Mediterranean dimension: conflict prevention and management"/ Roberto Aliboni
11. "The concept of various dispute settlement procedures: general international law and Osce practice"/ M. Bothe
12. "Dispute settlement procedures in the Osce-overview and genesis"/ Torsten Lohmann
13. "The role of conciliation and similar proceedings in international dispute settlement and the Osce procedured"/ Torsten Lohmann
14. "Jurisdictional web in the Osce space: Osce subsidiarity clauses"/ Susanne Jacobi
15. "Use and non use of Osce procedures"/ Susanne Jacobi
16. "Dispute settlement procedures and crisis management"/ Berthold Meyer
17. "The Osce: institutional and functional developments in an evolving European security order"/ Kari Möttölä
18. "Key note speach on the concept of early warning in the Osce"/ Rauno Viemerö
19. "The High Commissioner on National Minorities (HCNM): development of the mandate"/ María Amor Martín Estébanez
20. "The Osce implementation meeting on human dimension issues 1995"/ María Amor Martín Estébanez (Helsinki monitor, vol.7, no.1 (1996), p.5-26)
21. "The role of the human dimension of the Osce in conflict prevention and conflict management"/ Merja Pentikäinen
22. "Follow-on to the 1993 Athens report on cooperation in peacekeeping: press release, 6 December 1995"/ NATO Press Service

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Research project
The OSCE in the Maintenance of International Peace and Security
Project Leaders: Professors M. Bothe, N. Ronzitti, A. Rosas

ROME MEETING

IAI, Rome, 29-31 March 1996

Programme

Thursday, 28 March Arrival of Participants
Hotel Valadier, Via Fontanella 15, Rome
Tel. 0039 6 3612344 - Fax. 0039 6 3201558

Friday, 29 March Workshop, Session I (IAI Presentation)

9.30 Welcoming address: Prof. **S. Silvestri** (Undersecretary of State, Ministry of Defence, Italy; Vice-president of IAI)

9.45 *The Role of the OSCE in the Former Yugoslavia After the Dayton Peace Agreement*, H.E. Amb. **M. Sica** (Permanent Representative of Italy to the OSCE, Vienna)

10.15 *The United Nations and the Regional Organizations in Peace-keeping Operations,* Prof. **A. Gioia** (University of Trieste)

10.45 *Peace-keeping in the OSCE,* Prof. **N. Ronzitti** (IAI, Rome)

11.15 Coffee break

11.30 Discussion

12.00 *The Relations of the OSCE with European and Transatlantic Organizations - An Uneasy Partnership,* Prof. **V.Y. Ghebali** (Institut Universitaire des Hautes Etudes Internationales, Geneva)

12.30 *Relations Between OSCE and NATO with Particular Regard to Crisis Management and Peace-keeping,* Dr. **L. Zannier** (Head of Disarmament, Arms Control and Cooperative Security Section, Political Affairs Division, Nato Headquarters, Brussels)

13.00 Discussion

13.30 Lunch at IAI

15.00 *Relations Between the OSCE and the WEU with Regard to Peace-keeping Operations,* Dr. **C. Echeverria Jésus** (WEU Institute, Paris)

15.30 *Third Party Peace-keeping,* Dr. **E. Greco** (Research Fellow, IAI, Rome)

16.00 *The Division of Labour Between UN and OSCE in Peace-keeping Operations,* Dr. **G. Burci** (Office of the Legal Council, Office of Legal Affairs, UN, New York)

16.30 Coffee break

16.45 *Financing OSCE Peace-keeping Operations,* Dr. **F. Pagani** (Research Fellow, University of Pisa)

17.15 Discussion

18.15 End of Session I
Meeting of the project leaders (Bothe, Ronzitti, Rosas)

20.30 Dinner in town

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Saturday, 30 March Workshop, Conclusion Session I + Sessions II and III

Conclusion of Session I

9.30 *The Osce Mediterranean Dimension: Conflict Prevention and Management,* Prof. **R. Aliboni** (Director of Studies, IAI, Rome)

10.00 Key-note address: H.E. Amb. **L.V. Ferraris** (Undersecretary of State, Ministry of Foreign Affairs, Italy)

10.30 Discussion

11.00 Session II: Frankfurt Presentation

Presentation by Prof. Dr. **M. Bothe**, Dr. **T. Lohmann** and Dr. **B. Meyer** of the contributions of the Frankfurt Group

Prof. Dr. **M. Bothe**, (1) *Introduction*;
(2) *The Concepts of Various Dispute Settlement Procedures - General International Law and OSCE Practice*;

Dr. **T. Lohmann**, (1) *Dispute Settlement Procedures in the OSCE - Overview and Genesis*
(2) *The Role of Conciliation and Similar Proceedings in International Dispute Settlement and OSCE Procedures*;

Dr. **K. Oellers-Frahm**, *The Role of Arbitration in International Dispute Settlement and the OSCE Procedures*;

Mrs. **S. Jacobi**, (1) *Jurisdictional Web in the OSCE Space*;
(2) *Use and non-use of OSCE Procedures*;
(3) *Case Studies*;
Dr. **B. Meyer**, *Dispute Settlement and Crisis Management*
Mrs. **R. Dehdashti**, *Case-Study: Nagorno-Karabakh*

11.30 Coffee break

11:45 Continuation of Frankfurt presentation

13.00 Discussion

13.30 Buffet-lunch at IAI

15.00 Session III: Turku Presentation

Presentations by:

Mr. **K. Möttölä** (Special Adviser, Finnish MFA), *The OSCE Institutional and Functional Developments in an Evolving European Security Order*

Dr. **A. Bloed**, *The OSCE Main Political Bodies and their Role in Conflict Prevention and Crisis Management*

H.E. Amb. **R. Viemerö**

Prof. **A. Rosas** (Legal Adviser, EU Commission) and H.E. Amb. **T. Lahelma**, *The OSCE Long-Term Missions*

Ms. **M.A.M. Estébanez** (Research Fellow, Åbo Akademi University), *The HCNM: Development of the Mandate*

Ms. **M. Pentikäinen** (Research Fellow, Åbo Akademi University), *The Role of the Human Dimension in Conflict Prevention and Conflict Management*

16.15 Coffee break

16.30 Discussion

17.00 End of the Workshop

17.10 Excursion

20.30 Dinner in town

Sunday, 31 March Departure of Participants

THE ROLE OF THE OSCE IN THE FORMER YUGOSLAVIA AFTER THE DAYTON PEACE AGREEMENT

by
Ambassador Mario SICA
Permanent Representative of Italy to the OSCE

As a result of the Dayton agreements, which hopefully will bring about a peaceful settlement for war-torn former Yougoslavia, the OSCE is embarking upon a new phase in its existence. The Organization will be the "lead agency" for the Bosnian elections, with an important role to play in the field of human rights and in questions of confidence and security-building measures and arms control.

Why the OSCE ?

One may ask why the OSCE was selected by the Dayton negotiators for these jobs. If it had a considerable know-how in disarmament and arms control negotiations, its experience was rather limited concerning the operational dimension of human rights, and almost non-existant as to elections assistance and supervision.

The answer is probably that Russia's involvement in the Dayton implementation was crucial, and the OSCE provided the only structure that could allow such an involvement in the civilian field on an equal footing. Also, by its not being associated with earlier phases of the Bosnian conflict, the OSCE - unlike the UN - had managed to keep a clean image in the Balkans. Furthermore, the OSCE, as an organization based only on political commitments, had a much greater flexibility than any other body.

The OSCE did have a drawback: since 1992 the FRY was suspended from participating in its meetings. This factor, however, was offset by Milosevic's acceptance of the OSCE role at Dayton and by his subsequent acquiescence in the present limbo situation of the

FRY. Belgrade (and, for that matter, Moscow), while maintaining the point in principle, refrained from pressing for an immediate reintegration of the FRY into the OSCE, and agreed to a sufficient degree of cooperation with the OSCE in the framework of the Dayton implementation.

The consensus rule

Doubts were reportedly expressed during the Dayton negotiations on the OSCE's possibility, as an organization based on the consensus of 53 States, to stand the strains of a long and certainly controversial implementation of the Peace Agreement.

These doubts did not take into account recent evolutions in the OSCE structures, notably the increasing authority and operational capabilities of the Chairman-in-Office, and the decreasing role of the consensus rule in the operations of OSCE missions. The Chairman-in-Office enjoys today far-reaching powers of initiative and action which make him something more than a notarial interpreter of the lowest common denominator of the 53 States. As to the consensus rule, its role is fully evident at the moment of the adoption of a mission's mandate. Thereafter the importance of consensus decreases (except for the renewal of the mandate or for new budgetary appropriations) and the Head of the OSCE mission, under the general guidance of the Chairman-in-Office, enjoys a considerable degree of autonomy.

In the case of the OSCE mission to Bosnia, this autonomy is further increased by the longer mandate (one year, instead of the customary six months) and specific provisions that vest the two most important decisions of the peace process (the certification of the conditions for the Bosnian elections and the fixing of the elections date) in the Chairman-in-Office upon the advice of the Head of mission. In other words, the idea was to take an all-encompassing decision on the OSCE tasks at the beginning of the process so as to avoid resorting to other consensus decisions (other than on the budget) in the course of it. This concept inspired the decision taken in Budapest by the OSCE Ministerial Council on 8 December 1995 on "OSCE Action for Peace, Democracy and Stability in Bosnia and Herzegovina".

The OSCE mission in Bosnia

After some discussion it was decided to give the OSCE mission in Bosnia all the field tasks of the OSCE in the implementation of the Peace Agreement. Accordingly, the Head of Mission (the American Ambassador Robert Frowick) has a deputy for each of the three main fields of responsibility of the OSCE (elections, human rights and "regional stabilization", i.e. confidence and security-building measures and arms control).

The OSCE mission to Bosnia will stay in Bosnia for at least one year and will have its Head Office in Sarajevo. Regional Centres have been established in Tuzla, Mostar, Bihac, Banja Luka and Sokolac, in addition to one in Sarajevo. From these Centres the mission has deployed nearly all the foreseen 24 OSCE Delegations that will be reaching into everyone of the 112 municipalities across the country. At full strenght, the mission will have 225 members. To fully appreciate the effort the Organization is presently providing in Bosnia, one must think that the nine OSCE long-term missions presently deployed in various regions "between Vancouver and Vladivostok" have a combined strength of less than 100 members. Likewise, the Bosnia mission's budget (25 million dollars) should be compared with the current OSCE budget (approximately 33 million dollars). An additional budget for the Mission is foreseeable: its size will depend on the success of the fund-raising drive currently underway. It is a safe prophecy to say that, by the end of the year, the Bosnia mission will have doubled the ordinary OSCE budget.

Fortunately the OSCE mission was able to rely on the ECMM (European Community Monitor Mission), which since 1991 has exercised monitoring tasks in the region, including Bosnia and Herzegovina. The ECMM has deployed about 80 men in Bosnia under an agreement ("Memorandum of Understanding") with the OSCE, signed on 21 December 1995 in Vienna. The agreement provides for the ECMM teams, which have a lengthy experience and excellent knowledge of political and military developments in Bosnia, to assist the OSCE mission by carrying out some of its tasks. The ECMM has been

crucial in enabling the OSCE mission to field its Delegations and to begin systematic monitoring activities starting on 15 January.

The OSCE mission is still developing. As of 20 March, 123 members were deployed or en route, and 39 more had been approved for deployment. The deployment of the mission members is naturally a slow process: they are civilian secondees, not military men that can be ordered into the area. And they are individually selected for a specific job.

Like the other civilian implementation agencies, the mission comes under the general co-ordination of the High Representative (a function given to Carl Bildt, former Swedish Prime Minister). However, OSCE Head of Mission Frowick, as the head of one of the main organizations, is emerging as a key interlocutor of the three Dayton signatories for all matters concerning the civilian implementation. This has been demostrated by Milosevic's receiving Frowick for substantive talks despite the fact that RFY is still kept from participating in OSCE meetings.

The problems of the civilian implementation derive from the fact that, unlike the military side, this part is not organized under a single structure. A number of agencies are responsible, even though in certain fields their tasks are interconnected. For instance, it is clear that the role of International Police Task Force (IPTF) is vital for that of the OSCE mission both in the elections and in the human rights field. Yet there is little coordination between the two (the ITPF depends on the UN: only 600 monitors are presently deployed; it is hoped that the full Force, 1740 monitors, will be fully deployed by mid-April).

Also, the initial tendency of IFOR - and of NATO - was to avoid taking up any civilian task. "Mission creep", an expression reminiscent of the UN ill-fated operation in Somalia, was considered the main danger. To-day, there is an increasing awareness that in Bosnia there will be shared success or shared failure of civilian and military components of implementation. On the other hand, the main military tasks have been successfully carried out. Thus it has been already agreed that IFOR will be responsible for establishing a general environment of safety and stability for the electoral campaign and operations. Contacts are underway between the OSCE Mission and the IFOR command to see to

what extent IFOR can ensure other election-related tasks (such as ensuring security at polling stations, transporting electoral material, providing logistic support for OSCE supervisors.

Elections

The OSCE electoral tasks are essentially to supervise the preparation and conduct of elections in Bosnia; to certify whether social conditions are mature for elections, and to provide assistance in creating mature conditions; and to decide the date of the elections.

The first of these tasks is carried out through the establishment of a Provisional Election Commission (PEC) chaired by the Head of the OSCE mission in Bosnia. The PEC is composed of six members (three experts, and three representatives of the Bosnian parties), plus the Chairman who has the final decision in case of dispute within the Commission. The meetings of the PEC are valid with the presence of any four of its members (which means that boycotting the PEC by the Bosnian parties cannot, at least in theory, prevent it from working). The PEC has been inaugurated on 30 January and has held its first meeting on 1 February.

The PEC is responsible for adopting electoral rules and regulations regarding voters, candidates and political parties; the campaign; monitoring and supervising the voting and the counting of ballots; the establishment, publication and certification of the results.

Elections to be held under the guidance of the PEC are those for the Presidency and legislature of Bosnia and Herzegovina, for the presidency and legislatures of the two Bosnian entities and, if feasible, for cantonal and municipal bodies. Contrary to earlier plans, the PEC is now oriented to hold all these elections on the same day (possibly September 1, 1996).

The two decisions concerning the certification of the conditions sufficient and necessary to hold elections and the election date will be taken (according to the Budapest Ministerial decision) by the Chairman-in-Office of the OSCE, upon the advice of the Head of Mission and following consultation with the High

Representative and a substantial discussion in the Permanent Council. In practice, the advice of the Head of the OSCE mission will be decisive.

Concerning the conditions for the elections, the OSCE Mission has developed 12 goals, mainly drawn from the Dayton Agreement itself and from paragraphs 7 and 8 of the Copenhagen Document. These goals, which must be achieved to a reasonable degree before elections can be called, include: a politically neutral environment, freedom of expression and of access to the media, freedom of association, freedom of movement, the right to freely form political parties, the right of each Bosnian citizen to seek office etc.

Electoral regulations

On February 23 the PEC has adopted a first set of regulations. A definitive and more detailed set of regulations covering all aspects of the elections except absentee voting is expected by the end of March. Absentee voting regulations are not expected before early May.

Subjects covered so far are:

- method of voting: for the three-member presidency, the election will be conducted in two constituencies: the Federation will elect one Bosniac and one Croat, while the RS will elect one Serb;
- registration of voters: the 1991 voters list will be published, after being updated for those turned 18 and those dead; voters can then indicate a wish to vote in a place other than that in which they registered in 1991 (details have still to be decided);

(A basic dilemma: try to undo ethnic cleansing and re-build the ethnic fabric, or accept the present situation ?).

- absentee voting: there are an estimated 2 million Bosnians abroad, half of whom probably in voting age; how they will register and vote (whether by mail or in voting stations throughout the country of residence) has yet to be decided; fear that refugees might fail to register or to vote has been generated by the following sentence in the Dayton agreement: "The exercise

of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia";
- access to the media: free access to the media continues to be a problem; for elections to be credible, it is essential that all political parties have the opportunity to inform the electorate of their programmes; the OSCE Mission is working on a code of conduct to be observed by all media to ensure that news and current affairs coverage in the media during the election campaign conform to international standards of fairness and objectivity;
- supervision: two weeks before election day, the OSCE mission will be reinforced by a considerable number of "supervisors" (1.200 is the working hypothesis). Their task will be to see to it that both voting and ballot counting operations proceed in a free and fair manner and according to the regulations.

There are still many organizational questions to be solved before the elections can take place, including financial ones (the electoral operation as such still does not have a budget). But the criteria according to which the Bosnian elections will be judged are political, not organizational. The risk is that they will be turned into plebiscites which will endorse the past and future nationalistic policies of the three ruling parties. The challenge lies in the possibility of developing a party system that would cut across ethnic lines.

In this respect, the present situation does not give room for much optimism. In the words of the European Union at the recent (22 March) OSCE Senior Council Meeting in Prague: "future peace in the former Yugoslavia will depend on the possibility of reviving a multi-ethnic, multireligious and multicultural society in Bosnia, based on the respect of human rights and the rule of law". However, as High Representative Carl Bildt said following the March 18 Geneva meeting, "the forces of ethnic separation still are far stronger than the forces of ethnic reintegration".

Human rights

The Peace Agreement gives the OSCE - together with "other organizations" - a monitoring role in the field of human rights,

through the establishment of local offices and assignment of observers. It also gives the Chairman-in-Office of the OSCE the specific task of appointing a Human Rights Ombudsman. Together with the Human Rights Chamber, the Ombudsman forms the Human Rights Commission. The Chamber, when resolving or deciding on a case, forwards a report to the OSCE (as well as to other organizations). On the basis of the Budapest decision, the OSCE mission will support the Human Rights Ombudsman.

Thus the Peace Agreement has not specifically allocated human rights tasks to international organizations, none of which stands out as "lead agency" in this field. Nevertheless, as efforts of the international community to strengthen respect for human rights and fundamental freedoms are closely linked with the question of creating conditions propitious for elections, the OSCE mission has established an OSCE Co-ordinating Group to work with representatives of the international organizations and NGOs. The mission is also developing strategies to reach twelve specific objectives in the human right fields before it will be possible to certify that the elections can take place.

On 21 December 1995 the Chairman-in-Office appointed Ms. Gret Haller of Switzerland, an ambassador and a jurist, as Human Rights Ombudsman for Bosnia and Herzegovina.

Regional stabilization

In addition to tasks in the field of elections and human rights, the OSCE has been assigned a role in the area of confidence-building measures and arms control. Through Personal Representatives designated by the Chairman-in-Office, the OSCE is assisting the parties of the Peace Agreement in their negotiations on these issues and in the implementation and verification of resulting agreements.

Three different negotiations are foreseen in the Peace agreement: they fit into each other like a set of Chinese boxes. First, the three Bosnian parties have to agree on an initial set of confidence-building measures ("art. II negotiations"). Then, Croatia, FRY and Bosnia (the three Bosnian parties) have to

negotiate limitations of armaments and of military manpower: these negotiations ("art. IV"), which must be completed by June 1996, logically presuppose an agreement on art. II. Should the parties not achieve an agreement, the Peace Agreement contains a fall back mechanism of agreed ceilings. The last stage will be regional arms control negotiations under a special representative and under the auspices of the OSCE Forum for Security Co-operation ("art.V negotiations").

Negotiations on art.II and IV (entrusted to Hungarian Ambassador Gyarmati and to Norwegian Ambassador Eide respectively) are "under the auspices" (as opposed to "within the framework") of the OSCE. They are not, technically speaking, OSCE negotiations: they are not "open-ended" and do not take place in the usual OSCE meeting rooms. Besides the Personal Representative and the parties, six "witness" countries are present (the five of the so-called "contact group", plus Italy as EU President), as well as the OSCE Troika (Switzerland, Hungary and Denmark). The OSCE Permanent Council is regularly informed of the negotiations, but without an actual discussion taking place. These special arrangements are meant to cover situation such as that of the Bosnian parties (two of which are not members of the OSCE) or of the FRY (which is presently suspended from participating in OSCE meetings).

The delicate "art. II negotiations" on CBMs between the parties in the Bosnian conflict were successfully concluded by Ambassador Gyarmati on 26 January, a few minutes before the Dayton agreement deadline. The document signed in Vienna provides for a great number of agreed measures, such as restrictions on the deployment of certain weapons, an exchange of data on heavy weapons, a temporary prohibition of all military manoeuvres and mutual inspection of military installations. The Bosnian Federation and Bosnian Serb sides will also open liaison offices to improve mutual communication. Mutual inspections, which should restore some confidence and trust among the formerly warring parties, have begun in the middle of March. A second round of inspection will take place in mid-April.

Beyond the elections: the role of the OSCE after IFOR

The elections are a crucial passage for the re-establishment of peace in former Yugoslavia. For a number of reasons, however, they will probably not automatically lead to reconciliation, either within Bosnia or among the three signatory States of the Peace Agreement.

Hence the need for long-term action in many fields:
- economic reconstruction, where the European Union is already emerging as the "lead agency";
- the "stability process", promoted by the European Union, with a view to fostering reconciliation and mutual osmosis among Bosnia, Serbia and Croatia in a wide variety of fields, particularly at non governmental level;
- monitoring human rights, democracy building, the rule of law, the rights of minorities, the rights of returning refugees: these are typical tasks of OSCE missions.

The OSCE has already a mission in Bosnia, which, after the bulk of the civilian implementation of the peace agreement will be completed, will naturally be cut to size, but should continue, to support the Ombudsman, and for all the mentioned tasks as well. A mission is about to be opened in Croatia, with similar tasks. Mission existed in Sanjack, Voivodina and Kosovo before the FRY was suspended from the OSCE meetings: these missions should be re-instated, but probably as branch offices of an OSCE mission having its headquarters in Belgrade.

With missions in the three States, the OSCE would then be in a position to carry out a co-ordinated strategy of post-conflict rehabilitation, which - to-gether with the economic incentives, both bilateral and multilateral, might play a major role in ensuring long-term stability and reconciliation in the Balkans.

Mario Sica

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Research Project on "The OSCE in the Maintenance of International Peace and Security"
Rome Meeting, 29-31 March 1996

The United Nations and Regional Organizations (The Role of Regional Organizations in Carrying Out Peace-Keeping Operations)

by

Andrea Gioia

Contents: 1. Regional groupings of States in the United Nations Charter; 2. The concept of "regional arrangements or agencies"; 3. Regional unions and the peaceful settlement of "local disputes"; 4. Regional unions and "enforcement action"; 5. New aspects of regional action in the field of the maintenance of international peace: "preventive diplomacy", "peace-making", "peace-keeping", and "post-conflict peace-building"; 6. Regional unions and peace-keeping operations; 7. Conclusions.

1. The role of regional systems in the maintenance of international peace and security became a subject of analysis after the end of the First World War, when the first permanent universal organization for peace and security was established: the creation of the League of Nations and, after the Second World War, its replacement with the United Nations Organization inevitably gave rise to the questions of the compatibility and interrelationship of the universal system with existing and future groupings of States.

The Covenant of the League of Nations did not contain express provisions for the coordination of universal and regional action: one reason for this was undoubtedly the original attitude of the framers of the Covenant, who wanted a strong universal organization that would not be weakened by explicit approval of regional arrangements. However, Article 21 of the Covenant provided that: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace". Article 21, which was inserted in the vain hope of securing US Senate approval, thus made it clear that "regional understandings" were not incompatible with the Covenant, but, in the absence of more explicit provisions, coordination between the universal system and such "regional understandings" was left entirely to the good will of individual States party to both systems.

The United Nations Charter tries to reconcile regional and universal action in a more explicit way. Its provisions, however, result from a compromise between two competing approaches and, inevitably, present some ambiguities. The so-called "universalist" approach was favoured by, among others, the United States, and was reflected

in the original Dumbarton Oaks Proposals, which advocated a strong universal organization, primarily controlled by the five permanent members of the Security Council, and left little room for regional action. On the other hand, the so-called "regionalist" approach, which was favoured by several other States and, especially, the Latin American and Arab States, clearly emerged at the San Francisco Confgerence. The Latin American States, in particular, wanted to preserve the inter-american system, which had developed since the end of the XIXth Century: their main objectives were, first, to achieve priority for regional agencies with respect to the settlement of disputes, and second, to avoid subordination to the United Nations for fear that the veto right granted to permanent members of the Security Council would in fact prevent regional action.

A somewhat ambiguous compromise between the two approaches is embodied in Chapter VIII of the UN Charter, which is entitled to "regional arrangements", consisting of Articles 52 to 54. Other relevant provisions in the Charter are Articles 24, 33, 43, 48, and 51.

Under Article 24(1), "primary responsibility for the maintenance of international peace and security" is conferred to the UN Security Council. Such "primary responsibility" is, however, not exclusive, and does not preclude, in particular, a role for regional systems. In fact, Article 52(1) states that: "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such asrrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations". Thus the Charter makes it clear that regional systems are not, *per se*, incompatible with the universal system. It does not, however, define "regional arrangements or agencies", nor does it specify what matters are "appropriate for regional action".

As far as coordination between the UN and regional systems is concerned, the Charter specifically deals with two issues: the pacific settlement of disputes, on the one hand, and enforcement action, on the other.

As for the pacific settlement of disputes, Article 52(2) provides that parties to "regional arrangements" and members of "regional agencies" "shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council". For its part, Article 33, in Chapter VI of the UN Charter, lists "resort to regional agencies or arrangements" among the peaceful means which the parties to a dispute are obliged to resort to "first of all". Thus primary jurisdiction for regional systems is apparently recognized. However, Article 52(4) specifies that: " ... [Article 52] in no way impairs the application of Articles 34 and 35", which give authority to the Security Council to "investigate any dispute, or any situation which might lead to international friction or give rise to a dispute" (Article 34), and provide that "any Member of the United Nations may bring ... [such a dispute or situation] to the attention of the Security Council or of the General Assembly"

(Article 35). The interrelationship between the UN and regional systems is further complicated by Article 52(3), providing that: "The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council".

As for enforcement action, Article 53(1) provides, first of all, that: "The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority". In this respect, Article 43, which envisaged the conclusion of "special agreements" whereby "armed forces, assistance and facilities ... necessary for the purpose of maintaining international peace and security" would be made available to the Security Council "on its call", specified that such agreements would be concluded "between the Security Council and Members or between the Security Council and groups of States". It is a well-known fact, however, no such "special agreements" have so far been concluded. From a more general piont of view, Article 48(2) provides that: " ... [Decisions of the Security Council for the maintenance of international peace and security] shall be carried out by Members of the United Nations direcltly or through their action in the appropriate international agencies".

But the key provision on the interrelationship between the UN and regional systems, which is also contained in Articler 53(1), is the requirement that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". Thus the Charter makes it clear that, when it comes to "enforcement action", primary jurisdiction is given to the United Nations. However, no definition of "enforcement action" is given. Moreover, there are two exceptions to the rule: one exception, which is now merely of historical interest, is embodied in the last words in Article 53(1), dealing with "measures against any enemy State"; the other one is embodied in Article 51, dealing with "the inherent right of individual or collective self-defence if an armed attack occurs". Independent regional action must, however, end, in the case of measures taken against an enemy State, when the UN is "charged with the responsibility for preventing further aggression by such a State"; in the case of self-defence, when the Security Council takes the "measures necessary to masintain international peace and security".

The picture is then completed by Article 54, which requires that: "The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenmance of international peace and security".

In conclusion, it seems sufficiently clear that, while recognizing and encouraging regional action in the maintenance of peace, the UN Charter intends to subordinate such action to UN supervision, and, when it comes to enforcement action, to strict UN control. The language used in Chapter VIII, however, is rather ambiguous and, not surprisingly, has given rise to different interpretations both in legal literature and in the practice of States. Additional

difficulties have been created by the development of new concepts in UN practice, which are not expressly covered by the provisions in the Charter: whereas Chapter VIII is based on the distinction between the peaceful settlement of disputes and enforcement action, concepts such as "preventive diplomacy", "peace-making", "peace-keeping" and "post-conflict peace-building" are increasingly used in UN practice and have to be related to the provisions in Chapter VIII.

The purpose of this paper is to try to clarify the legal relationship between the United Nations and regional arrangements in the maintenance of peace. Such a clarification seems to be particularly important now that the role of regional action is being rediscovered in the context of the new international situation that emerged after the end of the so-called "Cold War". An attempt will be made, first of all, to identify the "regional arrangements or agencies" that are covered by Chapter VIII (paragraph 2); secondly, the interrelationship between the universal system and regional systems will be examined in the context of the peaceful settlement of disputes (paragraph 3) and of enforcement action (paragraph 4); finally, an attempt will be made to relate Chapter VIII to the new concepts of preventive diplomacy, peace-making, peace-keeping and peace-building (paragraph 5). Special attention will be devoted, in this context, to peace-keeping operations conducted through regional arrangements (paragraph 6).

2. The first question arising from an interpretation of Chapter VIII relates to the groupings of States to which its provisions refer. Chapter VIII speaks of "regional arrangements or agencies", but does not define the two expressions. Unfortunately, the *travaux préparatoires* do not help clarifying this question.

At the San Francisco Conference, Egypt proposed that regional arrangements should be defined as "organizations of a permanent nature grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities, make themselves jointly responsible for the peaceful settlement of any disputes which may arise ... as well as for the safeguarding of their interests and the development of their economic and cultural relations". The proposal was, however, rejected, partly because it was seen as too restrictive, and also for fear of reopening the difficult negotiations which had led to agreement on the provisions of Chapter VIII. No further attempts were, therefore, made to define the concept.

This lack of definition has led to considerable controversy in legal literature as well as in State practice, and has often been considered as one of the factors undermining the operation of Chapter VIII. On the other hand, attempts to restrict, in one way or another, the category of regional arrangements covered by Chapter VIII have been unconvincing.

The first question to be discussed is the meaning of the word "region": it has been rightly pointed out that there is no precise geographical concept of a "region". Despite the rejection at San Francisco of the Egyptian proposal requiring the existence of a grouping of States "in a given geographical area", some writers maintain that there should necessarily exist "some degree" of territorial proximity of members of a regional arrangement: this conclusion would be warranted by the purpose of Chapter VIII, which is seen as the granting to regional groupings of the power to resolve "local disputes" (Article 52(2)); morover, the contrary opinion would cause the "decentralized system of the UN for securing the peace" to "largely loose its effectiveness" (Hummer/Scweitzer). But these arguments are not very convincing: once it is admitted that there is no scientifically viable criterion to delimit a "region" an that a "region" can only be delimited from a political point of view, there seems to be no satisfactory criterion for determining what "degree of territorial proximity" is required. Moreover, the purpose of Chapter VIII is not only to grant regional arrangements the power to solve "local" disputes, but also to give the Security Council the power to utilize regional arrangements for enforcement action under its authority, or to authorize regional enforcement action: the only question in this context is whether or not the matter is "appropriate for regional action".

In my opinion, the inevitable conclusion is that, as a matter of principle, every grouping of States founded on the geographical situation *or* the common interest of its members can qualify as a "regional" arrangement within the meaning of Chapter VIII. It is true that the three international organizations that are recognized by everybody as being "regional" agencies under Chapter VIII, i.e. the Organization of American States (OAS), the Organization of African Unity (OAU), and the League of Arab States (LAS), are based on a certain "proximity" of their members. But there is no reason to exclude from Chapter VIII, on this ground alone, other arrangements in which such "proximity" is not present in a comparable degree, such as, for example, the North Atlantic Treaty Organization (NATO), or the Organization of the Islamic Conference (OIC).

The second important question to be discussed relates to the meaning of the words "arrangements" and "agencies". Under the definition proposed by Egypt at San Francisco, only "organizations" would have qualified as regional institutions under Chapter VIII. But the present wording of Chapter VIII clearly calls for a less restrictive interpretation: even if the terms "organization" and "agency" were considered to be synonimous, the terms "agency" and "arrangements" clearly cannot be so considered. Although it could be argued that every "agency" is based on an "arrangement", not every "arrangement" purports to create an "agency". In other words, the degree of institutionalization required of regional "arrangements or agencies" is not predetermined by the UN Charter: members of a "region" can certainly create a fully-fledged "organization", by which I mean an intergovernmental organization with a separate legal personality, operating through organs of its own; but nothing prevents them from setting up a less

developed "institutional union", operating through common organs of the member States, or even a "simple union", operating through the (mere) cooperation of its members. Whereas the OAS, the OAU, and the LAS undoubtedly constitute regional "organizations", nothing warrants the exclusion from entities covered by Chapter VIII of other regional groupings whose precise legal nature is still the subject of some discussion among legal writers.

Moreover, although all regional groupings are based on an "arrangement", such an "arrangement" needs not necessarily be a formal treaty, binding under international law: the term "arrangement" is ambiguous enough to allow for the inclusion of regional groupings, such as the Organization for Security and Cooperation in Europe (OSCE, previously known as the CSCE, Conference on Security and Cooperation in Europe), which are based on political agreements, as such not legally binding. What *is* probably required, in my opinion, is some degree of permanence and stability, whithout which a grouping of States could not even be regarded as an international "union", be it an institutional or a simple union. In other words, it is doubtful that occasional groupings of States can qualify as regional arrangements for the purposes of Chapter VIII: one could recall, in this respect, the opinion expressed by the International Court of Justice in the *Nicaragua* case, according to which the so-called "Contadora Group" could not be considered as a "regional arrangement" under Chapter VIII.

Having thus examined the concept of "regional arrangements or agencies", there remains the question of their purpose, i.e. "the maintenance of international peace and security". Although there is nothing in the Charter to prevent the creation of regional unions in other fields, Chapter VIII is specifically concerned with arrangements or agencies that can directly contribute to the maintenance of peace and security. Thus the so-called "functional" unions, such as the Council of Europe (CE), the European Community (EC), the Organization for Economic Cooperation and Development (OECD), the Caribbean Community (CARICOM), the Economic Community of West African States (ECOWAS), the Cooperation Council for Arab States of the Gulf (GCC), and others, would, in principle, be excluded from Chapter VIII. But of course this could only be a ***prima facie*** conclusion, since it cannot be excluded that some such unions may evolve and acquire functions in the field of the maintenance of peace. The EC, for example, is now part of a wider European Union (EU), which includes a common foreign and security policy; the GCC was founded as a comprehensive union which, although primarily economically oriented, has gained increasing weight in the security field; the ECOWAS has, since 1981, acquired the functions of a defensive alliance and of a regional system for collective security.

But the main question concerning the purpose of regional unions derives from a tendency to confine the provisions of Chapter VIII to those arrangements or agencies purporting to set up a "collective security" system ***within*** the region: according to this view, "it must always be a matter of an ***inter se*** relationship, i.e. the regional activities under

Chapter VIII must be taken by or against member States of the regional arrangement/agency" (Hummer/Schweitzer). As a consequence, defence alliances, i.e. unions that are exclusively or primarily concerned with mutual assistance against *external* aggression, such as NATO, would not be covered by Chapter VIII. This view was also supported in the past by members of regional military alliances, in order to avoid the obligation to "fully" inform the Security Council of activities taken or contemplated, which derives from Article 54: they preferred to see such alliances as collective self-defence unions under Article 51, which only requires UN members to report self-defence measures that are actually taken. This attitude is certainly understandable, inasmuch as the disclosure of information about contemplated action in self-defence could destroy its effectiveness. On the other hand, a good case could be made that Article 54 is inapplicable to self-defence, thereby undermining the main political argument supporting the exclusion of defence alliances from Chapter VIII.

In my opinion, there is nothing in the Charter that warrants the exclusion of regional alliances from Chapter VIII. While it is true that Article 51 appears in Chapter VII, it is equally true that its purpose is *not* to establish the compatibility of regional alliances with the UN Charter: although originally adopted to meet the concerns of regional organizations, Article 51 deals with individual, as well as collective, self-defence and, according to the now prevailing opinion, collective self-defence does not presuppose a previous agreement, let alone an institutional alliance. Moreover, while it is true that Article 52(2) seems to presuppose the existence of a regional system for the pacific settlement of disputes and that regional alliances usually lack such a system, there is nothing in Article 53 to prevent the Security Council from utilizing regional alliances for enforcement action under its authority or from authorizing such action on their part: even if directed against States not party to the regional system, such action would arguably still fall within the wider framework of the UN "collective security" system. This conclusion is further confirmed by the last phrase in Article 53(1), under which measures against an "enemy State" could be taken by "regional arrangements" without Security Council authorization: it cannot be denied that such measures concerned third States and could be taken outside the "regional" area.

A final question concerns the condition for the legal admissibility of regional unions: under Article 52(1), such unions and their activities must be "consistent with the Purposes and Principles of the United Nations". It is necessary to recall, in this respect, that, according to Article 103, "in the event of a conflict between the obligations of the Members of the United Nations under the ... Charter and their obligations under any other international agreement", obligations under the Charter "shall prevail". Explicit reference to regional "activities" in Article 52 is especially significant, inasmuch as an inconsistency between the UN Charter and regional "arrangements" is unlikely to occur: on the contrary, such arrangements often expressly state their compatibility with the Charter

At the San Francisco Conference, several proposals were made in order to make a review of this condition possible, but none was accepted. As a consequence, one cannot properly speak of a hierarchical relationship between the UN and regional unions. Moreover, regional unions are not, and indeed cannot be, members of the United Nations, irrespective of whether or not they possess a separate legal personality. In order to avoid inconsistencies, the United Nations must, first of all, rely on joint membership of States in both systems. In addition, recent UN practice places a special emphasys on the need to enhance cooperation between the UN and regional unions: in December 1994, the UN General Assembly adopted a "Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security" (Declaration on Cooperation). The Declaration points out that cooperation can take various forms, including exchange of information and the holding of consultations, participation in the work of the UN, exchange of personnel, material and other assistance. Some regional unions have been granted "observer" status within the General Assembly, and in some cases formal agreements have been concluded between the UN and regional unions.

In conclusion, as pointed out by the UN Secretary-General in his 1992 report "An Agenda for Peace", "the Charter deliberatly provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action which also could contribute to the maintenance of international peace and security". According to the Secretary-General, "such associations or entities could include treaty-based organizations, whether created before or after the founding of the United Nations, regional organizations for mutual security and defence, organizations for general regional development or for cooperation on a particular economic topic or function", and even "groups created to deal with a specific political, economic or social issue of current concern". While this last reference could be questioned in light of the ICJ ***dictum*** regarding the "Contadora Group", the very pragmatic approach taken in the report seems to confirm the above analysis.

Recent UN practice is consistent with this pragmatic approach: apart from the OAS, the OAU and the LAS, other unions have been, at least informally, recognized by the UN as "regional arrangements or agencies", such as the OSCE, which was granted observer status by the General Assembly in 1993. In August 1994, the Secretary-General convened the first meeting of the heads of a number of regional unions: participants in the meeting were, apart from the OAS, the OAU and the LAS, the then CSCE, the Commonwealth of Independent States (CIS), the OIC, the (British) Commonwealth Secretariat, the EU, the Western European Union (WEU), and even NATO; ECOWAS was also invited, but could not participate.

3. As pointed out before, Chapter VIII deals with two aspects of the role of regional unions in the maintenance of peace: the peaceful settlement of "local disputes" and "enforcement action". Both aspects are dealt with in a way that has given rise to discussions in legal literature and in State practice. As far as the pacific settlement of disputes is concerned, the provisions in Article 52 have given rise to two competing interpretations: according to the first interpretation, which was at first strongly supported by the Latin American States, the settlement of "local disputes" by regional unions has priority over the Security Council's procedures under Chapter VI; the opposing interpretation, which was originally supported mainly by the socialist States, but is now also advocated by the Latin American countries, favours concurrent jurisdiction of regional unions under Chapter VIII and of the Security Council under Chapter VI.

Practice in both the United Nations and regional unions is not very conclusive on this question. Generally speaking, though, there seems to have been a shift from a widespread preference for a sort of "exhaustion of local remedies" principle to the progressive acceptance of a principle of "free choice" by the parties to the dispute. The shift has been particularly clear in the practice of the OAS, which has proved that regional dispute-settlement can be very controversial when the regional union is dominated by one Superpower: whereas the original inter-american system went as far as obliging the parties to settle regional disputes first within the system itself, its provisions were amended since 1975 to open the way for the concurrent jurisdiction of the United Nations. Within the UN, the 1982 GA "Declaration on the Pacific Settlement of International Disputes" (the so-called "Manila Declaration") confirmed, on the one hand, that "States parties to regional arrangements or agencies shall make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring them to the Security Council", but added, on the other, that "this does not preclude States from bringing any dispute to the attention of the Security Council or the General Assembly in accordance with the Charter of the United Nations".

In conclusion, the present situation seems to be that "division of labour" between the UN and regional unions is "a matter of practicability and discretion" (Schreuer), which enhances the need for cooperation between the universal and the regional systems. The 1994 GA Declaration on Cooperation affirms that "States participating in regional arrangements or agencies are encouraged to consider the possibility of using or, where appropriate, establishing or improving at the regional level procedures and mechanisms for ... the peaceful settlement of disputes, in close coordination with the preventive efforts of the United Nations". The same Declaration, however, stresses, in the Preamble, "the primary responsibility of the Security Council, under Article 24 of the Charter, for the maintenance of international peace and security, and then reproduces, almost *verbatim*, the provisions of Chapter VIII. It seems clear, therefore, that, while member States of both the UN and regional unions are encouraged to promote cooperation

between the two systems in order to avoid conflicting action, obligations under the Charter must prevail whenever conflicts do occur. A brief attempt to clarify the legal situation under the Charter seems, therefore, necessary.

A rather ingenious theory has been put forward in German legal literature, according to which a correct interpretation of Article 52 has to distinguish between two aspects of the division of labour between the UN and regional unions: the first aspect relates to "formal procedural" jurisdiction, whereas the second relates to "merit-based" jurisdiction: at the procedural level, Article 52(4) leaves unimpaired the right of States to appeal to the Security Council and the right of the Council to examine the case under Articles 34 and 35 in Chapter VI; however, as far as jurisdiction on the merits is concerned, the Security Council could not make recommendations to the parties under Articles 36 and 37 "as long as it is not evident that the means employed on a regional level are ineffective" (Hummer/Schweitzer). It is pointed out that this interpretation is the only one that makes the rather unhappy formulation of Article 52(3) comprehensible: Security Council's encouragement of regional dispute-settlement "on the initiative of the States concerned" would then mean that, when members of the regional system turn to the Security Council and draw its attention to the existence of a dispute, the Security Council could investigate the case under Article 34 and could take provisional measures - such as referral, or referral back, to the regional union, postponement of treatment until the regional union has presented a report, maintenance of the topic on its agenda - but could not take measures under Articles 36 and 37 on the merits of the dispute. In conclusion, Article 52, being ***lex specialis***, would exclude the application of Articles 36 and 37, but only "as long as the regional procedure promises an effective securing of the peace" (Hummer/Schweitzer).

This interpretation has the merit of avoiding concurrent jurisdiction on the merits, which could lead to conflicting action by the UN and regional unions. However, its practical value seems considerably undermined by some necessary qualifications. In particular, whereas it is true that Article 52 is ***lex specialis*** vis-à-vis Chapter VI, it is nonetheless true that Article 52 (2) and (3) only speak of "local disputes": their provisions do not apply when States not party to the regional system are involved in a dispute. Moreover, Article 52(1) makes it clear, from a general point of view, that the role of regional institutions is confined to "matters ... appropriate for regional action", and it seems difficult to accept the view that "the regional agencies decide for themselves when a question is appropriate for regional action" (Hummer/Schweitzer): on the contrary, Article 52, read in conjunction with Article 24, seems to leave considewrable discretion to the Security Council as to what disputes are appropriate for regional settlement procedures. Finally, it seems necessary to point out that, whatever its relation to Chapter VI may be, Article 52 leaves the provisions of Chapter VII virtually unimpaired.

In conclusion, it would seem that a real priority of regional dispute-settlement mechanisms can only exist in case of disputes involving no actual or potential threat to international peace; when a potential threat to the peace exists, the Security Council could always decide that the matter is not appropriate for regional action and, as a result, its powers under Chapter VI, including Articles 36 and 37, would remain unimpaired. In practice, therefore, the legal situation seems to reflect the principle of "free choice" that has emerged in recent State practice: as Professor Bowett puts it, "reference to a regional organization's procedures becomes a matter of convenience, not of obligation, and much depends on the willingness of the parties to accept such a reference". When a dispute actually involves a "threat to the poeace" - and, even more so, when there exists a "breach of the peace" or an "act of aggression" - there can be no question of regional priority: the Security Council could take "action" under Chapter VII, and it could make recommendations for the settlement of the dispute similar to those it could make under Articles 36 and 37. Thus, in cases like the Falklands war of 1982, the situation in Nicaragua in 1982-83, the invasion of Grenada in 1983, or the invasion of Panama in 1989, nothing in Chapter VIII could have prevented the Security Council from exercising "merit-based" jurisdiction, or taking enforcement action, irrespective of the initiatives taken by the OAS or other regional unions.

4. When it comes to "enforcement action", Chapter VIII itself clearly gives priority to the United Nations: under Article 53, "the Security Council shall, where appropriate, utilize ... regional arrangements or agencies for enforcement action under its authority", but "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council".

Article 53 needs to be related to Chapter VII of the UN Charter, dealing with Security Council's "action with respect to threats to the peace, breaches of the peace, and acts of aggression": it is only when one such situation exists that the Security Council can take "action", and Article 53 broadens the means at the disposal of the Council by giving it access to regional unions. In this case also, the Security Council has a wide discretion in assessing whether or not utilization of regional unions, or authorization of regional action, are "appropriate" under Article 52(1). It must be pointed out, in this respect also, that the ***travaux préparatoires*** confirm the view that nothing in the Charter restricts utilization of regional unions to enforcement action *within* the regions concerned; nor can it be said that regional action can only be authorized against a member of the regional union. The question remains, however, of whether action against a third State is permissible under the terms of the regional union: whereas, as stated above, obligations under the

Charter must prevail over conflicting obligations under regional arrangements, nothing in Chapter VIII gives the Security Council the power to oblige States to take action inconsistent with such arrangements.

Having said this from a general point of view, it must be pointed out that the two situations envisaged in Article 53 are rather different in nature. When the Security Council utilizes regional unions for enforcement action "under its authority", one can properly speak of United Nations action, rather than of "regional" action. It has been said that regional unions act, in this case, as "subsidiary organs" of the United Nations. While it is perhaps more correct, at least when "regional" armed forces are made available to the Security Council, to speak of organs of member States - or, as the case may be, of a regional organization - placed at the disposal of the United Nations, the fact remains that their activities are, in principle, directly attributable to the United Nations. On the other hand, when the Security Council merely "authorizes" enforcement action "under regional arrangements or by regional agencies", it is more difficult to speak of United Nations action, unless, perhaps, the Security Council reserves for itself, at the very least, the overall political control of regional activities.

As far as the utilization of regional unions by the Security Council is concerned, it would seem that, despite the imperative language of Article 53, the Council cannot oblige regional unions to take enforcement action. As seen above, regional unions, even when possessing a separate legal personality, are not, and cannot be, members of the United Nations. It is true that members of regional unions would, in most cases, all be members of the United Nations, but it is difficult to directly derive from Article 53 an obligation on their part to take action on behalf of the Security Council. In this respect also, it seems necessary to relate Article 53 to the provisions of Chapter VII. Article 43, in particilar, envisaged the conclusion of "a special agreement or agreements" whereby "armed forces, assistance and facilities ... necessary for the maintenance of international peace and security" would be made "available to the Security Council, on its call": such agreements were to be concluded "as soon as possible" between the Security Council and member States or "groups of Members". As pointed out above, however, the "special agreements" envisaged in Article 43 have never been concuded: as a consequence, enforcement action under the authority of the Security Council could only be taken on the basis of *ad hoc* agreements with member States or regional unions, concluded on a case-by-case basis. But no such agreements have ever been concluded except in the context of the so-called "peace-keeping operations", which will be examined below, and none of these have been concluded with members of regional unions as such, or with regional organizations. In other words, regional unions have never so far been utilized by the Security Council for enforcement action under its authority.

Coming now to regional action "authorized" by the Security Council, the possibility for regional unions to use force on their own initiative was a hotly debated issue at the San Francisco Conference. The Dumbarton Oaks Proposals

already stipulated that no enforcement action could be taken at the regional level without Security Council authorization, but this stipulation, coupled with the so-called "Yalta Formula" granting veto power to the permanent members of the Security Council, would have resulted in granting each of the five Great Powers the faculty to prevent regional action, and met with strong opposition on the part of several States. The Dumbarton Oaks stipulation was only accepted after the recognition of the "inherent right of individual and collective self-defence" in Article 51, which was inserted at the end of Chapter VII of the Charter. It is, therefore clear that no Security Council authorization is required for collective self-defence against an "armed attack", even when action is taken in the framework of a regional union. Another exception to the authorization requirement was provided for in Article 53 itself, which authorized "regional arrangements" to take measures against "enemy States", but this provision is to be considered as obsolete since, *inter alia*, all such "ernemy States" have been admitted as members of the United Nations.

The question arises, in this context, of whether there are exceptions to the authorization requirement other than self-defence: it has been suggested, for example, that reprisals not involving the use of force do not require authorization. More generally, it could be argued that no authorization is required in all cases where regional unions merely coordinate measures that individual members could lawfully take under international law. This question, however, must properly be placed in the context of the more general question regarding the meaning of "enforcement action" in the context of Article 53.

As pointed out before, Article 53 does not define "enforcement action". The same expression is also used in Articles 2(5), 5, and 50; in some cases "enforcement action" is opposed to "preventive action", but nowhere in the Charter is a definition to be found. Article 2(7) refers to "enforcement measures under Chapter VII", but Chapter VII, for its part, only speaks of "action", arguably because Security Council action under Articles 39 *et seq.* could be regarded as "preventive" or "enforcement" action, depending on the existence of a mere "threat to the peace" or an actual "breach of the peace" or "act of aggression".

Be that as it may, the negotiations at San Francisco seem to point once again to the need to relate Artiche 53 to Chapter VII, to the effect that measures under both Articles 41 and 42, would constitute enforcement action under Article 53, at least when an actual threat to the peace or act of aggression is involved. However, such a restricted view has been contested by some States, especially in the context of measures taken by the OAS.

Both in the case of measures taken against the Dominican Republic in 1960 and in the case of the exclusion of Cuba from the OAS in 1962, it was argued that "enforcement action" does not include measures short of military force. In the "Cuban quarantine" case of 1962, it was also argued that "enforcement action" only includes mandatory action, to the exclusion of action merely recommended by a regional union to member States. Finally, when the OAS

established a military force to deal with the situation in the Dominican republic in 1965, it was argued that "peace-keeping operations" conducted with the consent of the "host State" do not constitute "enforcement action".

Leaving aside, for the time being, the question of "peace-keeping operations", which are not expressly covered by Chapter VII, the argument that "recommendatory" action is not "enforcement action" is not very convincing. The 1962 advisory opinion by the International Court of Justice in the *Certain Expenses* case is sometimes quoted to support this argument, to the effect that "enforcement action" amounts to "coercive action", to the exclusion of action merely recommended by an international institution; but the Court was dealing with "peace-keeping operations" established at the request, or with the consent of the States concerned, whereas "sanctions" adopted by member States upon the recommendation of a regional union are clearly taken against a target State, and without its consent.

As for the argument that measures not involving the use of force are not "enforcement action", notwithstanding Article 41 in Chapter VII, it has to be conceded that, during the discussions in the Security Council on the 1960 Dominican crisis and on the 1962 Cuban crisis, the majority of the member States seem to have assumed that neither the imposition of economic "sanctions", nor the exclusion of a member from a regional union amounted to "enforcement action". UN practice, however, is not very conclusive on this point.

The view is sometimes put forward that the kinds of measures that the Security Council can take under Article 41 could be taken within the framework of regional unions without Security Council authorization, at least when regional action merely amounts to coordination of measures that individual States can lawfully take under international law. It has been pointed out, in this respect, that "no general prohibition of economic sanctions or other reprisals exists in public international law" (Frowein), but resort to the concept of reprisals seems to complicate, rather than clarify, the matter. Reprisals are, technically, circumstances precluding the wrongfulness of State action: inasmuch as coercive action constitutes, *per se*, a violation of an international obligation, such action could be justified as a reprisal, or countermeasure, where it constitutes a reaction to a previous violation of international law by the target State. But reprisals can only be taken by the "injured" State or States: whereas one could argue that, when there has been a previous violation of an *erga omnes* obligation, all States - or, as the case may be, all members of a regional union - can be considered as injured States, resort to collective self-help other than collective self-defence is still a somewhat controversial issue.

Moreover, it could also be argued that legality under international law is not the appropriate criterion for determining the kind of collective action that can be taken under the UN Charter: both the Security Council and regional unions are entrusted with political, rather than judicial, functions, and the object of both Chapter VII and Article 53 is the maintenance of international peace and security in cases where there is a threat to the peace, breach of the peace, or

act of aggression. Both the existence of a previous violation of international law and the international legality of enforcement measures seem to be irrelevant in this context. Inasmuch as a situation exists that warrants the application of Chapter VII, the Security Council is given the competence to recommend or decide what measures States can or have to take to help maintaining peace, irrespective of whether or not such measures are consistent with existing international obligations.

Whereas it is true that individual States are not prevented by the Charter to take measures that are either lawful *per se* or justified as reprisals, action recommended or decided in the framework of a regional union has to conform to the provisions in Chapter VIII. In the absence of a clear definition of "enforcement action" under Article 53, it would seem that, as is confirmed by the *travaux préparatoires*, at least measures under both Articles 41 and 42, inasmuch as they are "coercive measures", have to be authorized by the Security Council.

A related and equally controversial question is whether or not authorization on the part of the Security Council must be preventive and express. According to one view, authorization could be given at any stage of regional action: this view would be confirmed by the 1960 Dominican crisis, since the Soviet Union proposed authorization of OAS action after this had already been taken. Similarly, according to some writers, authorization could also be implicit and even result from the mere inaction of the Security Council. The fact that the Security Council has rarely given express prior authorization of regional action under Chapter VIII, and that it has never condemned action taken within the framework of a regional union, may seem to give some weight to such opinions. On the other hand, it has been rightly pointed out that such views would loosen UN control over regional action, and would even encourage illegal acts by regional unions, in the hope that authorization would come afterwards or that condemnation would be prevented by the exercise of the power of veto within the Security Council.

The view is sometimes put forward, from a more general point of view, that regional action should be permitted whenever the Security Council fails to exercise its primary responsibility for the maintenance of international peace and security. However, the drafting history of Article 51 clearly shows that this view is untenable: at the San Francisco Conference, members of regional unions were fully aware of the dangers implicit in the granting of veto power to the permanent members of the Council; it cannot, therefore, be maintained that, because of the use of the veto, regional unions must be given a wider freedom of action than envisaged in the Charter.

Recent UN practice seems to point to a more correct relationship between the Security Council and regional unions, at least where the use of military force is envisaged. In the context of a number of resolutions adopted under Chapter VII, in particular in the context of the situation in the former Yugoslavia, the Council expressly gave prior authorization to member States, acting individually or through regional arrangements or agencies, to take "all necessary

measures" to deal with parrticular sutuations. Chapter VIII was expressly mentioned in such resolutions. Moreover, the situation in the former Yugoslavia has given risae to an interesting developmenmt: the provision by NATO of air power to support an ongoing UN "peace-keeping operation". This shows that, even when merely authorized by the Security Council, enforcement action in the framework of regional unions can complement United Nations efforts ion the maintenance of international peace and security.

5. United Nations practice in the field of the maintenance of international peace and security no longer conforms to the Charter distinction between the pacific settlement of disputes and enforcement action. New concepts are increasingly being used not only to indicate the various activities that can be undertaken by the United Nations itself, but also when it comes to encouraging a deeper involvement of regional unions in the maintenance of peace. Significantly, the 1994 GA Declaration on Cooperation lists "the peaceful settlement of disputes, preventive diplomacy, peacemaking, peace-keeping and post-conflict peace-building" as means through which regional arrangements or agencies can, "in their field of competence and in accordance with the Charter, make important contributions to the maintenance of international peace and security": regional unions are encouraged to consider "ways and means for promoting closer cooperation and coordination with the United Nations" in these fields, "with the aim of contributing to the fulfilment of the purposes and principles of the Charter".

Some clarification of these new concepts can be found in the 1992 Secretaty-General report "An Agenda for Peace", which contains definitions. "Preventive dipèlomacy" is defined as "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur". According to the Secretary-General, preventive diplomacy can include "measures to build confidence", "fact-finding", "early warning", "preventive deployment", and the establishment of demilitarized zones.

"Peace-making" is defined as "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations", but then examples are made that include "sanctions", as well as "use of military force", and the deployment of "peace-enforcement units".

"Peace-keeping" is defined as "the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well". Peace-keeping is further characterized as "a technique that expands the possibilities for both the prevention of conflict and the making of peace".

Finally, "post-conflict peace-building" is defined as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict". According to the Secretary-General, such action can include "disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapoons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation".

It must be emphasized that such a categorization of activities, whatever its value may be in UN practice or from the point of view of political science, has no precise legal meaning. As the Secretary-General has recognized, the concepts of preventive diplomacy, peace-making, peace-keeping and peace-building are "integrally related": fact-finding, for example, though classified among techniques for "preventive diplomacy", can sometimes be considered as a means for the peaceful settlement of disputes (Article 33 of the Charter lists "enquiry" among such means), and, depending on whether or not a "conflict" has already arisen, can be described as "preventive diplomacy" or "peace-making"; moreover, where it entails the sending of a mission in the field, it can also be described as "peace-keeping", at least when military personnel are involved. The category of "peace-keeping", in particular, is really a technique that can be used for "preventive diplomacy", "peace-making", or "peace-building".

The legal irrelevance of the categorization seems to be further confirmed by the 1995 Secretary-General report "Supplement to An Agenda for Peace", where the categories are augmented from four to six: "peace-making" is coupled with "preventive diplomacy", but "sanctions" and "enforcement action" become separate categories; "peace-keeping" and "post-conflict peace-building" remain separate categories; "disarmament" is added as a new category.

The emerging picture is one of ambiguity and confusion, at least from a lawyer's point of view. The Charter only distinguishes between the peaceful settlement of disputes (Chapter VI) and action with respect to threats to the peace, breaches of the peace and acts of aggression (Chapter VII). As far as regional unions are concerned, Chapter VIII distinguishes between the peaceful settlement of local disputes (Article 52) and enforcement action (Article 53). Consequently, as far as the range of activities described as preventive diplomacy, peace-keeping, peace-making or peace-building are concerned, the only relevant questions, from the point of view of the UN Charter, are whether or not the United Nations can perform a particular activity, and which are the competent organs, and, when it comes to regional activities, how can a particular activity be related to the "division of labour" delineated in Chapter VIII.

In the next paragraph, I shall try to clarify the legal relationship between the United Nations and regional unions in the field of "peace-keeping" activities, which are certainly the most important. From a general point of view, it must be pointed out that all regional activities in the maintenance of peace - be they preventive diplomacy, peace-making,

be pointed out that all regional activities in the maintenance of peace - be they preventive diplomacy, peace-making, peace-building or other - must be tested against Chapter VIII: if they consist of peaceful settlement of disputes, Article 52 (2) (3) and (4) apply; if they amount to enforcement action, Article 53 applies. Activities that neither consist of peaceful settlement of disputes nor amount to enforcement action - such as, for example, confidence-building or early warning - are to be considered as permitted by Article 52(1), if "appropriate for regional action" and "consistent with the Purposes and Principles of the United Nations" . Inasmuch as the Security Council is given wide discretion in determining what is appropriate for regional action, cooperation between regional unions and the United Nations is essential to avoid possible conflicts. The 1994 Declaration on Cooperation, though encouraging, in particular, the promotion of confidence-building measures at the regional level, as well as the use or establishment of "procedures and mechanisms for the early detection, the prevention and the peaceful settlement of disputes", has made it clear that regional efforts have to be undertaken "in close coordination with the preventive efforts of the United Nations".

6. As rightly pointed out by the UN Secretary-General, peace-keeping is "the invention of the United Nations". Peace-keeping operations developed in UN practice as special procedures for the maintenance of peace, but are not expressly provided for in the UN Charter. Under the definition proposed by the Secretary-General, "peace-keeping" is "the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military/or police personnel and frequently civilians as well"; the involvement of military forces seems, therefore, to be the essential feature of peace-keeping operations.

There have been two main types of peace-keeping operations: military observer groups, and peace-keeping forces. Both types of operations are established by the resolution of a UN organ, usually the Security Council, and the operations as such can be considered as subsidiary organs of the United Nations. The Secretary-General is usually entrusted with the task of recruiting military observers on an individual basis, whereas peace-keeping forces consist of military contingents placed by member States at the disposal of the United Nations on the basis of *ad hoc* agreements concluded with the Secretary-General. Military observer groups are usually charged with verification functions that can be described as "fact-finding", whereas peace-keeping forces have been charged with a variety of additional functions, ranging from interposition between the parties to a conflict or dispute, to the maintenance of law and order, humanitarian assistance and other functions: both military observer groups and peace-keeping forces could, therefore, be considered, depending on the circumstances of the case, as instruments for preventive diplomacy, perace-making, or peace-building.

Whereas military observers are usually unarmed, peace-keeping forces are armed forces, but are usually not supposed to use force except in self-defence; they are, moreover, usually expected to act impartially. Especially recent UN practice, however, has seen several departures from the "classical" features of peace-keeping operations: there have been cases where peace-keeping forces, in particular, have been given mandates that have led them "to forfeit the consent of the parties, to behave in a way that was perceived to be partial and/or to use force other than in self defence".

Various features differentiate these peace-keeping operations from the kinds of action originally envisaged in the UN Charter. These have led to considerable controversy both in legal literature and in State practice regarding their legality under the Charter, as well as which UN organ is competent to establish them. However, this controversy seems to have lost some momentum: originally strongly opposed by some member States, UN peace-keeping operations now seem to be accepted by everyone, at least when they are established by the Security Council. Consequently, it does not seem necessary to examine the question of their precise legal basis in the context of this paper, except in so far as it has implications for the legal relationship between the United Nations and regional unions.

A number of peace-keeping operations have in fact been established in the framework of regional arrangements or agencies. Observer groups were created by the OAS on a number of occasions, and the OAU also established a "Neutral Military Observer Group" in 1982, which was entrusted with verification functions in Rwanda and Uganda. One could also mention the EC-CSCE Monitor Mission in Yugoslavia, which, though charged with functions additional to mere verification, was composed of unarmed monitors.

But there have also been a number of cases where regional peace-keeping forces have been established: the OAS created an "Inter-American Armed Force" in 1965 for the purpose of "co-operating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights, and in the establishment of an atmosphere of peace and conciliation in which democratic institutions will be able to function"; the OAU created a "Neutral OAU Force in Chad" in 1981 to supervise the cease-fire, ensure freedom of civilian movement while disarming the population, restore and maintain law and order, and help organize and train an "integrated armed force"; the LAS created an "Arab Security Force" in 1961 to give "effective assistance to safeguard the independence of Kuwait"; in 1976, it further established a peace-keeping force - the "Symbolic Arab Security Force", later expanded to become the "Arab Deterrent Force" - in order to "maintain security and stability in Lebanon". Other examples include: the "Commonwealth Monitoring Force" established within the framework of the British Commonwealth in 1979 in order to supervise the cease-fire in Rhodesia; the "Cease-Fire Monitor Group" created by the ECOWAS in 1990 in order to supervise the implementation and ensure strict compliance with a cease-fire it had imposed on all the parties to the conflict in Liberia; a peace-keeping force established by the CIS in 1994, in order to deal

with the situation in Georgia. Finally, the latest - and, perhaps, most significant - example of a regional peace-keeping force is the "Implementation Force" (IFOR) set up in 1995, mostly in the framework of NATO, in order to "ensure compliance" with obligations undertaken under the peace agreement concerning Bosnia-Herzegovina.

Peace-keeping forces have sometimes been set-up by occasional groupings of States, outside the framework of an existing international union: the "Multinational Force and Observers", created under a 1981 agreement between Egypt and Israel, and the "Multinational Force" deployed in the Lebanon in 1982-84, are cases in point. It is doubtful, however, that such occasional groupings of States can be considered as "regional arrangements or agencies" within the meaning of Chapter VIII of the UN Charter.

From the point of view of their structure, regional peace-keeping operations do not substantially differ from UN operations, which were clearly taken as a model. Depending on whether or not the regional union has a separate legal personality, such operations can be considered as being organs of an international organization, or common organs of the member States; in cases where the integration is minimal, one could merely speak of co-ordinated action of the participating States. But the main question that concerns us here is, of course, the legal interrelationship between the United Nations and regional unions in the establishment and conduct of peace-keeping operations.

The controversial question is essentially whether or not peace-keeping operations amount to "enforcement action" within the meaning of Article 53 of the UN Charter: although the Security Council has never so far utilized regional unions for peace-keeping operations "under its authority", the question remains of whether regional peace-keeping requires prior authorization from the Security Council.

Extreme views have sometimes been put forward in this respect. In the 1965 Dominican case, it was contended that peace-keeping can never amount to enforcement action; the 1962 ICJ advisory opinion in the *Certain Expenses* case is often quoted to support the view that enforcement action does not cover operations established with the consent of the "host State", i.e. the State in whose territory the force is to operate. At the opposite extreme, the view has been put forward that peace-keeping always amounts to enforcement action, inasmuch as it involves the deployment of armed forces.

Such extreme views fail to take into account that there is no legal definition of "peace-keeping", and that peace-keeping operations have developed in UN and regional practice in a variety of ways that cannot be reconciled with either of them. In particular, with all due respect to the opinion of the ICJ, consent on the part of the host State is a rather artificial criterion for establishing the non-coercive nature of an operation in all situations where there is a conflict within a State rather than between States: the view that intervention on the side of the legitimate Government is always permitted under international law seems rather outdated and, in any case, as pointed out above, the lawfulness of

regional action under general international law does not necessarily deprive it of the character of "enforcement action" under Article 53. Moreover, in some cases the host State is in a state of anarchy, or semi-anarchy, and it is difficult, if not impossible, to determine which party to the conflict is the "legitimate" Government. It is significant, in this respect, that under the definition proposed by the UN Secretary-General, the consent of "all the parties concerned" is a necessary feature of "classical peace-keeping".

The 1994 GA Declaration on Cooperation confirms that the proper answer to this question lies somewhere in the middle: the Declaration encourages regional arrangements or agencies "to consider, in their fields of competence, the possibility of establishing and training groups of military and civilian observers, fact-finding missions and contingents of peace-keeping forces, for use as appropriate, in coordination with the United Nations and, when necessary, under the authority or with the authorization of the Security Council, in accordance with the Charter". The General Assembly seems to have thus taken the view that, in some cases, poeace-keeping does amount to enforcement action. Its pronouncement is all the more significant in the light of a clear statement in the Preamble of the Declaration to the effect that "peace-keeping activities undertaken by regional arrangements or agencies should be conducted with the consent of the State in whose territory such activities are carried out": this would seem to support the view that the consent of the host State does not necessarily deprive a peace-keeping operation of the character of enforcement action within the meaning of Article 53 of the UN Charter.

In my opinion, this is the correct view. Whereas simple observer groups can easily be dismissed as not constituting enforcement action when they act with the consent of the host State, the deployment of a peace-keeping force would constitute enforcement action in all cases where the force is given a mandate that exceeds the principles of "classical" peace-keeping, i.e. consent of all the parties concerned, impartiality and the non-use of force except in self-defence. Whereas one could argue that, in such cases, the term "peace-enforcement" would probably be more appropriate than "peace-keeping", this is clearly a merely terminological nicety that does not affect the legal situation: this requires that regional action be conducted under the authority, or with the authorization, of the Security Council.

Turning now to the practice of the Security Council, it must be conceded that the attitude taken by the Council is not very conclusive. Apart from the case of the OAU force in Chad, in which the Council "took note" of the decision of the OAU to establish the force, no clear "authorization" was given except in the recent case of IFOR in Bosnia-Herzegovina. This attitude is not very encouraging, since there can be little doubt, in my opinion, that several other operations undertaken by regional unions considerably exceeded the requirements of "classical" peace-keeping.

On the other hand, the "authorization" given to "Member States acting through or in cooperation with [NATO]" to establish IFOR clearly confirms that, in principle, "peace-keeping" operations do sometimes amount to

enforcement action: it is significant, in this respect, that the Council authorized the taking of "all necessary measures", and that it expressly spoke of "enforcement action by IFOR", while taking note, at the same time, that the parties to the peace agreement had "consented to IFOR's taking such measures". While Chapter VIII was not expressly mentioned and authorization was given "under Chapter VII of the Charter", the Council requested States participating in the operation "to report to the Council, through the appropriate channels and at least at monthly intervals": since the operation does not amount to collective self-defence under Article 51, such a request seems to be based on Article 54.

Apart from cases where "peace-keeping" really amounts to "enforcement action", the relationship between the UN and regional unions intending to engage in peace-keeping operations is to be governed by Article 52 (2) (3) and (4) in all cases where such operations can be considered as "efforts to achieve pacific settlement of local disputes". In such cases, and in all other cases, cooperation between regional unions and the United Nations is to be seen as essential in order to avoid conflicts. As pointed out in the 1994 GA Declaration on Cooperation, such cooperation can take various forms, ranging from the exchange of information and the holding of consultations, to the making available of personnel, material and other assistance.

In this last respect, interesting developments in recent practice include instances of "co-deployment" and "joint operations". Cases of co-deployment concern the deployment of United Nations field missions in conjunction with the ECOWAS operation in Liberia and the CIS operation ion Georgia: in the opinion of the UN Secretary-General, such cases, if successful, "may herald a new division of labour between the UN and regional organizations, under which the regional organization carries the main burden but a small UN operation supports it and verifies that it is functioning in a manner consistent with positions adopted by the Security Council". As an example of a "joint operation", the Secretary-General mentioned the UN mission in Haity, the staffing, direction and financing of which are shared betwee the UN and the OAS: this case is also singled out as "a possible model for the future that will need careful consideration".

7. [Conclusions]

OSCE PEACEKEEPING

by

Natalino Ronzitti

I

INTRODUCTION

1. CSCE institutions were established in 1989 by the Charter of Paris for a New Europe, a turning point in the pan-European process. The Charter celebrated the end of the Cold War and at the same time inaugurated a new era for the CSCE. Yet the participating States soon discovered that the institutions created by the Charter would have to be strengthened and that the CSCE mechanisms would have to be reviewed or amended. CSCE peacekeeping is a part of this process aimed at strengthening and deepening the European architecture.

The Prague Document on Further Development of CSCE Institutions and Structures, adopted by the Council on 30 January 1992, for the first time addresses peacekeeping in the CSCE context. Peacekeeping is seen as an instrument for crisis management and conflict prevention. In addition to requesting that the Helsinki Follow-up Meeting examine the possibility of improving the classic tools for crisis management and conflict prevention (fact finding and rapporteur missions, monitoring missions, good offices, counselling and conciliation, dispute settlement), the Council asked that it give "careful consideration to possibilities for CSCE peacekeeping or a CSCE role in peacekeeping". This alternative formulation shows that

participating States have two concepts of peacekeeping in connection with the CSCE: full-fledged peacekeeping under CSCE responsibility or a CSCE subsidiary role in peacekeeping carried out by other institutions (for the drafting history on the Chapter on peacekeeping, see G. Scheltema, "CSCE Peacekeeping Operations", Helsinki Monitor, 1992, pp. 10-14).

In Helsinki, a number of proposals were put forward for giving the CSCE a subsidiary role in peacekeeping. A Dutch proposal assigned a central role to the existing military alliances, such as NATO and Western European Union (WEU). The United States submitted a discussion paper in which the task of carrying out peacekeeping operations should be given to NATO, since CSCE had no military capabilities: participating States should attribute CSCE the competence to call an existing institution (such as NATO) to conduct peacekeeping missions; the CSCE should provide political authority and legitimacy and, once NATO has initiated a peacekeeping mission, the CSCE will monitor the operation to review the progress made in solving the crisis and bringing peace. According to this project, other CSCE States would contribute through the NACC or in other practical ways if they are not members of that organization.

Yet it was the first alternative, that is, the idea of having an independent CSCE peacekeeping capacity, that gained currency and found its place in Chapter III of the Helsinki Document. A proposal submitted by Nordic

countries, Canada and some central and eastern European countries drew up the main architecture of CSCE peacekeeping. In another, submitted by European Community member States, peacekeeping was seen as an "action to maintain stability on the ground"; the EC proposal addressed CSCE peacekeeping as an independent regional action, to take place within the framework of the United Nations and its Chapter VIII. It must be pointed out that both the proposal of the Nordic countries and that of the other States stated that CSCE peacekeeping should be considered "when there is a threat to peace and security on the territory of the CSCE participating States, and particularly in cases of conflict within the CSCE area involving gross and consistent breaches of CSCE principles, commitments and provisions". But this formula, which is a mixture of article 39 of the UN Charter and other CSCE documents, was left out and did not find its place in Chapter III of the Helsinki Document. Paragraph 17 of Chapter III makes a reference only to a situation of internal or international conflict, without any specification of the nature of the conflict.

The rules on peacekeeping drafted in the 1992 Helsinki Document have not been changed by the decisions adopted at subsequent CSCE meetings. The Ministerial Council, held in Rome on 30 November-1 December 1993, established the basis for "Third party peacekeeping", that is, the possibility for a CSCE member State to carry out peacekeeping operations under international control. Third party

peacekeeping will not be considered here, as it is the subject of another paper. Contrary to expectations, the 1994 Budapest Summit Declaration did not establish new rules on peacekeeping; it decided only that preparatory work be started for deployment of a peacekeeping mission in Nagorno-Karabakh, as soon as the conditions set out in Chapter III of the Helsinki Document are fulfilled.

At present there are no proposals for changing the rules established in the Helsinki Document. It is too early to know if new proposals will be prepared for submission at the 1996 Lisbon Summit. Consequently, assessment of OSCE peacekeeping will be based mainly on Chapter III of the Helsinki Summit and the work done by the HLPG in Vienna for the peacekeeping mission in Nagorno-Karabakh.

II

THE HELSINKI PROVISIONS ON PEACEKEEPING

2. The United Nations Charter does not contain very detailed provisions on actions taken to maintain or restore international peace and security. Chapter VII refers to three categories of actions in articles 40, 41 and 42, that is, provisional measures, measures not involving the use of armed force and action by the Security Council (enforcement measures). Articles on troops supply and on command and control have also be added, but have not yet been implemented. The notion of peacekeeping does not appear in the UN Charter; this is the result of UN practice and a

scholarly construction. In the Agenda for Peace and its supplement, the UN Secretary General has tried to clarify the terminology connected with the UN operations for maintaining international peace and security: peacekeeping, peace-enforcement, peace-building, etc. Questions related to command and control have not yet been clarified in a comprehensive document. The model Status of Forces Agreements (SOFA) and the model Participation Agreement with troop-contributing countries are the only documents connected with that crucial question. Moreover, the question of the applicability of humanitarian law to UN personnel is still open, notwithstanding the conclusion of the 1995 Convention on the safety of United Nations and associated personnel.

Compared to the UN Charter, the Helsinki Document establishes a set of very detailed rules on peacekeeping. Its ambition is to set the limits within which peacekeeping operations must be confined. Whether and in which way the Helsinki provisions on peacekeeping are effective is a matter that will be evaluated at the end of this paper. At this juncture, it will only be pointed out that the peculiar decision making of the OSCE and the preference for specifying detailed rules rather than letting the organization's practice build them up has led the participating States to establish a system aimed at providing a complete discipline for OSCE peacekeeping. The various aspects of that system are described in the following chapter: the concept of peacekeeping; its

functions; the conditions for initiating peacekeeping; the conditions for the actual dispatch of a peacekeeping mission; the chain of command; the terms of reference of a peacekeeping operation; peacekeeping personnel and how to finance a peacekeeping operation.

3. The Helsinki document does not contain a definition of peacekeeping. It does, however, focus on elements which concur in construing a concept of OSCE peacekeeping. First of all peacekeeping is not an end in itself; it is an instrument for conflict prevention and crisis management. For this reason the main task of peacekeeping is to complement ongoing efforts for a political solution. In other words a military solution cannot preempt political action. In this respect, OSCE peacekeeping differentiates from UN peacekeeping, since neither the Charter nor UN practice indicates the political instrument as a precondition for initiating peacekeeping. The other elements referred to in the Helsinki Document are the classic elements of peacekeeping: consent of the parties directly concerned, impartiality and a time limit.
A peacekeeping operation can be undertaken in case of an internal conflict or a conflict between States. In both cases, the State or States concerned must be participating States. Since OSCE is a regional organization a peacekeeping mission outside its borders cannot be undertaken.

The consent of the parties is required. This means that in case of an internal conflict consent should be provided not only from the governmental authorities but also from insurgents or dissident groups. The classic principle *volenti non fit iniuria* applies. Since a peacekeeping operation is not an enforcement action, entry into foreign territory requires the consent of the territorial sovereign.

Impartiality is another feature of OSCE peacekeeping. It means that the OSCE peacekeeping authorities cannot take a stance for one or the other of the factions involved. Compared to political action, impartiality in peacekeeping should be easier to maintain.

A time limit is also a common feature of UN peacekeeping operations. Usually the Security Council mandates the Secretary-General to deploy a force for a fixed period. If additional periods are required, this is decided by the Security Council. A classic example is the UNFYCIP, for which the mandate, originally fixed for six months, has been renewed every six months. The requisite of time limit puts peacekeeping missions into the hands of the organization's political organs. They have the power to extend the mission or to decide its termination after the expiration of the time limit.

Enforcement action by a peacekeeping mission is clearly ruled out. Even though recent UN practice, for instance related to UNPROFOR, shows that the distinction between peacekeeping and peace-enforcement is sometimes blurred,

the two categories of actions must be kept separate. The dividing line is related to the use of force. In the first case, the use of force is strictly confined to cases of self-defense by the peacekeepers; in the second, force can serve political purposes, such as disarming a faction or restoring the authority of the constituted government.
Can an enforcement action carried out by an organization other than the OSCE act as a support for an OSCE peacekeeping mission? UN experience includes the case of UNPROFOR, where enforcement action was entrusted to NATO, while UNPROFOR was carrying out a strictly peacekeeping mission. The Helsinki Document makes no statement on this point. An enforcement action can be authorized only by the Security Council; the OSCE has no competence in this matter. Therefore the case would be that of a peacekeeping operation carried out by the OSCE and supported by an enforcement action authorized by the Security Council. This would involve a division of labor between the OSCE and the United Nations, which is the subject of another paper.

4. The functions of peacekeeping are listed in Chapter III, para. 18 of the Helsinki Document. The list is not exhaustive and the activities mentioned there are classic examples of peacekeeping tasks: supervision and maintenance of a ceasefire; monitoring troop withdrawals; support in the maintenance of law and order; humanitarian and medical aid; assistance to refugees. Since any enforcement action is ruled out, OSCE peacekeeping cannot entail use of force

against a State. For instance, a second generation peacekeeping operation or an action against an aggressor is excluded, all the more so since an OSCE peacekeeping operation requires the "consent of the parties directly concerned".

The Helsinki rules indicate the nature of the personnel to be used. An operation might involve civilian and military personnel or only one category of personnel. The civilian component has been placed on the same footing as the military one. This is in keeping with the current trend of giving greater importance to civilian personnel in UN peacekeeping operations.

The Helsinki rules are flexible on the size of peacekeeping operations. Both small-scale and large-scale missions qualify as peacekeeping operations and might involve a simple observer mission, a monitoring mission or a larger deployment of forces.

5. A peacekeeping operation can be started only if a number of conditions are met. The responsibility of initiating a peacekeeping operation lies with the Council. The Council or the Senior Council acting as its agent have the authority to take a decision for this purpose. The Council can act *ex officio*. However a request to initiate a peacekeeping operation can be put forward by one or more participating States and addressed to the Senior Council through the Chairman-in-Office. This means that any participating State can address a request, even though it

is not directly involved in the situation requiring a peacekeeping operation. But a peacekeeping operation requires "the consent of the parties directly concerned" - a condition which is characteristic of UN peacekeeping practice. The Helsinki Document does not specify what parties mean. If this is clear in case of international conflict, it is disputable in case of internal conflict. Does parties mean the constituted government and the insurgents? What about a situation in which more than one faction is fighting against the constituted government? Since a MOU with the "parties concerned" is requested before the actual dispatch of a mission, does it means that the MOU should be signed "all parties" to the conflict?

The mandate adopted by the Senior Council should be "clear and precise". This condition will not be easily met, since it is difficult to quote examples of diplomatic documents of that nature, particularly if a large number of States concur in adopting the decision. The practice of the UN Security Council on peacekeeping, which counts less members than the OSCE Council, is instructive.

The mandate should be "clear and precise", however, on at least one point: the time limit of the peacekeeping mission. This requisite is underlined by the Helsinki Document, which affirms that peacekeeping operations "must be understood to be limited in time". The time limit is a condition in keeping with UN practice. It is conceivable that time limits can be extended for further periods if the

presence of the peacekeeping mission is required to achieve the objective of a negotiated settlement.

The mandate should also indicate the kind of peacekeeping mission to be established and what peacekeeping activities might be most appropriate. To this end, the Senior Council can avail itself of the cooperation of the Consultative Committee of the Conflict Prevention Center (the reference should now be to the Permanent Council).

Finances are a crucial aspect of any peacekeeping operation. This problem is tackled in another paper. Suffice it to say here that the financial basis is also a condition for initiating a peacekeeping operation.

6. The actual dispatch of peacekeeping forces is subject to a consensus decision by the Council or the Senior Council after the existence of a number of conditions has been verified. First of all a political evaluation of the situation has to be made to ascertain whether "all parties concerned have demonstrated their commitment to creating favorable conditions for the execution of the operation, *inter alia*, through a process of peaceful settlement and their willingness to co-operate". It is thus again pointed out that peacekeeping is not an end in itself but a tool complementing a political process of dispute resolution. Moreover, the following three conditions are prerequisites for the actual dispatch of peacekeeping forces:

- the establishment of an effective and durable ceasefire;

- agreement on the necessary Memoranda of Understanding with the parties concerned;
- provision of guarantees for the safety at all times of personnel involved.

These conditions are hard to meet. A ceasefire may be established, but it is difficult to predict if it will last, that is, if it is "an effective and durable ceasefire". The same is true for the safety of personnel involved. If the ceasefire is effective and durable, the safety of the personnel may possibly be guaranteed "at all times". However, the situation on the ground is never clear-cut and the assurances given by the warring factions could prove to be elusive. UN statistics prove that casualties among UN peacekeepers have increased dramatically and that UN personnel has been detained or taken hostage. The conclusion of a MOU with the "parties concerned" seems to be a condition that is easier to fulfill. But not even this is the case when the conflict has an internal character and more than one faction is striving to overthrow the constituted government.

Once the decision to dispatch a mission has been taken, peacekeeping forces are dispatched "as soon as possible". This does not mean "immediately after" the consensus decision taken by the Council or the Senior Council; the meaning of "as soon as possible" depends on the circumstances enabling OSCE peacekeeping forces to enter foreign territory.

7. As practice has shown, the chain of command in a peacekeeping operation is very important and can be a source of conflict between the States to which forces belong unless clear rules are established. The Helsinki Document makes a distinction between "overall operational guidance" and "operational command".

Overall operational guidance is a task entrusted to the Chairman-in-Office by the Council or the Senior Council. The Council/Senior Council gives the Chairman-in-Office the appropriate directives, even though there is no specification on this point in the Helsinki Document. The functions inherent to the political guidance of the mission are not the exclusive competence of the Chairman-in-Office: participating States are entitled to share these responsibilities through an ad hoc group. This body consists of representatives of three categories of participating States: the States to which the preceding and succeeding Chairmen-in-Office belong (this means that the Troika is represented since the group is chaired by the Chairman-in-Office in exercise); the supplier States, that is, those providing personnel (both military and civilian) for the mission; States making "other significant contributions" to the operation. This last category is not specified. It may refer to those States giving additional financial contributions to the mission or to those that provide logistic support.

The tasks assigned to the ad hoc group are of a political-military nature, since it monitors the mission,

acts as a point of contact for the Head of Mission and provide assistance to him. The Helsinki Document adds that the ad hoc group provides "overall operational support" for the mission.

The ad hoc group had another important task: to supply information to the organ that functions as a "liaison" between the operation and the participating States, the Consultative Committee of the CPC. After the reorganization of the OSCE structure, however, these functions now belong to the Permanent Council.

As mentioned previously, the Helsinki Document distinguishes between political guidance of the mission and operational command in the field. The latter is given to the Head of Mission, who is nominated by the Chairman-in-Office, though the nomination must be approved by the Senior Council. Rules concerning the Head of Mission are very spartan as compared to those regarding other aspects of peacekeeping. It is only stated that the Head of Mission "will be responsible to the Chairman-in-Office" and that he "will consult and be guided by the ad hoc group". This may create a problem concerning the unity of command and its effectiveness in the field. According to the letter of the provision, the Head of Mission should take orders ("guidance") from the ad hoc group and at the same time be responsible for their execution to the Chairman-in-Office, who is the nominating authority.

8. Para. 35 to 37 of the Helsinki Document deal with peacekeeping personnel. Since a peacekeeping operation may involve civilian and/or military personnel (para. 18), it is obvious that the provisions on personnel refer to these two categories of persons. The OSCE does not have military forces at its disposal; they must be provided by the States. This is also true of the civilian personnel taking part in the peacekeeping operation. The Helsinki Document dictates a few principles on personnel:

- all participating States are eligible to take part in OSCE peacekeeping operations;
- personnel will be provided by individual participating States;
- the parties concerned, that is, the States involved in a conflict (or the constituted government and the warring factions if the conflict has an internal character) should be consulted "about which participating States will contribute personnel to the operation". This rule has been established to avoid tensions between participating States and the parties concerned. For instance the territorial State cannot agree to the presence on its territory of a former occupant.

Personnel must be recruited, since the OSCE does not have permanent personnel - in particular, military personnel - at its disposal; . Recruiting of personnel is a task that the Helsinki Document assigns to the Chairman-in-Office of the Senior Council. To this end, he has to carry out appropriate consultations with the participating

States, which will be invited . . . "to contribute, on an individual basis, to an operation case by case". The Helsinki Document does not mention the procedure to be followed once a State has decided to supply personnel to the organization, for instance, whether or not an agreement should be stipulated between the participating State and the organization, on the model of those signed between the United Nations and supplier States.

9. The OSCE may use the services of other organizations to carry out peacekeeping operations; the organizations considered are the European Union, NATO and the WEU. The peacekeeping mechanism of the Commonwealth of Independent States is also named. The list is not exhaustive, as can be inferred from the wording of para. 52, which makes reference to "other institutions and mechanisms". Since the relations between the OSCE and the above mentioned organizations is dealt with in another paper, only those provisions of immediate relevance for peacekeeping are taken into account here.

The Helsinki Document states that regional and transatlantic organizations may contribute to an OSCE peacekeeping mission. They cannot, however, function as a substitute for an OSCE mission. This means that the OSCE cannot completely renounce use of its peacekeeping forces and delegate its functions to a regional organization. Rule 55 clearly sets out that a regional organization would carry out "definite tasks" within the peacekeeping mission

and that these tasks are to be mutually agreed between the OSCE and the organization involved. A regional organization is called to support an OSCE mission, which is established and conducted according to OSCE rules and remains under the command of the OSCE. The ad hoc group is entrusted with the task of serving as a liaison between the organization concerned and the OSCE.

Asking for the support of an organization (deciding whether it is opportune and which organization is most suitable) is a political matter. There is no established procedure on this point, but it is reasonable to believe that the Council/Senior Council has the competence to decide to call for the services of a regional organization. The Helsinki Document says that such a decision should be made "on a case-by-case basis", therefore, a decision assigning the general role of support of OSCE peacekeeping missions to a given organization would be illegitimate. Prior consultations with the participating State members of the organization concerned are requested and any decision should take into account "the consultations by the Chairman-in-Office regarding prospective participation in the mission, in light of the envisaged size of the operation and the specific character of the conflict".

10. The financial problems involved in an OSCE operation are the subject of another paper and are not examined here. Suffice it to say that the principle upon which it is based is that all OSCE participating States are

duty-bound to contribute to peacekeeping operations. However additional contributions can be provided by participating States on a voluntary basis. This means that the expenses of a peacekeeping mission should be covered by both obligatory and voluntary contributions.

11. The Helsinki Document goes into peacekeeping at great length but makes no mention of rules of engagement (ROE). This is understandable, since ROE are usually enacted for a specific mission and can vary. However, the bulk of ROE is essentially the same and it is opportune to examine the rules which have been established by the High Level Planning Group, charged to elaborate a "concept of operation of a possible OSCE peacekeeping mission in the conflict area of Nagorno-Karabakh".

On this point the OSCE can benefit from the experience of UN peacekeeping missions. The 1995 Convention on the safety of UN personnel engaged in peacekeeping missions can also be of some help, even though this Convention establishes obligations for States in which the forces operate and does not regulate the behavior of the peacekeeping forces themselves. For instance, Doc. 109/94, dated 23 January 1995 and prepared by the HLPG, contains a paper dealing with the general idea of peacekeeping and establishes elementary rules concerning peacekeeping personnel. This paper makes a distinction between peacemaking and peacekeeping. While the former implies that peace is enforced by armed force, since force is exerted in

order to bring one or several parties to conclude a political settlement, the latter presupposes that peace or at least a ceasefire has been already concluded. Therefore the use of weapons is not necessary for achieving a political end. Weapons should be used only in self-defence. Peacekeeping forces are not allowed to participate in military operations. Their tools are not weapons but rather negotiation and mediation. It is also stated that, as a general principle, "an OSCE peacekeeping force shall observe and respect the principles and spirit of the general international conventions applicable to the conduct of military personnel and forces". This formula is taken verbatim from the UN and is rather vague as it does not clarify what "general international conventions" it addresses. Rules for military personnel engaged in an armed conflict are contained in the 1907 Hague Conventions, the four Geneva Conventions of 1949, the 1954 Hague Convention on the Protection of Cultural Property in Time of Armed Conflict, the two Additional Protocols of 1977 and the 1981 Inhumane Weapons Convention. However, it is a moot point if the rules therein contained apply to peacekeeping forces, since the organizations to which they belong are neither party to them nor party to the conflict.

III

A CRITICAL EVALUATION OF OSCE PROVISIONS ON PEACEKEEPING

12. A quick perusal of Chapter III shows that the process for establishing an OSCE mission is very cumbersome; therefore, the risk that it may never be put into practice is very real.

First of all, some shortcomings are connected with OSCE decision making: the OSCE works on a consensus basis. This means that if a peacekeeping mission is opposed by even one of the participating States, it will never be carried out. A majority vote would imply a change in rules which is not easily foreseeable. Furthermore, it is difficult, from a political point of view, to envisage a change in decision making for peacekeeping alone.

The Helsinki Document calls for the adoption of "a clear and precise mandate". However precision and clarity are difficult to obtain from a body working by the rule of consensus. The device of "consensus minus one", adopted by the Prague Document in case of gross violations of human rights, democracy and rule of law, cannot be applied to peacekeeping, as it applies to actions which are performed outside the target State. A peacekeeping mission, on the other hand, is carried out in the territory of the target State and presupposes the consent of the territorial State.

Other flaws depend on the way in which peacekeeping is structured. The conditions for initiating peacekeeping are too rigid. While it understandable that a ceasefire is required before a mission can be established, it is less understandable that a ceasefire need be considered effective and durable. One wonders whether a peacekeeping

mission is strictly necessary if a durable and effective ceasefire has been achieved. In such a case, a long-term mission, an institution which has been and is being experimented, may serve the cause of peace better. Other conditions consist of drafting an MOU with the parties concerned and obtaining a guarantee for the safety "at all times of personnel involved". This second condition is certainly a laudable proposal, but it may be difficult to fulfill.

The consensus rule dominates not only while deciding on whether or not to establish a peacekeeping force, but also during the various phases of the mission itself. The terms of reference defining the practical modalities of a peacekeeping mission are adopted by the Senior Council; the Ministerial Council or the Senior Council is committed to reviewing the mission regularly and taking the necessary decisions.

13. The provisions on OSCE cooperation with regional and transatlantic organizations are also worthy of comment. The usual pattern has been established by relations between the United Nations and regional organizations: regional organizations are entitled to take enforcement measures if so authorized by the UN Security Council and this organ can "utilize" regional organizations for enforcement action "under its authority". This concept is based on the supremacy of the Security Council, under the authority of which regional organizations can act.

The way in which this concept has been implemented in practice is a moot point. During the Cold War, regional organizations often acted without any authorization from the Security Council (the best example is the Organization of American States). Even in the post-Cold War period, relations between regional organizations and the Security Council are still not easy (UNPROFOR and NATO is a case in point) and regional organizations sometimes act without real direction from the Security Council, as proven by the case of NATO in former Yugoslavia, where the United Nations adopted an "enabling resolution" putting NATO under the nominal authority only of the United Nations.

The OSCE does not have the ambition to have supremacy over other European and transatlantic organizations and does not claim that they have to act under its authority as a sort of subregional organization. In carrying out a peacekeeping mission, these organizations should have a "defined and mutually agreed task". Nevertheless, the principles and procedures set out under the Helsinki Document imply a derogation from the principle of equality in that they give the pan-European organization the leadership of the mission. This is not in keeping with reality. How can a NATO force act under a chain of command established for OSCE peacekeeping operations?

Moreover, not only the OSCE, but some of the other organizations mentioned in the Helsinki Document do not have armed personnel at their disposal either. This is true

of the European Union, which can supply only the civilian component of a peacekeeping mission.

Last but not the least, there are political reasons which lead one to believe that cooperation between the OSCE and regional organizations would not be an easy task. Hans von Mierlo has rightly pointed out that in today's Europe a need for peacekeeping will arise in the former Soviet Union or the former Warsaw Pact region. But the Russian Federation will not easily accept NATO troops on the territory of the former Soviet Empire. The same is true for CIS troops; their deployment in Western Europe is unthinkable. Indeed, the case of the former Yugoslavia shows that a transatlantic organization like NATO can carry out a peacekeeping operation as long as its blessing comes from the United Nations, not from the OSCE.

14. No peacekeeping operation has, as yet, been carried out by the OSCE and it is thus difficult to predict how the rules of Chapter III of the Helsinki Document will operate. The only precedent which may be quoted is that of Nagorno-Karabakh and the plans made for deploying a multinational peacekeeping force in that region. Plans started before the Budapest Summit of 5-6 December 1994, but the formal decision was taken at the Summit.

The Budapest decision made deployment of a peacekeeping mission in Nagorno-Karabakh conditional upon the conclusion of a political agreement on the cessation of the armed conflict and considered the peacekeeping mission

an element for the implementation of the agreement. Two other conditions were deemed necessary:

- a formal request by the parties to the conflict and their agreement on deployment of the force;
- an "appropriate" resolution from the UN Security Council backing the OSCE decision to deploy a peacekeeping force.

Only after those conditions had been met, could the Permanent Council decide to establish and dispatch a peacekeeping operation on the basis of the preparatory work done on the composition of the force. The planning for establishing the force was tasked to the Chairman-in-Office, with the support of the Secretary General, and assisted by the co-chairmen of the Minsk Conference and the Minsk Group. In effect, the real work was done by the High Level Planning Group established a few days after the Budapest decision and directed by the Chairman-in-Office.

The conditions set out by the Budapest Summit are in conformity with Chapter III of the Helsinki Document. This is true, for instance, of "the request by the parties to the conflict" and the "political agreement on the cessation of the hostilities", even though the Helsinki Document requires a simple "ceasefire", provided that it is "effective and durable".

A further condition which is extraneous to Chapter III is required by the Budapest decision: an "enabling resolution" by the UN Security Council. The OSCE is a regional organization under Chapter VIII of the Charter, but authorization by the Security Council is not requested

for deployment of a peacekeeping force of the kind envisaged by the HLPG; the Charter requires only that the Security Council be kept fully informed of the activities planned by a regional organization. This condition set down in the Budapest decision adds further obstacles to a process which is already difficult to manage. Indeed, the Fifth Meeting of the Ministerial Council, held in Budapest in 1995, took note of the fact that the HLPG "completed preparatory work on planning of an envisaged peacekeeping operation" and acknowledged that "conditions which would allow the deployment of such an operation are, however, still lacking".

15. As noted before, no peacekeeping operation has yet taken place. On the other hand, OSCE practice shows that almost a dozen long-term missions have been deployed or are still operating. The latest mission is the one deployed in Bosnia-Herzegovina according to the decision adopted by the Ministerial Council at its fifth meeting in Budapest. OSCE long-term missions are, however, the object of another paper; here they are taken into consideration only to evaluate whether they are an independent institution or a part of peacekeeping.

The Helsinki Document makes a distinction between fact finding and rapporteur missions on the one hand and peacekeeping missions on the other (see Chapter III, paras 12-16 and 17-56, respectively). Nowhere are long-term missions mentioned. Yet given the tasks assigned them, they can hardly be based on paras 12-16. In effect, long-term

missions perform a variety of functions such as good offices, mediation and human rights monitoring, and play an active role which goes beyond the function of merely reporting to the Permanent Council or the Senior Council, typical of a fact-finding or a rapporteur mission.

Indeed, long-term missions are sometimes given tasks such as withdrawal troop monitoring or post-conflict state-building, which are also suitable for peacekeeping. Moreover, according to the Helsinki Document, a peacekeeping mission must involve only civilian personnel, even though there are instances of long-term missions involving civilian and military personnel, albeit with a minimal military component.

There are also similarities as far as the establishment of a long-term mission and its direction are concerned. The decision to establish a mission is taken at the level of the Ministerial Council or the Senior Council; a clear mandate is requested and the consent of the territorial sovereign is necessary for dispatching a mission. The political direction of the mission is given to the Chairman-in-Office, who will appoint the Head of Mission (see, for instance, the decision on OSCE action for peace, democracy and stability in Bosnia and Herzegovina).

No provisions regarding the funding of long-term missions can - obviously - be found in the Helsinki Document. The principle is that of collective financial responsibility in accordance with the scale of contribution. Additional sources of funding are not excluded. For instance, the

Ministerial Council's decision on Bosnia-Herzegovina affirms that "the OSCE will seek additional, including non-governmental, sources of funding".

It is clear that notwithstanding the above mentioned similarities, long-term missions and peacekeeping operations also have distinctive features. But these distinctions seem to be more a question of detail and specification than real differences pertaining to the overall structure.

It might be concluded that since long-term missions are a flexible instrument based on State practice, they could possibly function in the future as a substitute for peacekeeping operations, once political reality has proven how difficult it is to establish peacekeeping operations if all the conditions set out by the Helsinki Document are to be fulfilled. Practice in Bosnia-Herzegovina also shows that a long-term mission could complement a peacekeeping mission dispatched by a regional organization or a universal organization such as the United Nations. A possible division of labor between the OSCE and other organizations could be organized as in Bosnia-Herzegovina, where NATO administers the military side of the operation, while OSCE is entrusted with tasks of post-conflict institution building.

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FIRST DRAFT

THE RELATIONS OF THE OSCE WITH EUROPEAN AND TRANSATLANTIC ORGANIZATIONS

by Professor Victor-Yves Ghebali, Graduate Institute of International Studies (Geneva)

Throughout the East-West period, the OSCE maintained with other international organizations *selective* and *functionally-limited* relations. Links were only established with some institutional elements of the United Nations Organization or the United Nations System (mainly the UN/ECE and UNESCO on a regular basis) - but not with any European organization. Those links took the form of highly-symbolic invitations of the United Nations' Secretary-General , as "guest of honour", to OSCE summits and follow-up meetings. However, they did not go practically beyond the circulation of "contributions" papers (also presented orally)to OSCE meetings. In any event, they did not entail genuine working relations or interplay, let alone any kind of reciprocity .

Since the end of the Cold War, this picture has dramatically been altered. On the one hand, the OSCE has proclaimed itself a "regional agreement " under Chapter VIII of the UN Charter and is developing a growing cooperation and coordination with the United Nations . On the other hand, it has established with European and transatlantic organizations and institutions pragmatic working relations characterized by their *differentiated character* : while partnership relations are developing with the European Union and the Council of Europe , no such thing has taken place either with NATO or with the WEU - not counting the Commonwealth of Independent States. At present, in 1996, the fate of the overall issue is linked to the "Security model", which the OSCE is trying to hammer out following a decision taken at the Budapest Review Conference.

The General Pattern of OSCE's Relations with Other International Organizations

During the Cold War period, international organizations concerned with European security and/or cooperation developed in a pattern of political bipolarity, rigid division of labour and mutual ignorance.

Each of the two competing ideological blocs created international organizations for the management of intra-bloc relations. All of them operated on the basis of clear-cut and inflexible mandates. Thus, NATO and the Warsaw Pact were attributed the task of collective defense, economic integration/cooperation went to the European Community and Comecon - while the WEU and the Council of Europe were respectively entrusted with tasks related to arms control and human rights. This led to the development of a watertight, although unconcerted, division of labour and, as a consequence, to a piecemeal approach to European security and cooperation. In addition, all institutions operated as a rule in mutual blindness : they deliberately avoided establishing formal or even pragmatic working relations. The

reluctance of the Western Allies to grant any international legitimation to the undemocratic institutions under Soviet hegemony was the fundamental reason for such institutional schizophrenia. The latter also prevailed among Western organizations, but for reasons having to do with differing memberships and a sectorial approach to Western European security and cooperation. At that time, the OSCE represented the only exception to the rule : it had a *paneuropean* membership; its mandate was conceveid in terms of *comprehensive security* and it entertained some regular relations with the *United Nations*.

In a nutshell, during the Cold War era, European security problems were tackled separately within institutional fiefdoms - of which the most important were the two pairs of dyads represented by NATO/Warsaw Pact and European Community/Comecon, as well as the OSCE. The WEU amounted, then, to nothing more than NATO's mute annex. The Council of Europe performed as a club strictly restricted to liberal democracies and, thus, was perceived by the Eastern bloc as a Wester-biased organization. As to the United Nations, apart from the particular case of the Cyprus conflict, it carefully avoided any significant involvement in political European affairs : given a basic understanding between East and West (implicitely reconfirmed with the development of the OSCE process) European security matters were considered as a sort of taboo by the United Nations. Finally, it colud be said, that the OSCE reigned unchallenged in the realm of the Greater Europe.

The collapse of Communism and the end of bipolarity introduced three new parameters. First, there was the demise of the international institutions of the former Eastern bloc (Warsaw Pact and Comecon) and the creation of new institutions of a paneuropean (European Bank for Reconstruction and Development) or regional nature (Commonwealth of Independent States). Second, previously existing organizations engaged in growing interplay : they formally recognized each other, and began to liaise and even to undertake joint ventures or actions. Last, but not least, those same organizations undertook major-self reforms and proclaimed a more or less paneuropean vocation. NATO revised its strategy , established organic links with its former Warsaw Pact enemies (through NACC and the Partnership for Peace Programme) and is contemplating its eastward enlargement. By means of the Maastricht Treaty, the European Community achieved its evolution towards a "European Union" and adopted the principle of a Common Foreign and Security Policy (CFSP). The WEU has been politically reactivated, provided with embryonic operational capacities (in view of becoming the European Union's armed wing and NATO's European pillar) , while offering associate membership or observer status to a number of former Western and Eastern countries. The Council of Europe granted full membership to a large number of former Soviet or Yugoslav Republics and spelled out the concept of "democratic security". Finally, the United Nations itself was freed from its European taboo and authorized to manage the Yugoslav conflict as well as some conflicts which erupted on the territory of the former Soviet Union (Abkhazia/Georgia, Tajikistan) .

The overlap of roles and functions has inevitably led to conflicting institutional claims. This means that OSCE is not anymore reigning alone as a paneuropean institution. It is now *de facto* challenged by NATO, the WEU and the European Union for the management of security matters and by the Council of Europe in the realm of the human dimension. It is againtst this background that the present state of OSCE's relations with European and Transatlantic organizations must be assessed.

The Formal Political Response of the OSCE

OSCE's relations with European and transatlantic organizations and institutions raise a particularly sensible political issue within the OSCE. This is the case because such an issue is closely related to the problem of "European security architecture". The latter presents two distincts aspects. The first (and initial) aspect concerns the freudian-type quarrel between France and the United States about the respective roles of NATO, the WEU and the OSCE in post-Communist Europe. Driven by the concern of overcoming what is perceived as "American hegemony", the French have consistently been seeking (until a very recent past) to downsize NATO's post-Cold War functions, to promote the WEU as the main component of a "European defense identity"and to oppose the establishment of any organic or functional link betwen the OSCE and NATO. By contrast, the Americans have been striving to maintain the OSCE as an organization of pure "soft security" (in view of preserving NATO's future), to discourage the European Union to act as a single political entity within the OSCE and to avoid any weakening of the OSCE's human dimension which could only upgrade the political role of the Council of Europe. As a direct consequence of the French-American dispute, the OSCE became hostage to NATO's and the WEU's respective self-reforms and to the ultimate division of labour to be agreed between them.

The second aspect of the issue of the "European security architecture" , which emerged at a later stage (by 1993), has to do with Russia's demands for hierarchy among existing security organizations in the OSCE area. Russian unstated objectives are twofold.On the one hand, the attribution of some overarching role to the OSCE obvioulsly aims at slowing down, if not discouraging, NATO's efforts for eastward enlargement. On the other hand, the promotion of the Commonwealth of Independent States as a sub-regional organization linked to the OSCE as the latter is related to the United Nations evidently aims at legitimizing Russian "peacekeeping" (actually peace-enforcement) operations in its "near aborad".

Initially, the OSCE addressed the issue of relations with European and transatlantic organizations and institutions from the very narrow angle of *exchange of information* - and not from that of working relations. At its inaugural meeting (Berlin , June 1991), the Ministerial Council agreed to encourage an "exchange of information and documents" between the OSCE and a limited number of organizations :the *European Union*, the *Council of Europe*, *NATO* and (in view of mitigating the political importance of the whole matter) the *UN/ECE*; it also asked the CSO to elaborate a relevant procedure which could be reexamined after six months [1] . The CSO did so in January 1992. [2] By the end of the year, the Director of the Prague Office (Nils Eliasson) signaled to the participating States that the documentation so far circulated presented a "low degree of utilization" for OSCE purposes.[3] Consequently, in February 1993, the CSO decided to discontinue it [4] .

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[1] Summarry of Conclusions of the Berlin Ministerial Council (1991) : paragraph 13.

[2] See *Journal* No 3 (10 January 1992) of the 5th Meeting of the CSO, Annex 2.

[3] See CSCE Communication No 424 of 22 December 1992. List of exchanged documents : CSCE Communication No 334 of 4 November 1992.

[4] See *Journal* No 2 (3 February 1993) of the 19th Meeting of the CSO (decision 5 i).

At its second regular meeting,(Prague, January 1992), the Ministerial Council addressed the matter of working relations.It admitted that the management of post-Communist Europe requested closer links between European, transatlantic and other institutions and organizations.[5] .The word "other" was used in order not to limit inter-institutional relationships to security organizations, but to extend them to *economic* organizations such as *OECD*, *EBRD* and *EBI*. The Ministerial Council tasked the Helsinki Review Conference to study the matter with the objective of strenghtening effectiveness and avoiding overlaping.[6] In the meantime, it decided that concerned organizations would be invited to submit "contributions" to those OSCE meetings related to their own expertise and to future Seminars organized by Conflict Prevention Center. [7] : this meant that the organizations concerned could only receive *occasional* invitations to contribute to some specialized meetings, but not to the *political meetings* of the Ministerial Council and the CSO. The Prague Ministerial Council also suggested that the concerned organizations could channel information related to their working programmes as well as to resources available for the undertaking of joint endeavours.[8] Although , the Pragua decisions did not obviously go too far, they had the apparent merit of authorizing the OSCE to envisage - for the first time - functional relations with European organizations, including security ones.

The Helsinki Review Conference achieved a formal breakthrough on the issue of outstanding (as opposed to regular) working relations by allowing the OSCE to undertake *peacekeeping operations* not only of its own, but also with the support of organizations such as the *European Community*, *NATO*, the *WEU* (as a result of a tough French-American bargain) [9] and the *Commonwealth of Independent States* (upon the insistence of Russia). The breakthrough was largely "formal" , since the Helsinki provisions on peacekeeping were so restrictive that their actual implementation could only be hypothetical. Concerning regular working relations, no progress was however reached. Given continuing French-American disagreeements ,the Helsinki Review Conference could only reaffirm the Prague decisions - with a slight additional element : "appropriate international organizations" may be invited to attend as "guest of honour", on a case- by- case basis,OSCE meetings and seminars with relevant nameplates [10] .

The French-American squabble persisted. It even climaxed at the Rome Ministerial Council (November-December 1993), when American efforts for a clear-cut decision on functional links between the OSCE and NATO were turned down by France : hence a murky compromise on the objective of "establishing improved arrangements for consultations and for co-ordination of activities", including "co-operation arrangements" [11] .The Chairman-in-Office was entrusted to conduct talks for that purpose with the organizations concerned. No practical results followed suit. The 1994 Budapest Review Conference only reaffirmed the willingness of the

[5] Summary of Conclusions of the prague Ministerial Council (1992) : paragraph 10.

[6] *Ibid.*, paragraph 10.

[7] Prague Document (1992) : paragraphs 43 and 40.

[8] *Ibid.*, paragraph 44.

[9] Helsinki Decisions 1992 : paragraph 52 of Chapter III.

[10] *Ibid.*, paragraph 5 of Chapter IV.

[11] Decisions of the Rome Ministerial Council (1993) : paragraph VI.3.

OSCE to "enhance co-operation with European and other regional and transatlantic organizations, while avoiding duplication of effort".[12] In the same vein ,the Budapest Summit confirmed the decision "to pursue more systematic and practical co-operation" between the OSCE and European and transatlantic organizations and institutions "that share its values and objectives" [13] - a reference presumably related to growing concerns over Russian "peacekeeping" operations undertaken under the rubber stamp of the Commonwealth of Independent States.

The Functional Institutional Response of the OSCE

The overall actual relations of the OSCE with European and Transatlantic organizations and institutions present, however, a less negative character.

The OSCE has developed a true partnership relation with the *European Union* [14] . In 1991,in the early stage of the Yugoslav conflict, the OSCE was associated to the work of the Monitoring Commission and the International Conference on Yugoslavia ("Carrington Conference") both created under the aegis of the European Union. In 1992, the OSCE was granted an observer status at the Geneve Internationmal Conference on the Former Yugoslavia, co-sponsored by the European Union and the United Nations. Genuine partnership only flourished by the end of the same year when the OSCE and the European Union created and managed a joint mechanism for the monitoring of United Nations' sanctions in the countries neighbouring the Federal Republic of Yugoslavia (Serbia /Montenegro).[15] More recently, the European Stability Pact (a direct product of the European Union's foreign policy) became part and parcel of the OSCE's programme of work [16] .

Partnership has also been characterizing the OSCE relations with the *Council of Europe* in the manifold aspects of the human dimension. This a particularly positive development, given the pattern of bitter competition which prevailded for quite some time between the two organizations in the aftermath of the collapse of Communism. [17]

In contrast, functional relations with the *Western European Union* have been almost inexistant. In 1993, the WEU however undertook a brief "police operation" on the Danube in support of the OSCE/European Union joint monitoring

[12] Budapest Decisions 1994 : paragraph 26 of Chapter I.

[13] Budapest Summit Declaration (1994) : paragraph 8.

[14] See Fraser CAMERON : The European Union and the OSCE : Future Roles and Challenges", *Helsinki Monitor*, Vol. 6, No 2, 1995, pp. 21-31.

[15] For more details, cf. Eugenios KALPIRIS, Richardt VORK et Antonio NSAPOLITANO : *Les sanctions des Nations Unies dans le conflit de l'ex-Yougoslavie.La coopération OSCE/Union européenne*. Bruxxelles, Bruylant, 1995, xi-191 p. (coll. "Axes",16).

[16] On the Stability Pact, see the author's articles in *Défense nationale* (Vol. 50, October 1994, pp. 67-77). and in *Le Trimestre du Monde* (No 28, 1994/IV, pp. 107-122).

[17] See Thomas M. BUCHSBAUM : "The CSCE and International Organizations : Expanding Cooperation with the Council of Europe", *The CSCE in the 1990's. Constructiong European Security and Cooperation*. Edited by Michael R. LUCAS. Baden-Baden Nomos Verlagsgesellschaft, 1993, pp. 125-142.

mechanism of United Nations' sanctions [18] .

Finally, relations with *NATO* still remain (because of the above-mentioned French/American quarrel) a liability in OSCE's balance sheet. The only concrete development (although not one of first magnitude) has taken place in 1995, when NATO's request to be connected with OSCE's Network of rapid communications (for the purpose of a better monitoring of the CFE Treaty regime) was painfully granted. [19]

Towards a Common and Comprehensive Security Model

Following Russia's insistence, the 1994 Budapest Review Conference agreed on the principle of providing the OSCE with a "Common and Comprehensive Security Model for the Twenty-First Century". However, the specific modalities of the practical exercice necessary for that purpose were envisaged in rather cautious and vague terms. Thus , Chapter VIII of the Budapest Decisions did contain no precision on the abstract or functional meaning of the word "Model". It only hinted that the exercice's goal would be the elaboration of a "security concept". [20] It also indicated that the Model would draw its inspiration from "CSCE principles" as well as from the Charter of Paris and the 1992 Helsinki Decisions, and given due account of the fact that OSCE is contributing to "co-operative security" in its geopolitical area. [21] The Budapest mandate committed participating States less to elaborate an actual Model than to launch "a broad and comprehensive discussion" on all aspects of security". [22] In addition, it specified that such a debate "will not affect the inherent right of each and every participating State to be free to choose or change its security arrangements, including treaties of alliance, as they evolve" [23]. Even more strikingly, the mandate contained no whatsoever reference to the "European Security architecture" and did not even suggest the possibility of "contributions" from the present European and translatlantic organizations and institutions to the debate

Despite those caveats, the decision made by the Budapest Conference was not meaningless. Indeed, if seriously undertaken and achieved, the exercice could indulge participating States to formulate more accurately the security goals of the OSCE and also to readjust its means to its declared ends. A genuine Model could endow the OSCE with a *security identity*, while introducing some degree of institutional coherence in the "European security architecture".

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[18] See *Journal* No 9 (1 April 1993) of the CSO Vienna Group (decision 4 f), *Journal* No 18 (24 May 1993) of the CSO Vienna Group (decision 4 e and p. 4). See also Frédéric TRAIN : "L'assistance douanière international pour l'application de l'embargo économique contre la République fédérale de Yougoslavie", *Revue générale de droit international public*, 1995/2, pp. 408-410.

[19] See *Journal* No 1 (15 December 1994) of the Permanent Council (decision 5 c). See also *Journal* No 97 (18 Jnauary 1995) and No 98 (25 January 1995) of the Forum for Security Cooperation.

[20] Budapest Decisions 1994 : Chapitre VII (first "tick").

[21] "Cooperative security" and "Common security" are interchangeable expressions.

[22] Budapest Decisions 1994 : Chapitre VII (first "tick").

[23] *Ibid.*, first paragraph (last sentence) of Chapter VII.

The discussions on the Security Model started on March 1995. Comprehensive debates took place in the Senior Council, an Informal open-ended working group of the Permanent Council and a special Seminar. In December 1995, the Ministerial Council considered that the exercice was ripe for entering into a more operational phase. In any event, the issue will continuously remain on the OSCE agenda until the 1996 Lisbon Summit. [24]

From the outset, participating States realized that no consensus could be reached on a number of fundamental points. First, the Model would not lay the foundations of a "New European Security Order" within a Charter offering security guarantees. Second, the OSCE politically-binding security commitments would not be transformed into legal obligations. Third, the Helsinki Decalogue would not be subject to redrafting or reinterpretation - not even for the purpose of a better articulation between Principle III (Territorial Integrity of States) and Principle VIII (Self-determination of peoples). Fourth,the Model would not suggest any kind of hierarchy or division of labour among existing security organizations.

However, the participating States were able to agree on the general basic conceptual elements of the Model ("global", "indivisible" and "cooperative" security)[25] , on the necessity of establishing an open-ended list of risks and challenges affecting the OSCE area and, finally, on the principle of improving the cooperation of the OSCE with all security organizations operating on the Continent. A basic understanding seems to exist that such an improvement should be conceived in the perspective of "comparative advantages" enjoyed by each individual institution, functional complementarit and synergy as well as self-evolution in conditions of full openness and democracy.

Conclusion

Since its institutionalization, the OSCE has been subject to alternate (and even simultaneous) flows of overoptimism and overpessimism. Unexpectedtly confronted with the nascent Yugoslav conflict and the resurgence of national minorities' claims, an unprepared OSCE could only deliver erratic and inconsistent responses in 1991-1992. Adrift in the Greater Europe, it appeared to be in search not only of its specific place in the post-Cold War setting, but also of its identity as an international institution. However, by 1993, it gradually arrived at three basic constructive conclusions. First, the OSCE realized that an organization with a mandate of

[24] See *Jounal* No 2 (31 March 1995) of the 1st Meeting of the Senior Council, Annex 2 (p. 2) and *Journal* No 2 (27 October 1995) of the 3rd Meeting of the Senior Council, Annex 2 (pp. 1-2). See also OSCE : REF.PC/568/95 of 5 October 1995 and MC(5).DEC/2 of 8 December 195.

[25] Cooperative security represents a variant of collective security. However, it differs from it in two main respects. First, common security aims at *peaceful change* and *prevention* , while collective security is fundamentally oriented towards the preservation of *status quo* and its restoration by coercive means if necessary. Second, common security, proceeds from the premise of the *non-hegemonic* behaviour of participating States and requires from them a true partnership spirit based on mutual transparency, confidence and accountability at both *domestic* and foreigh policy level. Under such an approach, security appears as *indivisible* and *global* . Indivisibility means that security cannot operate as a zero sum game : it must provide equal guarantees and protection for all States and all regions and sub-regions., and that no State can be allowed to achieve its national security to the detriment of other States. Common security also implies global security : iaddresses risks and challenges from a perspective going far beyond the military factor - that is to say also encompassing the political, economic, social, humanitarian and environmental factors of security. In addition, its beneficiaries are not only Nation-States, but also such sub-units as peoples, national minorities and the ordinary citizen.

common and global security has a fully legitimate raison d'être : while the Helsinki process aimed at overcoming the artificial division of Europe, the "Paris Process" has the challenging task of creating the necessary conditions for the emergence of a stable and democratic security community in the Greater Europe, inluding the integration of Russia in the European family of nations. Second, the OSCE realized that preventive diplomacy and peace-building were the functions it could perform best and use as its comparative advantage vis-à-vis other security organizations. Third, the OSCE realized that cooperation and coordination with other international organizations are an inescapable necessity : given the complexity of the new riddle of European security, no single security organization seems able to tackle alone the existing risks and challenges.

Although the issue of relations with European and Transatlantic organizations and institutions remains as complex and sensible as ever, it has now become an opend-ended one. Its positive evolution is tributary of two main factors : the contents of the Security Model provisions concerning functional institutional synergy and the confirmation of France's recent rapprochement with NATO.

Geneva, March 1996

(5)

Rome, 29th March 1996

RELATIONS BETWEEN THE OSCE AND NATO WITH PARTICULAR REGARD TO CRISIS MANAGEMENT AND PEACEKEEPING

Dr. Lamberto Zannier

NATO-OSCE relations have intensified steadily in recent years, both in quantitative and qualitative terms. This is the consequence of the evolution of both institutions and of the increasing interaction that has developed between them as a result of their new roles in the area of crisis management and peacekeeping.

As a starting point, I wish to emphasize that NATO and its member nations have always been strong supporters of the CSCE since its inception. Throughout the second half of the 70s and the 80s, NATO Allies were one of the main driving forces within the CSCE. As one of the three groups of participating States (the others being the Warsaw Pact and the NNAs), they have consistently sought to strengthen the role of the CSCE not only in the field of military security - and I am thinking in particular of the Stockholm Document, which was the first expression of a successful cooperative effort in arms control in the CSCE - but in all areas covered by the Helsinki principles, including the human dimension.

Following the end of the Cold War, new challenges had appeared on the horizon, and both NATO and the OSCE undertook a profound evolution of their structures and functions in order to be able to effectively meet them. This required the development of closer links between NATO, the OSCE and the other relevant European institutions, to be embedded in the framework of a coherent and mutually-reinforcing security architecture. One of the important elements of the debate internal to the Alliance in that phase was increased attention for the role of institutions like the UN and the OSCE which, by virtue of their broad membership, respectively at a global and at a regional level, could legitimately undertake activities aimed at preventing and managing crises and conflicts.

In fact, the OSCE has been the first institution to which NATO has turned its attention. Already before the OSCE Summit in Helsinki in July 1992, Allies began to realise the need for a strengthened OSCE with updated tasks in order for it to meet the new risks deriving from the post-Cold War instabilities. Accordingly, they put forward several ideas that were enshrined in the Helsinki Document. Moreover, at the Oslo Ministerial Meeting in June 1992, NATO Ministers offered support by NATO countries, on a case-by-case basis, to OSCE activities in the field of conflict prevention and crisis management. This offer, which was later also extended to the UN, was confirmed in

a number of further Ministerial statements, including at the January 1994 NATO Brussels Summit.

Apart from this practical support, the most concrete expression of which is the present cooperation in the former Yugoslavia, enhanced relations between the two organisations involve closer contacts between the Secretariats and with the Chairman-in-Office, exchange of relevant documents, and participation in meetings and seminars. Last autumn, the North Atlantic Council adopted a series of decisions for the further enhancement of NATO-OSCE institutional relations, including more intense contacts and systematic representation in meetings.

A representative of the Chairman-in-Office regularly briefs NATO and NACC fora, such as the Council and the Political Committee, on current OSCE developments. In the Ad Hoc Group on Cooperation in Peacekeeping, there is a permanent nameplate for the OSCE; briefings by representatives of the Chairman-in-Office in this Group are extremely valuable and appreciated by Delegations. Moreover, the OSCE has been represented at the level of the Secretary General and of the Director of the Conflict Prevention Centre at seminars on peacekeeping and crisis management. This pattern of representation has continued under the Swiss Chairmanship, and has resulted in a rather extensive Swiss presence, in the OSCE Chair, at a number of NATO meetings. Considering that the OSCE Chairman-in-Office has so far been represented at NACC meetings by either Allied or Partner delegations (Italy and then Hungary), it has also been decided to continue this cooperation by inviting the Swiss Foreign Minister to participate in the NACC Ministerial in Berlin in June and to deliver a presentation on current OSCE issues.

For their part, NATO representatives have also been increasingly involved in attending OSCE meetings. NATO's Secretary General attended - either personally or through his representative - all OSCE Council Meetings, Summits and sessions of the OSCE Parliamentary Assembly over the last few years. NATO high-level officials addressed OSCE fora on issues such as Partnership for Peace and the Alliance's involvement in the former Yugoslavia. Officials representing NATO and NACC have participated in a number of OSCE seminars, including seminars on military doctrines, on peacekeeping, on early-warning and conflict prevention and on the OSCE Security Model. On this latter issue, NATO's debate on enlargement is a particularly relevant and important contribution to the development of a broad European Security Model for the 21st century. Therefore, NATO will continue to participate actively in this debate in the OSCE.

As I pointed out earlier, and as has become clear through the description of the institutional aspects of this relationship, the most concrete expression of NATO-OSCE cooperation is in the area of crisis management and

peacekeeping, where the interaction between the two has become even more intensive following their involvement in the peace settlement in the former Yugoslavia.

A first major contribution by NATO to the international community's efforts to develop a collective approach to managing crises in Europe has been through the development of practical cooperation activities within PfP. The broad range of initiatives of military cooperation, including joint training and exercises, increased focus on joint planning and interoperability issues, have represented a first step towards the creation of a capability of NATO Allies to operate jointly with Partners in the framework of OSCE- or UN-mandated peacekeeping operations. Important work has also been carried out with regard to doctrinal and conceptual approaches, in view of developing commonly agreed principles for carrying out peacekeeping operations in the complex post-Cold War security environment. Particularly successful efforts in this regard have been the so-called Athens Report and its recent Follow-on, addressing a number of complex issues relating to multi-functional peacekeeping operations.

More specifically, with reference to activities in the former Yugoslavia, it is obvious that the eventual success of the OSCE mission to Bosnia-Herzegovina depends in the first instance on the success of the NATO-led IFOR. In fact, the two missions are closely interrelated. IFOR's objective is to ensure full and timely implementation of the Dayton Agreements, thus creating the appropriate conditions for the civilian activities aimed at rebuilding and stabilising the country.

This is in itself a daunting task, to be performed within a year. It required accurate preparation and accelerated implementation procedures. The deployment of the NATO element of the multinational implementation force (IFOR) is now complete. IFOR comprises approximately 49000 personnel from all the NATO nations and 6500 from non-NATO contributors. It will be further strengthened as forces from the non-NATO contributors transfer under IFOR control. IFOR is fully capable of carrying out its primary task of implementing the military aspects of the Peace Agreement. This includes monitoring of compliance by the parties with their obligations under Annex 1-A, including respect for the new Zone of Separation established along the Inter Entity Boundary Line (IEBL) at D+90 (19th March). In addition, IFOR is helping to provide a secure environment for the work of the various civil agencies and international organisations involved in implementing the civil aspects of the Peace Agreement and is contributing to reconstruction from available resources without detriment to its primary mission.

In order to perform this task efficiently, IFOR is represented on most of the joint civil commissions. It is assisting the High Representative and the international organisations involved in implementing the civil aspects of the

Peace Agreement as far as its principal tasks, as defined in the Peace Agreement, and available resources allow. The IFOR civil/military cooperation (CIMIC) process involves close liaison and cooperation with international organisations in Bosnia-Herzegovina including the OSCE, the UNHCR, the International Committee of the Red Cross (ICRC) and the IPTF. IFOR is already engaged in a number of reconstruction projects; and, at the request of the High Represenative, is now considering additional support in the area of economic rehabilitation. It is also in close contact with the staff of the High Representative and OSCE representatives about how best it can provide support to the elections required by the Peace Agreement. General support to all civil agencies includes the exchange of information and security advice and, in emergency, the provision of medical and repair facilities, fuel, accommodation and food, based on retrospective repayment arrangements. Various forms of support have also been provided to the High Representative and his staff, including assistance with transportation, logistics, communications, security and administation.

IFOR also continues to support the efforts of the International Criminal Tribunal for the former Yugolsavia (ICTY) to bring persons indicted by the Tribunal to justice. A recent example is the transport and escort protection given to the ICTY team investigating a mass grave site in the Prijedor Obstina area. It is also undertaking air reconnaissance and area ground surveillance of suspected mass grave sites and will report any tampering which it detects to ICTY.

With regard to the OSCE, a number of additional steps have taken place to ensure that appropriate coordination is taking place not only in theatre, but also at the strategic-political level, to ensure community of intent and purpose in the operation of the two institutions with regard to former Yugoslavia.

In this spirit, NATO's Assistant Secretary General for Political Affairs, Ambassador Gebhardt von Moltke, accompanied by members of the newly-created internal NATO Task Force on Bosnia-Herzegovina, visited the OSCE on 8th February, at the invitation of the Chairman-in-Office. In the course of his visit, Ambassador von Moltke delivered a presentation to the Permanent Committee on the state of implementation of the Dayton Agreements and held consultations with individual delegations and OSCE officials.

One month later, on 6th March, Ambassador Frowick, the Head of the OSCE Mission for Bosnia-Herzegovina, briefed the North Atlantic Council on progress achieved in the mission so far and on the state of cooperation with IFOR.

A common assessment that emerged in the discussions both in Vienna and in Brussels was the excellent state of

cooperation on the terrain between IFOR and the OSCE mission and the need for a further expansion of IFOR's support, while avoiding the danger of a mission creep. In particular, NATO's support might become necessary with regard to the demanding OSCE task of supervising the preparation and conduct of democratic elections within a severely limited timeframe. Following the discussion in Brussels, the North Atlantic Council has asked Ambassador Frowick to come up with a more detailed assessment of the OSCE requirements in this field, so that a timely decision can be made on whether to extend IFOR's activities to supporting the elections process.

Another area related to the former Yugoslavia where NATO is actively supporting the OSCE is the arms control process. Upon request of the Chairmen of the two sets of negotiations under Articles 2 and 4 of the Dayton Agreement, Ambassador Gyarmati and Ambassador Eide, NATO has provided military liaison officers to ensure full coherence between the negotiations and IFOR activities. These officers have been stationed in Vienna as personal advisers to the Chairmen of these negotiations and have served as a useful channel between the negotiating force, NATO HQ and the IFOR command. Moreover, NATO has provided concrete support to the OSCE in the area of verification by putting at the disposal of the CPC its expertise deriving from years of coordination in verification and implementation of the CFE Treaty.

Both Gyarmati and Eide have paid frequent visits to NATO Headquarters. In fact, only last week, Gyarmati briefed Council on the state of implementation of Article 2 agreements. The week before, Eide met with the Secretary General and members of the International Staff to share his assessment of the prospects for the Article 4 negotiations. One general point that emerges from these contacts is that eventual success in the negotiations and in the subsequent implementation will depend on the political climate in the region and, more specifically, on the success of IFOR's mission. Ambassador Eide also expressed certain concern at the prospect that reductions under Article 4 negotiations will begin only towards the end of the year and will coincide with the draw-down of IFOR and may negatively impact on the success of the implementation process. Both Eide and Gyarmati are expected to return to NATO for another briefing to the Council within the next couple of months.

In a sense, cooperation in the former Yugoslavia has introduced a new qualitative dimension in the relations between NATO and the OSCE. While broadening the scope of the interaction between the two organisations at the political level, it has also introduced a more practical pattern of cooperation on a day-to-day basis. This is yet another step towards the development of a more interactive relationship that may become a key element in our endeavour to effectively prevent and manage future crises on the European continent.

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Seminar on the OSCE in the Maintenance of International Peace and Security

Rome, IAI 29-31 March 1996

"Relations between the OSCE and the WEU with Regard to Peacekeeping"[1]

Dr. Carlos ECHEVERRIA JESUS

Institute for Security Studies-Western European Union

[1] Preprint of paper to be presented at the Seminar. The views expressed in this paper are the sole responsability of the author, and do not represent the policies of the WEU or of its Institute.

Introduction

The post-Cold War world has seen a substantial increase in the number and variety of peacekeeping activities. There is no single, generally accepted definition of "peacekeeping". This is a highly evolutive and dynamic concept. However, there is a need to develop a common understanding of this concept, proceeding from the existing terminology contained in the relevant UN and OSCE documents.

The term "peacekeeping" has been used to describe operations based on Chapter VI of the UN Charter. Operations similar to those conducted under Chapter VI may also be carried out under the authority of the OSCE on the basis of the 1992 Helsinki Document. Operations aimed at the maintenance or establishment of peace and based on Chapter VII of the UN Charter, have also been carried out under the authority of the UN Security Council.

The role of the OSCE in peacekeeping operations

The OSCE is the only regional forum bringing together all the countries of Europe, as well as Canada and the US, under a common framework with respect to human rights, fundamental freedoms, democracy, the rule of law, security and common liberty. The OSCE has been designed to manage change and transition rather than crises and conflicts. With the post-Cold War transition over, the OSCE is evolving into a modest system of conflict prevention and

crisis management. The Organization could become an institutionalized contribution to maintaining regional stability, particularly in Central Europe and the Balkans.

The OSCE has had some success in conflict prevention and is moving towards a stage where, as a regional agency of the UN, it will be able to give mandates to intervene in and manage crises. The participating states of the Organisation have created appropriate institutions and mechanisms for early-warning, conflict prevention and crisis management and made the OSCE sufficiently flexible to address the numerous tensions, conflicts and instabilities in the area. The elaboration of principles relating to the peacekeeping activities of the OSCE is one of the most important achievements of the Organization.

The role of the WEU in peacekeeping operations

As the defence component of the EU and a means to strengthen the European pillar of NATO, WEU has a key role to play in organizing European contributions to crisis prevention and management activities. Its operational capabilities have developed considerably in recent years although much remains to be done. At Petersberg in 1992, WEU member States agreed that, apart from contributing to the common defence, their military units, acting under the authority of WEU could be employed for humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in

crisis management including peacemaking[1]. A Planning Cell was established to plan for eventual WEU operations in these areas. The decision to undertake WEU peacekeeping operations, in the framework of UN or OSCE, will be taken on a case-by-case basis by the WEU-Council of Ministers who will retain overall political responsability of the peacekeeping operation and exercises political control.

A WEU's role in peacekeeping can be founded on Art. 48 of the Charter, according to which "decisions of the Security Council for the maintenance of international peace and security shall be carried out by the members of the UN directly and through their action in the appropriate international agencies of which they are members". In fact, the CRISEX 95-96 aimed to test the set of WEU operational mechanisms and procedures in all phases of the management of a simulated crisis based on a UN resolution. This exercise was within the framework of peacekeeping operations under Chapter VI of the UN Charter and pursuant to the Petersberg Declaration. The general mission of the WEU force, under a UN mandate, was to reestablish conditions in which humanitarian aid can be provided.

The political authority for possible WEU involvement in any peacekeeping task may be provided by any of the following: a

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[1] In their Petersberg Declaration of 19 June 1992, the Foreign and Defence Ministers of WEU member States stated: "... we are prepared to support, on a case-by-case basis and in accordance with our own procedures, the effective implementation of conflict prevention and crisis management measures, including peacekeeping activities of the CSCE or the UNSC".

resolution of the UN Security Council; a decision by the OSCE; a request to WEU by the EU; a request from the state or the states concerned directed towards WEU. Any WEU role in peacekeeping task has to be based on a clear mandate.

WEU can contribute to humanitarian operations when military deployments are required to create a secure environment or to provide specific military assistance or logistic support. If one has an operation which is entirely civil in its character, it is more likely to come under the auspices of the OSCE or the EU. Planning in WEU should be organized on the assumption that the operation will involve the deployment and command of significant numbers of military forces, even if these may be deployed largely in policing or monitoring roles.

Cooperation between the OSCE and WEU in peacekeeping operations

A European security architecture is emerging in which WEU, together with other international organizations, regional cooperative arrangements and bilateral treaties are all contributing towards the objective of strengthening European security and stability.

The various statuses within WEU - Members, Associate Members, Observers and Associate Partners[2] - gives the Organization the

[2] **WEU Members:** Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and the United Kingdom. **WEU Associate Members:** Iceland, Norway and Turkey. **WEU Observers:**

possibility to draw on the resources of a wide range of European countries for Petersberg operations. The military cooperation between the member countries of the WEU and those of Central and Eastern Europe will in particular be concerned with the preparation and execution of peace support missions under a UN or OSCE mandate. WEU is prepared to play a significant role in peacekeeping operations under UN or OSCE authority as part of ad hoc command arrangements, either alone, together with or complementary to NATO, depending on the circumstances.

The OSCE, thanks to its inclusive membership, its comprehensive approach to security and the scope of its competences inherited from the CSCE and based on the Paris Charter (1990), Helsinki (1992) and Budapest (1994) Documents, forms one of the pillars of the new European security architecture. The OSCE plays an important role in associating Russia with the settling of disputes in Europe and will continue to do so while that country is not a member of the EU.

The WEU British Presidency is currently in contact with the past and future Chairman-in-Office of the OSCE on the subject of briefings of the WEU Council on OSCE matters. The Ambassador of Switzerland, as Representative of the current OSCE Chairmanship, provided the WEU Council on 20 February 1996 with a comprehensive briefing on current OSCE activities.

Austria, Denmark, Finland, Ireland and Sweden. **WEU Associate Partners:** Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic.

Conclusions

WEU is ready to support diplomatic efforts of other organizations such as the EU or the OSCE. WEU is also ready to play an active role in the implementation of peacekeeping operations, on the basis of decisions taken case by case. In fact, WEU has offered to support, on a case by case basis and in accordance with its own procedures, conflict prevention and crisis management measures undertaken under OSCE aegis.

Cooperation among the relevant institutions with responsabilities in the field of peacekeeping calls for practical arrangements to ensure complete complementarity and transparency between them. The division of labour must be clearly defined and agreed in order to avoid overlap and institutional rivalry where the UN and regional organizations are both working on the same conflict. In light of the experiences in former Yugoslavia, it will be useful for the future WEU operations to address the need for a clear understanding of the respective roles of other organizations involved (eg. UN or OSCE), in response to a crisis and for closer coordination of their responses.

OSCE mandates are likely to remain confined to modest, controllable contingencies. The OSCE has a mission, but no means. In fact, the UN and the OSCE do not have assigned forces except through voluntary national contributions in a given crisis. The Bosnian experience has already shown that the UN, and even more so the OSCE, depends on collective defence organizations like

NATO. WEU, with its four categories of status, has the necessary flexibility to bring together the various contributions of 27 European countries in the politico-military field.

THIRD PARTY PEACEKEEPING

by Ettore Greco

paper presented at the International Conference on *The OSCE in the Maintenance of International Peace and Security*, Rome, 29-30 March 1996

1. The origin of the concept of «third party peacekeeping». The decisions of the 1993 Rome Council.

The 1992 Helsinki document which has introduced peacekeeping as an «operational element of the overall capacity of the CSCE for conflict prevention and crisis management» foresaw two types of peacekeeping operations which could be carried out under the aegis of the organization: the operations conducted under a set of defined CSCE procedures and a CSCE chain of command and those conducted in «cooperation with regional and transatlantic organizations». The inclusion of the «peacekeeping mechanism of the

Commonwealth of Independent States (CIS)» among the instruments which could be used for the second type of operations reflected Russia's desire to obtain international political blessing and material support for its growing military involvement in the hot spots of the former Soviet Union (FSU) - the socalled «near abroad» - as well as the recognition by the other participating states - notably the Western states - that Russia's role could have a stabilizing function in the area especially if it had been developed in cooperation with other FSU countries. It must be recalled that at the time of the Helsinki summit the Western states were strongly encouraging the cooperation projects which were emerging in the CIS framework.

In any case, Russian 'peacekeeping' in the FSU area was already a geopolitical reality and the Western countries were neither willing nor able to effectively oppose it. In this context, Russia's search for international approval of its military interventions in the FSU area was regarded as a promising development. The assumption was that the newly established CIS could provide the appropriate framework for some multilateralization and hence international control of Russian military operations. However, from the very beginning the problem was to reconcile the recognition of Russia's special responsibility with regard to the CIS area with the need to avoid the establishment of a Russian exclusive sphere of influence which would be in blatant contrast with such key OSCE's principles as the indivisibility of security and the co-equality of states.

Soon after the Budapest summit it became clear that the potential for development of the CIS, especially of its military component, had been overestimated. The CIS peacekeeping mechanism proved to be a hollow shell whilst Russian 'peacekeeping' operations continued to develop in a unilateral manner or on the basis of loose agreements with a limited number of CIS states.

It was basically the recognition of this reality which led to the introduction of the concept of 'third party peacekeeping' at the 1993 Rome meeting of the CSCE Council. It indicates operations conducted neither directly by the OSCE nor by a regional organization acting in cooperation with the it but by a country or a group of countries with the political blessing of the OSCE. This would be provided on the basis of a specific cooperative arrangements between the pan-European organization and the states participating in the operation. Whilst the OSCE does not direct the operation - not being involved in its chain of command - the cooperative arrangements with the participating states shall ensure that the role and function of the peacekeeping force be consistent with OSCE principles and objectives. To this end they shall, *inter alia*, contain provisions which provide the OSCE's with an actual capacity to 'observe' or 'monitor' the operation.

The Rome Council established a set of conditions for the OSCE political support of a third party peacekeeping: respect for sovereignity and territorial integrity; consent of the parties; impartiality; multinational character; clear mandate; transparency; integral link to a political process for

conflict resolution; plan for orderly withdrawal. As these conditions were still rather vague, the Council mandated the CSO and the PC to their further elaboration. In fact, most of these criteria had been already established in the 1992 Helsinki document as general criteria for any type of OSCE peacekeeping missions.

2. **The unsuccessful attempts to develop guidelines for third party peacekeeping**

The concept of third party peacekeeping was introduced at the Rome Council not without resistance by some participating states, in particular the Baltic states, Ukraine, Azerbaijan and Turkey. All of them were concerned about Russian new military assertiveness in the FSU area. Their opposition became even stronger in the following months. A specific concern was that the third party peacekeeping formula could be adopted for the operation in Nagorno-Karabach thus allowing Russia to dominate it.

At the same time, as the negotiation on the further elaboration of the guidelines sketched out by the Rome Council proceeded, it became also clear that the Russians themselves were losing interest in the exercise. This change of attitude had two main motivations. First, they realized that the legitimation of their military operations could have obtained only in exchange of the acceptance of an effective capacity of the OSCE to control the conformity of the operations with

international standards. During a CSCE meeting in June 1994 Russia rejected a plan aimed at allowing the organization to carry out effectively the monitoring of third party peacekeeping operations. Secondly, and not less important, any automatic OSCE funding of the Russian operations was excluded. On the contrary, the principle of voluntary financial contributions was adopted. Moscow had instead placed a big emphasis on the need for an institutional financial and material support for its operations. It must also be noted that, given the obstacles encountered within the CSCE the Russians developed a parallel campaign to obtain the legitimation of their peacekeeping activities from the United Nations. By and large, for the Russians the UN context proved more promising. This accentuated their loss of interest in the CSCE.

After the Rome Council the Italian delegation, acting in its capacity as CSCE chair, elaborated several subsequent drafts for a OSCE document containing the guidelines for third party peacekeeping. However, given the described political resistance, the effort was unsuccessful. At the Budapest Summit renewed political divergencies prevented the adoption of any decision concerning third party peacekeeping. In particular, Turkey and Azerbaijan continued to develop a strong opposition to any practical implementation of the concept. In fact, it was not given any serious attention during the summit. Most of the attention was concentrated on the mission in Nagorno-Karabach which was to be an OSCE-directed undertaking.

No progress has been made after the Budapest summit. Russia continues to be reluctant to resume negotiation on the guidelines. A certain interest is however shown by the delegations of some Western countries in light of the difficulties the OSCE continues to have in mounting the operations in Nagorno-Karabach. Indeed, as for peacekeeping in the CIS area the only possible alternative to OSCE-directed operations continues to be the development of some forms of cooperation between the pan-European organization, Russia and, possibly, other CIS states.

The negotiations on the «Security Model for the 21° Century» which, as decided at the 1995 Budapest Council, will concern also peacekeeping, could provide the opportunity for a renewed effort to establish rules for the peacekeeping operations which are being conducted in the CIS area.

3. **Main problems emerged during the negotiations**

During the negotiation on the guidelines for the conduct of third party peacekeeping a number of delicate - often controversial - problems have emerged.

- Link to a political process for conflict resolution. This has proved to be a highly controversial issue as Moscow is reluctant to accept a prominent OSCE's role in conflict resolution activities. Instead, it is essential for the OSCE to ensure that the third party peacekeeping operations be

complemented by a serious effort to solve the root causes of the conflict. Practically in all areas where it is conducting a peacekeeping operation, Russia has repeatedly tried to keep the OSCE at the margin of the political negotiation, claiming its preminence in this field. The most telling example of this attitude are Russia's unilateral efforts to solve the conflict in Nagorno-Karabach. It is therefore of vital importance that the rules for third party peacekeeping contain precise provisions on the OSCE's contribution to the process of conflict resolution.

- International agreements on which the presence of the peacekeeping force is based. The key problem is the participation of the OSCE in the development of these agreements. The text prepared by the Italian chair states that this participation should take place whenever possible but it does not set it as a necessary condition. In any case, the agreements should be communicated to the OSCE as one of its tasks is to ensure that their provisions are fully respected. This is one of the key aspects of the relation of mutual transparency that should be established between the organization and the countries participating in the operation.

- Multinational participation. Some countries have placed a special emphasis on this requirement, insisting that the contribution of any one country should not be more than a given percentage of the total. Russians instead tend to prefer a massive presence of their troops with some small units

provided by the other participating countries as in the case of the mission in Tajikistan. In the latest versions of the draft prepared by the Italian chair the multinationality principle has been remarkably softened. The last version states that the force should be «in principle multinational in character and, in every case, open to multinational participation». Thus, the multinational character would not be a necessary pre-requisite. This point has however remained highly controversial. Apart from the sheer number of troops provided by each participating state, there is the need to ensure an appropriate balance in their individual involvement in the chain of command of the operation.

- Participation of the parties to the conflict. Originally the draft envisaged the possible participation of the parties to the conflict in the peacekeeping operations, as happens in the tripartite force in South Ossetia. However, the evident risk was to compromise the impartiality of the force. Thus, the participation of the parties to the conflict was excluded. Indeed, the action of both the Georgian and the South Ossetian contingents in South Ossetia has proved to be destabilizing (only the Russian contingent is accomplishing a truly peacekeeping function.

- Terms of reference. They have to be agreed by the parties to the conflict and by the states providing the forces. According to the draft, they shall however be communicated to the OSCE. This may, in turn, provide its advice and information for

their elaboration. Clearly, especially the rules of engagement (Roe)are a key element as they have to be in accordance with the basic principles of the OSCE peacekeeping. It must be noted that the Roe of Russian forces are often extremely flexible concerning the use of the force. In addition, they are equipped with arms which are heavier than those required for traditional peacekeeping.

- Chain of command. By definition, the OSCE does not have any role in the chain of command. However, in order to ensure trasparency, the chain of command shall also be communicated to the OSCE.

- Withdrawal of the force. It is essential that there be credible plans for the earliest possible withdrawal of the force of the third party in order to avoid that its presence may turn into a permanent military occupation of the country concerned. It must be recalled, for example, that the 14th Russian Army is still active in Trans-Dniestria although an agreement for its withdrawal was reached a long time ago.

- Financial support. As noted above there is a broad agreement that the OSCE states should provide it on a voluntary basis. The draft also foresees the possibility of establishing a voluntary fund.

- OSCE monitor mission. It is the main instrument the OSCE may activate in order to ascertain whether the peacekeeping force

acts: i) in accordance with the OSCE principles and objectives; ii) within its own terms of reference.

The main problem connected with the monitor mission is the degree of intrusiviness of its activities. In particular, there are different interpretations of the term «monitoring» (i.e. what types of activities it entails). The Russians tend to interpret it in a restrictive sense.

Furthermore, of crucial importance are the coordination mechanisms to be established between the OSCE monitor mission and the command of the forces. The draft calls for the conclusion of a memorandum of understanding. Both mutual trasparency and the respect of each other's terms of reference have to be ensured. The OSCE is clearly interested that the monitoring mission have access to the highest possible level of the chain of command and that it be given the greatest freedom of movement. However, it is exactly on this point that the Russians have shown the stiffest resistance to accept the requests of the other states.

The OSCE missions for the monitoring of a third party peacekeeping operation would be established and operate in accordance with the provisions of the 1992 Helsinki document concerning peacekeeping missions directed by the OSCE. They would therefore be typical small-scale peacekeeping missions as envisaged by the Helsinki document.

- Exit clause. Of great importance are also the procedures for the cessation of the operation in case the necessary conditions for the continuation of the OSCE monitoring mission

no longer exist or there have been violations of OSCE principles. A key problem is the respective roles of the Chairman-in-Office (CIO) and the Senior Council (SC) or the Permanent Council (PC). As in the case of the other OSCE missions it seems quite natural that the CIO shall have the task of reviewing the activities of the force and reporting regularly to the PC. Similarly, the final decision on the cessation of the mission shall rest with the main political bodies (the PC and the CIO).

4. **Practice**

In the absence of agreed guidelines for the conduct of third party peacekeeping operations, there has been clearly no formal implementation of the concept. However, the practice of some OSCE's monitor missions has a considerable relevance.

This is particularly true for the OSCE monitor mission in South Ossetia (Georgia). After the Rome meeting the attention concentrated on the case of South Ossetia as it satisfied some basic requirements: a ceasefire had been agreed and then substantially respected; the OSCE was already active in the political process for conflict resolution; the peacekeeping force had a multinational character (being composed of Russian, Georgian and South Ossetians). After an initial opposition, Moscow accepted the deployment of the OSCE mission with the task of monitoring the operation, i.e. the conformity of the participating forces with the declared terms of

reference and with the OSCE principles and objectives. As noted above, the military operation in South Ossetia is only formally tripartite as the only actual peacekeepers are the Russians. However, the cooperation established between the OSCE mission and the Russian forces has been considered fruitful by the OSCE's officials on the ground.

A similar case study is provided by the United Nations monitor mission in Abkhazia (Georgia). It also takes place in a situation where some basic requirements for the OSCE third party peacekeeping are met. The UNOMIG has the mandate to monitor the multinational peacekeeping force deployed in Abkhazia. On the contrary, the dispatch of a mission for the monitoring of the military activities led by the Russians has proved impossible in the Trans-Dniester region (Moldova) and Tajikistan. In particular, the UN observer mission active in Tajikistan provides a liaison between the OSCE mission and the peacekeeping forces but does not have the mandate to monitor the latter.

5. Problems connected with possible OSCE's legitimation of Russian military operations in the «near abroad» through the third party peacekeeping mechanism

Moscow has consistently seen the OSCE as an instrument for obtaining both political support (legitimation) and financial support of its peacekeeping role in the CIS area; at

the same time, it is reluctant to carry out this role in full respect of the OSCE rules.

When presenting its proposal for «Increasing the Effectiveness of the CSCE» in the Summer of 1994, Moscow explicitly requested that a special right be assigned to it for the peacekeeping in the FSU area. Russia's idea of a division of labour between the CIS, NACC, NATO and the WEU with the OSCE playing the role of an overarching security organization clearly implies the recognition of special Russian geopolitical responsibilities over the FSU. In particular, it stresses the right to act unilaterally in case of serious danger for ethnic Russians living outside the country. This is highly alarming for such countries as the Baltic states and Ukraine. Furthermore, Moscow has made it clear that it is ready to accept only very broad rules for its peacekeeping and emphasized the need for flexibility in their application given the big differences existing between the individual crisis situations.

The dilemma faced by the other countries (especially the Western countries) is somewhat specular to that faced by the Russians. In principle, they are not against Russia playing a stabilizing role in the CIS area, but they are unwilling to give Moscow *carte blanche* to carry out actions which violate international rules. There is the risk of compromising basic OSCE's principles such as sovereign equality of the states and indivisibility of security. These principles were recently reaffirmed in the Decision of the Budapest Council concerning the Security Model for the 21° Century: «Within the OSCE, no

state, organization or grouping can have any superior responsibility for maintaining peace and stability in the OSCE region, or regard any part of the OSCE region as its sphere of influence». Indeed, the pan-European organization has a traditional special responsibility for the protection of smaller states against larger ones.

On the other hand, there is an evident unwillingness of Western countries to provide substantial peacekeeping forces in the CIS area. This became evident, in particular, during the planning of the operation in Nagorno-Karabach. Furthermore, some think that a partial acceptance of Russian peacekeeping role could also be a way of convincing Moscow to accept, in turn, effective international monitoring.

An overall assessment of the basic features of the Russian peacekeeping activities in the CIS areas highlights a number of major obstacles to a cooperation with Moscow in the field of peacekeeping within the normative framework established by the OSCE.

- Respect of human rights. There is clear evidence that Russian troops have committed a number of violations of human rights in several areas. These were very serious in both Tajikistan and Moldova.
- Consent of the parties. Russia's interventions have sometimes taken place without a prior consent of the parties; in general, Russia is not particularly concerned about the definition of formal agreements with the conflicting parties.
- Exclusion of enforcement action. The rules of engagements of Russia's troops are flexible enough to allow for enforcement

actions; as a matter of fact, they are far more heavily armed than in usual peacekeeping operations. Indeed, Russian peacekeeping doctrine does not make a clear-cut distinction between traditional 'peace-keeping' and peace-enforcement.

- Impartiality. Russia tends to back one of the conflicting parties. This seems unavoidable, in particular, if a Russian minority is involved. Russian peacekeeping forces sided with the secessionist forces in both Georgia and Moldova. Moscow also supports the Tajik government, which pursues a repressive policy against the opposition groups, thus jeopardizing the efforts to promote national reconciliation.

- Actual contribution to security of the states and areas concerned. Although Russian troops have had a stabilizing effect in some cases, their presence could, in the longer run, turn into a factor of instability as it could exacerbate political and ethnic rivalries. Indeed, especially in the first phase (1992-1993) of its intervention in the «near abroad», Russia followed a policy aimed at stirring up communal conflicts and encouraging secessionist drives in order to advance its national interests.

- Civilian control of armed forces. This is one of the key principle of the «Code of Conduct» approved at the Budapest summit. However, civilian control of the Russian armed forces is far from being stable and guaranteed, as demostrated by many recent events, chief among them the performance of Russian army in the Chechen conflict. The state of confusion and deep organizational crisis of the Russian army entails the concrete risk that regional military commanders make use of

military operations to pursue their own policies separate from those of the government.

The intervention in Chechnya has further eroded Russia's credibility as a guarantor of peace and stability in the CIS areas. Rather surprisingly, it accepted a role of the OSCE in Chechnya and this was seen as a promising sign of a possible growing role of the organization in the area. The Osce Assistance Group in Chechnya also took over a limited mediating role. However, it is proved to be completely unable to influence the course of the events. Furthermore, there is the evident risk that the presence of the OSCE could serve as an implicit legitimation of Russian intervention.

6. Possible role of the CIS in peacekeeping operations

A closely connected question concerns the possible (residual) utilization of the CIS mechanisms for peacekeeping operations which could be legitimized by the OSCE.

In principle, the CIS's involvement may be helpful for ensuring the multinational character of the force. It may also be seen as a way for avoiding an exclusive dependency on Russia.

However, the international status of the CIS remains highly uncertain. Its institutional structure and decision-making procedures are very weak. They suffer from a general lack of trasparency which is instead a basic pre-requisite for any workable cooperation with the OSCE. At the operational

level the CIS as such does not seem to have anything substantial to offer especially after the abandonment of the original plan for the creation of joint task forces.

The multilateral dimension of the CIS is also quite underdeveloped and, in general, unclear. There is instead a growing emphasis on bilateralism. As a matter of fact, Russia tends to use the CIS as an instrument for promoting its interests with regard to the individual CIS states. Furthermore, some of them, including a key country like Ukraine, officially reject any competence of the CIS in the security field.

In general, Russian-led peacekeeping in the CIS area has developed on the basis of bilateral or strictly regional arrangements without any actual utilization of collective structures of the CIS. Peacekeeping operations were launched following more or less defined agreements between Moscow and the states concerned. CIS countries with no connection with or interest in the individual conflicts have consistently rejected Russia's pressure to participate in the related peacekeeping operations.

7. Utilization of the NACC/PFP programmes

A distinct possibility to promote an international control of Russian military activities in the CIS area is the utilization of some expertise and resources which have been developing within the frameworks of the North Atlantic

Cooperation Council (NACC) and the Partnership for Peace (PFP) programmes.

One of the main purposes of both NACC and PFP is the development of arrangements and capabilities for multinational peacekeeping operations. In particular, a valuable experience has been gained with PFP multinational exercises. The PFP can thus provide technical means for peacekeeping in the CIS area that OSCE lacks. On the other hand, the OSCE has a unique capability and a growing specialization in conflict resolution mechanisms. What is needed is a increasing closer interconnection between the programmes generated in the OSCE context and in the NACC\PFP one as well as a more structured institutional link between NATO and OSCE.

It must be noted that Russian leaders have repeatedly stressing their interest in the utilization of the NACC as an instrument for the development of peacekeeping capabilities to be made available to the OSCE. The positive experience of the cooperation between NATO forces and Russian troops within the context of the IFOR operation in Bosnia could also be seen as a encouraging sign.

Nevertheless, there remains the problem of the strong reluctance of Western countries to get involved in military operations in the CIS areas. The possibility of making use of some procedures and capabilities developed in the NACC\PFP context could at least attenuate this negative attitude.

8. **Concluding remarks**

The obstacles which have prevented the implementation of the concept of third party peacekeeping reflect a more general difficulty in identifying and creating effective and appropriate instruments for the interaction between the OSCE and Russia in the various types of operations in the CIS area. This difficulty became evident especially with the failure to mount the OSCE peacekeeping operations in Nagorno-Karabach.

Although the work on the third party peacekeeping seems to have little prospect to be resumed in the near future, there remains the problem of activitating instruments capable of ensuring some degree of international control on Russian peacekeeping operations.

In the CIS area the OSCE could continue to concentrate its efforts in the development of small-scale missions with a limited mandate such as those which are active in many crucial hot spots including Chechnya. But it should also promote more advanced forms of cooperation with NATO making use of the expertise which have been developing through the NACC and PFP programmes. The strategic objective should be to gradually develop a capability to mount multinational peacekeeping operations in the CIS area with a substantial Russian participation but with a parallel effective OSCE capacity to control their developments and the overall political process for the resolution of the conflicts.

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Gian Luca Burci*

DIVISION OF LABOUR BETWEEN THE UNITED NATIONS AND THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE IN CONNECTION WITH PEACE-KEEPING

1. Introduction

The Organization for Security and Cooperation in Europe (OSCE)[1] emerged from the cold war as an exception among European regional organizations. Whereas the other European bodies were the product of a "bloc mentality" and attempted to be mutually exclusive and antagonistic, the OSCE was from its outset a veritable bridge between Eastern and Western Europe. In this capacity, it was able to develop the core of fundamental common values codified in the Helsinki Accords of 1975. This unique position, as well as the broad membership of the OSCE, justify the ambitions of its members about its role in the new European security architecture, which largely found expression in the Charter of Paris for a New Europe of 1990[2] and the Helsinki Summit Declaration of 1992[3].

Within the European scenario, the end of the cold war led to the dissolution of the then-existing Eastern European institutions and called for a rethinking of the raison d'être

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* Legal Officer, Office of the Legal Counsel, United Nations. The views expressed are only those of the author and do not necessarily reflect those of the United Nations.

[1] For ease of exposition, only the acronym "OSCE" will be used, even when reference is being made to events or documents relating to the "CSCE" before its change in appellation at the Budapest Summit in 1994.

[2] See ILM, Vol XXX, 1991, pp. 190-228.

[3] See ILM, Vol. XXXI, 1992, pp. 1385-1420.

and the role of Western European organizations. The role of the United Nations (UN) within Europe was also affected by the changed political circumstances; whereas the strategic importance of Europe for the two superpowers during the cold war had made it a taboo area for the UN, this obstacle largely disappeared and was soon replaced by frequent requests for UN involvement in crises in Central and Eastern Europe as well as in the ex-Soviet area.

The prospect of a growing UN involvement at various levels in a number of conflicts worldwide, as well as the new possibilities opened for regional organizations by the end of the cold war, called for a rationalization of the division of labour in the maintenance of international security, in which the Security Council and the Secretary-General could rely on a number of strengthened and cooperative regional institutions acting within the framework of Chapter VIII of the Charter, while preserving at the same time the primacy of the UN.

The OSCE placed itself at the crossroad of this development in July 1992, when its members declared, at the Helsinki Summit, their understanding that the OSCE was "a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations", and that the Organization "will work together closely with the United Nations especially in preventing and settling conflicts[4]". It was the first occasion in which a regional organization had made such a policy statement. At the same time, the Helsinki Summit decided to boost the operational capabilities of the OSCE by providing for the possibility of

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[4] Supra, note 3, p. 1392. This statement of understanding was welcomed in a statement made on 28 January 1993 by the President of the UN Security Council on behalf of its members. UN doc. S/25996.

OSCE peace-keeping operations (PKOs), independently or in cooperation with other European or transatlantic organizations.

The configuration of the relationship between the OSCE and the UN, and of a possible division of labour in the peace-keeping area for a more rational use of their comparative advantages, is a function of a number of factors, such as the following:

- The mandate and capabilities of the OSCE in the peace-keeping area, particularly the kind of operations envisaged, and the suitability of the OSCE institutional structure for the conduct of military field operations;
- The relationship between the OSCE and the UN, within the broader context of the relations between the UN and regional organizations;
- What kind of "peace-keeping" is or should be carried out within the OSCE area, in view of the peculiarities of the European and ex-Soviet context, and whether the OSCE and the UN are suited to deal effectively with such peculiarities.

2. Mandate and role of the OSCE in peace-keeping

The decision of the 1992 Helsinki Summit to give the OSCE an explicit and quite elaborate mandate in the peace-keeping area represents an attempt by its Members to ensure the centrality of the then Conference in the new European scenario, by giving it a more structured institutional setting and equipping it with a full complement of instruments for conflict prevention and crisis management. There was a definite preference by non-NATO countries, in particular the Russian Federation, to promote the OSCE as the primary European organization in the field of security as a counterbalance to the potential

domination in the European theatre by NATO and WEU as the military agencies of the victors of the cold war.

It emerged during the preparatory work to the Helsinki Summit that there was a consensus as to the politically legitimizing role that the OSCE should have played, as the only pan-European organization, in authorizing and mandating non-UN peace-keeping within its area. As to its operative role, there were more marked differences between countries advocating an autonomous role of the OSCE, and countries which aimed at a pragmatic division of labour based on the evidently higher credibility of NATO as a military mechanism. NATO could have then drawn from non-NATO resources through the North Atlantic Cooperation Council (NACC) so as to make possible the involvement of all OSCE participants [5].

The decisions of the Helsinki Summit seem to have chosen the more ambitious course, and devote to OSCE peace-keeping ample space within Section III, entitled "Early Warning, Conflict Prevention and Management (Including Fact-Finding and Rapporteur Missions and CSCE Peacekeeping), Peaceful Settlement of Disputes". Peace-keeping by the OSCE is thus seen as one of the options, alone or in combination with others, on a continuum of functions and resources aiming at the maintenance of peace and security within its geographical area.

At the outset, the possible functions and terms of reference of a peace-keeping operation by the OSCE cover many activities which have been discharged by first- and second- generation PKOs launched by the United Nations. The exemplification set out in

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[5] *CSCE Sanctioned Peacekeeping*, Discussion paper by the US, 13 May 1992.

paragraph (19) spans from the monitoring of cease-fires to the provision of humanitarian aid and assistance to refugees. Pursuant to paragraph (17), OSCE PKOs can be deployed in conflicts within participating States, besides international conflicts. This is an important corollary of the comprehensive concept of security, which has become a landmark among OSCE commitments. This concept gives full relevance to violations of human rights and democratic institutions which may trigger OSCE's involvement, as stated by the 1991 Moscow meeting on the human dimension as well as in the mechanism on the human dimension. In view of the fact that conflicts in post-cold war Europe have largely been of a predominantly internal nature, the absence for the OSCE of a statutory limit comparable to that of Article 2 (7) of the UN Charter is an important consideration in the analysis of possible interactions between the two institutions.

A second element worth noting is the strictly consensual nature of OSCE peace-keeping. The Helsinki decisions emphasize that OSCE PKOs will not entail enforcement action and that they will only be conducted impartially and on the basis of a number of commitments by the parties concerned, such as the explicit acceptance of an OSCE presence and a commitment by the parties to find a peaceful solution to the conflict. The decision to establish a PKO, as well as subsequent revisions of its mandate, have to be adopted by consensus, which is the strongest safeguard for the State or States concerned. This may hinder timely decisions and may give excessive leverage to the States more directly involved or parties to the conflict. The limitations implicit in the consensus rule are even more evident when one considers that the policy-making organs of the OSCE are plenary organs, in which consensus must be reached among 53 participants. At the same time, the establishment of a PKO by consensus should create a particularly strong sense of

identification and commitment for the participating States, and should thus militate in favour of a substantial political support for the operation. The exceptions to the consensus rule are, for the moment, quite limited. In the area under consideration, a role can be played by the emergency mechanism, which allows the convening of a meeting of the Senior Council upon a request by a participating State endorsed by at least any twelve other States. This mechanism can seize the Council of a situation in a way which could eventually lead to the launch of a PKO.

Another important element in an evaluation of the potential for cooperation between UN and OSCE is the institutional framework for peace-keeping by the latter. According to paragraph (26) of the Helsinki decisions, a request to the Committee of Senior Officials (CSO, now Senior Council) through the Chairman-in-Office (CIO) for a PKO can only come from one or more participating States, to the exclusion of the Secretary-General. The organs involved in the planning, establishment and conduct of a PKO are rather numerous: the supreme policy-making authority resides in the (Ministerial) Council, or the CSO/Senior Council acting as its agent; the overall operational guidance pertains to the CIO, who is assisted by an ad hoc group established at the Conflict Prevention Centre (CPC)[6], and who nominates the Head of Mission subject to endorsement by the CSO/Senior Council. Mention is also made of the Consultative Committee of the Center for the Prevention of Conflicts (CPC), which should assist in the preparation of the terms

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[6] The ad hoc group includes the Troika as well as States contributing to the operation. From its composition, it seems that this organ can exert a remarkable political influence on the conduct of the operation, going beyond the "overall operational support" and monitoring provided for in paragraph (39).

of reference of the operation and ensure continuous liaison between the operation and participating States. The chain of command thus appears somehow fragmented, with a number of organs or sub-organs of a political nature controlling various stages of the operation. The primary policy-making role thus pertains to the Senior Council, whereas the main operative role belongs to the CIO. Subsequent decisions taken at OSCE meetings have not altered this internal division of labour. .

An element worth underlining is the virtual invisibility of the OSCE Secretary-General in the decisions in question. Unlike the UN Secretary-General under Article 99 of the Charter, he does not have the authority to bring to the attention of the CIO or the intergovernmental organs of the OSCE "matters which...may threaten the maintenance of international peace and security". Moreover, he does not have a specific operational or administrative role in the implementation of the decisions of the Council/CSO, in contrast with UN PKOs which are under the operational control and command of the Secretary-General. The fact that the operational control resides with the CIO places the conduct of a PKO in the hands of a political organ which changes every year, and raises doubts as to the possibiliy for consistent management of a PKO by subsequent participating States with potentially differing policies. The fact that the exercise of operational authority is so different in the OSCE as compared to the UN has to be taken into account when assessing their potentialities for cooperation[7].

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[7] Several authors have called for a strengthening of the role of the Secretary-General, and the attribution of powers parallel to those enjoyed by the UN Secretary-General under Article 99 of the Charter. See for example V.Y. Ghebali, "C.S.C.E Basic Needs Before the 1994 Budapest Review Meeting", *Studia Diplomatica*, XLVII (1994), p.73.

Finally, OSCE peace-keeping is to be exercised in conformity with the purposes and principles of the UN Charter and with due regard to UN responsibilities in this field. Paragraph (2) of Section IV, devoted inter alia to relations with international organizations, adds that "[t]he rights and responsibilities of the United Nations Security Council remain unaffected in their entirety". This stated respect for the leading role of the United Nations calls for cooperation and harmonization of policies between the two organizations. Harmonization, in turn, means that the four permanent members of the Security Council that are also OSCE participating States, should ensure the consistency of their policies in both institutions. This has not always been the case, and it is another element to assess when analyzing possible forms of cooperation.

3. Relations between the OSCE and the United Nations

As the only body which has so far given itself the label of "regional arrangement" in the sense of Chapter VIII of the Charter, the relations between the OSCE and the UN has to be seen precisely in the context of that Chapter and the policy directions which the Security Council, the General Assembly and the Secretary-General are in the process of formulating.

An interest in promoting and rationalizing the relations with regional organizations has emerged within the policy-making bodies and the Secretariat of the UN since the early 90's, in view of the increasing involvement of the organization in peace-keeping, peace-making and preventive diplomacy activities around the world, which called for some forms of burden-sharing.

From the point of view of the Secretary-General, the two major policy statements concerning cooperation with regional organizations are: "an Agenda for Peace" of 1992 [8] and its supplement of 1995 [9]. In both documents, the Secretary-General reconfirms the principle of the primary responsibility of the United Nations for the maintenance of international security. At the same time, he advocates a flexible pattern of forms of cooperation with regional organizations, not inspired to an unrealistic fixed universal model, but rather tailored to the diverse capabilities of the various organizations in question, and the requirements of specific situations. Cooperation must in any case be grounded on certain general principles, namely: agreed mechanisms for consultations; the primacy of the United Nations, which requires inter alia that regional bodies not assume a level of UN support not yet agreed upon by its Member States; clear division of labour to avoid overlaps and institutional rivalry; and consistency of policies by States members of both organizations .

Throughout the two documents, a certain caution concerning the scope of the authority that regional organizations should appropriately exercise is clearly detectable. The 1995 Supplement, in particular, sounds a cautionary note in highlighting the conditions that regional bodies are to meet in order to effectively assist, rather than hamper, the efforts of the UN. Recent experiences have confirmed the belief of the Secretary-General that the overall primacy of the UN should be the paramount consideration, and that the

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[8] *B. Boutros-Ghali*, "an Agenda for Peace" (1992), pp. 35-38.

[9] *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, 1995, UN doc. A/50/60 - S/1995/1, pp. 20-21.

integration of regional bodies in an overall security structure should be "guided" along political and operational lines to be established by the Security Council and the General Assembly.

From a policy-making perspective, the Security Council has made a number of general statements concerning cooperation with regional organizations, mainly as part of the process of review of the recommendations contained in the Agenda for Peace and its supplement [10]. The Council has stressed the important role that regional agencies and arrangements could and should play in the maintenance of international security by inviting them to enhance their capabilities and to consider ways and means for assisting the UN; by undertaking to support their peace-making and, where appropriate, peace-keeping efforts within their areas; and by calling for effective coordination with the United Nations and for assistance by the Secretary-General in developing capacities for preventive action, peace-making and peace-keeping. At the same time, as in the case of the Secretary-General, the approach of the Council is rather flexible and "non-committal", in view of the wide differences in mandate and capabilities among existing agencies. While not minimizing the role of regional organizations, the Council does not seem to commit itself to a general philosophy as to the division of labour and the distribution of jurisdiction between them and the UN. Peace-keeping, in particular, is not highlighted as an area in which regional bodies are expected to play a major or somehow privileged role.

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[10] Of particular interest concerning cooperation with regional organizations and arrangements are the statements of the President of the Security Council contained in UN docs. S/25184 of 28 January 1993; S/25859 of 28 May 1993; and S/PRST/1995/9 of 22 February 1995.

Finally, the General Assembly has adopted, at its forty-ninth session on 9 December 1994, resolution 49/57 containing a "Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security", [11]. The Declaration is in part a solemn restatement of the principles of Chapter VIII. It also aims at maintaining the flexible approach noted above between the prerogatives of the UN, the autonomy and independence of regional arrangements, and the importance attached to the consistent respect of the basic Charter principles of sovereign equality and non-intervention.

The Declaration also highlights a number of areas in which States members of regional arrangements should concentrate their efforts (confidence-building, prevention and peaceful settlement of disputes), and contains in paragraph 10 the following provision concerning peace-keeping:

> "Regional arrangements or agencies are encouraged to consider, in their fields of competence, the possibility of establishing and training groups of military and civilian observers, fact-finding missions and contingents of peace-keeping forces, for use as appropriate, in coordination with the United Nations and, when necessary, under the authority or with the authorization of the Security Council, in accordance with the Charter".

This rather open-ended statement is, so far, the most explicit policy indication on peace-keeping by regional organizations in relation to the functions of the UN.

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[11] The resolution had been negotiated within the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization upon an initiative of the Russian Federation See the preparatory works in the reports of the Committee: UN docs A/47/33; A/48/33; and A/49/33.

The institutional relations between the OSCE and the UN have obviously been enhanced by the decisions adopted at the 1992 Helsinki Summit and by the growing instances of cooperation between the two organizations in central and eastern Europe and Asia. The two organizations concluded a "Framework for Cooperation and Coordination" in May 1993 [12], which sets out general parameters for cooperation both at Headquarters level and in the field. It should, once again, be stressed that contacts and exchanges take place, under this arrangement, mainly between the Secretariat of the UN and the Permanent Mission of the country holding the OSCE chairmanship. The OSCE Secretary-General is described as playing a supportive role, in particular with regard to contacts in Vienna, since there are no OSCE observer missions as such in New York and Geneva. Besides the customary provisions concerning exchange of information and consultations, specific reference is made to PKOs planned or launched by either side, in particular: prior consultations concerning timing, terms of reference and composition; the possibility of joint reports; mutual assistance in the field; and examination of the possibility of joint missions.

The General Assembly has inscribed since its 47th session in its agenda an item entitled "Cooperation between the United Nations and the Conference on Security and Cooperation in Europe" [13] and, by resolution 48/5 of 22 October 1993, granted observer

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[12] UN doc. A/48/185 of 26 May 1993. The exchange of letter was signed on behalf of OSCE by the Foreign Minister of Sweden as CIO.

[13] Under this item, the Assembly adopted without a vote resolutions 47/10 of 28 October 1992; 48/19 of 16 November 1993; 49/13 of 15 November 1994; and 50/... The Secretary-General, at the request of the Assembly, has submitted a number of reports spelling out the modalities and areas of cooperation. See UN docs A/48/549 of 2 November 1993;

status to the OSCE. Such observer status, together with the 1993 framework agreement, constitute the institutional parameters of cooperation between the two organizations. These are reinforced and complemented, at the political level, by the provision contained in the 1994 Budapest Summit Declaration, that OSCE "participating States may in exceptional circumstances jointly decide that a dispute will be referred to the ... Security Council on behalf of the CSCE" [14], and at the practical level, by the informal understanding that there should be a pragmatic division of labour between the organizations based on a case-by-case approach.

At the field level, the OSCE has not yet launched a full-fledged PKO. Thus, for the sake of analysis, the long-term missions deployed in several countries, as well as other field assignments carried out by the OSCE, could be considered as falling within a broad definition of "peace-keeping". Even from this broader perspective, the relations and the division of labour between the two organizations have been altogether marginal. OSCE long-term missions have maintained contacts with the UN PKOs deployed in the same areas (e.g. Georgia, Tajikistan, Bosnia and Herzegovina, Yugoslavia and Macedonia). Relations have mainly consisted in the OSCE observing UN-sponsored meetings of the parties; exchange of information and reports between the respective missions; logistical support by the UN to the OSCE (e.g. in Sarayevo); and technical advice by the UN Department for Peace-keeping Operations to the OSCE High-Level Planning Group for the PKO in Nagorny Karabakh, which completed its initial work on the concept of the operation and its rules of engagement in 1995. In Georgia, the two organizations have implemented the

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A/49/529 of 17 October 1994; and A/50/564 of 16 October 1995.

[14] See ILM, Vol XXXIV, 1995, p.768.

model of alternate lead, with the OSCE dealing with South Ossetia and the UN with Abkhazia, which turned out to be an impractical arrangement since the two conflicts are somehow part of the same problem. Both organizations, moreover, are cooperating in the implementation of the Dayton Agreement. The OSCE, in particular, has established a mission in Bosnia and Herzegovina, and is responsible for military confidence-building measures; the supervision of the electoral process; and monitoring of respect of human rights. The UN is deploying an International Police Force to monitor local police, as well as human rights monitors, while UNHCR assists returnees and displaced persons. In addition, they are closely associated with the Steering Board of the Peace Implementation Council [15].

It has been noted that, notwithstanding the good general framework for cooperation, at the implementation level the lack of a clear division of labour and prestige considerations have sometimes led to a competitive rather than cooperative relationship. In Georgia, for example, the UN has refused to be represented in South Ossetia, while the OSCE has never gained a meaningful presence in Abkhazia. There have been no joint reports, and the UN has consistently rejected the idea of joint high-level representation [16].

Finally, it is worth mentioning the deployment by the OSCE and the European Union of Sanctions Assistance Missions (SAMs) in countries neighbouring Yugoslavia, in order to assist them in the implementation of the mandatory sanctions against that country.

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[15] The report of the London Peace Implementation Conference is reproduced in UN doc. S/1995/1029, 12 December 1995. The concept of operation in Bosnia and Herzegovina is contained in decision MC(5).DEC/1, adopted at the December 1995 Budapest Ministerial Council, and reproduced in UN doc. S/1995/1030, 12 December 1995.

[16] W. Kemp, "The OSCE and the UN: A Closer Relationship", in *Helsinki Monitor* 6 (1995), p.26.

The SAMs and their communications centre in Brussels (SAMCOMM) have established a sophisticated communications system with UN Headquarters and kept daily contacts with the Secretariat of the Sanctions Committee on Yugoslavia, ensuring a constant interaction between political considerations and practical requirements. This exercise has so far probably been the most successful in terms of cooperation and division of labour between the OSCE and the UN [17].

4. The challenges of peace-keeping within the OSCE area

An assessment of the possible division of labour in the peace-keeping field between the UN and the OSCE cannot be made in a vacuum, but has to take into account the political landscape in the geographical area of competence of the OSCE, and the challenges that peace-keeping, as a form of conflict management, faces in such area.

As the recent experience of the UN shows, peace-keeping in Europe - particularly the former Yugoslavia - has brought that very concept to a breaking point [18]. Even though the circumstances prevailing in the former Yugoslavia are to a certain extent unique, still they reveal certain characteristics of conflicts within the OSCE area which have to be taken

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[17] For the establishment and terms of reference of the Office of the Sanctions Coordinator for the SAMs and SAMCOMM are contained in UN doc S/25272, 10 February 1993.

[18] S. Tharoor, "United Nations Peacekeeping in Europe", in *Survival* 37 (1995), pp. 121-135; and *id.* "Should UN Peacekeeping Go Back to Basics?", in *Survival* 37 (Winter 1995-1996), pp.52-64.

carefully into account, in particular the prevalence of vicious internal conflicts of a broadly "tribal" nature, with a measure of external support for the factions involved. This kind of conflict has proved the most impervious to a traditional "peace-keeping treatment", and this has led to a growing reluctance by the international community to provide the military and financial resources necessary for a credible PKO.

These conflicts have confronted the international community with large-scale humanitarian disasters, and have pressed governments into having to "do something" in response, thus limiting policy options for the international organizations involved in peace-making and/or peace-keeping functions. Their particular nature, moreover, makes it much more difficult for a multinational force tasked with an essentially peace-keeping mandate to maintain its impartiality in the perception of the warring parties.

The European scenario is also well endowed with a number of regional institutions of a political, military or economic nature (e.g. OSCE, NATO, WEU, EU, CIS, Council of Europe), whose involvement in these conflicts has sometimes led to rivalries, confusions and overlaps between them and with the UN. The definition of the roles of such institutions, and the achievement of a broad consensus for making them complementary and "interlocking", has been indeed one of the main recent challenges for European States. At the same time, it was equally visible that the main European powers, as well as the USA. were (and remain) extremely reluctant to engage directly in conflicts as intractable as that in Bosnia, and have relied on international institutions as a surrogate. The involvement of a plurality of international bodies, particularly in the Yugoslav conflict, has thus been the

sign of the absence rather than the presence, of a clear policy [19]. It has also contributed to the establishment, especially in Bosnia and Herzegovina, of hybrid and contradictory mandates for peace-keepers, where traditional peace-keeping functions were combined with humanitarian assistance functions within an on-going conflict and with enforcement functions for which the Force was not equipped.

A much more cautious approach by the Security Council concerning further peace-keeping commitments in Europe (and elsewhere) is now evident. This restricts a realistic analysis of the possible forms of cooperation between the UN and OSCE to more traditional, and strictly consensual, forms of peace-keeping.

A further element which deeply influences OSCE policies, and has considerable repercussions in the peace-keeping field, is the Russian attitude vis-a-vis its "near abroad" and the management of the conflicts still open in that area (e.g. Moldova, Georgia, Tajikistan, Nagorny Karabakh). Russian policy in the OSCE and the UN has been adamantly in favour of preserving a sphere of influence for the Russian Federation as the sole effective guarantor of security within the former Soviet area. This has gone in parallel with the development of peace-keeping capabilities, dominated by Russia, within the CIS [20]. Russia sees the OSCE as the European security institution in which it can play a meaningful role and more immediately pursue its aim of excluding or minimizing the role of outsiders in the CIS area, particularly NATO members acting through the UN or the

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[19] V.Y. Ghebali, "L'ONU et les organisations Européennes face au conflit Yougoslave", in *International Geneva Yearbook* 8 (1994), p.27.

[20] See K.A. O'Brien, "Russian Peacekeeping in the Near Abroad", in *Peacekeeping and International Relations* 23 (1994), p.14; and M. Shashenkov, "Russian Peacekeeping in the Near Abroad", in *Survival* 36 (1994), p.46.

OSCE [21]. Accordingly, Russia has adopted a sometimes aggressive and sometimes ambiguous position within the OSCE and the UN, trying in practice to play one against the other so as to weaken them and strengthen its own freedom of movement [22]. Russia has been consistently promoting the idea that the CIS is a sub-regional organizations within the OSCE, just as the OSCE is a regional organization vis-a-vis the UN. Consequently, on the one hand, a UN involvement or endorsement of an OSCE-CIS PKO would be required, thus allowing Russia to influence Security Council's policies; on the other hand, the CIS would enjoy a "right of first intervention" in local conflicts, under a general OSCE legitimizing umbrella. The challenge for the OSCE is acute: by accepting as participants all former Soviet republics, the Organization has assumed the responsibility to ensure the upholding and enforcement of OSCE commitments in their respect, first and foremost that of the indivisibility of security in the OSCE area. Acquiescence to a Russian imperialistic policy towards its near abroad would risk reverting to a block mentality and the

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[21] For a particularly critical assessment of Russian policy, and the stakes that this creates for the OSCE, see S. Blank, "The OSCE, Russia and Security in the Caucasus", in *Helsinki Monitor* 6 (1995), pp. 65-80.

[22] Thus, during the discussion at the 1994 Budapest Summit on the Dutch-German proposal of "OSCE first", Russia supported the central role of the OSCE while at the same time proposing language that ensured the right of any UN member tc submit a dispute to the Security Council, where Russia has veto power. Similarly, while accepting, probably under intense US pressure, the proposal of an OSCE rather than Russian PKO in Nagorny Karabakh, Russia obtained the insertion in the relevant paragraph of the 1994 Summit decisions of a reference to "an appropriate resolution from the United Nations Security Council" as a condition for the deployment of the operation and as a means
to subject the OSCE to some form of UN authorization. See W. Kemp, *loc. cit.*, footnote 16, *supra*, p.28.

fragmentation of European security arrangements, denying the very basis of the OSCE approach to security and weakening the positive developments of the end of the cold war.

The peace-keeping formula approved at Helsinki in 1992 is clearly based on a multinational approach which would allow participation by any OSCE member. At the same time, the sheer importance of the Russian military capabilities, besides obvious political considerations, make a Russian peace-keeping role impossible to downplay. A reluctant attempt at compromise has been sought at the Rome Ministerial Council of 1993, in which it was decided that the OSCE "could consider, on a case-by-case basis and under specific conditions, the setting up of CSCE co-operative arrangements in order inter alia to ensure that the role and functions of a third party military force in a conflict area are consistent with CSCE principles and objectives" [23]. This decision, even though dictated by expediency and the search for compromise, confirms in any case the important legitimizing role of the OSCE, as the active "custodian" of the basic political values applicable to its area.

The problem of containing ethnic conflicts within the ex-Soviet area as well as the "creeping imperialism" of current Russian foreign policy is very relevant also for the UN: the two PKOs currently deployed in the CIS area (UNOMIG in Georgia and UNMOT in Tajikistan) aim at observing the first, and complementing the second, an independent peace-keeping effort by CIS contingents dominated by the Russian Federation. From this point of view, at least in the eyes of the United States and most European States, the two

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[23] "CSCE and the New Europe - Our Security is Indivisible", Decisions of the Rome Council Meeting (1993), section II, paragraphs 2-3.

organizations can play complementary or mutually reinforcing roles for keeping Russian expansionism under control.

5. Division of labour between OSCE and UN: guiding principles and possible developments

The lengthy analysis that precedes is important in that it provides the complex framework within which cooperation and division of labour between the OSCE and the UN can be envisaged. Indeed, in the absence of clear-cut policies by both organizations about a precise distribution of jurisdiction and definition of forms of cooperation, their relationship in the peace-keeping field will be probably characterized by a pragmatic approach, based on a case-by-case basis upon the requirements of specific situations, considerations of comparative advantages, or the policies of key players in either institution. In this section, therefore, I will try to highlight some possible models for this interaction, which could be used in isolation or in combination, according to political and practical considerations, such as those provided in the preceding sections.

What matters is that such cooperation should be based on a few essential principles agreed upon by both organizations, so as to avoid as much as possible overlaps or rivalries and ensure complementary and mutually reinforcing roles. These principles, analogous to those stated by the UN Secretary-General in the Supplement to an Agenda for Peace, should be: the primacy of the UN as the highest instance for the establishment of general policy directives and the management of conflicts; the use of both organization in such a

way as to put to full fruition their comparative advantages; and the fact that the OSCE should embody and express a "European approach" for the management of European conflicts. Moreover, the legitimizing function consisting in providing political and legal legitimacy to forms of external "intervention" in a conflict, should be kept conceptually (even if not always practically) distinct from operational responsibilities.

The considerations provided in the foregoing sections highlight in my opinion the basic fact that the real strength of the OSCE lies in its unique role within the Eurasian context as the sole regional organization with a membership "from Vancouver to Vladivostok", as well as in its function as the repository and advocate of the basic common political values of the area in question. Its inclusiveness allows, inter alia, the Russian Federation to focus on the OSCE as a non-antagonistic regional security body in which its interests can be brought to the fore and where it can play a meaningful role. Moreover, the military low profile of the OSCE, its consensus decision-making process and its lack of enforcement powers make it a less "threatening" organization than other institutions such as NATO or WEU or, for that matter, the UN. Conversely, there are doubts about the actual operational capabilities of the OSCE beyond the performance of its current small missions or ad hoc operations such as the SAMs. Its main weaknesses in the peace-keeping field have already been highlighted in section 2 and will not be repeated here. An additional consideration in this context is the particularly complex nature of recent European conflicts, which have so far largely defied attempts at facilitating their settlement through peace-keeping operations, and whose parties have rarely genuinely entered and respected commitments to accept the presence of an impartial international force and to cooperate with it. The juxtaposition of these elements, coupled with the competition for an

operational role in Europe from WEU and, above all, NATO, suggests that the most significant peace-keeping role for the OSCE could be that of legitimizing peace-keeping efforts by other organizations, or act as a link between the UN and regional or sub-regional organizations for the management of conflicts in a peace-keeping perspective, rather than trying to play a strong autonomous role in launching medium- or large-scale peace-keeping operations.

At the same time, it should also be taken into account that the UN is undergoing an overall painful transition, in which its peace-keeping and peace-making functions are being critically reexamined, especially with regard to its recent and unsuccessful efforts in the former Yugoslavia. The failure at achieving a veritable "mission impossible" has led to calls for a "return to the basics" of peace-keeping [24]. The conceptual retrenchment which the Organization is undergoing could lead to a reduction of the UN's involvement in European conflicts, especially in terms of peace-keeping. Still, its experience and resources in the peace-keeping area are undeniable, as it is its legitimizing role as the sole universal political organization.

The foregoing considerations lead to the identification of three main areas in which the question of a division of labour between the OSCE and the UN can be specifically addressed.

The first area is the distribution of jurisdiction in relation to conflicts within the OSCE area. This issue, of course, is preliminary to, and at the same time goes beyond, the consideration of peace-keeping functions. It actually calls into play the basic issues raised by Chapter VIII of the UN Charter, and its somewhat difficult compromise between

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[24] S. Tharoor, *loc. cit.*, note 20, *supra*.

universalist and regionalist tendencies. It also involves the rather open-ended policy indications formulated by the organs of the UN, which have been summarized in section 3 above [25].

In this scenario, three main patterns of interaction between the OSCE and the UN can be considered: alternate lead; referral of disputes from one organization to the other; or joint jurisdiction on specific disputes. The alternate lead of either organization is the current working arrangement in several cases in the ex-Soviet area. Under this arrangement, one organization actively deals with the substance of the conflict while the other provides political and diplomatic support to the efforts of the first one. It has sometimes been criticized as having led to irrational situations such as separating the management of the two conflicts in Georgia [26]. Still, it is in principle a valuable model insofar as it can rely on the existence of coordination and consultation mechanisms that can ensure a joint assessment by the two organizations of a specific situation and its political and operational requirements. The current framework arrangement offers a working basis for such coordination, especially since the State holding the OSCE chairmanship can probably serve more effectively than representatives of the OSCE Secretariat as a focal point for an essentially political decision. Moreover, informal consultations among key players may frequently replace more institutionalized contacts, and eventually lead to formal decisions by the policy-making organs of the two organizations.

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[25] For a rather elaborated commentary on Chapter VIII, see B. Simma et al. (eds.), "The Charter of the United Nations - A Commentary", 1995, pp. 679-752; and R. Wolfrum, C. Philipp (eds.), "United Nations: Law, Policies and Practice", 1995, vol.2, pp. 1040-1051.

[26] See W. Kemp, *loc. cit.*, note 16 *supra*, p.26.

The second model is joint exercise of jurisdiction, meaning a joint, coordinated and complementary effort by the two organizations (with the possible participation of further organizations if necessary) to deal with the same situation. This model would allow each organization to concentrate on the functions in which it is more credible - for example, the OSCE on human rights monitoring or military confidence-building measures, and the UN on humanitarian assistance or monitoring of cease-fires and disengagements. Such arrangements could be decided upon at the initiative of either organization along the pattern set out in Article 52 of the Charter, i.e., either the OSCE in case its efforts proved insufficient or the UN by partial reference to the OSCE. They would necessitate a high degree of coordination at the policy-making as well as the implementation levels, higher than in the case of alternate lead. At the peace-making level, this model would imply an effort to integrate activities in order to increase their political weight, for example through high-level joint representation in the conflict area (i.e. a single representative or two representatives acting together through an integrated structure), or the preparation of joint reports to be submitted to both organizations. To my knowledge, this scenario has not yet been proposed or seriously analyzed at the policy-making level by either organization; concerns about mutual independence and the "primacy" of the UN do not militate in its favour. As mentioned in section 3, the OSCE had proposed similar arrangements in Georgia; it is somehow unfortunate that the UN rejected them.

The third model is referral of conflicts between the two organizations, as foreseen in Article 52 of the Charter. In this case, one of the organizations, initially seized of a certain conflict, would subsequently relinquish its consideration of it in favour of the other organization. In recent practice, the UN has not yet "referred" a particular conflict to a

regional body, but has rather stepped in in the light of the inability of regional organizations to deal with certain situations. In view of this trend, and of the above-mentioned attitudes of the Security Council, it seems unlikely that the Council, once seized of a certain conflict, would somehow transfer jurisdiction over it to a regional organization. The reverse possibility, that of "OSCE first" for all European conflicts, with a subsequent joint referral to the UN in case of failure of OSCE efforts, offers more potential, particularly with regard to peace-keeping and peace-enforcement. This was precisely the Dutch-German proposal to the 1994 Budapest summit, which seemed virtually unopposed until the end of the Summit but then unexpectedly failed, reportedly due to the objections of Armenia but probably also for the scarce enthusiasm of France, Russia, the UK and the US for codifying a possible relinquishment of jurisdiction by the Security Council [27]. An integral part of that proposal was the joint referral to the Security Council even without the consent of the State(s) directly involved, which would have considerably eroded the scope of consensus within the OSCE. It is to be hoped that efforts to build up consensus along these lines may lead soon to positive results. A clear political decision to designate the OSCE as the instrument of first choice would strongly increase its relevance, clarify its role vis-a-vis the other European and Atlantic organizations, and avoid "institution shopping". If OSCE procedures failed, a joint referral to the Security Council by about 50 UN members (including four permanent members of the Council), providing an analysis of the situation and the steps undertaken, as well as a recommendation for action, would carry a great weight and would create an as yet lacking indirect possibility for enforcement of OSCE policies. The Dutch-German proposal also provided that the OSCE would have

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[27] W. Kemp, *loc. cit.*, note ..., *supra*, pp. 29-30.

assisted in the implementation of Security Council's measures and would have sought a corollary commitment by other European-Atlantic institutions. This would have placed the OSCE at the center of the European security architecture as the link between the UN and those institutions.

The second area for a division of labour between the OSCE and the UN focuses on the legitimizing function played by an international organization through its power to legitimize or authorize a peace-keeping operation, define its scope, terms of reference and participation, and thus exercise a form of political direction over the management of a conflict. The operation in question can then be carried out by the same organization or by [an]other organization[s].

As noted above, this seems to be the function in which the OSCE can play its strongest role as the only pan-Eurasian and transatlantic institution, a role parallel to that of the United Nations as the sole universal political institution.

A legitimizing function by the UN vis-a-vis the OSCE is shadowed by the provision, in the 1994 Budapest decisions, of "an appropriate resolution from the United Nations Security Council" for the establishment of an OSCE PKO in Nagorny Karabakh [28]. This sentence was introduced at the request of Russia, and could suggest, if used in this direction by Russia, a devaluation of the OSCE as a "sub-contractor" of United Nations decisions, potentially more easily directable by the Security Council [29]. In fact, the 1992 Helsinki decisions on OSCE peace-keeping make no mention of the need for a UN "enabling" resolution. Moreover, Chapter VIII of the UN Charter shows that, short of an

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[28] *Loc. cit.*, note 15 *supra*, p.777.

[29] See J. Borawski, "The Budapest Summit Meeting", in *Helsinki Monitor* 6 (1995), p.10.

enforcement action under Article 53 or of an active referral of a conflict by the Security Council to a regional organization under Article 52, there is no legal need for such a resolution. That decision could more constructively be interpreted as a request for clear political support by the Security Council, of the kind that the Council has already expressed in its several resolutions and presidential statements on Nagorny Karabakh.

On a more general level, it is important that this model be used not as an attempt by one international organization to subordinate another (which would certainly backfire), but as a form of coordination and cooperation between "interlocking institutions" based on the principle of comparative advantage. In this light, it could be envisaged that the Security Council decide in principle that a certain situation threats international security and thus action is necessary, and seek the cooperation of the OSCE and/or other regional bodies (NATO, NACC, WEU, EU) in this respect. The action to be taken could be left to the consideration of the bodies concerned, or could be suggested by the Council. In view of the nature of the OSCE, military enforcement measures under Chapter VII and VIII should not be included. It could, moreover, be agreed between the two organizations that, whenever enforcement actions are not considered, the UN make explicit mention of the central role of the OSCE, which would reinforce its position as "the" political Eurasian institution and as the possible institutional link between the UN and regional or sub-regional organizations in Europe.

As far as the OSCE is concerned, the Helsinki decisions of 1992 foresee that the OSCE may draw upon, on a case-by-case basis, the resources of the EC, NATO, WEU and the CIS. While this reference aimed at obtaining resources for OSCE PKOs, the language in question could, in the presence of the necessary political will, be used to lay

out a regional division of labour in which the OSCE, with or without a previous action by the UN, discharge a legitimizing function by calling for action in a specific situation and seeking the cooperation of European military institutions for taking measures including peace-keeping. The current generalized need for consensus would make it necessary that the State[s] involved participate in such a decision, which should ideally be taken by the Senior Council to give it a higher political standing. In the presence, once again, of the required political will, the OSCE could even provide the general mandate for peace-keeping by other regional institutions. This would enable them to take action both at the policy-making and the military implementation levels. The possibility could also be envisaged of peace-keeping by ad hoc groups of OSCE participating States which volunteer military contingents and financing [30]. The OSCE would work as a link between regional institutions and the UN also by keeping the latter informed about regional peace-keeping activities, as prescribed in Article 54 of the Charter.

This legitimizing function of the OSCE also plays an absolutely crucial role in its efforts to contain the role of the Russian Federation in the conflicts in the former Soviet area. The planned operation in Nagorny Karabakh offers a good example in this respect, as before the 1994 Budapest Summit it was configured as a Russian separation force, and even after the major achievement of the Summit in moderating Russian ambitions, the extent of Russian participation was reportedly still under discussion [31]. The above-mentioned

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[30] As has been noted, a European legitimization of European peace-keeping might have remarkable importance for Eastern European and ex-Soviet States, and lead them to a greater confidence than is currently the case in the capabilities of the OSCE as a security structure, which could assist them until they are covered by NATO's military guarantees. See J.E. Goodby, "Peacekeeping in the New Europe", in *The Washington Quarterly* 15 (1992), p.166.

[31] J. Borawski, *loc. cit.*, note 29 *supra*, pp. 8-10.

provision of the 1993 Rome Council clearly appears an attempt at drawing the minimum conditions under which the OSCE would agree to set up "cooperative arrangements" in connection with CIS or Russian peace-keeping [32].

In this regard, as noted above, the OSCE and the UN could be playing a useful complementary role in putting pressure on Russia to moderate its imperialistic tendencies, while at the same time involving her in multilateral processes for conflict management, and integrating her in the OSCE community of values. The OSCE should use, with UN backing, the Russian need for legitimization and support of its peace-making and peace-keeping in the near abroad to ensure as much as possible a multilateral and cooperative approach and the definition of conditions and terms of reference respecting OSCE's principles and objectives. The authorization by the OSCE of Russian or, preferably, CIS PKOs on the basis of an agreed mandate and with clear reporting requirements would represent a concrete possibility in this sense.

The third area for a possible division of labour between the OSCE and the UN is field deployment in the context of peace-keeping operations. The structural and procedural features of the OSCE which militate against its assumption of an effective operational capability have already been highlighted above [33]. A possible operative role of the OSCE,

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[32] The principles defined as essential are: respect for sovereignty and territorial integrity; consent of the parties; impartiality; multinational character of the Force; clear mandate; transparency; integral link to a political process for conflict resolution; and a plan for orderly withdrawal. See *loc. cit.*, note 24 *supra*.

[33] What seems crucial in order to increase the operational potentials of the OSCE would be, first and foremost, a limitation of the use of consensus, which can be a valuable instrument in other contexts but is unsuitable to cope with the swiftness required by operative decisions, and gives an excessive leverage to the States involved in a dispute. Proposals to reduce or overcome the use of consensus are numerous and cannot be analyzed in this contribution. See those mentioned in J. Borawski, *loc. cit.*, note 29 *supra*, p.7; and R. Zaagman, "Focus on the Future - A Contribution to Discussions on a New

and how this can be coordinated with that of the UN should, therefore, be seen with great realism. As recalled above, a decision was taken at the 1994 Budapest Summit to deploy a PKO in Nagorny Karabakh, the preparatory work for which was reportedly completed in 1995 but whose prospects are dubious in view of the unwillingness of the parties to agree on a permanent cease-fire. With the exception of this exercise, as we have seen, the OSCE has limited itself to deploy small diplomatic missions as well as Sanctions Assistance Missions around Yugoslavia, and is participating in the implementation of the Dayton Agreement. There is no mention in recent OSCE documents of establishing new PKOs or amending the 1992 decisions and their strict conditions for the establishment of such operations.

The above-mentioned exigence of realism is also dictated by the recent setbacks suffered by UN peace-keeping and peace-making in the former Yugoslavia, which may confine the UN's operational role in Eurasia to a relatively modest one for some time.

The settlement in Bosnia and Herzegovina has seen the emergence of NATO as the leading regional peace-keeper and the only security structure enjoying full US support. This makes it possible to envisage a leading role by NATO also in the settlement of future conflicts in Central Europe, for example in possible disputes in the Balkans (e.g. Yugoslavia/Albania, Greece/Macedonia, Greece/Turkey), besides the obvious interest of Eastern European States to see an extension of NATO's military guarantees to their territories as soon as possible. This scenario might further reduce the possibility of a UN peace-keeping role besides existing operations, or might confine the UN to participating in

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OSCE", in *Helsinki Monitor* 6 (1995), p.46.

some aspects of operations dominated by other organizations, as is the case in Bosnia and Herzegovina.

In view of all foregoing considerations, a number of possible forms of division of labour and interaction concerning field deployment can be considered. Firstly, it is likely that the current level of relations between UN and OSCE mission will continue in the future, especially within the framework of existing missions. This is certainly positive, but it would necessitate a measure of streamlining of procedures and of enhanced willingness to involve the other organization and share resources and information, especially on the part of the United Nations. In the absence of an increased mutual involvement, relations between the two organizations can only remain altogether marginal and disconnected, and the political and operational advantages deriving from their synergy would inevitably be lost.

In addition to the continuation of the current forms of field interaction, a theoretical alternative model would consist in a request by the Security Council for some form of PKO by the OSCE. Along recent practice, this request might be couched in the form of an authorization issued to unspecified Member States and "regional agencies or arrangements", rather than as an outright request, which would imply a "subcontracting" by the UN and a resulting subordinate role for the OSCE. In this case, the UN would exercise the "legitimizing function" referred to above, while the OSCE would provide the first line of European peace-keeping. This might be the scenario for the OSCE PKO in Nagorny Karabakh if Russian policy is adopted. It is so far a largely theoretical possibility, especially in view of the operational limitations of the OSCE. It could, however, be politically consonant with the spirit of the 1992 Helsinki Decisions, in

particular the statement that the OSCE provides "an important link between European and global security".

Other possible patterns may utilize models of interaction between the UN and regional organizations, which have already been experimented in UN practice [34]. Such patterns could be the following:

1) Co-deployment. Under this scenario, a small-scale UN PKO would be deployed in conjunction with a larger OSCE PKO, in order to support it and verify that it discharges its mandate in a manner consistent with positions adopted by the Security Council. In this case, the main operational burden would be carried by the regional organization, while the UN would have to ensure the consistency of the operation with UN policies, which would thus maintain their primacy. The UN has employed this mechanism in Liberia, where UNOMIL observes the activities of an African peace-keeping force; and in Georgia/Abkhazia, where UNOMIG, among other tasks, observes a CIS interposition force. This scenario has been described as a promising possibility for the future by the UN Secretary-General, but it can open delicate political, operational and financial questions and should be explored with caution. In particular, the relations between the two organizations and their different functions should be carefully and precisely spelled out in advance. In the OSCE scenario, this model could be used to make more acceptable to both organizations an OSCE PKO with a predominant Russian component deployed in the CIS area.

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[34] Some of them have also received a positive assessment by the UN Secretary-General in his supplement to An Agenda for Peace. See *loc. cit.*, note 9 *supra*, pp. 20-21.

An alternative form of co-deployment could be along the line of the on-going peace mission in Bosnia and Herzegovina, in which NATO, OSCE, UN and EU are all involved under the umbrella of the Dayton Agreement and the London Peace Implementation Conference, and carry out complementary but separate tasks. Contingents and components would be deployed in parallel by the OSCE and the UN, and would either report separately to their Headquarters or jointly to both. Lines of communication and liaison would be established to ensure that both division of roles and cooperation are maintained. This scenario would avoid possibly delicate questions arising from deploying one organization to monitor, in practice, the behaviour of the other, and would allow each participant to focus on the activities in which it enjoys a comparative advantage.

2) Commencement of an operation by one organization, and continuation by the other. Among UN PKOs, this has taken place in Rwanda, were the first PKO, UNOMUR, was later absorbed by UNAMIR. More recently, numerous military contingents as well as civilian personnel that were serving within UNPROFOR throughout the former Yugoslavia have been transferred to various operations with a different mandate and occasionally under a different organization: UNTAES in Eastern Slavonia, UNPREDEP in Macedonia, and especially IFOR in Bosnia and Herzegovina, which is under NATO rather than UN command. This model could be utilized between the OSCE and the UN in both directions, according to the prevailing circumstances. For example, an operation launched by the UN could be taken over by the OSCE (possibly with a residual UN presence in a monitoring mode along the lines illustrated in the previous number) once its main military functions are largely completed, and the civilian component becomes the priority. Conversely, an initial OSCE PKO (e.g. that in Nagorny Karabakh) could be taken over by the UN, with

the same or a revised mandate, if the composition of the force should become an obstacle to the effective discharge of its functions in view of changed political circumstances. The succession of the UN to the OSCE would then allow the injection of non-European military contingents. Also this model would require delicate arrangements at the policy-making as well as implementation levels for carrying out such a transition, for example from a financial point of view.

3) Joint operations. In UN practice, this has succesfully taken place in Haiti through the civilian human rights monitoring mission, MICIVIH, which is staffed, directed and financed jointly by the UN and the Organization of American States. Also this model would require careful arrangements, and would probably best be limited to small- or medium-scale missions of a civilian nature. It could be envisaged, for example, that an OSCE long-term mission such as that previously deployed in Sandjak, Kosovo and Vojvodina could be jointly deployed on a larger scale by both organizations. The presence of both OSCE and UN could make such mission more acceptable to the host State; the sharing of resources could allow precious economies of scale in a time of financial stringency while increasing the effectiveness of the monitoring functions carried out by the operation.

6. Conclusions

Both the OSCE and the UN are in a transition phase, and are searching for a clearer identity in the post-cold war environment. Also the political scenario throughout the

Eurasian region is in transition, largely due to the instability and convulsions in central and eastern Europe. In addition, the attitude of the US and Russia vis-a-vis conflict management in Eurasia is far from predictable in the medium- and long-term; the forthcoming US presidential elections could lead to a further disengagement from Europe while those in Russia to a return to the imperialistic policies of the past.

In this uncertain scenario, and in view of the particularly complex and daunting nature of recent conflicts within the OSCE area, it is difficult to imagine a coherent and clear-cut division of labour between the two organizations. I have tried in my contribution to indicate and analyze the factors and variables that will influence decisions concerning the planning and carrying out of peace-keeping activities, as well as the basic conflict management policies that will be overarching a possible division of labour.

It seems to me that a future (hopefully more intense than at present) division of labour will inevitably be decided more with an eye to the needs of the moment than to a general philosophy of the relations between the OSCE and the UN. By disposing of alternative and interactive models which conform to a few basic principles, therefore, policy-makers could more easily take decisions which spouse operational needs and political expediency with the respect for the unique roles and characteristics of both organizations.

Financing OSCE Peace-keeping Operations

(draft)

Fabrizio Pagani

Outline: I. Introduction. II. Financing UN peace-keeping: 1. The expenses for peace-keeping as expenses of the Organization under art. 17.2 of the Charter of the United Nations. 2. The apportionment of the expenses among the Member States. 3. The budget procedures for peace-keeping expenses. III. Financing OSCE peace-keeping operations: 1. The OSCE regular budget. 2. Financing OSCE activities in the field: i) short-term missions; ii) long-term missions; iii) peace-keeping operations.

I. Introduction

In the literature of peace-keeping the issue of financing has received noticeable but not comprehensive attention ([1]). Interest in financing has focused mainly on two aspects: the financial crisis of United Nations in the early nineteen sixties related to the "Certain Expenses of the UN" case and more recently the financial difficulties arising from the dramatic increase in peace-keeping operations and their changing nature ([2]).

The need for a comprehensive approach which considers the issue of financing peace-keeping in more general terms is evident. Furthermore emerging of operations which are carried out by regional organizations requires looking at financing peace-keeping operations in contexts outside the United Nations framework.

The scope of the present work is to analyze the methods and procedures of financing peace-keeping operations carried out by international organizations. This

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1) For a review of the writings on the financial aspects of peace-keeping see FERMANN, G., *Bibliography on International Peacekeeping*, Dordecht/Boston/London, 1992, pp. 173 ff., and less recently JONES, P., *Peacekeeping. An Annotated Bibliography*, Kingston, 1989.

2) For a review of the status of the financial situation of the UN peace-keeping operations see the Report of the Secetary-General, Improving the Financial Situation of the United Nations (UN/A/50/666, 20 October 1995).

approach will be limited both by the organizations considered and the notion of financing peace-keeping adopted.

Procedures of the United Nations and of a regional organization, the Organization for Security and Co-operation in Europe (OSCE), will be investigated.

As to the notion of financing peace-keeping operations, it is useful to make some general comments. This concept appears quite general and implies different meanings.

A distinction should be drawn between the expenses of the international organization for planning, preparing, administrating and carrying out a peace-keeping operation and the costs incurred by the troop-contributing States for their direct participation in the mission.

The first aspect has an exclusively international character. It concerns the methods and the procedures through which the organization raises funds for managing the operations and through which it allocates the relative expenses. The national contributions, both mandatory and voluntary, which each State makes to the organization for financing peace-keeping must be included in this ambit.

The second aspect is only partially relevant at the international level because it concerns the national costs of the troop-contributing countries resulting from their direct participation in the operations.

The costs of the first type generally burden all the States which are members of the concerned organization. The second type exclusively concerns the States participating with troops or materials in the operations.

Yet the two aspects, even so distinguished, are not completely separate. They are connected by reimbuirsement procedure through which the international organization provides compensation for the costs incurred by the participating countries. This reimbursement usually does not cover the entire amount of the expenses undertaken by the contributing countries.

The present work will examine the first aspect, the expenses of the international organization.

II. Financing UN peace-keeping

In considering the United Nations mechanisms for financing peace-keeping operations we will first examine the Charter, then the practice developed in the Organization.

II.1. The Charter of the United Nations contains very limited dispositions concerning finances. Reference is made to art. 17, budget procedure, and art. 19, failure to pay contributions. A few other rules, in particular art. 18, voting procedures in the General Assembly, and the provisions on the functions of the Secretariat of the Organization, become relevant in assessing the overall financial organization of the United Nations.

The Charter does not provide any specific rule concerning the expenses for actions in the field of peace and security. Neither are there rules on the financing of enforcement actions *ex* Chapter VII or, *a fortiori*, of any other kind of operational activity, such as peace-keeping.

During the Conference of San Francisco the subject was quite marginally dealt with by the Committee III/3. This Committee indicated only that the UN should create a sharing system in order to guarantee the "fairest possible distribution of expenses" ([3]) incurred as a result of enforcement action ([4]).

Two provisions of the Charter are sometimes indicated as relevant. They include art. 49:

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[3]) United Nations Conference on International Organization XVII, p. 362.
[4]) See BOWETT, D.W., *United Nations Forces, A Legal Studies of United Nations Practice*, London, 1964, pp 468 ff.; GOODRICH, L.M., HAMBRO, E., SIMONS, L.M., *United Nations. Commentary and Documents*, New York/London, 1969, pp. 337 ff.; EISEMANN, P.M., *Article 49*, in COT,J.-P., PELLET, A., *La Charte des Nations Unies*, pp. 754 ff.

> The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

And art. 50:

> If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Few conclusions on the issue of financing can be drawn from these two articles. The possibility for the member States to consult with the Security Council on financial difficulties arising from the undertaking measures in the field of peace and security seems more related with the moment of implementing those measures than with that of financing them ([5]).

Thus, due to the lack of any ad hoc disposition, we can conclude from a textual exam of the Charter, that the issue of financing military activities decided by the Organization should be inserted in the framework of art. 17 and considered as any other expense of the Organization. One alternative would be to regulate the issue at the time of the conclusion of the agreements foreseen in Article 43 ([6]); however, as it is well known, that provision of the Charter has never had concrete application.

Within the framework of Art. 17 has developed a practice which after years of uncertainty now seems to be completely consolidated.

As peace-keeping developed, the problem of funding emerged haphazardly. In the early nineteen sixties the Organization underwent through a deep financial crisis connected with its peace-keeping operations in Sinai, Congo and Lebanon. The matter was dealt with in an advisory opinion of the International Court of Justice

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[5]) For a commentary of these dispositions see EISEMANN, P.M., *Article 49* and *Article 50*, in COT, J.-P., PELLET, A., *La Charte des Nations Unies*, pp. 754 ff.; BRYDE, B.-O., *Article 49* and *Article 50*, in SIMMA, B., *The Charter of the United Nations. A Commentary*, Oxford, 1994, pp. 656 ff.

[6]) This solution was suggested by BROWNLIE, I., *United Nations Forces. A Legal Studies of United Nations Practice*, *op. cit.*, p. 470.

([7]) which has been thoroughly studied and commented on([8]). The conclusions of the Court indicating funding of peace-keeping as "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter of the United Nations has found general acceptance in subsequent practice.

The General Assembly apportions the expenses for peace-keeping as obligatory contributions to be met by member States. The principle of collective financial responsibility has been consolidated by broad and consistent practice.

Even the prudent indications of the Special Committee on Peace-keeping Operations suggested the inclusion of the expenses of peace-keeping within the meaning of article 17, paragraph 2, of the Charter of the United Nations as the first source of financing:

> The costs of peace-keeping operations authorized by the Security Council shall be considered as expenses of the Organization, to be borne by the Members in accordance with Article 17, paragraph 2, of the Charter of the United Nations (or any other methods of financing which the Security Council may decide) (unless decided otherwise) (art. 11) ([9]).

This practice has been confirmed by several resolutions and Secretary-General Reports ([10]). Under the agenda item "Comprehensive Review of the Whole Question of Peace-keeping Operations in All Their Aspects" the General Assembly has reaffirmed several times that the financing of peace-keeping operations is the collective responsibility of all Member States in accordance with Article 17, paragraph 2, of the Charter. For example in res. 47/71 of 14 December 1992 was affirmed:

> *The General Assembly,*
> .....

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[7]) *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter). Advisory Opinion of 20 July 1962: I.C.J. Reports 1962*, pp. 151 ff.

[8]) See JENNINGS, R.Y., *International Court of Justice - Advisory Opinion of July 20, 1962: Certain Expenses of the United Nations, International and Comparative Law Quarterly*, 1962, pp. 1169 ff.; BOTHE, M., *Certain Expenses of the United Nations (Advisory Opinion)*, in Bernhardt, R. (ed.), *Encyclopedia of Public International Law* [Instalment 1 (1981) p. 48 ff.].

[9]) *Report of the Special Committee on Peace-keeping Operations, Eleventh Report of the Working Group* (UN Doc. A/32/394 Annex II Appendix I of 2 December 1977)

[10]) Recall the Reports of the Segretary General concerning the UNEF II which reversed the practice of financing solely through voluntary contributions which seemed established with the UNFICYP oeration.

> 12. *Recalls* that the financing of peace-keeping operations is the collective responsability of all Member States in accordance with Article 17, paragraph 2, of the Charter of the United Nations, and reiterates its call upon all Member States to pay their assessed contributions in full and on time and encourages those States which can do so to make voluntary contributions that are acceptable to the Secretary-General.

The same disposition has been reiterated in several subsequent resolutions.

Since 1993 all the peace-keeping forces have been financed under art. 17.2 of the Charter. In addition, UNFICYP financing was switched from the completely voluntary funds to the art. 17.2 procedure, at least for the costs of the Force that are not covered by voluntary contributions ([11]).

Thus it is possible to conclude that the "Certain Expenses" debate has been settled. Either from a textual reading of the Charter or from an analysis of the practice of the Organization we must consider the expenses for peace-keeping as expenses of the Organization under art. 17.2 of the Charter. Therefore the General Assembly, being the organ which considers and approves the budget of the Organization as set out in Article 17, also has the authority for peace-keeping expenses.

To analyze the financing of UN peace-keeping we have to distinguish between the apportionment of the expenses among the Member States and the budget procedures. These aspects deserve to be widely treated because of the peculiarities and differences which they have regarding the financing of the ordinary activities of the Organization.

II.2. As set out in art. 17.2 of the Charter, the General Assembly apportions the expenses of the Organization. This apportionment is concretely decided through the establishment of a scale of assessments based on the 'capacity to pay'. It is reviewed every three years.

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[11]) Res. A/47/236 of 14 September 1993.

Since the first peace-keeping missions many States, in particular the developing States, raised the issue of the particular nature of the expenses for peace-keeping which would have justified an apportionment different from that decided for the regular budget. This debate led to a first decision in 1963 and then to a substantive review in 1973. Through this second resolution the General Assembly established a specific scale of assessments for peace-keeping expenses ([12]). That decision has been subsequently adjusted many times ([13]).The last review concerning the period 1995-1997 was approved in 1994 ([14]).

This ad hoc scale for the apportionment of the contributions was motivated and based on the assumption that the States which are permanent members of the Security Council have a special responsibility for financing peace-keeping operations. According to that resolution the member States are divided into the following four A, B, C, D groups:

A - the permanent members of the Security Council (liable for around 55 % of the costs) ([15]);

B - specifically named economically developed States which are not permanent members of the Security Council (liable for around 42 %);

C - economically less developed States (liable for around 2%);

D - economically less developed States which are specifically named (liable for less than 1 %).

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[12]) Res. A/3101 (XXVIII)
[13]) An important revision was implemented with Res. 43/232, 1 March 1989.
[14]) Res A/49/19/A-B, Scale of Assessments for the apportionment of the expenses of the United Nations, 29 November 1994 and 23 December 1994. For a recent analysis of the scale of assessments and the relative issues, see *Report of the Committee on Contributions* (A/50/11).
[15]) For example, the United States owes 25% of the regular budget and contributes around 31% to the peace-keeping budget. For more data see Schoettle, E.C.B., *Financing UN Peacekeeping*, in *Keeping the Peace in the Post-Cold War Era: Strenghtening Multilateral Peacekeeping. A Report to the Trilateral Commission*, New York/Paris/Tokyo, pp. 17 ff.

The composition of the groups is reviewed and adjusted periodically ([16]) and the share of each member within its group is determined with reference to the scale of assessments established in the regular budget of the UN.

This particular apportionment of the expenses seemed for a certain period a fairly satisfactory arrangement. Its underlying *ratio* is that the permanent members have to be ready to shoulder most of the costs of a mission they decide to establish. In this sense recall par. 19 of res. A/47/71 on a "Comprehensive Review of the Whole Question of Peace-keeping Operations in All Their Aspects":

> *The General Assembly,*
> *Acknowledges* the competence of the General Assembly for the appropriation and apportionment of the costs of United Nations peace-keeping operations, and also acknowledges the importance of the Security Council members being informed of the cost implications of such operations.

In recent times changes have been proposed, particularly a reduction in the ceiling on the assessed contribution of any Member State ([17]).

From a procedural point of view the apportionment of the expenses of each single mission is inserted in the decision through which the expenses of the mission are appropriated and its budget passed.

II.3. The budget procedure for financing peace-keeping operations offers many points of interest for its specificity relating to the regular budget practice.

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[16]) For example some States after the breakup of the Soviet Union asked for their reclassification under the group of the less developed countries, see, e.g., Letter dated 25 September 1995 from the President of Ukraine addressed to the Secretary-General (A/50/502, 3 October 1995).

[17]) See the Secretary-General Statement on Financial Crisis of 6 February 1996 (SG/SM/5892 GA/9050 *Secretary-General Calls for 1996 Special Assemly Session on UN Finances in Statement to High-Level Group on UN Financial Situaton*). An analogous proposal has been presented on behalf of the European Union by Italy, see *Agence Europe*, 26 January 1996, p. 3. The issue was also recently discussed within the High-level Open-ended Working Group on the Financial Situation of the United Nations, see its report to the General Assembly (UN/A/49/43).

Usually three categories of financing peace-keeping are distinguished: the mandatory contributions to the regular budget; the mandatory contributions to the peace-keeping budget; and the voluntary contributions.

The peace-keeping operations are usually financed outside the regular budget, but there are some exceptions which are worthy of mention. The United Nations General Fund covers the costs of the following operations:

- the oldest truce observation missions. Reference is made to the United Nations Supervision Organization (UNTSO) and to the United Nations Military Observer Group in India and Pakistan (UNMOGIP);

- some human rights verification operations such as the joint United Nations-Organization of American States Mission to Haiti (MICIVIH) and the Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA);

- some election monitoring missions such as the United Nations Observer Mission in South Africa (UNOMSA) or the United Nations Observer Mission to Verify the Referendum in Eritrea (UNOVER);

- some other field activities concerning peace and security such as early-warning and preventive diplomacy missions. Examples are the United Nations Office of the Secretary-General in Iran and Iraq (UNOSGI), and the Office of the Secretary-General in Afghanistan and Pakistan (OSGAP).

Without deciding whether these missions can or not be considered peace-keeping operations *stricto sensu* ([18]), it is sufficient to point out that their costs are inserted in the Section "Peace-keeping Operations and Special Missions" of the Part "Political Affairs" of the regular budget of the organization. The reasons for this choice lie either in the history or in the nature of each mission.

[18]) These operations are inserted among peace-keeping activities in some United Nations documents, besides the Programme Budget. See, for example, the *Financial report and audited financial statements for the biennium ended 31 December 1993 and Report of the Board of Auditors. Volume II United Nations peace-keeping operations* (UN A/49/5), p. 7.

Some, such as the UNTSO or the UNMOGIP were established prior to the development of any coherent practice in financing peace-keeping. Other operations, such as the MINUGUA or the UNOMSA, are field missions with an exclusive civilian component. Their nature distinguishes them from the military peace-keeping missions and their relative practice. Some have been established by the General Assembly.

The costs for the functioning of the Department of Peace-keeping Operations are part of the regular budget as well. Also part of the regular budget are the expenses for peace-keeping which are relevant to other departments or offices, such as the Department of Political Affairs ([19]).

At this point we pass to the core aspect of the procedures for financing peace-keeping operations. The financing of peace-keeping is based on the principle of the separate assessment for each operation. Each operation is separately funded through its own account. Due to the unpredictable nature of the establishment and development of these operations the recourse to the system of the single operation budget seemed the most appropriate.

We will follow this procedure in all its details. According to the practice developed in the last few years, when the Secretary-General suggests the establishment of a new peace-keeping mission, he usually makes a first estimate of the possible costs of the mission. For example in the case of the assessment of the establishment of a new peace operation in Angola (UNAVEM III) the Secretary-General attached a financial *addendum* with the estimated cost of UNAVEM III for a 12-month period ([20]) to his Report to the Security Council ([21]). These assessments are

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[19]) It is just the case to remind that a Support Account for Peace-keeping Operations has been established in 1990 in order to meet the need to supplement the human resources that are provided under the regular budget for the backstopping of for the various operations. (Administrative and Budgetary Aspects of the Financing of the United Nations Peace-Keeping Operations: Financing of the United Nations Peace-Keeping Operations. Support Account for Peace-Keeping Operations, Report of the Secretary-General, UN Doc. A/48/470/Add. 1, 27 May 1994).

[20]) UN/S/1995/97/Add. 1, 6 February 1995.

[21]) UN S/1995/97, 1 February 1995.

usually not very detailed due to the difficulties of an early precise estimate ([22]) and to a certain fear of the Secretariat that the Security Council could pare the mission in case of high costs. In any case since 1994 a standard cost manual for the equipment and materials employed in peace-keeping operations has been developed in order to have standard cost parameters in the earliest stages of a mission ([23]).

After the enabling resolution of the Security Council authorizing the establishment of the operation the Secretary-General submits a report on the financing of the mission to the General Assembly. This report is prepared by the Peace-keeping Financing Division in the Office of Programme Planning, Budget and Accounts. It is based on the resource requirements submitted by Finance Management and Support Service of the Field Administration and Logistics Division of the Department of Peace-keeping Operations.

This report is presented to the Advisory Committee on Administrative and Budgetary Questions (ACABQ), which refers to the General Assembly. During the hearings concerning the budget proposal the ACABQ can ask the Secretary-General to review of the budget and submit a modified report to the General Assembly. The report is first examined by the Fifth Committee of the General Assembly, which refers to the General Assembly proposing a draft decision. The General Assembly approves the budget by *consensus*.

The functioning of the mechanism can be seen through a concrete example. On August 24th, 1993, the Security Council decided to establish by its res. 858 the United Nations Observer Mission in Georgia (UNOMIG) for a period of six months. The cost of the mission, after an early assessment made by the Secretary-General in his Report of 7 July 1993 ([24]), was estimated at months $ 16,195,000 for the first six

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[22]) On the difficulties which can be faced by the Secretary-General in this phase see SCHOETTLE, *Financing UN Peacekeeping, op. cit.*, p. 29.
[23]) For a more detailed exam of the content of the standard cost manual, see the Final Report on the in-depth evaluation of peace-keeping operations: start-up phase of the Office of Internal Oversight Services (UN/E/AC.51/1995/2, 17 March 1995).
[24]) UN/S/26023/Add.1, 7 July 1993.

months and a monthly cost thereafter of $ 1,950,000 ([25]). Subsequently the composition of the Force was drastically reduced due to the serious disagreements which developed between the parties concerned. The costs were thoroughly reviewed. In the Secretary-General's Report to the General Assembly on the Financing of the UNOMIG they were fixed at $ 2,198,400 gross for the period from its inception on 24 August 1993 to 31 January 1994 ([26]). This report was reviewed by the ACABQ which reported to the General Assembly ([27]). Within the General Assembly the issue was examined by the Fifth Committee and reported to the plenary session with the recommendation of the adoption of a resolution ([28]). On that recommendation the General Assembly adopted a decision on the financing of the Force which authorized expenses for $ 2,680,100 for the period from 24 August 1993 to 31 March 1994 ([29]). In the same decision the General Assembly proceeded to the apportionment of the expenses in accordance with the procedure already mentioned.

Every time the mandate of a mission is extended the procedure is repeated. In the case of UNOMIG for example, after the decision of the Security Council to continue the mandate, the Secretary-General presented a few new reports on financing the mission ([30]) and the General Assembly approved the relative resolutions ([31]). According to this procedure the General Assembly, and the other organs, can be called many times a year to review the budget of a peace-keeping operation, involving all the relative workload.

Facing this problem the General Assembly recently approved a budget cycle reform ([32]) according to which the budget of those operations which are not subject

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25) UN/S/26250/Add. 1, 6 August 1993.
26) UN/A/C.5/48/40, 9 December 1993.
27) UN/A/48/778 and UN/A/48/781.
28) UN/A/48/823, 23 December 1993.
29) UN/A/48/475, 23 December 1993.
30) See for example the UN/A/48/699/Add. 1, 24 March 1994. In this type of report the Secretary-General also recognizes the status of contributions to the mission.
31) UN/RES/A/49/231, 23 December 1994.
32) UN/RES/A/49/233, 23 December 1994 *(Administrative and Budgetary Aspects of the Financing of the United Nations Peace-keeping Operations)*.

to fluctuation will be considered for approval once a year. The other operation budget estimates will be considered and approved twice a year. This new regime, which introduces an annual budget cycle, has to be fully operational not later than 1 July 1996. Other changes and improvements in the standardization of the budget process and format were also introduced ([33]).

A particular problem is posed by the financing of the "start-up or expansion phase" of each operation. The need of a rapid deployment and the unforseeable developments on the field do not conform to the slow procedure just described. In many cases the Secretary-General has been called to establish an operation without the backing financial commitments of the General Assembly and with a very limited independent financial authority. Examples are the beginning of the peace-keeping operations in Cambodia and Yugoslavia in 1992.

This issue poses two problems: the short-time availability of financial resources and the financial authority to appropriate them.

The General Assembly decided to establish with a Peace-keeping Reserve Fund with its resolution 47/217 of 23 December 1992. The Fund, effective since 1 January 1993, is placed under the authority of the Secretary-General and is designed to work as a cash-flow mechanism to ensure the Organization's rapid response to the needs for peace-keeping operations. The level of the Fund was set at 150 million US dollars which were collected from surpluses both in the regular budget and in the budgets of some peace-keeping operations. A misuse of the Fund due to the borrowing from its resources to meet cash shortages in ongoing peace-keeping operations prevented its proper working. A recent Secretary-General proposal of increasing the level of the Fund to $ 800 million has been rejected by the General Assembly which has maintained the Fund at its present level ([34]).

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[33]) A mock-up budget for a single operation which reflects the modification requested by the General Assembly was presented by the Secretary-General on 1 August 1995 (UN/A/50/319).

[34]) UN/RES/A/49/233, 23 December 1994 *(Administrative and Budgetary Aspects of the Financing of the United Nations Peace-keeping Operations)*.

With regard to the second aspect, i.e. the financial authority in the "start-up or expansion phase", the General Assembly recently authorized the Secretary-General to enter into commitments not to exceed 50 million US dollars per decision of the Security Council relating to peace-keeping operations. This financial authority is limited by the rule that the cumulative total of outstanding commitment authority must not exceed 150 million dollars at any one time. If the Secretary-General were called on to enter into commitments exceeding $ 50 million per decision or a total of $ 150 million, the matter would have to be examined by the General Assembly.

III. Financing OSCE peace-keeping operations

The methods of financing peace operations by the Organization for Security and Cooperation in Europe present features which are very different from those just described. An attempt to sketch the framework of the OSCE peace operations and their funding requires a look at the peculiar legal nature of this Organization. While it is not possible in this context to assess the legal value of the OSCE arrangements ([35]), some conclusions will be drawn at the end of this section.

The regular budget of the OSCE will be considered first, then the special provisions concerning funding of field activities, particularly peace-keeping operations carried out by the Organization.

The not yet completely institutionalized character of the Organization, the elementary management of its financial resources and its recent involvement in field activities suggest a preliminary examination of the Organization's regular

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[35]) See CONDORELLI, L., Diritto e non diritto nella CSCE, in BARBERINI, G., RONZITTI, N., La nuova Europa della CSCE, Milano, 1994, pp. 47 ff.

budget. This will give a more complete picture of the financial framework in which the field activities are carried out ([36]).

III.1. Until 1990 the Conference on Security and Cooperation in Europe lacked any institutional apparatus. It worked as a diplomatic conference whose subsequent sessions were pragmatically decided at the end of each meeting. During this period the need for a real institutional budget never emerged. The only expenses were of an organizational nature. Financial arrangements only of a very limited scope were made.

The issue of financing the Conference was dealt with in the 1972-73 Multilateral Preparatory Talks for the Conference of Helsinki. The work of the Committee was formalized in a "Blue Book" ([37]), which set the blueprint and the procedural aspects of the Helsinki Conference. This text also governed the subsequent follow-up meetings.

According to these regulations a very simple system of financing was established. The necessary expenses were to be covered in advance by the country which was hosting the Conference and subsequently reimbursed by the participating States as allocated by a cost-sharing scale (rules 92-96). This scale of distribution divided the participating States into 7 groups, contributing from a maximum of 8.80 per cent of the budget to a minimum of 0.20 per cent (rules 89-91) ([38]).

The funds were mainly devoted to the costs of the Executive Secretary, the embryonic but non-permanent administrative body of the Conference. The Executive Secretary was assigned the tasks of organizing the administrative and technical

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[36]) The issue of the financial aspects of the CSCE/OSCE does not seem to have received attention in the literature except for some very short remarks in the general presentations of the Conference.

[37]) See Final Recommendations of the Helsinki Consultations, Helsinki, 8 June 1973, reproduced in Bloed, A. (ed.), From Helsinki to Vienna: Basic Documents of the Helsinki Process, Dordrecht/Boston/London, 1990, pp. 39 ff.

[38]) For the negotiating history of this arrangement see FERRARIS, L.V., Testimonianze di un negoziato. Helsinki - Ginevra - Helsinki 1972 - 75, Padova, 1977, pp. 211 ff.

services of the Conference and recruiting the necessary staff. He was also responsible for the financial administration of the Conference, as indicated by rule (76):

> The Executive Secretaries will work under the authority of the Conference and report on their activities to the appropriate body of each stage of the Conference, especially on financial matters.

These provisions also governed the Follow-up Meetings of the CSCE and in particular the Meetings of Belgrade (1977-1978), Madrid (1980-1983), Vienna (1986-1989) ([39]) and the summit-level Conference in Paris (1990) ([40]).

An important development which was a turning point in the history of the Conference occurred during the Paris Conference ([41]). In Paris the organization and the structure of the Conference were thoroughly examined. For the first time in the CSCE process permanent offices and centres were created, institutionalizing their functions.

The establishment of these structures raised the issue of funding and of recruiting personnel. To maintain the intergovernmental character of the Conference and its agile structure and to reduce costs, it was agreed that most of the personnel, particularly all the professional officers, would be seconded by national governments ([42]). The introduction of a more sophisticated system of financial management became necessary and a budgetary procedure was established. A cost-sharing arrangement divided expenses among the seconding countries; the

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[39]) A particular scale of assessment was established in the Vienna Meeting for the framework on Conventional Armed Forces in Europe among the States participating in this negotiation.

[40]) See for example the 1980 Purple Book on the organization of the Madrid Follow-up Meeting, reproduced in SIZOO, J., JURRIENS, R. Th. (eds.), CSCE Decision-Making: the Madrid Experience, The Hague/Boston/Lancaster, 1984, pp. 290 ff.

[41]) For the developments introduced with the Paris Summit see LEHNE, S., The CSCE in the 1990s. Common European House or Potemkin Village?, Wien, 1991.

[42]) See *Charter of Paris for a New Europe. Supplementary Document to Give Effect to Certain Provisions Contained in the Charter of Paris for a New Europe*, Section I.H. (Procedures and Modalities Concerning CSCE Institutions), reproduced in International Legal Materials, 1991, pp. 215 ff.

country hosting the concerned institution; and the Conference itself ([43]). An up-to-date scale of distribution was also approved ([44]).

Afterwards the Prague Meeting of January 1992 and the Helsinki Summit of July 1992 introduced changes in the organization of the CSCE, adding more structure and wider articulation of its offices and institutions ([45]). These developments had important ramifications for the financial organization of the Conference. In the Conference of Helsinki for the first time an entire section of the final document was devoted to the administrative and financial arrangements ([46]). This document dealt with the following aspects:

- the establishment of a new scale of distribution;
- the structuring of a budget for the permanent offices of the Conference; and
- the organization of a budget procedure for the CSCE meetings.

These provisions with slight amendments, constitute the framework for the current financial system of the Organization for Security and Cooperation in Europe.

During the process of institutionalization a group with financial competence was established: the Financial Committee of Experts. This Informal Committee is called upon "to deal, inter alia, with the issues of budgets, cost savings and staffing". The Informal Financial Committee of Experts reports to the Committee of Senior Officials (CSO). The Financial Committee meets quarterly, in conjunction with but prior to the meetings of the Committee of Senior Officials ([47]).

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[43]) Ibidem.
[44]) Ibidem, Section III (Financial Arrangements of the CSCE and Cost-Effectiveness).
[45]) On the new organization see RONZITTI, N., The Conference on Security and Cooperation in Europe and its Institutions, in The International Spectator, 1993, pp. 31 ff.
[46]) We refer to Section XII (Administrative Decision) of the Helsinki Summit Decisions, reproduced in International Legal Materials, 1992, pp. 1419 ff.
[47]) Ibidem par. 1.

The next issue to be resolved was a review of the scale of assessment. The need for a new scale of distribution was triggered by the enlargement of the Conference when new States emerged from the political developments in Central and Eastern Europe. The new cost-sharing distribution ([48]) envisages a group of six States (France, Germany, Italy, Russian Federation, United Kingdom, United States), each contributing 9% of the budget for a total 54% of the budget. The remaining 46 States were divided into 13 different contributing groups with a minimum of 0.15% of the budget for the micro-States. Each time a new State is admitted to the Organization, the scale of distribution is adjusted by a decision of the Permanent Council ([49]).

The Helsinki Summit had important consequences for the finances of the Conference. The Conference's reshaped organizational structure resulted in the creation of new institutions such as the High Commissioner for National Minorities (HCNM) and the Secretary-General. Other institutions created in the Paris Summit and its aftermath were consolidated, as the Office for Democratic Institutions and Human Rights (ODIHR), the Conflict Prevention Centre (CPC) and the CSCE Secretariat.

In this regard a distinction emerged between funding the permanent offices and centres, and funding the expenses for the organization of meetings and *ad hoc* conferences.

Concerning the former, the permanent offices were financed through the assessed contribution of the participating States, except for the seconded personnel which remained the financial responsibility of the national governments. A very simple budget procedure was set up. The budget numbers from the various offices of the Organization are first reviewed by the aforementioned informal

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[48]) Ibidem parr. 3-4.
[49]) See, for example, Decision No. 82 of the Permanent Council of 2 November 1995, PC Journal No. 42.

Financial Committee of Experts. Then the Senior Committee evaluates and approves the budget during its end of the year session ([50]). During the financial year the budget is usually revised through a decision of the Permanent Council ([51]).

The 1995 budget serves as an example. The 1995 budget proposals were presented by the Secretary General, through the Office of Administration and Budget of the Secretariat, on 13 September 1994 ([52]) and subsequently on 11 October 1994 ([53]). After the review of the informal Financial Committee this budget was approved by the Committee of Senior Officials in its meeting of 18 November 1994 ([54]) and afterwards revised during the first months of 1995 consistent with the outcome of the Budapest Summit. It was adopted by the Permanent Committee in its revised version at its meeting of 6 April 1995 ([55]). A further review was completed in July ([56]).

For 1995 the total proposed budget except for the missions was 196,079,387 Austrian Shillings, divided into four main funds:

- the General Fund: the CSCE Secretariat;
- the Office for Democratic Institutions and Human Rights (ODIHR);
- the High Commissioner on National Minorities; and
- the Funds Relating to the Conflict in Nagorno-Karabakh.

To these funds must be added the mission funds, amounting to around 117,000,000 Austrian Shillings, for a total budget of over 312,000,000.

The expenses for the organization of meetings and *ad hoc* conferences are addressed in the Helsinki 2 Document. A detailed procedure was created to approve and appropriate their costs. This financial mechanism is not to be followed for the

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[50]) The regular budget of the CSCE is very limited, for example, in 1993 it amounted to around 150.000.000 Austrian Shillings (around 13 million US Dollars).
[51]) These aspects and all the technical details of the budget procedure are governed by the Financial Regulations of the Organization.
[52]) Document 705/94 of the Secretary General of 13 September 1994.
[53]) Document *The 1995 Budget Proposals* of the Secretariat of 11 October 1994.
[54]) See 29-CSO/Journal, 18 November 1994.
[55]) See PC/Journal No. 15, 6 April 1995.
[56]) See OSCE Mid-Year Review 1995, PC.DEC/64, Annex, 25 July 1995.

CSCE meetings organized in the framework of the Secretariat, or for ODIHR activities whose costs are covered by their relative institutional budgets. This procedure is based on the system of an advance by the governments which host the meeting and reimbursement by the participating States. According to the Helsinki 2 Decisions, the procedure must be characterized by the principles of cost-effectiveness and transparency ([57]).

III.2. We will now examine the funding of the missions carried out in the framework of the OSCE.

Since 1992 the CSCE has entered a new phase of its history. From the Helsinki Summit forward, the tasks and activities of preventive diplomacy, crisis management and conflict resolution have become the primary focus of the Conference ([58]). Its relative competence and powers were codified in Chapter III ("Early Warning, Conflict Prevention and Rapporteur Missions and CSCE Peacekeeping") of the Helsinki Decisions of 1992.

The CSCE developed a wide range of missions in the field following its first 1991-1992 actions in Albania and other newly admitted States ([59]). The Conference assumed a strong operational role which had been extraneous to its history and practice up to that point.

These missions may be distinguished here by their funding ([60]). From this perspective three kinds of missions emerge:

i) the short-term missions;

ii) the long-term missions;

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[57]) Section XII (Administrative Decision) of the Helsinki Summit Decisions, parr. 4-12, cit.

[58]) See, for example, ROTFELD, A. D., In Search of a Political Settlement. The Case of the Conflict in Moldova, in The Challange of Preventive Diplomacy. The Experience of the CSCE, Stockholm, 1994, p. 104.

[59]) On these missions, see HÖYNCK, W., CSCE Missions in the Field as an Instrument of Preventive Diplomacy - Their Origin and Development, in Ibidem, pp. 56 ff.

[60]) For an examination of these mission see, in this volume, ROSAS, A., OSCE Long-Term Missions.

iii) the peace-keeping missions.

The principle of collective financial responsibility of the participating States is generally valid for each type of mission. Differences occur in the mechanisms, procedures and importance of the funding.

i) According to the Guidelines for financing CSCE missions adopted by the Committee of Senior Officials in September 1992 ([61]), the short-term missions include both the fact-finding and rapporteur missions under paragraphs (12) - (16) of Chapter III of the Helsinki Document ([62]) and the urgent missions undertaken at the request of the Chairman-in-Office. The former missions are financed from the budgets of the appropriate institutions. The expenses of the urgent missions of the Chairman-in-Office are covered by the CSCE Secretariat. The costs which have been pre-paid by one participating State will be refunded ([63]). The expenses of a mission to be covered collectively include the following categories of costs: travel costs to and from the mission area and within the mission area, communication charges, board and lodging, fees for independent experts, insurance, interpretation and other additional expenses ([64]).

ii) The long-term missions such as those to Skopje, Georgia, Estonia, Moldova, are a flexible instrument which can accomplish a wide range of tasks.

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[61]) See 16-CSO/Journal No. 3, Annex 3.

[62]) For these missions in the Helsinki Decisions (Section III.16)an explicit reference is made to the principle of collective responsibility:

> Except where provided on a voluntary basis, the expenses of fact-finding and rapporteur missions will be borne by all participating States in accordance with the scale of distribution.

[63]) A peculiar cost-sharing arrangement has been agreed on for the rapporteur missions under the Moscow Mechanism. The funds which are advanced by the ODIHR are subsequently refunded by the participating State or States that have requested the establishment of the mission. In case of the appointment of experts or rapporteurs pursuant to a decision of the Senior Council, the expenses are covered by all the States in accordance with the usual OSCE scale of distribution of expenses (See Chapter I.14 of the Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect for Human Rights, Pluralistic Democracy, the Rule of Law, and Procedures for Fact-Finding, Moscow, 3 October 1991, reproduced in International Legal Materials, 1991, pp. 1676 ff.).

[64]) See Guidelines for cost-sharing relating to short-term CSCE missions, in 24-CSO/Journal No. 3, Annex 5.

These missions, strictly speaking, are not provided for in the framework of the Helsinki Decision on Early Warning, Conflict Prevention and Crisis Management, Peaceful Settlement of Disputes. Thus there are no general express provisions concerning their funding ([65]). The practice of the Organization has been to cover the costs of these missions on a case by case financial appropriation. Each time a mission is established, an *ad hoc* budget is approved.

Here the budget procedure requires the Head of the Mission, in close co-operation with the Secretariat, to prepare a financial proposal based on estimated costs to be submitted to the Informal Financial Committee. After the review of the Financial Committee, the proposal is submitted to the relevant OSCE body for approval ([66]).

The peculiar structure of the OSCE envisages the parallel existence of three bodies, the Ministerial Council, the Senior Council and the Permanent Council, which in a "Chinese box" style have very similar competences. This structure implies that all three organs may establish a mission and approve its budget. In the practice of the Organization, the establishment of a long-term OSCE presence is usually approved by the Ministerial Council or by the Senior Council ([67]). These organs can proceed either to approve the budget directly or to delegate its elaboration and approval to the Permanent Council. This forum, due to its permanent nature, seems the most suitable organ to conduct the review of all the administrative and financial aspects of a mission.

There are examples of these procedures. In the Mission to the Republic of Moldova the Senior Council, which at that time was still named Committee of Senior Officials, after having established the mandate of the mission, acted thus:

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[65]) See ultra in this volume, ROSAS, A., OSCE Long-Term Missions.
[66]) See Guidelines for cost-sharing relating to long-term CSCE missions, in 24-CSO/Journal No. 3, Annex 4.
[67]) For example, the Chechnya Assistance Group was established by the Permanent Council (see OSCE Press Release, No. 24/95).

> The Committee of Senior Officials,
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> ...
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> 4. Further requested the CSO Vienna Group ([68]) to elaborate and approve by 15 March 1993, on a preliminary basis, the terms of reference and budget for the Mission, taking into account the recommendations of the Personal Representative of the Chairman-in-Office. The terms of reference and budget will be submitted to the CSO for final approval at its next Meeting ([69]).

A similar decision was recently made when the OSCE Mission to Bosnia and Herzegovina was established. In this case the Ministerial Council after considering a draft budget directed "the Permanent Council to agree before 15 January 1996 on a budget... ([70])".

Once the budget is approved the OSCE Secretariat notifies the participating States of their assessed share of the total costs for each mission based on the scale of distribution, and requests payment.

The costs which are usually covered are both establishment costs for vehicles, communication and office equipment, and operational costs for travel, office rents, board and lodging and salaries for locally hired personnel.

The Osce missions as the United Nations peace-keeping missions present a start-up funding problem. The solution is fairly similar. A separate budget item for initial costs for long-term missions has been established in the regular budget of the Conflict Prevention Centre ([71]). In 1994 and 1995 this Fund was set at 3,000,000 Austrian Shillings. Financial authority is given to the Secretary General of the Organization for expenses in the star-up phase. The Mission to Bosnia and Herzegovina was thus provided for:

> Before the budget is agreed, the Secretary General is authorized to engage the OSCE on urgent procurement orders and contracts concerning premises for the Mission up to 20% of the above-mentioned cost estimate ([72]).

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[68]) The Permanent Council did not exist at that time and the CSO Vienna Group performed analogous functions.

[69]) CSCE/19-CSO/Journal No. 3.

[70]) Decision No. 1, OSCE Action for Peace, Democracy and Stability in Bosnia and Herzegovina, OSCE Ministerial Council, Budapest 1995, MC (5) Journal No. 2.

[71]) The budget for the Conflict Prevention Activities are part of the General Fund.

[72]) *Ibidem*.

In 1995 the budget for these missions, including the Sanctions Co-ordinator and Sanction Assistance Missions, was over 117,000,000 Austrian Shillings ([73]), around 38% of the total budget.

iii) Close attention is paid to the funding of peace-keeping operations in the Helsinki Document.

The organization, the deployment and the operational activities of a peace-keeping force imply high costs. The wider number of personnel involved, the presence of a predominant military component with weapons and logistics, the usually long-term schedule make the costs of a peace-keeping operation much higher than those of any other mission carried out by the OSCE.

The matter of funding peace-keeping emerged in recent years as one of the most sensitive issues. Considering the United Nations' negative experience, the CSCE's concern is that an uncertain financial basis could endanger the peace-keeping activities of the Organization. A general provision on funding peace-keeping was thought necessary and it was introduced in the Helsinki Document:

> Peacekeeping operations require a sound financial basis and must be planned with maximum efficiency and cost-effectiveness on the basis of clear cost projections ([74]).

The Helsinki Document reiterates the principle of collective financial responsibility and establishes an annual budget cycle:

> Costs of CSCE peacekeeping activities will be borne by all CSCE participating States. At the beginning of each calendar year, the CSO will establish a reasonable ceiling for the cost of peacekeeping operations to which the CSCE scale of distribution will be applied. Beyond that limit, other special arrangements will be negotiated and agreed to by consensus. Full and timely payments will be required ([75]).

In this way the Organization establishes an annual budget process for peace-keeping through the projection of the financial implications that such

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[73]) See Revised 1995 Budget, Permenent Council, Journal No. 15, 6 April 1995, Annex 1.

[74]) Par. 46, Section III (Early Warning, Conflict Prevention and Crisis Management (Including Fact-Finding and Rapporteur Missions and CSCE Peacekeeping), Peaceful Settlement of Disputes) of the Helsinki Summit Decisions, cit.

[75]) Par. 47, *ibidem*.

operations would have for the OSCE. This measure is accompanied by the establishment a start-up fund:

> A start-up fund will, if appropriate, be established to cover the initial costs of an operation. Contributions by a participating State to the start-up fund will be deducted from that State's regular assessed share of the costs relating to the operation ([76]).

Given the lack of practice of the Organization in this field, it is difficult to assess the application of these rules. In any case the "Guidelines for cost-sharing relating to long-term CSCE missions" seem to be fully applicable also to the peace-keeping operations ([77]). Thus with regard to the budget procedure it is possible to refer to the mechanisms already described for the long-term missions. In the Helsinki Decisions it is just indicated that "financial accountability will be ensured by the Chairman-in-Office through regular reports to the participating States" ([78]).

There has not yet been a true peace-keeping practice in the Organization. It is, however, of interest to review the proposals and the activities carried out by the Organization in the OSCE action in relation to the Nagorno-Karabakh conflict.

In the Budapest Summit of 1994 the Conference considered the possible deployment of a multinational peace-keeping force whether a peace settlement would have been reached in the Nagorno-Karabakh conflict. To this aim a High Level Planning Group was established to make recommendations on "the size and characteristics of the force, command and control, logistics, allocation of units and resources, rules of engagement and arrangements with contributing States" ([79]).

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[76]) Par. 50, *ibidem*.
[77]) Cit.
[78]) Par. 49, Section III (Early Warning, Conflict Prevention and Crisis Management (Including Fact-Finding and Rapporteur Missions and CSCE Peacekeeping), Peaceful Settlement of Disputes) of the Helsinki Summit Decisions, cit.
[79]) See Decisions (II. Regional Issues - Intensification of CSCE action in relation to Nagorno-Karabakh conflict) of the Budapest Summit, 6 December 1994, reproduced in International Legal Materials, 1995, pp. 764 ff.

The High Level Planning Group (HLPG) was formed on the 20th of December 1994 and began working a few months later ([80]). A considerable amount of finances was allocated for operating of the HLPG ([81]) and for supporting of the diplomatic activities of the OSCE in the region ([82]).

The HLPG prepared different options of involvement of the Organization in the Nagorno-Karabakh region. In any case most of the different models proposed foresaw a deep involvement of the Organization. The most suitable option would comprehend a planned force between 3.000 and 4.000 military and civilian personnel. It would imply very high costs for the Organization. They have been estimated from 93.000.000 to 150,000,000 US Dollars a year according to the strength of the Force ([83]).

These high costs constitute a matter of deep concern for the Organization, which was clearly express by the Chairman-in-Office. In the meeting of the Senior Council of 31 March 1995 the issue was debated and the following statement was recorded:

> The Chairman-in-Office called upon the participating States to make concrete commitments of personnel and financial resources and to ascertain the financing of the operation ([84]).

The same concern was expressed by the single delegations:

> A number of delegations noted the importance of the credibility of OSCE action and support for OSCE activities, and the willingness of

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[80]) For the involvement of the OSCE in the Nagorno-Karabakh conflict and on the activity of the High Level Planning Group see VILEN, H., KARIE, M., Preparations of a Peace-keeping Mission for the Nagorno-Karabakh Conflict by the OSCE's High Level Planning Group, in International Peacekeeping, 1995, pp. 106 ff.; GRECO, E., L'Europa senza muri: le sfide della pace fredda. Un anno di Presidenza italiana della CSCE, Milano 1995, pp. 147 ff. and pp. 220 ff.

[81]) In the meeting of 9 March 1995 the Permanent Council approved the budget for the HLPG (staff costs, travel costs, language services...) for the period of 1 January to 31 August 1995 at the level of ATS 6,485,714 (see PC Journal No. 11, 9 March 1995).

[82]) In 1995 the budget allocated for the Minsk Process and the Field Representatives was more than ATS 24,000,000 (see OSCE Mid-Year Review 1995, PC.DEC/64, Annex, 25 July 1995).

[83]) It is worthy of being stressed that this budget is much higher than the whole annual OSCE budget, which for 1995 was equivalent to some 30.6 million US Dollars. The costs planned for the OSCE Mission is comparable to those of a UN peace-keeping operation of similar strenght.

[84]) SC/Journal No. 2, 31 March 1995.

participating States to contribute resources. Participating States were urged to ensure that their resource commitments allow the OSCE to fulfil the role and functions set forth by Heads of State or Government in Budapest ([85]).

In the following months the work of the HLPG continued. In any case due to the political situation on the region and the absence of any definitive agreement among the parties, conditions which would allow the deployment of such a force were still lacking ([86]).

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[85]) Ibidem.

[86]) This evaluation was made in the OSCE Ministerial Council of December 1995, see MC(5) Journal No. 2, 8 December 1995. See more recently "OSCE Chairman-in-Office Travels to Baku and Erewan", Press Release No. 10/96, 28 February 1996.

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THE OSCE MEDITERRANEAN DIMENSION:
CONFLICT PREVENTION AND MANAGEMENT

Roberto Aliboni, Director of Studies
Istituto Affari Internazionali, Rome

Research project on "The OSCE in the Maintenance of International Peace and Security"
Rome meeting, 29-31 March 1996

The institutional environment

The place of the OSCE Mediterranean Dimension today is illustrated in the 1994 Budapest Document, which says that "the participating States decide to intensify the dialogue with the five non-participating Mediterranean States" and provides measures for such reinforcement to be implemented. Despite the political will expressed by the Budapest Document, however, one can hardly believe that the modest role played by the Mediterranean Dimension in the CSCE, since its inception in 1975 as part of the Helsinki Final Act, is going to change substantively in the OSCE. After the Budapest Conference, the measures set out by the Budapest Document have been implemented but only to show that on both sides of the sea basin the notion and the aims of the OSCE Mediterranean Dimension remains weak and uncertain. What Professor Victor-Yves Ghebali had pointed out in 1989[1] remains still today a substantially true picture of the Mediterranean Dimension: the non-member Mediterranean states have the possibility to be given audience by the OSCE member states

[1] "le contenu de la Déclaration sur la Méditerranée se ramenait à une corbeille politico militaire vide, à une corbeille économique rédigée em termes flous, à une vague allusio concernant une hypothétique réduction des forces armées étrangères à la région et, surtout, a principe de la poursuite du dialogue": *La diplomatie de la détente: la Csce d'Helsinki à Vienn (1973-1989)*, Etablissement Emile Bruylant, Bruxelles, 1989, p. 373.

but without any legal (and political) chance to influence the decision-making process in the organisation.

The most serious attempt at shaping out of the CSCE a fully-fledged organisation aiming at cooperation and security in the Mediterranean area - like a fully armed Athena from Jupiter's brain - was the proposal of establishing a Conference on Security and Cooperation in the Mediterranean (CSCM) that the Spanish and the Italian governments put forward in the September 1990 CSCE meeting in Palma de Mallorca. Initiated within the CSCE process, the CSCM -whenever implemented - would have retained a strong political link with the CSCE, though it would have acquired a specific role and a distinctive organisation that would have replaced and enlarged the CSCE Mediterranean Dimension. With respect to the "centre-periphery" model of Euro-Mediterranean relations included in the CSCE, the CSCM model represented an attempt at enhancing Euro-Mediterranean relations by creating two parallel organisations.

Resumed again and again[2], the CSCM proposal has never been implemented so far (and probably it will never be so). Meanwhile, two unrelated political-institutional developments are now envisaging -like the CSCE - conflict prevention and management in the Mediterranean: the peace process in the Middle East, initiated by the 1991 Madrid Conference, and the Euro-Mediterranean Partnership, started only recently by the November 1995 Barcelona Conference. Eventually, they might implement the CSCE/CSCM legacy.

The multilateral dimension of the Middle East peace

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[2] Eventually by the Inter-Parliamentary Union, IUP, which organised two non-governmenta CSCM sessions, first in Malaga (15-20 June 1992: see *Bulletin Interparlementaire*, No. 2, 1992 and then in Valletta (1-4 November 1995: see Union Interparlementaire, IIe Conférenc Interparlementaire sur la Sécurité et la Coopération en Méditerranée, *Document Final*, La Vallett (Malte), 1er-4 Novembre 1995).

negotiations includes the Working Group on Arms Control and Regional Security (ACRS), which in the last years brought forward a non-conclusive but important work in parallel to political negotiations. On the other hand, the Euro-Mediterranean Partnership aims at establishing a "zone of peace and security" by working out a shared policy of conflict prevention and management in the Mediterranean. The emphasis is on two different though overlapping areas, the Middle East and the Mediterranean, and while it is on conflict resolution in the Middle East, conflict prevention seems to prevail in the Mediterranean.

Given the importance of both economic and cultural cooperation in the Euro-Mediterranean Partnership, the latter seems to emerge as the framework that may borrow the most from the CSCE/CSCM blueprints. However, the role of economic cooperation within the Middle East peace process (i.e. the multilateral Regional Economic Development Working Group, REDWG, and the MENA Economic Summit process) cannot be overlooked either.

At this point in time, it is not up to anybody to say what will be the institutional framework wherein the "Mediterranean Dimension" will really be evolved, whether in the OSCE, in the Middle East peace process or in the Euro-Mediterranean Partnership (with its related WEU Mediterranean Dialogue), or eventually in the NATO Mediterranean Dialogue (and the emerging proposal for a Partnership for Mediterranean). What can be clearly understood, however, is that the questions related to the implementation of the OSCE Mediterranean Dimension must be regarded in a sort of competitive institutional environment - a development that is not that new in the post-Cold War era. In other words, one possible response to questions related to crisis prevention and management in the OSCE Mediterranean Dimension can

well be that Mediterranean crisis prevention and management could better take place elsewhere or in combination with other institutional contexts.

In this moving institutional landscape, the future of conflict prevention and management in the OSCE Mediterranean Dimension can be taken into consideration from two different points of view. One can wonder whether the longstanding Mediterranean Dimension included in the CSCE and inherited by the OSCE will be able to develop into something more solid than what it has been so far. Otherwise, one can inquire whether, more broadly speaking, the fundamental experience made in the CSCE/OSCE conflict prevention and management can be translated - and to which extent - to the Mediterranean, within the OSCE as well as other institutional frameworks.

This paper proceeds on the second path. It discusses conflict prevention and management in the Mediterranean indipendently of any given institutional framework and seeks to understand to which extent conflict prevention and management experiences made in the CSCE/OSCE (and elsewhere) can be brought to bear in the Mediterranean environment. After this discussion, though, it goes back to the issue of the institutional framework.

Lessons from the CSCE/OSCE and insights from the CSCM

There are transformations taking place in the shift from the CSCE to the OSCE worth being reminded here. The CSCE was a large-scale, politically-binding conference diplomacy in which the emphasis fell on conflict avoidance[3] by mean of arms control and the establishment of CBMs. The OSCE is an institution with the

[3] For the notion of conflict avoidance see Luc Reychler, "The Art of Conflict Prevention" in Werner Bauwens, Luc Reychler (eds.), *The Art of Conflict Prevention*, Brassey's Atlantic Commentaries No. 7, Brassey's, London, New York, 1994 pp. 1-21.

legal task of preventing and - to a less clear extent - managing crises.

Because of the end of the Cold War, conflict avoidance purposes are truly marginal within the OSCE today. The three generations of CBMs that were worked out within the CSCE in 1975 (Helsinki Final Act), 1986 (Stockholm Document) and in 1990-1992 (the two Vienna Documents) "have become a routine matter of military cooperation in the framework of the European Security Forum", according to Hans Günter Brauch. The same author notes that the CBMs are just of no use with respect to the new kind of conflicts that emerged in Europe with the end of the Cold War: "they did not yet address the new violent conflicts both with respect to their prevention and post-conflict peace-building"[4].

The structures and the institutions established within the OSCE clearly show the importance and preminence acquired by crisis prevention and management, in tune with the transformation of the European security context (from a world of overwhelming military threats to one in which societal and cultural risks tend to prevail and low-intensity violent conflicts are erupting): the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Conflict Prevention Centre included in the Vienna Secretariat, the varying OSCE missions (essentially related to prevention and post-conflict peace-building), and the High Level Planning Group which plans the OSCE peace-keeping force for Nagorno-Karabakh.

How much is this CSCE/OSCE evolution relevant to the Mediterranean/Middle East situation? With the end of the Cold War and the beginning of the peace process in the Near East, the

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[4] Hans Günter Brauch, "Confidence (and Security) Building Measures: Lessons from the CSC Experience for the Western Mediterranean", in Antonio Marquina and Hans Günter Brauch (eds.) *Confidence Building and Partnership in the Western Mediterranean. Tasks for Preventive Diplomac and Conflict Avoidance*, UNISCI, Papers No. 1, Madrid, 1994, pp. 185-228.

(North-South) Mediterranean and Middle Eastern security context has changed in the same direction of the European one, i.e. from a context in need of conflict avoidance[5] through one mostly in need of conflict prevention and management. To be sure, there is a debate about CBMs within the framework of the (South-South) Middle Eastern peace process to which the CSCE has some relevance[6], but the risks which by far command the stage are socio-economic, cultural and political in their character and what is clearly in order is preventive diplomacy (i.e. "concerted action designed to resolve, manage or contain disputes before they become violent"[7] including some management and containment of conflicts underway[8]), conflict prevention (actions aiming "at the supposed roots of ... conflict: poverty, environmental degradation, overpopulation, resource competition, and lack of

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[5] During the Cold War the Mediterranean and the Middle East were conspicuous beside othe areas as possible sources of "horizontal escalation". However, no conflict avoidance effort wa pursued in the Mediterranean Dimension of the OSCE. On the other hand, non-CSCE efforts t establish measures of confidence and arms control at sea were pursued only to a very limite extent (see Marco Carnovale, guest ed., Special issue on "Naval Arms Control and Maritime Security in the Mediterranean", The International Spectator, 28, 4, 1993.

[6] Hans-Heinrich Wrede, "Applicability of the CSCE Experience to the Middle Eastern Conflic Area", *The Jerusalem Journal of International Relations*, 14, 2, 1992, pp. 114-22.More in general see: Geoffrey Kemp, *The Control of the Middle East Arms Race*, Whashington DC, Carnegie Endowmen for International Peace, 1991; Shai Feldman (ed.), *Confidence Building and Verification Prospects in the Middle East*, The Jaffee Center for Strategic Studies, The Jerusalem POst Westview Press, Jerusalem & Boulder (Co.), 1994; Mohamed Nabil Fahmy, "Egypt's Disarmamen Initiative", *The Bulletin of the Atomic Scientists*, November 1990; Gerald M. Steinberg, "Middl East Arms Control and Regional Security", *Survival*, vol. 36, No. 1, Spring 1994, pp. 126-141 Ariel Levite, "Confidence- and Security-Building Measures in the Middle East", in Chantal D Jonge Oudraat (ed.), *Conference of Research Institutes in the Middle East. Proceedings of th Cairo Conference (18-20 April 1993)*, UNIDIR, United Nations, New York and Geneva, 1994, pp. 97 102.

[7] Stephen John Stedman, 'Alchemy for a New Order. Overselling "Preventive Diplomacy"' *Foreign Affairs* (New York), 74, 3, May-June 1995, pp. 14-20.

[8] Margaretha af Ugglas, 'Conditions for Succesful Preventive Diplomacy', in Ministry fo Foreign Affairs, *The Challenge of Preventive Diplomacy. The Experience of the CSCE*, Stockholm 1994, pp.11-32.

legitimate institutions"[9]) and crisis management, particularly in the form of post-conflict peace-building.

In this sense, while the CSCE experience may be of some value to the on-going peace process in the Near East within the framework of the ACRS, in as much as the broader Mediterranean context (more or less the context singled out by the Barcelona process) is concerned what is relevant is the on-going OSCE experience with crisis prevention. In particular, it must be noted that the idea of a Pact of Stability (Euro-Mediterranean Pact in the Barcelona Declaration wording) is sketched out by the Barcelona Declaration and is supported by European governments, especially France's.

This may be an important indication for those who have now the task of putting wine in the empty bottle of the "area of peace and stability" envisaged by the Barcelona process. However, governments have to account for lasting fundamental differences in the two frameworks, the European and the Mediterranean. To begin with, these differences can be pointed out by referring to the intellectual process which has accompanied the debate on the CSCM.

The CSCM's intellectual contribution has been admirably summarized by José A. Sainz de la Peña[10] in reporting the debate which supported the working out of the CSCM proposal in Spain:

> Two main differences were found when trying to adapt the CSCE system to the Mediterranean. Firstly, due the risk of military confrontation in Europe, the security "basket" had priority in the CSCE. Whereas in the Mediterranean, other "baskets" such as Cooperation and Human Rights were emphasized because of the great disproportion in the military capacity between the

[9] Stedman, *op. cit.*

[10] "Confidence Building Within the Frame of Cultural Dialogue", in Antonio Marquina and Han Günter Brauch (eds.), *op. cit.*, pp. 245-256.

north and south shores.

Secondly in the CSCE there was a great cultural homogeneity among the participants who shared the same system of values. Whereas in the Mediterranean both shores had different cultures which had been often confronted in spite of common origins, history and a literature based on mutual tolerance.

The second point is most relevant for our discourse. In the OSCE framework, two powerful factors seem to make crisis prevention and management possible - though neither necessarily successful nor applicable or easily applicable (as in the case of former Yugoslavia): (a) countries affected by crises in Central-Eastern Europe are very willing to comply with Western European or, more generally speaking, Western values and goals, as to a lesser or greater extent they are strongly interested in being integrated into Western institutions; (b) both international conflicts and domestic conflicts with international implications are viewed as shared security threats or risks by regional actors, in Central-Eastern as well as in Western Europe.

The same is not true in the Euro-Mediterranean region, where countries on respective shores pursue forms of international cooperation but do not pursue any goal of integration. For example, this is even symbolically portrayed in the EU decisions in relation to future membership whereby a line has been eventually drawn between those countries in Eastern Europe and the Mediterranean (Cyprus and Malta) that are eligible as members of the EU and those that are not and will not (with Turkey maybe somewhat in between).

It may be aptly assumed that this line is also separating two different areas of crisis prevention and management opportunities and policies[11].

[11] It may be noted that the above mentioned line also crosses the OSCE, cutting Russia an large sectors of the CIS out of the more integrative Western-Eastern European core. In thi

While a common integrative ground eases crisis prevention and management in the European scenario within the OSCE, the absence of a common integrative background may make crisis prevention and management in the Euro-Mediterranean area more difficult than in the OSCE circle. This is not to say, however, that crisis prevention and management in the Euro-Mediterranean area cannot be pursued: the fact is that they may require other instruments and ways. There may be other common grounds conducive to crisis prevention and management. For example, in the Middle East both Israel and the Arab states have no other real option than to proceed towards a peaceful arrangement, however warm or cold they may feel about it. Such a context - quite different in its character from the European drive towards integration and probably more impervious to progress - unifies the region and makes crisis prevention and management possible.

Let's try to summarize the conclusions that have been pointed out in this section:

(a) the security context that is prevailing in today's Euro-Mediterranean relations needs a collective effort of crisis management, particularly in the shape of conflict prevention and post-conflict peace-building;

(b) in this sense the Euro-Mediterranean context is similar to the present OSCE context and a Pact of Stability may be put forward in the Mediterranean too;

(c) however, unlike the OSCE, the Euro-Mediterranean context is not predicated on strong tendencies to political and cultural integration; consequently, the policies directed at preventing

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sense, a broader analytical framework could be developed wherein there would be two areas ("Partnership for Peace" area vs. an area including Russia, part of the CIS, part of the forme Yugoslavia and the Mediterranean) to which different conflict resolution schemes would apply.

conflict and the conditions for these policies to succeed must be predicated on common grounds that may be different from what is suggested by the OSCE experience.

These different common grounds must be duly investigated, because understanding what is, or what may be, the shared Euro-Mediterranean security ground (vs. OSCE's) is an essential condition for proceeding to elaborate on what kind of crisis prevention and management is allowed for in the area. In order to understand what common ground would allow for crisis prevention and management in the Euro-Mediterranean framework, an analysis of mutual perceptions of security is needed. This point is dealt with in next section.

The shared Euro-Mediterranean security ground

In this section European and Arab mutual security goals and perceptions are first pointed out. These security goals and perceptions will help defining a common Euro-Mediterranean security ground. The latter should allow for identifying more precisely which actions would fit better with collective security cooperation in the Euro-Mediterranean framework.

As already noted, with the end of the Cold War the threat to Western Europe from the Mediterranean and Middle Eastern areas, mostly in the shape of "horizontal escalation", has come to an end. The security situation which has replaced that prevailing during the Cold War - repeatedly analyzed by the literature[12] and officially received by the Heads of state and government in the meeting of the North Atlantc Council in Rome

[12] Roberto Aliboni, *European security across the Mediterranean*, WEU Institute for Securit Studies, Chaillot Papers, 2, Paris, 1991; José-Luis Buhigas, "Una politica de seguridad para e Mediterraneo", *Revista Española de Defensa*, 29-30, 1990, pp. 78-85; Miguel Angel Moratino Cuyaubé, *La seguridad europea y el Mediterraneo*, Ministerio de Asuntos Exteriores, Informativ 7, 1990.

on 7-8 November 1991 ("The Alliance's Strategic Concept") - is predicated on non-military factors, be they socio-political, economic or cultural in their character. Military risks, like those brought about by unconventional proliferation, are not missing in the Mediterranean picture. However, they are not regarded and perceived as immediate and effective threats. This is shown, for example, by the fact that in Western Europe the development of an anti-missile technology is eventually lagging behind (with the exception of Israel). The reasons Europe feels its security affected with respect to the areas south of the Mediterranean sea are to be found elsewhere.

Three main factors have a security impact on Europe: (a) the demographic reversal taking place between the northern and southern shores; (b) the slow economic growth and high unemployement rates of southern Mediterranean countries; (c) the political vacuum arising from the inability of Arab regimes to broaden their bases by creating the consensuses which would legitimize their regimes and, along with liberal opposition, integrate political Islam within national political systems.

These factors present the EU with increasing migrations and a weak and unstable regional economic neighbourhood. Migration from Muslim countries, particularly those surrounding the Mediterranean basin, brings cultural opposition inside Europe itself. It puts the EU members thorny political and cultural dilemmas. It exposes historical, political and cultural differences towards inter-cultural relations between the EU member states and makes freedom of personal movements within the EU more difficult. As for the economic weakness of the Mediterranean neighbours, it is more and more regarded by the EU as a danger in a world in which globalization seems to go hand in hand with stronger and well balanced proximity (i.e. regional)

relations. While Japan and US economic relations with their respective regional neighbours are reasonably solid and well balanced and mutually reinforcing, the same is not true for EU relations with the Mediterranean and Middle Eastern areas[13].

On the Arab side, the end of the Cold War, the 1990-91 War against Iraq in the Upper Persian Gulf and the beginning of the peace process in the Middle East have changed Arabs' strategic self-perception and their security vision and brought about strong feelings of insecurity and threat. The collapse of the Soviet Union has suddenly and unexpectedly eliminated the only factor which made the attainment of pan-Arab regional claims (Palestine) and international ambitions credible and feasible. Faced by one single superpower, without the possibility to appeal to anybody more against the US, first the Arabs felt they had to participate in the Gulf War beside the US and the UN coalition and, then, they understood there was no way out of the necessity to go to peace with Israel.

Both the Gulf War and the beginning of the negotiations with Israel, however, have reinforced and multiplied domestic political opposition against the regimes in power from many quarters, particularly from nationalist and - most of all - religious groups and parties[14].

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[13] Nazih N. Ayubi (ed.), *Distant Neighbours. The Political Economy of Relations betwee Europe and the Middle East/North Africa*, Ithaca Press, Reading, 1995; I. Bensidoun, A Chevallier, "Les échanges commerciaux euro-méditerranéens", *Economie Internationale* (Paris), 58 1994, pp.111-130 ; Robert Bistolfi (sous la diréction de), *Euro-Méditerranée, une région construire*, Publisud, Paris, 1995, pp. 57-100; Bichara Khader, *L'Europe et la Méditerranée, Géopolitique de la proximité*, L'Harmattan, Paris, 1994, pp. 251-261.

[14] A very good summary of the Arab public opinion's perceptions after the beginning of th Arab-Israeli peace process and its insistence on the use of a double standard by the West agains the Arab and Muslim world has been made by David McDowall, *Europe and the Arabs. Discord o Symbiosis?*, Royal Institute of International Affairs, Middle East Programme, London, 1992; o the impact of the Gulf War see: Salah Bassiouni, "L'impact de la guerre du Golfe sur la politiqu au Moyen-Orient", and Mustapha Sehimi, "Le vecu de la guerre du Golfe", both in Fondation pou les études de défense nationale, *Séminaire sur la sécurité et la coopération en Méditerranée*

Threats to Arab regimes today are no longer and not primarily coming from external sources, like Israel, Western imperialism, tensions within the East-West confrontation and inter-Arab rivalries. To be sure, several of these threats have not yet disappeared nor related perceptions have completely changed. However, threats are stemming primarily from domestic politics. These threats, in turn, are more or less directly related to the new international situation and Western policies. The latter are not of much help to current Arab regimes. UN/US policies in Somalia and European policies with respect to Bosnia or to migrant peoples are regarded by Arab public opinion as anti-Arab or anti-Muslim and tend to reinforce Islamist and non-Islamist oppositions grievances about present Arab governments and their links with the West. Furthermore, the West is not supporting Arab regimes as strongly as the latter would like. In fact, the majority of Western governments is well aware of the non-democratic character of religious and other opposition movements to current Arab governments, but is no less aware of the fact that the latter are authoritarian and repressive and are unable and unwilling to introduce more pluralism and democracy in their society.

Though the West supports present Arab regimes, it doesn't really consider them fully legitimate, a situation that is obviously dangerous and unsecure for the Arab regimes. Given this situation, two fundamental reasons have pushed the Mediterranean Arab countries to confirm their interest in the OSCE Mediterramnean Dimension as well as the WEU and NATO Dialogues

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Paris, 30-31 octobre, 1991 (ronéo); Abdelwahab Biad, "Le Maghreb et la guerre du Golfe" in IREMAM, *Annuaire de l'Afrique du Nord*, vol. 29, Paris, Editions du CNRS, 1992, pp. 439-52 Nadji Safir, "Les opinions maghrébines et la guerre du Golfe", *Peuples Méditerranéens*, No. 58-59 January-June 1992, pp. 39-47; Yahia Zoubir, "Reactions in the Maghreb to the Gulf Crisis an War", *Arab Studies Quarterly*, Vol. 15, No. 1, Winter 1993, pp. 83-103.

and, eventually, to join the Euro-Mediterranean Partnership beside the Middle East process: (a) the importance of establishing a strong and structured economic cooperation with the the European Union in order to help stopping the downgrading of the socio-economic situation in their countries and the consequent increase of political opposition stemming from unemployement, poverty, social inequalities and so on; (b) the importance of sharing international institutions for cooperating with Europe and, in the end, have a say in their political processes related to the Mediterranean situation.

Given these respective security visions and requirements, what is the security pact, if any, underlying the Euro-Mediterranean relations? From the European point of view, the goal is to strengthen the economic and political performance of the Mediterranean area by more or less gradually introducing pluralism. This is particularly evident in the fresh Barcelona process, which will increase instability in the short term but is expected to secure Arab world's stability, strength and flexibility in a more distant future and provide security to the EU by containing migrations and securing a stronger regional partner to the EU within the context of global economic competition. From the Arab point of view, the security cooperation expected from the implementatioon of a Euro-Mediterranean framework has two inter-related goals: upgrading the European political and economic support and preventing and/or containing European and Western ingerence and interference into domestic politics.

The common ground is therefore here: though for different reasons, Arabs and Europeans have both an interest in going to the the "supposed roots of ... conflict: poverty, environmental degradation, overpopulation, resource competition, and lack of

legitimate institutions".

This common ground clearly emphasises, on the Arab as well as on the European side, the need to develop a stronger crises prevention capacities in the Mediterranean in a distinctive joint political and institutional Euro-Mediterranean framework.

Though there is a strong Euro-Arab convergence on crisis prevention, the extent the latter is going to be applied is somewhat limited. These limitations stem from the difference between the Euro-Mediterranean and the OSCE frameworks. The root of these differences lies on two factors: (a) first, the EU is interested in more pluralism and the assertion of democracy and human rights in the Mediterranean countries but, unlike what happens with Central-Eastern Europe (and even Russia and the western parts of the CIS), the absence of pluralism, human rights and democracy in these countries is not regarded in itself as a strategic threat to the future political and economic development of the Union (pluralism and the like are instrumental to stability and security and less precise standard will be required); (b) on the other hand, the Arab countries will never even consider common discussions about minorities in their countries, like Central-Eastern European countries have done within the OSCE and the Stability Pact, as that would be considered an ingerence and a threat to their fundamental political stability. Unlike Central-Eastern and Western European countries in the OSCE, the Euro-Mediterranean partners will never act against common threats but only to smooth or eliminate reciprocal risks and threats. This will limit the range and even the substance of joint action for preventing crises.

With these limitations, crisis prevention will be largely possible, however. A Euro-Mediterranean pact of stability, dealing through *ad hoc* "round tables" with issues as diverse as

water allocation, boundary conflicts regulation, infrastructures implementation, and the like, is certainly the most important and substantive development to be expected within the Euro-Mediterranean framework. An improvement of the modest mechanism for political cooperation set out by the Barcelona Declaration should also be possible and could work to upgrade crises prevention capacities. Whether a common center for monitoring, analysing and preventing crises will be possible in the Euro-Mediterranean framework remains to be seen and will probably be the result of some meaningful success in dealing with less engaging measures in the beginning.

Crises management in the Mediterranean?

If a distinction is made between crises prevention and management in the sense that the latter entails most of all peace-keeping and peace-enforcing, one can wonder whether the Euro-Mediterranean context can go beyond crises prevention or, put otherwise, what room is left for crises management in the "Mediterranean Dimension".

Leaving aside Cyprus, in the Arab and Arab-Israeli areas peace-keeping under the direct leadership of the UN has been limited but not unsuccessful (as in the case of UNIFIL)[15]. Arab states tend to accept Arab (Arab League) crises management, much less so interventions from non-Arab entities. Post-Cold War experiences with the Gulf, former Yugoslavia and Somalia have been evaluated in a very negative way by both Arab governments and public opinions. As we have already noted in the above, in the new international situation crises management - whichever its leadership - is perceived by the Arabs as an instrument of

[15] Georgios Kostakos, 'UN Peace-keeping Missions in the Mediterranean Region', in Richar Gillespie (ed.), *Mediterranean Politics*, vol. 1, Pinter Publishers, 1994, pp. 58-81.

Western interference and domination, basically anti-Arab or anti-Muslim in its character. In this sense, for example, the prevailingly humanitarian operation in the Iraqi Kurdistan is largerly considered by Arab public opinions as directed against Iraq's territorial integrity. Contents and emphases are obviously varying according to whether such conclusion comes from governments, liberal and nationalist oppositions or religious groups, but the substance of the conclusion is the same. This attitude is confirmed by opinions and perceptions related to re-arrangement underway in Western security alliances. The upgrading of forces mobility within the alliances (e.g. the CJTFs), the establishment of the NATO standing naval force in the Mediterranean, the military triangular cooperation between France, Spain and Italy in the Western Mediterranean area and their "Helios" satellite project as well as, eventually, the setting up of Euromarfor and Eurofor within the WEU are regularly regarded as instruments with poor broad security rationales, then presumably and potentially directed against the Arabs and their interests.

In this framework of misunderstanding or poor understanding it is not surprising that the dialogue with a number of South Mediterranean countries (and Mauritania) launched by the WEU in 1992 has proved unable to produce any significant result so far. A recent proposal for a joint Euro-Mediterranean effort to manage crises in Sub-Saharan Africa[16] has been broadly well received, but it doesn't solve the question of a joint Euro-Mediterranean crises management in the Euro-Mediterranean region.

While the OSCE doesn't envisage explicit means and ways to

[16] W. Kühne, G. Lenzi, A. Vasconcelos, *WEU's Role in Crisis Management and Conflic Resolution in Sub-Saharan Africa*, Institute for Security Studies of the Western European Union Chaillot Papers, No. 22, Paris December 1995.

extend to the Mediterranean Dimension its facilities and capacities for crises prevention and management, beside crises prevention policies[17] the Euro-Mediterranean Partnership adopted in Barcelona in November 1995, plans (though in a very loose way) a number of policies which may bring about common actions in the field of crises management and even crises avoidance (in the shape of CBMs, anti-proliferation measures, the establishment of free-weapons zones and arms control). Nonetheless, whether the Barcelona process will be able to go into crises management and avoidance remains to be seen.

There are factors that may act in the next future towards establishing a general framework of trust and confidence and give way to an expansion of presently limited opportunities for Mediterranean crises prevention and, most of all, management. First, the success of the Euro-Mediterranean Partnership and the expansion of the scope of its presently very limited Political Cooperation mechanism might be one such elements of increased confidence in the Mediterranean Dimension. Second, the success of IFOR in Bosnia may also be very instrumental in convincing the Arabs that Western and European security alliances are not necessarily against them and the Muslims. If circumstances will allow for increasing basic political confidence in the Mediterranean Dimension, the actual fragmented situation in the area - as reflected in the following table - could be superseded by a more diffuse and flexible capacity for crises prevention,

[17] "The Parties will consider practical steps to ... - promote conditions likely to develo goo-neighbourly relations among themselves and support processes aimed at stability, security prosperity and regional and sub-regional cooperation; - consider any confidence and security building measures
that could be taken between the parties with a view to the creation of an 'area of peace an stability in the Mediterranean', including the long term possibility of establishing a Euro Mediterranean pact to that end." In the view of this author the use of the terms of CBMs an CSBMs in a context prevailingly referred to prevention is inappropriate.

management and resolution and give way to an appropriate institutionalization.

leader	*framework*	*type of action*
US	Middle East process	Crises avoidance & prevention
UN/NATO	IFOR	Crises management
EU	Euro-Med. Partnership	Crises prevention

To this broad conclusion about crises management in the Mediterranean Dimension two footnotes must be added in relation to "conditionality" and "migration". In fact, both of them may be regarded as special cases of crises management.

First, the Barcelona process includes conditionality, in the sense that EU financial support is contingent to the observance by the Mediterranean partners of the principles related to democracy, pluralism and human rights adopted by the Barcelona Declaration. True, the Barcelona Declaration points out that these principles have to be adjusted and interpreted according to inter-cultural diversity. In any case, it is evident that this aspect might introduce tensions within the Euro-Mediterranean "pact" by asserting elements of crisis management and unilateral security enforcement which go against Arab expectations.

Second, there is no doubt that in the Mediterranean Dimension migration is probably the most serious crisis in being, a crisis that would require management. Quite surprisingly, however, migration is almost missing in the Euro-Mediterranean Partnership, which in principle is the most fitting framework for the migration issue to be faced. The reason is that the EU cannot

act in the field of migration if their members are unable to come to the necessary agreements for a number of fundamental policies related to immigrated peoples to be shared. In other world, the EU is not prepared to discuss and implement a joint trans-Mediterranean migration policy. This is a serious shortcoming. In the Mediterranean perspective, there is no doubt that migration plays a much more relevant role with respect to security perceptions and requirements than many other issues.

Some conclusions

The Mediterranean Dimension can be defined in many ways. If the Middle Eastern dimension is emphasised, the CSCE past experience with crisis avoidance and management is more relevant than current OSCE experience with crises prevention. The opposite is true whenever the OSCE and Barcelona process notion of Mediterranean Dimension is adopted.

Between crises prevention in the "Mediterranean Dimension" and crises avoidance in the "Middle Eastern Dimension", the scope for developing some joint capacity or framework for crises management seems to remain limited. It may be expanded, however, if crises avoidance and prevention will succeed.

Which institution may be more fitting with the aim of developing crises prevention and management in the Mediterranean? To the question that has been raised in the first section of this paper an answer cannot be easily provided. Like the CSCE, also the OSCE seem focussed on Europe. The scope of the Middle Eastern process, despite its importance, tends to be more limited in its scope than the Euro-Mediterranean Partnership. The latter will certainly be able to develop as the most important factor for crises prevention, but its range in the field of security remains rather narrow and undefined. A joint security-related framework

might be developed within NATO (a Partnership for Mediterranean?[18]) or the WEU, but NATO-WEU relations within the Western security structure need to be previously clarified. Furthermore, whether a separation between security and non-security frameworks will be accepted in trans-Mediterranean relations remains also to be seen. Competition and absence of coordination in the European as well as in the Western and inter-Arab world seem to prevail. They are not positive factors for more cooperation and security to be developed in the Mediterranean Dimension.

[18] The concept of a Partnership for Mediterranean has been introduced by the Italian Defenc Minister, Gen. Domenico Corcione, at the informal metting held by the NATO Defence Ministers i Williamsburg on 5-6 October 1995; see *Atlantic News*, 6 October 1995, pp. 1-2.

Bothe

The Concept of Various Dispute Settlement Procedures - General International Law and OSCE Practice

1. The categorisation of dispute settlement procedures

Under general international law, there is a kind of accepted typology of dispute settlement procedures. The main types or categories are:

a. fact-finding or inquiry;
b. conciliation or mediation;
c. arbitration;
d. decision by an international tribunal.

Certain treaties relating to those procedures provide for definitions. But there are no general defintions of those types of procedure under general international law, thus sharp legal distinctions are difficult. But there is a certain typology or typical forms of procedure to be discerned in international practice. It is this typology which serves as a point of departure for this paper. In a first step, the basic characteristics of each of those types have to be determined. In a second step, the specific functions which these forms of procedure have in relation to conflict management have to be analysed. In a third step, the various types of OSCE procedures have to be related to the analysis made under general international law.

2. Types of dispute settlement procedures

The various of dispute settlement procedures involving third parties are distinguished on the basis of their result, except that the distinction between arbitration and decision by a tribunal is made on the basis of the composition of the third party. Fact-finding or inquiry are procedures where the result is some kind of statement concerning the existence or non-existence of specific relevant facts. Conciliation or mediation are procedures where the relevant organ or person exercises some kind of impact on the resolution of a dispute to be found between the parties. The relevant actor, in other words, influences a result which in binding or legal terms is to be decided by the parties themselves. This influence may take the form of a recommendation concerning a particular solution, but this is not the only possibility. Arbitration or decision by a tribunal are two different forms of what is called judicial settlement of dispute. The common element is that the result is a legally binding pronouncement of what the legal situation is in a particular case.

These elements which are the basis for the distinctions which determine the typology just mentioned are by no means the only differences which are relevant for the functions and the effectiveness of those procedures. Other relevant differences relate to the initiation of the procedure, the determination of its mandate and essential procedural rules such as the distinction between adversarial and inquisitional procedures.

3. Functions of various dispute settlement procedures

The functions of fact-finding in relation to crisis management relate to the fact that in a dispute, knowledge of certain facts is an important element of dispute settlement. If the facts are no longer disputed, the solution of a particular conflict may be easier. Purpose and function of mediation or conciliation procedures stem from the fact that negotiations between the parties to a conflict are quite often not able to lead to the solution of a particular conflict, but they are

often stalled. In this case, third party impact is necessary in order to facilitate a solution. But the actual solution is to be achieved by the parties themselves. Any solution found by the third party may be convincing or even imposed in political terms, but it is not legally binding.

This is different in the case of arbitration or the decision by an international tribunal. Both kinds of procedures are based on the assumption that the binding determination of the law in relation to particular conflict is a useful contribution to its solution. Legal decisions on particular claims are a traditional part of instruments for the maintenance of international peace and security.

The relative importance of these kinds of procedure varies over time. The late 19th and early 20th century are the high time of the development of arbitration. In the time after the First World War, the creation of the Permanent Court of International Justice led to a stronger emphasis on decision by a tribunal, and the relative importance of arbitration was reduced. After the 2nd World War, the role of judicial settlement of dispute decreased, but that trend has been reversed.

4. OSCE procedures as compared to their presidence

The basic characteristic of the dispute settlement system of OSCE is the fact that it tries to make use of the whole spectrum of international experience in the field of dispute settlement by offering a wide choice of procedures of types which can indeed be found in general international law. The case of CSCE is different, however, to the extent that usually, those dispute settlement procedures are based on a legal rule, while this is not the case for all OSCE procedures. The question then has to be raised whether and why a procedure based on a non-legal obligation serves different functions, is more or less useful as a means of conflict resolution than a procedure based on a legal obligation. It is submitted that until now, there is no conclusive answer to this question and actual practice is lacking to a great extent. It is submitted that in relation to fact-finding procedures, the ones based on non-legal obligations may be developed more quickly, which is an advantage.

Then, the question has to be raised whether and to what extent certain OSCE procedures constitute a development or a variation of procedures found in general international practice. The La Valletta Mechanism, for instance, is a very special kind of conciliation procedure because its result is strictly limited to indications and suggestions. The basic idea behind it apparently is that it might be more acceptable than other procedures because it leaves more freedom to the parties than a conciliation where the powers of the conciliation organ to press for a solution or to make a very strong recommendation go much further, indeed. The powers of the conciliation commission established under the conciliation and arbitration treaty go much further. Directed conciliation is a still more intrusive dispute settlement procedure.

Dispute Settlement Procedures in the OSCE-Overview and Genesis

by

Torsten Lohmann[1]

(preliminary draft)

[1] Dr. jur., Johann- Wolfgang Goethe-University, Frankfurt/Main

1 Development of formalised dispute settlement procedures

First, principle V of the Final Act of Helsinki I (1975)[2] has to be noted. It emphasises the role of the peaceful settlement of disputes for peace, security and justice among the participating states. Furthermore, all participating states have the right to raise any question within the CSCE process.

Experts met for an elaboration of principle V. The first meetings of experts in Montreux (1978) and Athens (1984) did not lead to a consent among the participants.[3] The detailed Swiss proposals[4] were not accepted. It was the Vienna Follow-Up Meeting (1989) where the principle of obligatory involvement of a third party was laid down in the Concluding Document of the Conference (principle 6). The developments in Eastern and Central Europe[5] had changed the attitude of these states towards dispute settlement procedures.[6] This formed the mandate for the third meeting of experts, which took place in La Valletta, Malta (15.1.-8.2.1991).[7] The Charter of Paris repeated this mandate with only minor changes. It was clear from the beginning that the obligatory element had to be confined to the involvement of the third party. Under current circumstances most states are not ready to accept a binding decision of their disputes by a third party. This is demonstrated by the states' practice with respect to Art. 36 para 2 of the Statute of the International Court of Justice.[8] The third meeting[9] created the first formal dispute settlement procedure of the CSCE, the so-called "La Valletta Mechanism" which can be characterised as a form of binding conciliation.[10] The Mechanism was endorsed at the Berlin Meeting (19./20.1.1991). Its details will be discussed below. The Report of the La Valletta meeting was approved at the Council Meeting in Berlin (19./20.6.1991). It entered into force with the 40th nomination to the register of candidates.

Further steps were made at the Follow-up Meeting in Helsinki (24.3.-10.7.92).[11] France and Germany presented a very ambitious Draft CSCE Convention on dispute settlement, which found

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[2] For comprehensive compilations of CSCE-documents see U. Fastenrath, KSZE: Dokumente der Konferenz über Sicherheit und Zusammenarbeit in Europa (loose-leaf, 1992); A. Bloed (ed.), The Conference on Security and Co-operation in Europe, Analysis and Basic Documents, 1972-1993, Dordrecht 1993.

[3] For a summary of the developments see A. Bloed, A European System of Peaceful Settlement of Disputes, Polish Yearbook of International Law 1989/90, 113-127; G. Bosco, La CSCE e la soluzione pacifica delle controversie, Communita Internaz. 1991, 259-277.

[4] See F. Münch, Zur schweizerischen Initiative für die friedliche Beilegung von Streitigkeiten in Helsinki und Montreux, 1973 und 1978, in: Festschrift für Rudolf Bindschedler (1980), 385; G. Hafner, Bemühungen um ein gesamteuropäisches Streitbeilegungssystem im Rahmen der KSZE, in: Festschrift für Ignaz Seidl-Hohenveldern (1988), 147.

[5] Cf. M. Staack (ed.), Aufbruch nach Gesamteuropa-Die KSZE nach der Wende im Osten, Münster 1993.

[6] See H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (123).

[7] See H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122-137; Ch. Leben, La création d'un organisme CSCE pour le règlement des différends, RGDIP 95 (1991), 857-878; K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71-89.

[8] See K. Oellers-Frahm, Probleme und Grenzen der obligatorischen internationalen Gerichtsbarkeit, in: ArchVR 1989, 442.

[9] For a detailed descreption of the divergent positions of states see G. Tanja, Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water, Helsinki Monitor 4 (1993/1), 22 (24 et seq.).

[10] The nature of the mechanism is discussed by H. Ruiz Fabri, La CSCE et le règlement pacifique des differends: l'élaboration d'une methode, AFDI 1991, 297 (304 et seq.).

[11] See paragraphs 57 to 62 of Chapter III of the Helsinki Decisions of 1992. Cf. A. Heraclides, Helsinki II and its Aftermath-the Making of the CSCE into an International Organisation, London 1993; H. Holtermann (ed.), CSCE-From Idea to Institution-A Bibliography, Copenhagen 1993.

little support. The main critics were: If not all states ratify the convention the principle of universality would become frustrated. A legalistic and institutionalistic approach would change CSCE's nature. The authority of existing institutions, such as the International Court of Justice or the Permanent Court of Arbitration would be undermined. Others questioned the necessity and cost-effectiveness of such an endeavour. The United Kingdom proposed a matching declaration. states should be given the option of making a declaration of acceptance of a conciliation procedure on the basis of reciprocity. The United States argued in favour of a procedure of directed conciliation. Finally the states mentioned agreed not to block their respective proposals.[12] This resulted in the cumulative approach of the Geneva Meeting of experts (12.-23.10.1992). The results of this meeting did not add so much to the substance of compulsory settlement of disputes but much to the complexity of CSCE procedures. They were adopted at the Third Meeting of the Council in Stockholm (14./15.12. 1992):

-A "Convention on Conciliation and Arbitration within the CSCE" was drafted to take account of the German-French wishes (Annex 2).

-"Provisions for a CSCE Conciliation Commission" were the outcome of the proposal of the United Kingdom (Annex 3). They can be distinguished from the Convention by the lack of a legal nature and their less complicated structure.

-"Provisions for Directed Conciliation" go back to a proposal of the United States (Annex 4). They empower the Council of Ministers or the Committee of Senior Officials to direct disputing states to seek conciliation if these states were not able to resolve a dispute "within a reasonable period of time". In this case the provisions laid down in Annex 3 apply. The Consensus-minus-two-rule applies to the decision by the Council or the CSO.

-The rules for the nomination of the La Valletta Mechanism were simplified (Annex 1).

-A Financial Protocol to the Convention takes account of the fact that some states were not willing to sign a convention without knowing it's financial consequences.[13]

In January 1994 the Convention on Conciliation and Arbitration within the CSCE[14] was signed by 32 states.[15] It entered into force in December 1994 after the deposit of the twelfth instrument of ratification or accession. But still a significant number of states hesitates to join the Court.

The procedures for the peaceful settlement of disputes were discussed during the review conference at Budapest in 1994 but were not changed..[16]

The Court on Conciliation and Arbitration was established in May 1995 in Geneva. At the establishing meeting, Robert Badinter was elected as President of the Court and Hans-Dietrich Genscher as Vice President.

As a result of the described development[17] a variety of procedures is open for the member states of OSCE to solve their disputes peacefully by using formalised dispute settlement. It cannot be said that the OSCE is short of procedural tools for the peaceful settlement of disputes. These procedures are not the only instrument the OSCE has at its hands for conflict management. At first, the various *instruments* of preventive diplomacy have to mentioned. In contrast to formalised dispute settlement, some experience with e.g. long-term mission was acquired. The

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[12] See G. Tanja, Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water, Helsinki Monitor 4 (1993/1), 22 (30).

[13] See G. Tanja, Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water, Helsinki Monitor 4 (1993/1), 22 (33).

[14] Cf. G. Hafner, Das Streitbeilegungsübereinkommen der KSZE. Cui bono, in: Festschrift Zemanek, 115-156.

[15] See H. Hurlburt, CSCE Conflict Resolution in Practice: A Work in Progress, Helsinki Monitor 1994/2, 25 (28).

[16] For details see: J. Borawski, The Budapest Summit Meeting, Helsinki Monitor 1995/1, 5-17.

[17] Cf. G. Tanja, Peaceful Settlement of Disputes within the Framework of the CSCE, Helsinki Monitor 1994/3, 42-54.

formalised dispute settlement procedures still remained paper concepts without practice. They share this fate with many other instruments that provide for such kind of conflict management.

The following chart shows the main characteristics of the existing procedures:

Mechanism	Type of procedure	Character of basic instrument	Initiation	Decision	Scope/Subject matters
1. La-Valletta Mechanism	sui generis	political	unilateral	non-binding proposal	broad escape clause
2. Conciliation Commission	Conciliation	political	agreement optional clause	non-binding proposal optional binding	no express provision for exclusion
3. Conciliation Commission (Convention)	Conciliation	legal	unilateral	non-binding proposal optional binding	any dispute no provision for exclusion
4. Directed Conciliation	Conciliation	mixed	decision by Ministerial Council or Senior Council	non-binding proposal	broad escape clause
5. Arbitral Tribunal (Convention)	Arbitration	legal	agreement optional clause	binding	exclusion in optional clause possible
6. Emergency Mechanism	Consultations Mediation	political	unilateral	proposal	emergency situations
7. Moscow Mechanism	Inquiry Conciliation	political	unilateral Permanent Council	factual report proposal	Human Rights
8. Mechanism for unusual military activities	Consultations	political	unilateral		Military Activities
9. Long Term Missions	Mediation	political	Permanent Council	proposal	

Common to all procedures mentioned is their complementary nature. They shall complement other available procedures. The various mechanisms of the OSCE shall function as „mechanisms of last resort".

The introduction of a Convention that will not be signed by all member states has frustrated the principle of universality in the OSCE. It demonstrated that it was not possible to find a method for the settlement of disputes that was acceptable to all members.[18]

2 Institutional Aspects

There is not only a proliferation of procedures of various kinds within in the OSCE but also a permanent process of creation and transformation of various institutions.[19] Directly or indirectly various bodies and organs of the OSCE are concerned with dispute settlement.

[18] See G. Tanja, Peaceful Settlement of Disputes within the Framework of the CSCE, Helsinki Monitor 1994/3, 42 (53).

[19] Cf. H. Hurlburt/D. Shorr, A Gesamtkonzept for Conflict Management. Bringing Capabilities into Line with Exigencies, Helsinki Monitor 3/1994, 55-62.

2.1 Dispute Settlement Bodies

2.1.1 "La Valletta Mechanism"

The members of the mechanism are nominated from a pre-established roster of persons,[20] which is administrated by the OSCE. Each participating State can nominate up to four persons for this register.

In case of a dispute the parties have to try to reach an agreement on the composition of the Mechanism. If they have not agreed on the members of the Mechanism within two months the Senior official of the nominating institution has to select seven names from this list. Each party to the dispute can reject up to three nominees.[21] Nationals of the disputing states cannot be a member of a Mechanism.

The use of such a roster is an established method, as is demonstrated by the practice of the Permanent Court of Arbitration, GATT-Dispute Settlement Procedures and the Additional Facility of ICSID. But some problems require further consideration. The procedure for the selection of members of the mechanism does not work if there are more than two parties to the dispute.[22] Proposals for this situation could be elaborated. The result of the nomination procedure can be an even number of members, what bears the risk of a stalemate situation in the decision making process.

The basic idea of the procedure is the assistance of the parties by a flexible and persistent influence.[23] But can a body which has no carrots and sticks exercise such an influence?

2.1.2 Conciliation Commissions

Conciliation Commissions can be established according to the "Provisions for a CSCE Conciliation Commission".[24] In case of a dispute the parties agree to settle by this procedure their members are appointed from the Valletta Register mentioned above.

2.1.3 Court of Conciliation and Arbitration within the CSCE

The Court of the OSCE[25] is not a court in the strict sense of the word. It consists of the conciliators and arbitrators appointed by the parties to the Convention. Each party shall appoint two conciliators and one arbitrator and one alternate. The seat of the Court shall be established in Geneva. From among their number a "Bureau of the Court" consisting of a President, a Vice-President and three other members shall be elected.

For specific disputes Conciliation Commissions or Arbitral Tribunals are constituted, that consist of one or an uneven number of members selected from the members of the Court.

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[20] According to one author the nomination of the members is the only compulsory element of the procedure. See P.H. Kooijmans, The mountain produced a mouse. The CSCE Meeting of Experts and Peaceful Settlement of Disputes, Valletta 1991, LJIL 1992, 91 (94).

[21] Section V of the La Valletta Provisions werde modified by Annex I to the Decision on Peaceful Settlement of Disputes of the Third Meeting of the Council in Stockholm (1992).

[22] These problems were seen as to be too complicated to solve them at the La Valletta Meeting. See H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (132).

[23] H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (128).

[24] Annex 3 to the Decision on Peaceful Settlement of Disputes of the Third Meeting of the Council in Stockholm (1992)

[25] See D.S. Lutz, Der OSZE-Gerichtshof, OSZE-Jahrbuch 1 (1995), 241-253.

2.2 Dispute settlement functions of other organs

2.2.1 Ministerial Council

The Ministerial Council (formerly the CSCE Council) was occupied with conflicts and decided on missions which were sent to the respective regions.[26] The Council adopted the instruments that form the basis of the non-conventional procedures.

2.2.2 Senior Council

The Senior Council (formerly the Committee of Senior Officials, CSO) performed important functions in the field of dispute settlement until the „Vienna Group" was institutionalised which took over much of its routine workload.

The Committee of Senior Officials (CSO) was the predecessor of the Senior Council. The Senior Council -and not a La Valletta Mechanism- could be entrusted with the task of handling a dispute. Every party to a dispute could bring "a dispute of importance to peace, security, or stability among the participating States" before this body.[27] It remains unclear whether the valuation of a specific dispute was made by a party to the dispute or by the Senior Council. A further way to bring the dispute to the attention of the CSO is provided for if the procedural comment or advice of the la Valletta Mechanism does not lead to at least a procedure for its settlement.[28] The right of states to "bring that circumstances to the attention" of the Senior Council is interpreted as to allow the Senior Council to take up the case on its own motion.[29]

A further way to bring a dispute to the attention of the CSO was established by the CSCE Council in Berlin (19./20.6.1991), the "Mechanism for Consultation and Co-operation with regard to Emergency Situations". The impact of this mechanism on the right of states to bring disputes before the CSO under the La Valletta Mechanism is not clear.[30]

Since the Prague meeting of the CSCE-Council (30./31.1.1992) the CSO is empowered to take "appropriate action" in the absence of the State concerned, if "cases of clear, gross and uncorrected violations of relevant CSCE commitments occur. Such 'sanctions' are confined to political actions outside the territory of the states concerned.[31] A first exercise of this power was the suspension of the CSCE membership of Serbia-Montenegro in 1992.[32]

After the Stockholm Meeting of the Council of the CSCE (14./15.12.1992) representatives of the member states met in Vienna every Thursday in the so-called CSO-Vienna Group. In this "standing body of the CSCE" every subject could be raised.[33] It has been operative since June, 28, 1993.[34] It was institutionalised by the Rome Council in 1993 as the Permanent Committee.

The Budapest decisions 1994 replaced the CSO with the Senior Council. It shall meet less frequently, i.e. twice a year, in Prague. The establishment of the Permanent Council (formerly

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[26] See V.Y Ghebali: The CSCE after the Rome Council Meeting. An Institution Still in the Making, Helsinki Monitor 1994/1, 75 (78).

[27] Section II La Valletta Document.

[28] Section IX La Valletta Document.

[29] H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (133).

[30] See H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (130).

[31] Section IV of the Prague Document on Further Development of CSCE Institutions and Structures.

[32] H. Hurlburt, CSCE Conflict Resolution in Practice: A Work in Progress, Helsinki Monitor 1994/2, 25 (29).

[33] W. Höynck, The Role of the CSCE in the New European Security Environment, Helsinki Monitor 1994/1, 16 (20).

[34] V.Y Ghebali: The CSCE after the Rome Council Meeting. An Institution Still in the Making, Helsinki Monitor 1994/1, 75 (76).

Permanent Committee), which now performs many of the functions of the former CSO allowed the reduction of number of meetings of the Senior Council.

2.2.3 Permanent Council

The Permanent Council (formerly Permanent Committee and CSO-Vienna Group) is responsible for the operational work of the OSCE. At the fourth Meeting of the Council of the CSCE in Rome (30.11./1.12.1993) the CSO-Vienna Group (see above) was institutionalised as the "Permanent Committee" of the CSCE. It replaced the Consultative Committee of the Conflict Management Centre which ceased to exist. It consists of representatives of the member states. It's function is to serve as forum for political consultations and decision making (Pt. 7.1). With respect to the existing mechanisms it's review function has to be mentioned (Section VII, para 4).[35]

As the Permanent Committee can discuss any problem in the OSCE area it's potential activities may make the triggering of the CSCE dispute settlement machinery unnecessary.[36]

The Permanent Committee was renamed in Budapest in 1994 to Permanent Council. It shall be the regular body for political consultations and decision-making. It may conduct Urgency-meetings. It regularly meets in Vienna and consists of the permanent representatives of the member states. The Chairman-in-Office (CIO) received the right to bring „serious cases" of alleged non-compliance with OSCE undertakings to the attention of the Permanent Council. Therefore, the Permanent Council plays an important role in conflict management by deciding on the various OSCE missions that are deployed to regions where conflicts occur.

2.2.4 Chairman in Office (CIO) and Troika

The responsibility for executive action -including dispute settlement activities- is vested in the CIO, the Foreign Minister of the State that organises the current session of the Ministerial Council. He is assisted by the other members of the Troika, consisting of the preceding and succeeding Chairmen, and Ad Hoc Steering Groups.

The CIO can appoint Personal Representatives with a mandate to assist the CIO in the management of a conflict.

2.2.5 Secretary General

The post of a Secretary General of the CSCE was established at the Stockholm Meeting of the Council. It is currently held by Dr. Wilhelm Höynck. With a view to the manifold activities of the Secretary-General of the UN the potential dispute settlement functions of this post cannot be over-estimated.

At the Berlin meeting of the CSCE Council the Conflict Prevention Centre (CPC)[37] was designated as the nominating institution of the La Valletta Mechanism.[38] Its Consultative Committee was replaced by the "Permanent Committee", which was established at the fourth Council Meeting in Rome. The facilities of OSCE now form only a department of the OSCE

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[35] See V.Y Ghebali: The CSCE after the Rome Council Meeting. An Institution Still in the Making, Helsinki Monitor 1994/1, 75 (76).

[36] This idea was advanced by participants of a CSCE Seminar on Early Warning and Preventive Diplomacy in January 1994. See A. Bloed, CSCE: Increasing Number of Meetings, Helsinki Monitor 1994/2, 89 (94).

[37] For a comprehensive review see E. Greco, The Role of the Conflict prevention Centre in the Security System of the CSCE, Helsinki Monitor 1994/1, 5-15.

[38] See Annex 3 to the Summary of Conclusions of the Berlin Meeting of the CSCE Council.

Secretariat in Vienna.[39] The Stockholm Decisions (1992) chose the Director of the Conflict Prevention Centre as Secretary of the "Commission".[40]

2.2.6 High Commissioner on National Minorities (HCNM)

The High Commissioner can also perform important dispute settlement functions.[41] His tasks and functions are treated elsewhere in this volume in detail.[42]

3 Types of Procedures

3.1 La Valletta Mechanism

3.1.1 Functions

The primary task of the mechanism is according to "to assist the parties in identifying suitable procedures for the settlement of the dispute".[43] It can be questioned whether the relatively scarce use of formalised procedures for the settlement of disputes is caused by the lack of "general or specific comment or advice" which the mechanism is ready to offer. Perhaps this first phase of the procedure will only be used by obstructing parties to a dispute as a means for time-dragging.

If the first phase of the procedure does not lead to solution of the dispute any party to the dispute may entrust the Mechanism with the task of providing the parties with "general or specific comment or advice on the substance of the dispute".[44] This is very similar to the function of conciliation, where usually the procedure ends with "recommendations". At any time the parties can agree on any other function of the procedure, e.g. expert advice, fact-finding, binding arbitration.[45]

The parties to the disputes are not obliged to follow the advice given by a Mechanism. They have only to "consider in good faith and a spirit of co-operation any such comment or advice of the Mechanism."[46] Is this a serious shortcoming or does it demonstrate the 'realistic' approach of the OSCE, taking into account the fact, that peaceful settlement of a dispute is not possible against the will of a party to the dispute?[47]

Given the wide range of existing obligations and institutions for the peaceful settlement of disputes, the Mechanism was designed to function as a "safety net"[48] for those disputes that are still not covered. These disputes should be identified. A further step should be an analysis of the suitability of the Mechanism for their peaceful settlement.

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[39] See V.Y Ghebali: The CSCE after the Rome Council Meeting. An Institution Still in the Making, Helsinki Monitor 1994/1, 75 (76).

[40] See Section XVII of the Provsions for a CSCE Conciliation Commission.

[41] Cf. B. Meyer, Erst die Spitze des Eisbergs. KSZE-*Konfliktmanagement* und nationale Minderheiten, PRIF-Report 8/1992.

[42] See .....

[43] Section VII La Valletta Document.

[44] Section XI La Valletta Document.

[45] The experience with the GATT dispute settlement mechanism which opens similar choices to the parties shows that states will probably not use this option.

[46] Section XI La Valletta Document.

[47] In favour of the latter position K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71 (80).

[48] H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (128).

3.1.2 Limitations

Certain states were only ready to accept the procedure under the condition of the insertion of an extremely wide escape clause.[49] Furthermore, the application of this escape clause rests exclusively in the hands of the states. Therefore, it can be anticipated that in most serious disputes unwilling states will use these clause to evade the unfavourable results the procedure could lead to. On the other hand, this clause which is more specific than the well know exception of "vital interests, political questions or national honour" was commented as a return to realism.[50] The impact of this provision should be analysed in the light of probable disputes. The insistence with which some states argued in favour of the escape clause indicated disputes they are not willing to submit to the Mechanism.[51]

The limitation of the field of application of the mechanism to certain categories ratione temporis was not accepted. The same happened to the proposals to confine the Mechanism to "legal" disputes[52] or certain categories of disputes.[53]

3.1.2.1 Criteria for the solution of disputes

For lawyers the answer to the question is quite clear, under normal circumstances: of course the applicable body of law, in the case of interstate disputes for the most part public international law. And, if there is a respective agreement, a solution can be developed ex aequo et bono. But the OSCE is something special. It's basis is not formed by legal instruments but by political commitments. The formulation of Section XI of the La Valletta Document takes account of this fact, the Mechanism has to "assist the parties in finding a settlement in accordance with international law and their CSCE commitments". What does this mean? Do the rules of public international law and the OSCE commitments form the limits of broad range of possible criteria which could be applied?[54] One could also put forward the idea that the proposal of the Mechanism has to be developed on the basis of applicable legal and OSCE-rules.[55] Given the hesitance of states to submit their disputes to procedures the outcome of which cannot be calculated the former view will probably result in an understandable non-use of the Mechanism.

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[49] Section XII La Valletta Document enables states to prevent the dispute from operation if the dispute raises issues of "territorial integrity, national defence, title to sovereignty over land territory, or competing claims with the jurisdiction over other areas".

[50] K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71 (80).

[51] Turkey had its disputes with Greece in mind. The United Kingdom and Spain were careful because of Gibraltar. See G. Tanja, Peaceful Settlement of Disputes within the CSCE: Bridge over Troubled Water, Helsinki Monitor 4 (1993/1), 22 (26 et seq.).

[52] The difference between legal and political disputes did play an important role in the so-called Bindschedler draft from 1973, which was the first step to CSCE dispute settlement. For the text see K. Oellers-Frahm/N. Wühler, Dispute Settlement in Public International Law (1984), 101 et seq..

[53] See K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71 (84 et seq.).

[54] K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71 (79); H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (133).

[55] Cf. the Introduction of the La Valletta Document: "International disputes are to be settled on the basis of the sovereign equality of States and in accordance with the principle of the free choice of means in comity with international obligations and commitments and with the principles of justice and international law."

3.2 Conciliation

3.2.1 Conciliation Commission

Since long, conciliation belongs to the established methods of dispute settlement procedures in the international arena. The dispute settlement procedures of the OSCE can lead to conciliation in various ways. The La-Valletta-Mechanism itself has many elements of a conciliatory process. The Mechanism can advice the parties to adopt conciliation in the strict sense as procedure.

Further ways to conciliation are opened by the Stockholm Decision (1992). States may at any time declare that they will accept conciliation by a Conciliation Commission for disputes with other member states. Of particular interest is the procedure of directed conciliation, which could be see as a contradiction in itself.

A legal basis exists for the initiation of conciliation for disputes between member states of the Convention on Conciliation and Arbitration within the CSCE.

3.3 Arbitration

The concept of arbitration was introduced in the OSCE by the Convention on Conciliation and Arbitration. Arbitration that leads to legally binding decision marks a qualitative step in the development of dispute settlement in the OSCE. Therefore, it is not surprising that still many states hesitate to sign the convention. The Convention takes care of the reluctance of states to accept judicial procedures and allows the exclusion of sensible subject-matters.

3.4 Political Consultations

The following mechanisms do not belong to the classic procedures of formalised dispute settlement procedures. Nevertheless, they have to be mentioned as methods of conflict management that are to certain degree formalised and aim at settling disputes peacefully.

3.4.1 Mechanism for Consultation and Co-operation with regard to Emergency Situations

If twelve or more participating states second the request of a party to a dispute, which considers the dispute to be an "serious emergency situation", an emergency meeting of the CSO will be held. This mechanism was already used in the case of Yugoslavia. In April 1993 a session on Nagorno-Karabakh was held.[56] Hungary tried to have an emergency meeting with regard to its conflict with the Czech Republic concerning the Gabcikovo Dam on the river Danube in October 1993 but could not gain the necessary support of twelve states.[57]

This procedure can only start when a serious emergency situation already exists. Its function therefore is not confined to conflict prevention. Instead, an existing dispute has to be settled by more or less diplomatic means. The existence of this mechanism has to be taken into account for the discussion of the functions of those procedures that are explicitly designed for dispute settlement. The fact that Hungary tried to set in motion this mechanism instead of using the La Valletta Mechanism[58] demonstrates the need for clarification in this respect.

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[56] See H. Hurlburt, CSCE Conflict Resolution in Practice: A Work in Progress, Helsinki Monitor 1994/2, 25 (29).

[57] A. Bloed, The CSCE in the Post-Helsinki- II Era, Helsinki Monitor 1992/4, 77 (79 et seq.).

[58] Cf. A. Bloed, The CSCE in the Post-Helsinki- II Era, Helsinki Monitor 1992/4, 77 (80), who argues that this dispute had been suitable for the La Valletta procedure.

3.4.2 Human Rights: Moscow Mechanism

If the fulfilment of OSCE commitments concerning human rights, fundamental freedoms, democracy and the rule of law is a matter of dispute between the states, they can use a specific Mechanism that goes back to the Concluding Document of the Vienna Meeting,[59] was developed by the Copenhagen Meeting[60] and the Moscow Meeting[61] of the Conference on the Human Dimension of the CSCE. Its current structure was adopted at the Rome Meeting of the Council (30.11./1.12.1993).[62]

3.4.3 Mechanism for Consultation and Co-operation concerning unusual military activities

This mechanism can also be qualified as a kind of dispute settlement mechanism. If situations envisaged by this mechanism occur, the Emergency Mechanism cannot be used.[63]

4 Problems

4.1 Relations between different OSCE procedures

Not only the procedures and institutions outside the OSCE bring us to the question of the specific field of application of the OSCE dispute settlement machinery but also OSCE instruments which have functions in this field. The relations between the various procedures that have been described above have to be clarified.

4.2 Relationship to external institutions and procedures

The mandate of the La Valletta expert meeting was limited to developing a method "aimed at complementing existing methods".[64] The wording of Section III of the La Valletta Document provides for the non-application of the Procedure "if the dispute has previously dealt with, or is being adressed, under some other procedure for the settlement of disputes, as referred to in Section VIII,[65] or is covered by any other process which parties to the dispute have accepted". The exact meaning of this provision needs further clarification. Is the abstract agreement between the parties on any method sufficient? Or can the establishment of the Mechanism only be blocked if the parties have accepted a process for the specific dispute?[66] Which requirements have the "other procedures" to fulfil? Could a simple consultation clause in a treaty covering the dispute be invoked as an objection? Is the mechanism not applicable if the involvement of the UN-Secretary General leads to talks between the parties?[67]

There exists already a broad range of obligations of states to peacefully settle their disputes. They can be found in multilateral[68] and bilateral[69] treaties of a general nature as well as in

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[59] See B.3 of this document.

[60] See Nr. 42 of the Document.

[61] See Nr. 1-16 of the Document.

[62] See Annex A to the Summary of Conclusions.

[63] See Pt. 3 Annex 2 to the Summary of Conclusions of the Berlin Meeting of the CSCE Council.

[64] Principle VI of the Final Act of the Vienna Conference 1986.

[65] There are enumerated "fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure".

[66] In favour of the last interpretation: K. Oellers-Frahm, Die obligatorische Komponente in der Streitbeilegung im Rahmen der KSZE, ZaöRV 51 (1991), 71 (82).

[67] H. Hillgenberg, Der KSZE-Mechanismus zur friedlichen Regelung von Streitfällen, GYIL 34 (91), 122 (135).

[68] See Art. 33 Charter of the United Nations; Hague Conventions on the Pacific Settlement of Disputes from 1899 and 1907; Geneva General Act for the Pacific Settlement of International Disputes (1928 and 1949); European Convention for the Peaceful Settlement of Disputes (1957).

instruments with more specific subjects, being of an economic,[70] technical[71] or environmental[72] nature.[73] By fulfilling these obligations states can make use of institutions like the International Court of Justice or the International Centre for Settlement of Investment Disputes. Given the subsidiary nature of the La Valletta Mechanism it has to be analysed which uses can reasonably be expected.

The OSCE has declared itself as a regional arrangement under Art. 52 of the UN-Charter. But in legal terms this question remains still open. In general, institutions for the peaceful settlement of disputes are seen as a prerequisite for the formation of such an regional arrangement. Do the existing CSCE procedures fulfil these requirements? Does the new Convention change the situation?

4.3 Existing OSCE practice?

None of the mechanisms explicitly designed for dispute settlement has been used. But the OSCE was of course involved in the settlement of disputes. To be mentioned are the activities with regard to the situation in Yugoslavia and Nagorno-Karabakh which took place in the context of the "Berlin Mechanism".[74] The non-use of the formal machinery should be analysed in the light of existing conflicts and existing practice in respect of these conflicts as well as the results of the hitherto existing experience.

5 Summary

The existing OSCE-machinery for the formalised peaceful settlement of disputes is the result of a complex process. This is reflected by the complexity of various different procedures. It is under permanent review. Differently from international organisations and treaties with a legal basis, modifications of the instruments are a practical option which was frequently used. The machinery can be modified if a need is perceived by the members.

It remains to be seen whether the complicated machinery for formalised dispute settlement will ever be used by the OSCE members. Critics argue that one of the reasons for the non-use of existing OSCE-mechanisms lies simply in the complexity of the system.[75] On the other hand, the OSCE was not the first to create dispute settlement mechanisms that remained dead letter or had to wait quite a time for their first use. The OSCE-mechanisms share this fate with other instruments that were created for an orderly conflict management on the basis of the rule of law, or at least, generally accepted standards. The possible functions of formalised dispute settlement procedures for the maintenance of peace and security in general depend on various factors that go far beyond the scope of this chapter.[76]

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[69] See e.g. the German-Swiss Treaty on Arbitration and Conciliation (1921 and 1928).

[70] See e.g. General Agreement on Tarriffs and Trade- Multilateral Trade Negotiations: Understanding on Rules and Procedures Governing the Settlement of Disputes (1993).

[71] See Annex C to the Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT" (1971).

[72] See e.g. Annex to the International Convention Relating to Invervention on the High Seas in Cases of Oil Pollution Casualties (1969).

[73] For a comprehensive review see K. Oellers-Frahm/N. Wühler, Dispute Settlement in Public International Law (1984).

[74] H. Hurlburt, CSCE Conflict Resolution in Practice: A Work in Progress, Helsinki Monitor 1994/2, 25 (29).

[75] H. Hurlburt, CSCE Conflict Resolution in Practice: A Work in Progress, Helsinki Monitor 1994/2, 25 (36). Cf. Decision of the Rome Council Meeting (1993), section VII, para 4, which asks the Permanent Committee for a review of existing mechanisms.

[76] Cf. P. Schlotter/N. Ropers/B. Meyer, Die neue KSZE. Zukunftsperspektiven einer regionalen Friedensstrategie (1994).

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13

The Role of Conciliation and Similar Proceedings in International Dispute Settlement and the OSCE Procedures

by

Torsten Lohmann[1]

(preliminary draft)

[1] Dr. jur., Johann Wolfgang Goethe-University, Frankfurt/Main.

1 The concepts of formalised "enhanced" diplomatic dispute settlement

1.1 Characteristics

1.1.1 "formalised"

The procedures that form the subject of this chapter are characterised by the fact that they build upon the classic informal methods like negotiations or good offices, but are to differing extent formalised. They follow a predetermined pattern.

1.1.2 "enhanced"

These procedures are enhanced methods because they try to be more than a simple supplement to negotiations. They try to rationalise the process of finding a solution to a conflict and they try to introduce and promote standards or law as, at least additional, decisive criteria for the solution of the conflict.

1.2 Types

Mediation

Enquiry (fact-finding)[2]

Conciliation[3]

1.3 Basic philosophy

1.3.1 Finding I: Promotion of negotiations.

Often, the parties to a dispute are unable to reach a solution, or at least, to start or conduct negotiations on their own. In these cases a third party can positively influence the negotiation process. On the basis of this finding since long the mentioned enhanced diplomatic methods were developed.

1.3.2 Finding II: Reluctance of states to accept judicial settlement of disputes.

Experience shows that states are reluctant to accept judicial means (arbitration and international courts) for the management of their conflicts. The binding character of the decisions is made responsible for this reluctance. This explanation resulted in efforts to find procedures which do not produce binding results but are nevertheless orderly and rational.

1.3.3 Finding III: The determination of the settlement of a dispute is not the result of an application of law but a consequence of the relative "power" of the parties.

The promotion of negotiations is often quite helpful for the solution of conflicts. But in negotiations not law but the relative power of the parties is the decisive criteria for the determination of the outcome. Therefore, a need is perceived to introduce a neutral, objective factor to promote the rule of law or other standards into the process.

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[2] See Ch. Bourloyannis, Fact-finding by the Secretary-General of the United Nations, New York University Journal of International Law and Politics 22 (1990), 641-669.

[3] See Conciliation Rules of the United Nations, Doc. A/45/742 of 20 November 1990.

1.3.4 The assumption: "Intermediate concepts " can promote the rule of law and are more acceptable to states.

From the above mentioned findings the conclusion is drawn that procedures that combine the advantages of negotiations and judicial methods and avoid their disadvantages could advance the peaceful settlement of disputes.

The advanced diplomatic means avoid the binding and inflexible character of judicial procedures that makes those unacceptable to states. And they introduce an objective element into the process that can reduce the role of mere power for the finding of a solution.

Consequently, the concepts of mediation, enquiry and conciliation can be found in numerous legal and non-legal documents that aim to promote the peaceful settlement of disputes.

These advantages seem to be the reason for their introduction in the then CSCE process.

1.4 The problem: Low practical significance of formalised enhanced diplomatic procedures

Despite the fact that the concepts of mediation, enquiry and conciliation are quite attracting in theory, they were only seldom used in practice. To a large extent, they remained paper concepts. This is also true for the OSCE.

What are the reasons for the non-use of these "attractive" procedures by the states? Why do they prefer either informal negotiations or binding decisions?

What can be done to further their use?

2 The use of the concepts in legal and non-legal instruments

2.1 In general

A great variety of instruments exists that provides for the application of procedures for the management of conflicts.[4] Nearly all instruments that oblige states to seek peacefully solutions for their disputes acknowledge procedures like meditation, enquiry or conciliation. They can already be found in the 1899 and 1907 Hague Conventions for the Peaceful Settlement of Disputes. They are mentioned in an universal instrument like the Charter of the United Nations (Art. 33 (2)).[5] They are contained in regional instruments like the American Treaty on Pacific Settlement (Pact of Bogotá) or the League of Arab States and they belong to the arsenal of international organisations that are concerned with specific subjects like the International Centre for the Settlement of Investment Disputes (ICSID) or the World Trade Organisation (WTO).

[4] K. Oellers-Frahm/N. Wühler, Dispute Settlement in Public International Law (1984); Preparation of the Draft Handbook on the Peaceful Settlement of Disputes between States, Progress Report by the Secretary General, A/AC.182/L.68, 12. November 1990.

[5] See E.B. Haas, The United Nations and Collective Management of International Conflicts, UNITAR, Geneva 1986; C. Murphy, The Conciliatory Responsibilities of the United Nations Security Council, GYIL 35 (1992), 190-204.

2.2 In the OSCE

2.2.1 La Valletta Mechanism

2.2.2 Conciliation Commission

2.2.3 Convention on Conciliation and Arbitration within the CSCE

2.2.4 Directed Conciliation

2.2.5 Enhanced political mechanisms

Not only those procedures that are considered as to be *the* Dispute Settlement Procedures of the OSCE contain elements of enhanced formalised dispute settlement. The activities of the respective Councils under the Berlin and Moscow Mechanism or the Mechanism for Consultation and the Mechanism for Consultation and Co-operation concerning unusual military activities have features that allow to consider them as formalised enhanced diplomatic procedures.

If long term missions are sent to areas where a conflict already exists they do not serve the purpose of preventive diplomacy but are a means for the peaceful settlement of disputes. In these cases they can be considered as a form of mediation.

3 The application of the concepts to disputes

There is no statistics on the number of disputes submitted to these procedures. There may have been cases that have been settled in secret. Here one has to draw on the information provided by the literature.[6] In most disputes a third party is informally involved. But if one looks for disputes where formalised procedures were invoked only a few can be found.

The Dogger Bank Incident remains the best known example for the use of an international commission of enquiry for the solution of a dispute. In recent years a similar instrument that has nevertheless to be distinguished found a lot of attraction among lawyers and international diplomats, the procedure of fact-finding. Its main purpose is not the promotion of a peaceful solution of a dispute but the verification of allegations against a state that is accused of a breach of international obligations. As far as conciliation is concerned only very few cases are reported.

More important are the activities of representatives of international organisations. See e.g. the efforts of the UN-Secretary-General. his mediatory activities were quite important for many disputes. But is a matter of definition whether these activities should be considered as cases of application of formalised dispute settlement procedures.

4 Reasons for choice of means

4.1 Preference for informal negotiations

Most disputes are solved by various forms of negotiations between the parties to conflicts. If both parties want a settlement of a dispute on the basis of reasonable expectations they can find a viable settlement that allows them to preserve their face.

[6] Cf. R.S. Lee, A Case for Facilitation in the Settlement of Disputes, GYIL 34 (1991), 138-174. Still important are the Studies of the David Davies Memorial Institute of International Studies: International Disputes: the Political Aspects, London 1971, and International Disputes: the Legal Aspects, London 1972.

4.2 Reasons for failure of negotiations

In many cases where negotiations fail the reason is not the insufficiency of the procedure of negotiations itself but lies outside the scope of the process. The representatives of the disputing states are not ready to accept a compromise. They may have misperceptions about the consequences of an ongoing conflict. This may result from an unrealistic understanding of their relative positions in terms of power or international support of their position.

Another important factor for the failure of negotiations has to be considered. If conflicts escalate it is often quite difficult for politicians to sell compromises at home.

4.3 Functions of third party involvement

From the short description of the reasons for the failure of negotiations the following functions for the involvement of a third party in a process of dispute settlement can be drawn:

4.3.1 Moderation and information

Third parties can help the parties to a dispute to get realistic expectations of possible options.[7] These options are a result of a reasonable application of the relevant criteria that can be either power-oriented or law-oriented.

This function can be performed by any third party that is acceptable to the parties and has him or herself a realistic perception of the conflict. For the successful exercise no formalised procedure is necessary.

4.3.2 Pressure

If mere information is not sufficient to convince the parties of the fact that the acceptance of a compromise is the preferable solution to their conflict it may be necessary to exercise pressure upon the parties.

This increases the requirements that have to be fulfilled by the third party. The third party must be able to credibly threaten or tempt with adequate carrots and sticks. The adequacy of carrots or sticks depends on the parties and the political and legal environment. Here, financial aid or military involvement can be mentioned. If these are the relevant arguments only representatives of powerful states or international organisations can positively influence the parties to a dispute.

Also the menace of an unfavourable decision of an international court or tribunal or dispute settlement body can exercise pressure to accept a compromise. As an example trade disputes can be mentioned. Here the Director- General of the World Trade Organisation (WTO) can tell the parties to a dispute which decision from a Dispute Settlement Body may be expected. Here, parties may be inclined to accept a proposal because at the end of diplomatic attempts to solve the dispute an obligatory judicial mechanism is available.

4.3.3 Authority - transfer of responsibility

If one of the major problems for the finding of a solution lies in the existence of powerful interest groups that oppose compromises inside one or both of the disputing states it is not sufficient to convince their representatives of the advantages of a compromise. They need help to win supporters inside the states they represent.

In these cases, third party opinions can be used as an authority to sell a certain outcome of a process at home. The acceptance of an outcome that is perceived as unfavourable can more easily be justified if powerful third states, an international organisation or an international court can be made responsible. In these situations the representatives of states are sometimes inclined

[7] Cf. R.L. Merritt, Communication in International Politics, London 1972.

to accept a judicial settlement of their dispute. A binding decision opens the way for the acceptance of a compromise without loosing face.

5 Functions of formalised enhanced diplomatic dispute settlement

The foregoing discussion of the reasons for the choice of specific means for the settlement of disputes has demonstrated that there is only a restricted field of application for the intermediate procedures.

They are of a certain value for the parties as far as a moderation of the negotiations is needed. Third parties acting under these procedures can provide the parties with information they need for finding a rational decision. But it is questionable whether for the performance of these functions a formalised procedure is necessary. A personal representative of a credible international institution or a powerful nation can also do this job.

The intermediate procedures are less adequate if pressure or authority are needed. In theses cases the state parties to disputes tend to prefer the involvement of a powerful actor (e.g. the United States) or a binding decision by a judicial body.

6 Perspectives for the OSCE[8]

On the basis of the experience gained with the procedures discussed it would be rather surprising if these methods for conflict management would be of great importance as they are now written on paper. It seems to be necessary to integrate these procedures in the conflict-oriented activities of the political organs of the OSCE. Only these organs could credibly exercise pressure upon the parties to take e.g. the outcome of conciliatory proceeding serious. They can back up the efforts of mediators and conciliators in the field with the necessary authority.

This view is confirmed by the practice of states and the OSCE, which clearly demonstrates a preference for the political procedures. These should be improved on a step-by-step approach by incorporating elements of formalised dispute settlement.

[8] See also H. Neuhold, Conflicts and conflict management in a "new" Europe, AJPIL/ÖZöRV 46 (1994), 109-129.

(14)

Chapter 3:
Jurisdictional web in the OSCE space - 'OSCE subsidiarity clauses'

by

Susanne Jacobi[1]

I. Subsidiarity of CSCE/OSCE procedures for the peaceful settlement of disputes

In order to avoid a duplication of existing instruments for the peaceful settlement of disputes (=PSD), most of the OSCE PSD instruments have been created as - more or less - complementary and subsidiary.
This holds true, in particular, for the much disputed project of the 'Convention on Conciliation and Arbitration within the CSCE' the preamble of which explicitly emphasizes that the states parties to the Convention *'do not in any way intend to impair other existing institutions or mechanisms, including the International Court of Justice, the European Court of Human Rights, the Court of Justice of the European Communities and the Permanent Court of Arbitration.'* More precisely, Art. 19 stipulates highly complex provisions regarding the subsidiarity of both the conciliation and the arbitration procedure under the Convention.
To the same end, but with different wordings, also the 'Valetta Mechanism' and the 'Directed Conciliation' procedure have been provided with rules for them to step back behind other PSD means. The relevant provisions read as follows:

1. Convention on Conciliation and Arbitration within the CSCE (Annex 2 of the Stockholm CSCE Council Meeting Decisions on PSD, 14 December 1992)
'Art. 19
Safeguarding the Existing Means of Settlement
1. A Conciliation Commission or an Arbitral Tribunal constituted for a dispute shall take no further action in the case:
(a) If, prior to being submitted to the Commission or the Tribunal, the dispute has been submitted to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept, or if such body has already given a decision on the merit of the dispute;
(b) If the parties to the dispute have accepted in advance the exclusive jurisdiction of a jurisdictional body other than a Tribunal in accordance with this Convention which has jurisdiction to decide, with binding force, on the dispute submitted to it, or if the parties thereto have agreed to seek to settle the dispute exclusively by other means.'
The scope of the conciliation procedure is even more restricted: A Conciliation Commission *'shall take no further action if, even after the dispute has been submitted to it, one or all of the parties refer the dispute to a court or tribunal whose jurisdiction in respect of the disputes the parties thereto are under a legal obligation to accept'* (Art. 19 (2)) and it shall postpone examining the dispute if it *'has been submitted to another body which has competence to formulate proposals'* and not resume its work unless at least one party would request it to do so if the dispute was not settled by those prior efforts (Art. 19 (3)).

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[1] Johann Wofgang-Goethe-University, Frankfurt/Main.

States are allowed to make reservations in order to ensure compatibility *'with other means of dispute settlement resulting from international undertakings applicable to that State'* (Art. 19 (4)). The Commission or Tribunal has the competence to determine its competence (Art. 19 (6)).

2. Provisions for a CSCE Procedure for Peaceful Settlement of Disputes (Report of the CSCE Meeting of Experts on Peaceful Settlement of Disputes, Valetta 1991)
'Section III
The procedure described below will not apply if the dispute has previously been dealt with, or is being addressed, under some other procedure for the settlement of disputes, as referred to in Section VIII, or is covered by any other process which parties to the dispute have accepted.'
Section VIII refers to the content of the comment or advice the Valetta Mechanism may render: it *'may relate to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure which it may indicate in relation to the circumstances of the dispute, or to any aspect of any such procedure.'*

3. Provisions for Directed Conciliation (Annex 4 of the CSCE Council Stockholm Meeting Decisions on PSD, 14 December 1992)
The relevant provision, para. 5, combines the principle of subsidiarity with a Valetta-type escape clause. The parties to a dispute will not be directed to seek conciliation:
'(a) if the dispute is being addressed under some other procedure for the peaceful settlement of disputes;
(b) if the dispute is covered by any process outside the CSCE which the parties to the dispute have accepted, including under an agreement in which the parties have undertaken to address certain disputes only through negotiations;
(c) if either party to the dispute considers that, because the dispute raises issues concerning its territorial integrity, or national defence, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas, the provisions of the Annex should not be applied.'

II. Gaps in the jurisdictional web to be filled by OSCE PSD procedures?

While, anyhow, it is difficult enough to determine whether an international body is competent to deal with a specific dispute, the complexity of the different OSCE subsidiarity clauses does not facilitate the task to detect gaps to be filled by them. The question is whether there might be a general need for OSCE PSD instruments or, at least, specific types of dispute, fields of international law, or possible parties to a dispute (for example among Eastern and Central European states) who are not yet included in the existing PSD net. Thus, the examination should proceed in two steps:

1. Analysis of the subsidiarity clauses regarding their wording and content - what kind of outside-OSCE PSD procedure would have priority over which OSCE PSD procedure? Which requirements (regarding the the degree of formality; legal/non-legal obligation to

accept a procedure; (quasi-) juridicial, compulsory/voluntary character; binding/non-binding results) would have to be met by a procedure?
For example: What is the difference between Art. 19 (1) and (2) of the Convention? Would the undertaking to address disputes through negotiations, as envisaged in paragraph 5 (b) of the Provisions for Directed Conciliation, also be sufficient to take precedence over the Valetta Mechanism as 'any other process' which the parties have accepted (Section III)?

2. Analysis of exemplary global and regional PSD instruments - in how far is there any space for the application of OSCE PSD procedures to possible disputes between OSCE participating states? Alongside the traditional classification of PSD means (see Art. 33 UN Charter), questions like access to an institution; actual obligation to submit to a specific procedure; acceptance of compulsory jurisdiction ('matching declarations'/reservations, principle of reciprocity) shall be addressed, with special emphasis on those states/state groups (Eastern and Central Europe) where a 'gap' may be most likely to be found.

III. Existing PSD procedures to be taken into consideration

1. International courts and tribunals

a) Global/general:

- International Court of Justice (Art. 92, 93 UN Charter, Art. 36 ICJ-Statute)
  - -- Declarations under the 'optional clause' (Art. 36 (2) ICJ-Statute)
  - -- Treaties providing for reference to the ICJ (e.g.: International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (Art. 11, 12); Geneva General Act for the Pacific Settlement of International Disputes, 1928/1949; Vienna Convention on the Law of Treaties, 1969 (Art. 66 + Annex); European Convention for the Peaceful Settlement of Disputes, 1957)

b) Global/specialized:

- International Tribunal for the Law of the Sea (UN Convention on the Law of the Sea, 1982, Annexes V-VIII)

c) Regional:

(Human rights)

- European Commission on/Court of Human Rights (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 46)

(Economic/nuclear energy)

- Court of Justice of the European Union, 1957; Court of First Instance, 1988
- Benelux Arbitral College/Court of Justice, Benelux Economic Union, 1958
- European Nuclear Energy Tribunal (Convention on the Establishment of a Security Control in the Field of Nuclear Energy, 1957 (Art. 12-14 + Protocol); EUROCHEMIC, 1957 (Art. 16); Convention on Third Party Liability in the Field of Nuclear Energy, 1960 (Art. 17); Convention Supplementary to the Third Party Liability Convention, 1963 (Art. 17))

2. Global/arbitration:

- Permanent Court of Arbitration (Hague Convention on the Pacific Settlement of Disputes, 1899/1907)

3. Arbitration and/or conciliation procedures in the framework of international organizations

(general)

- Charter of the United Nations, 1945 (Art. 33-38)

(Human rights)

- International Covenant on Civil and Political Rights, 1966 (Art. 41, 42)

(Arms control)

- Treaty on Conventional Forces in Europe, 1990 (Art. XVI)
- Chemical Weapons Convention, 1993 (Art. XIV)

(Economic/technical and environmental matters)

- GATT Dispute Settlement Panels and Working Groups (Art. XXII, XXIII and Understanding of 1979)/WTO
- Agreement relating to the International Telecommunications Satellite Organization 'INTELSAT', 1971 (Annex C)
- European Fisheries Convention, 1964 (Art. 13 + Annex)
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Annex)

4. Bilateral general arbitration/conciliation treaties:

- German-Swiss Treaty on Arbitration and Conciliation, 1921/1928
- Danish-Swedish Treaty, 1924
- Italian-Swiss Treaty, 1924
- Bryan Treaties: US-France, 1914/US-GB, 1914

5. Compromise clauses providing for the establishment of ad hoc arbitral tribunals

(Multilateral Agreements)

- Vienna Convention on Diplomatic Relations, 1961 (optional protocol)
- Convention on International Liability for Damage caused by Space Objects, 1972 (Art. 19)

(Bilateral Agreements)

- Air Services Agreement UK-US, 1977 (Art. 17)
- Agreement on Social Security FRG-US, 1976 (Art. 19)

Chapter 7: Use and non-use of OSCE procedures

by

Susanne Jacobi[1]

I. While the CSCE/OSCE-PSD procedures are relatively new, the concept of PSD as a CSCE principle is not: Pinciple V of the Helsinki Final Act contains the commitment to settle disputes between the participating states by the 'classical' PSD means of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other means of their own choice. Through the adoption of the Valetta mechanism in 1991 and, in 1992, of a whole set of PSD procedures ranging from two additional conciliation procedures to the Convention on Conciliation and Arbitration, the OSCE meanwhile is well-equipped with procedures, at least on the paper.

use of OSCE procedures: so far, no use.

II. **non-use:** *leads to the question of reasons for the reluctance of states to submit disputes to PSD mechanisms.*

The record of the international state practice as well as the underlying reasons differ with respect to the different PSD means; the motivation to accept or to reject an offer of good offices cannot be identified with that to accept or reject a judicial procedure before the ICJ. Thus, the examination will follow the dividing line between binding PSD and other procedures like mediation/conciliation. Moreover, different levels of argumentation will have to be separated:

1. **most general:** *hardly encouraging international state practice regarding dispute settlement procedures involving third parties.*

Interestingly, this argument against introducing the Convention on Conciliation and Arbitration had not been used by the states opposing it (particularly the US, UK and Turkey) during the discussion within the CSCE informal working groups. (For example, the Permanent Arbitration Court delivered 20 sentences in the first 33 years of its existence and has not been activated since 1932.)

Although the prospects are not as dark for the ICJ, the prevailing assessment is that binding dispute settlement nowaday is generally deemed appropriate only for minor conflicts, questions of a predominantly technical character or within highly integrated communities as it is the case with the EU. The conflicts at the heart of the matter, e.g. those of high political importance or those resulting from minority problems and the dissolution of states, are considered to be hardly accessible to conciliation and arbitration.

On the other hand, the continuing international practice of inserting such clauses in treaties seems to contradict this assessment, although this may be aimed at achieving some other result (like motivating parties of a dispute towards settling it by peaceful means other than conciliation and arbitration).

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[1] Johann Wolfgang Goethe-University, Frankfurt/Main.

Issues to be adressed:

- Which conditions are favourable for the use of PSD?
- Record, prospects and popularity of the different means of third party PSD (mediation, conciliation, arbitration)
- Do states prefer non-binding to binding PSD mechanisms? Menu Approach instead of a step-by-step approach, threatening compulsory arbitration as the last stage?
- Procedural questions (composition of the body; effect of the procedure to be followed and its outcome, in particular the relevant law)
- Which kind of conflict may be settled by peaceful means - or are there conflicts that simply cannot be settled that way?
- Explanations for the divergence between the elaborated systems of conciliation and arbitration and their practical result?

2. CSCE/OSCE structural level: *Convention on Conciliation and Arbitration not suitable for CSCE/OSCE.*

While the different (politically binding) CSCE/OSCE conciliation procedures have been criticized for several procedural shortcomings, more fundamental objections have been raised against the character of the convention as a legally binding instrument (the first one concluded within the CSCE/OSCE framework apart from the CFE and the Open Skies Treaty). Although CSCE/OSCE commitments were 'only' informal and of a politically binding nature, they were binding on all participating states, while the convention is not and only binding on those states ratifying it, thus breaching the principle of universality and leading to different sets of standards for different states. The question involved is whether this is a gain or a loss of binding force (and of legitimacy)?

The adoption of the PSD package was made possible by an 'agreement to disagree' between the French-German coalition promoting the Convention and its US/British opposers. The dispute over 'legalizing' the CSCE/OSCE reveals an underlying conflict regarding its future structure and its position in Europe as a whole, reflecting different interests, political concerns and historical and legal traditions of the participating states.

Moreover, the CSCE/OSCE's 'philosophy' and its procedural, non-institutional approach is said not to be compatible with the traditional law-oriented PSD models. The CSCE, being itself a framework for the reduction, containment and civilization of conflicts, has contributed to overcoming the East-West confrontation and to peaceful change in Europe by offering nothing more than a framework for informal and dynamic discussions. Being characterized by cooperative methods of decision-making, is it adequate to introduce rigid legal regulations aimed at forcing the parties of a dispute to compromise?

Issues to be adressed:

- CSCE/OSCE's structural strength and deficiency: advantage of the 'informal' approach?
- Need for further institutionalization/legalization: Will or should the Convention be followed by other legal instruments?
- Consequences of undermining the principle of universality
- Function of the Convention in 'shaping the New Europe': Does it correspond to a real need felt by Central and Eastern European states to settle their numerous disputes - or does it obstruct their democratic development by imposing too high requirements which cannot be met by the 'new democracies'?

3. PSD instrument level: *deficiencies of the mechanisms.*

It is widely held that each of the PSD mechanisms is far from being perfect and more or less limited in its scope. For example, the Valetta Mechanism has been criticized *inter alia* because of its wide escape clause, nevertheless this clause has been repeated in the Provisions on Directed Conciliation and can be made subject of the declaration to accept the Court's arbitration procedure under the convention. The convention, in particular, is said to be regressive rather than progressive; regarding its compulsory character; the fact that neither individuals nor minorities have legal standing before the court (thus excluding all HD issues as well as the most relevant sources of conflict, e.g. intra-state conflict); the initiation of the procedure etc. The PSD instruments at the disposal of the OSCE should therefore be analyzed with a view of shortcomings and possible (realistic or desirable) improvements.

Issues to be adressed:

- Initiation and conduct of the different procedures; composition of the bodies; rules of procedure; control of the parties; enforcement of the award
- Relevant norms to be taken into account; outcome of the procedure
- Escape and subsidiarity clauses
- Financial aspects
- Widening of the procedures' scope?

Possible case studies

- Fisheries dispute (Spain/Canada)
- Gabcikovo (In October 1992, Hungary initiated the Berlin Emergency mechanism instead of the Valetta mechanism which supposedly could have been invoked)
- Great Belt Case (Finland/Denmark)
- Aegean Sea Islands (Greece/Turkey: On 28 February 1992, the EU foreign ministers agreed on a compromise saying that the parties shall settle their dispute by peaceful means, including the clarification of all legal questions, if necessary, by the ICJ.)

(Note: Shall the occasional cases of the initiation of the HD mechanism and the Berlin Emergency mechanism be included in this chapter - or (as rather belonging to 'conflict prevention' and not to formalized PSD) being addressed by the Turku participants?)

Berthold Meyer

Dispute settlement procedures and crisis management

Some preliminaries to the paper to be presented at the 3rd workshop

1. As all measures and procedures of dispute settlement in the documents of the CSCE-process are cases of application of crisis management, crisis management is the generic term of different dispute settlement procedures. The regulation of the Final Act from Helsinki, that dispute settlement has to be peaceful is an international norm and is a guideline for all efforts of crisis management.

2. What are the requirements of a promising conflict management? To answer this question, it is necessary to differ between conflict management within the group of conflict parties and Third Party efforts of conflict resolution. In the latter case (which will be in the center of the analysis) it must be differed between situations, where the Third Party is invited by one or all conflict parties to help to come to a resolution or transformation of their dispute, and those, where the Third Party takes the initiative by itself.

3. The success of a Third Party depends either on being accepted from both conflict parties as being impartial (for cases of arbitration, bargaining, negotiation or mediation) or being partial but powerful enough to put as much pressure on one or all disputing parties or give them "sticks and carrots" as it is necessary to come to a peaceful settlement. It is possible that a powerful Third Party is not accepted, when it is obviously looking forits own interests, for instance to get or hold influence in a region or to prevent an expansion of the crisis onto its own territory.

4. Besides, it is to bedistinguished, if a measure of conflict management starts in an early or in a later phase of a conflict, when tensions have reached a critical point or even have crossed the threshold of violence. The status of escalation is meaningful to decide whether it is urgent to come to measures which shall prevent a further escalation or to those which shall lead to a de-escalation and a conflict transformation. In the first case it may be useful to favour an intervention by military means (as US/NATO did in Bosnia), for the latter it is more useful to intervene with civil longterm missions like CSCE/OSCE did in several conflicts. This difference shows the importance of "time" as a factor of crisis management.

5. Under the doube aspect "pressure of time" and "effectiveness" I would like to relate the procedures of dispute settlement in the CSCE/OSCE-process in the following scheme:

pressure of time	effectiveness		
	low or temporary	medium	high or enduring
quick reaction is necessary	control of escalation via Berlin-Mechanism, Valletta-Mechanism, Vienna Mechanism, Moscow-Mechanism	early warning by High Commissioner for National Minorities; observation by long-term missions	
relatively much time is necessary or available		arbitration, bargaining, negotiation or mediation by the HCNM or a Third Party or in the context of long-term missions or seminars of ODIHR	proceedings of settlement and arbitration at the Geneva Court of the OSCE

6. This leads to the following questions:

6.1 How can the discrepancy be minimized between the urgency of a reaction and the enduring effectiveness ?

6.2 Are the relations between the different dispute settlement procedures flexible enough to gain the necessary time for long-term measures and enduring effects by starting with quick reaction procedures being only temporarily effective, or do exist tensions between the different procedures following the sentence "the well-meant is the enemy of the more effective"?

7. Besides this it must be analized, if some of the OSCE dispute settlement procedures - which were never experienced since they were adopted - were only the result of tactical compromises, because some greater powers were not prepared to accept foreign influence regarding their own conflict behavior or international regimes in questions of their own vital interest. Therefore, it is to be asked, if some mechanisms had been developed only to demonstrate a general willingness of "doing something", but that these procedures had been complicated intentionally in a way that would make them not attractive to be used.

(17)

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THE OSCE: INSTITUTIONAL AND FUNCTIONAL DEVELOPMENTS IN AN EVOLVING EUROPEAN SECURITY ORDER

Kari Möttölä

The author is Special Adviser, Security Policy at the Ministry for Foreign Affairs of Finland. Statements of fact and opinion are those of the author and do not imply endorsement by the Finnish Government.

Introduction: an OSCE security model

In the Budapest Document 1994, the participating States of the Organization for Security and Co-operation in Europe (OSCE) agreed to start "a discussion of a model based on the CSCE principles and [...] documents for a common and comprehensive security for the twenty-first century." After the first phase, devoted to listing security risks and challenges and assessing conceptual aspects, a progress report of the "broad and comprehensive discussion on all aspects of security [...] aimed at devising a concept of security" was presented to the fifth meeting of the Ministerial Council in Budapest, December 1995, which agreed upon a set of guidelines to take the work into a more operational phase. Results "available at that time" will be presented to the Lisbon Summit Meeting in late 1996.[1]

The model discussion within the OSCE is another phase in the process towards a sustainable and workable security order for a post-cold war Europe facing new risks and challenges but also enjoying new opportunities for co-operation. Since the euphoria and sweeping proposals of the immediate post-Wall period, the mainstream in the search for a new security has followed a gradualist and organic approach, stressing the integrity of the common normative basis for inter-state and intra-state relations, the need for adapting existing international institutions instead of establishing new ones, the opportunity opened for international solidarity and crisis management, and the central function of socio-economic transition within former totalitarian states as an engine for peaceful change at the national and international levels.

The exchange of views among the 53 OSCE participants is

devoted to determining, developing and asserting the role of their joint institution in producing security, but the task is broader in scope. Conceptual visions are needed, and political programmes of action called for, to affect the normative, institutional and functional aspects of the European security order as a whole. The model study will cover not only the OSCE but also its external environment, the evolving complex security structure of the post-cold war Europe. In fact, one of its main aspects will be the determination of future relations between European and transatlantic security-related institutions and organizations, the OSCE being but one of them, embedded in the system, albeit in a special position and with its particular strengths and weaknesses.

As a community of values and as a security-policy organization, the OSCE is performing both normative and operative roles in European security.

The OSCE has an unquestioned position as an institution responsible for codifying and designing norms for intra-state as well as inter-state behaviour. The United Nations with its global and inclusive mandate, and the Council of Europe with its sectorial mandate, are the other recognized norm-setting fora, their standards being consistent with the OSCE acquis.

Together with the OSCE, several other European and transatlantic institutions and organizations are involved in the verification of state actors' compliance with the common norms, and in generating concerted actions aiming at their implementation and enforcement. In addition to the CSCE/OSCE itself, most of these institutions, notably such originally Western institutions as the European Union, the WEU, the COE and NATO, are survivors from the cold war. They are

adapting their activities to new circumstances and tasks and enlarging their spheres of contact and influence with those countries that during the cold war remained outside, or on the other side of, the East-West divide and are rejoining a unifying and integrating Europe.

The multi-institutional order which is based on mutual reinforcement and complementarity[2] has to fullfil a variety of functions in order to meet post-cold war challenges to security in Europe. In the context of ongoing political and structural change, those functions can be set in three broad categories: (i) promotion of transition while safeguarding stability; (ii) conflict management in all its aspects; and (iii) maintenance of military-strategic stability.[3]

Against the legacy of organized violence in Europe (Gleditsch, 1995, 539-543), the point of departure for any definition and assessment of security policy is the problem of wars and other types of conflict. The three broad functional approaches of security policy - prevention, crisis management and protection - are interlinked and pursued simultaneously. In coping with conflict in international relations, prevention and protection are long-term strategies, whereas crisis management concerns immediate or short-term responses to actual challenges; in terms of instruments used, prevention is predominantly a non-military strategy, protection is traditionally a military strategy and crisis management is both a non-military and military strategy. (Keatinge, 1995, 6-9)

Whereas the "long peace" of the cold war era was connected with the policies of strict bipolarity and confrontational deterrence and the concomitant risk of nuclear war (Gaddis, 1987; Gleditsch, 1995, 543-555),

the post-cold war era has brought to the fore the problem of internal and domestic conflict (Sollenberg and Wallensteen, 1995; Gleditsch, 1995, 555-563). Accordingly, efforts towards common security have to avoid new divisions and find innovative solutions to conflict resolution that go deep into the root causes of violence.

The wide scope of security-policy strategy reflects the broad concept of security that has emerged in the post-cold war political and intellectual milieu. Security is not only determined by political and military factors but includes also social, economic and ecological aspects. Assessing security challenges, concerns, risks and threats is likewise an exercise with a broad agenda. Security policy - national as well as international - has to deal with change not only as a challenge but also as an integral goal; the unification of a community of states under the common norms of democracy; the compliance with and implementation of norms, including through conflict prevention and crisis management; and military problems connected with strategic residuals from the bipolar order, new trends in defence alignment and complicated subregional conflict scenes.

In addition to its inclusive membership, one of the unique characteristics of the OSCE is the broad scope of its agenda and activity, covering all the aspects of comprehensive security. In practice, however, the OSCE has a broad normative basis combined with a narrow or "soft" operative capability for action. Enhancement of its capability is not only an internal institutional matter for the OSCE, but involves also its relationship with other international institutions in the totality of the security order. Furthermore, it depends on the motivations and interests, as well as contributions, of

the participating states and their common bodies to develop the institutional and functional aspects of the OSCE. One of the strengths of the OSCE in its search for an optimum role is institutional flexibility.

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The present and future role of the OSCE in the international security order is determined by its political and legal **competence** as an international institution, by its **capability** for concerted action depending on its decision-making efficiency, institutional structure and material resources, and by its **authority** and prestige arising from the will of actors to use its services in attaining security goals and in meeting security challenges, reflecting the impact of the international institution on state actors' behaviour. The role of the OSCE will vary in the different functional sectors of security policy, stability promotion, conflict management and arms control.

The present paper deals with the theory and politics of an OSCE security model for Europe, and more generally with the role of institutions in international security and security governance.

Firstly, the paper deals with concepts and theories of security. What kind of background theories can be used for an OSCE security model? What are the worldviews and perceptions that serve as arguments or sources for a new European security order?

Secondly, the paper deals with security policy. Analyzing the functional and institutional aspects of an evolving security order in Europe, the paper aims at assessing effective international governance within the

various sectors of security policy and outlining, in a predictive and prescriptive manner, a security "model" or a "common security space" for Europe.

1. Significance of the Budapest decisions for the role of the OSCE[4]

In changing the name of the institution from "Conference" to "Organization", the Budapest Summit underlined the "new political impetus" given to the OSCE so that it can play "a cardinal role" in meeting the security challenges facing the participating States in the next century.

Although the change in name altered neither the political character of the OSCE commitments nor the status of the organization, the decisions in Budapest are aimed at a more efficient joint decision-making and a stronger impact of concerted action through the OSCE on security and stability in Europe. The concept of "partnership" is introduced to indicate the nature of the overall relationship among the members and their cooperation aiming at common security in a system based on the sovereignty and equality of states.

The results from the Budapest meeting affect the security-role of the OSCE in all its aspects: competence, capability and authority.

Competence

Competence, set in formal rules, is determined by the political and legal character of the joint provisions and commitments and the nature and scope of the tasks and functions ascribed and delegated to the common organization.

After Budapest, the fundamental nature of OSCE commitments, their politically binding character of OSCE commitments remains unchanged. The issue of legal competence was touched upon and will remain part of the future agenda, above all in the narrow sense, concerning the legal personality of the OSCE and its institutions, which is referred to in the Document, but also in the broader sense, exemplified by the idea of turning OSCE commitments into a mutual security treaty.

The coverage of OSCE norms is extended to collective policies of the institutions and organizations where the participating States belong and which will share the values and objectives of the OSCE. Even though the OSCE has no operative power over the decisions or actions of other institutions, its status is further strengthened in the multi-institutional order as the provider of legitimacy through norms and principles.

The adoption of the Code of Conduct on politico-military aspects of security has extended, in a more directive manner, the normative OSCE guidance to inter-state and intra-state military relations and to the use of military force in general. The Code of Conduct has a special relevance for internal conflicts and internal security operations. (Lucas, 1995)

The Code of Conduct acts as a reference document for military reforms, including the establishment of democratic control of armed forces, in states and societies on their way to pluralistic democracy. In effect, the Code complements the Bonn Document (1990) on the economic dimension and the Copenhagen Document (1990) on the human dimension as a guidebook on the workings of democracy.

Furthermore, the Code of Conduct has a normative role

in guiding decisions on independent or collective defence arrangements. Based on the principle of sovereign equality, the Code of Conduct confirms the right of each state freely to choose and change its security arrangements, in accordance with international law and OSCE commitments. Such decisions should, however, be taken bearing in mind the legitimate security concerns of other states. Stressing the indivisibility of security, the participants reconfirm in the Budapest Declaration their commitment not to pursue security interests at the expense of others.

Another application of the principle of sovereign equality in security policy, while coping with diversity, is found in the Budapest mandate on further development of arms control within the OSCE. The decisions stress that the work towards a framework and an agenda for new measures will take "into account the specific characteristics of the armed forces of individual participating States." The provision refers to differences in defence systems, in particular between those relying on significant standing forces and those based solely on force generation through mobilization. The principle of equal security and the goal of increasing defensiveness are relevant here.

Capability

Capability has to do with the institutional structure of the organization and the way it harnesses its resources. Capability measures the efficiency of the OSCE's decision-making and joint action.

Increasingly, the focus is placed on the operational capability of the OSCE in various forms of conflict management, such as early warning, conflict prevention, crisis management, dispute settlement and post-conflict

rehabilitation.

The political management side of OSCE decision-making is strengthened by emphasizing the contribution of capitals in the Senior Council, making the Permanent Council into a permanent Vienna-based body for political consultation and decision-making, also for emergency purposes, and encouraging a more assertive role by the Chairman-in-Office and the Secretary General, enhancing OSCE executive action in conflict management.

By the implementation of the Budapest decision on Nagorno-Karabakh, peacekeeping (military crisis management) would be introduced in the OSCE arsenal of instruments and put into real use. It would enlarge the role of the OSCE in conflict management, complementing its innovative functions in early warning (HCNM), conflict prevention (HCNM, missions) and political crisis management through missions. This first OSCE peacekeeping operation is to be launched once the political preconditions (a ceasefire agreement, a supporting UNSC resolution) are met and the military planning is concluded. In Budapest 1995, the OSCE ministers noted that agreement on the basic principles for the resolution of the Nagorno-Karabakh conflict continued to be elusive, despite the efforts of the Minsk Group as the sole forum. Even though the preparatory military planning had been concluded, conditions for the deployment of an OSCE operation were lacking.

A stronger capability for the OSCE in conflict management will enhance its position in the functioning of the multi-institutional security order.

The Chechen crisis has demonstrated the role of the

OSCE as a forum available for co-operative crisis management with Russia in sensitive situations which have an impact on its territorial unity and reform process. The OSCE fact-finding mission and later the OSCE assistance group have facilitated humanitarian aid, monitored human rights and ensured an international political and diplomatic presence on the conflict scene. Through Permanent Council discussions in Vienna and the good offices by the group on site, the OSCE has acquired a role in the political settlement of the conflict. (Bloed, 1995a; Survey of OSCE Long-Term Missions, 1995)

Authority

Authority of an organization, in the sense of prestige and influence, flows from deeds, action and results, from the performance of the OSCE in fulfilling its functions. Authority has to do with past, present and future expectations by actors towards the OSCE and in comparison with other institutions.

The competence and capability of an institution set limits to its performance but room remains for the workings of political will. Consequently, authority is the measure of the will of the participants to comply with OSCE norms and decisions and to use, or cooperate in the use of, its institutional structures and instruments for security tasks.

The authority of the OSCE as a norm-setter and norm-provider is unquestioned. But in addition to the moral or potential authority brough about by this role, the OSCE is in need of dynamic or operative authority.

The OSCE like other institutions, suffering from a credibility loss caused by the war in former

Yugoslavia, has a new chance in the implementation of the Dayton peace accords and in the reconstruction and rehabilitation of the region.

A succesful operation in Nagorno-Karabakh would increase the OSCE's prestige, as it applies to a major conflict in the region. The OSCE's actions in the Chechen crisis will be an important indication of its capacity in the political management of difficult issues. A success can enhance the authority of the OSCE as a lead institution in situations involving the CIS region.

Both the Nagorno-Karabakh and Chechen cases highlight the role of the OSCE as an institution for dealing with conflicts in the former Soviet Union and for integrating Russia within the common accountability regime. The discussion on a security model provides a forum for addressing Russian security concerns in the light of such issues as NATO expansion.

As the only or principal forum for future arms control in Europe, the OSCE will be kept in the focus of national and collective security policies. Important challenges will be the interface of arms control and conflict management as well as the integration of regional solutions and specific national characteristics into a future arms control programme.

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Summarizing the Budapest results (see also Greco, 1995), the competence of the OSCE is reaffirmed with an option for further refinement. The capability of the OSCE is strengthened through small steps in its present forms of activity and through enlargement to peacekeeping. New prospects are opened for enhancing

the authority of the OSCE as a security institution by succesful conflict management activities in the FSU and Balkans.

2. Institutionalist and realist theories of international security relations

The end of the cold war and the dissolution of the East-West divide have been followed by a profound post-cold war transformation in international relations. Unification of a new Europe, based on the recognition of the common principles of democracy and market economy, has become the declaratory goal embodied by the OSCE. Implementation of this policy, involving a new security order for Europe, has revived institutionalism as an explanatory and predictive theory, working in parallel with, and in competition with, the traditional realist theory. (Baldwin (ed.), 1993; Dunne, 1995a; Goldmann, 1994; Mearsheimer 1994/1995; Powell, 1994; Wendt and Friedheim, 1995; assessed also in Möttölä, 1995a)

The neoliberalism-neorealism debate is relevant for efforts towards a new security order in Europe, as it concerns the nature of the post-cold war change, whether it is fundamental or situational, and the factors accounting for the change. The main point here is how the change in international relations affects not only political, social and economic but also security relations, the conditions determining conflict, war, peace and stability.

As a challenging doctrine, institutionalism contains a promise of change in international relations and rejects the immutability stressed by realism. As a political programme, institutionalism (neoliberal

institutionalism, liberal internationalism, multilateralism)[5] promises to make international relations less conflictual or less war-prone by international institution-building and inter-state cooperation in security affairs.

Both (neo-)realist and institutionalist theories view the structure of the international system as a powerful determinant of state action, but the latter considers social problems with structural causes to be solvable by structural reform or change. While realism views the essential features of the international system to be nearly constant, institutionalism sees systemic features essential to war and peace as variable. (Goldmann, 1994, 198)

A structural reform, accordingly, is the first institutionalist line of action in changing and reforming the European security order. A deeply integrated community of states or a perfect and uniform collective security system are examples of such far-going structural changes.

Institutionalist trends can differ essentially from each other. While (neo-)liberal institutionalism is predicated on a rationality assumption behind the interest-based behaviour of states engaged in security cooperation, the international society theory is reflectivist, stressing their subjective sense of being bound together by a community. (Dunne, 1995, 142) While states remain sovereign and equal under anarchy, they constitute an international society which is more than the sum of its parts. A post-cold war international society does not require a structural transcendence of the states-system but its reforming; the aim is generating good security governance. To cushion the effects of security competition, states devise common

rules of existence, whereby humanitarian and ethical aspects become significant factors. (Dunne, 1995, 138)

The second institutionalist line of action in security modelling, accordingly, stresses the need for a **governance reform**, which does not require fundamental structural changes. Instead, the questions of leadership, decision-making and joint responsibility come to the fore. Governance gives intention to order; governance shapes the system and runs its functions irrespective of the formal or explicit organizations or structures (Rosenau, 1992).

Institutionalist programme

Institutionalist thinking recognizes inter-state anarchy - the absence of central authority with distributive and coercive powers - as a key structural and political factor in the international system. But institutionalism relativizes the explanatory power of anarchy in shaping motivations and actions of states; even in anarchy, international institutions or cooperation can have a significant impact on international relations.

One need not choose between a world government and a hierarchy of states in order to overcome or transcend the problems inherent in the propensity of states under anarchy to rely on self-help, reach for relative gains at the expense of others or search for protection from cheating by others - the basic characteristics of a realist behaviour. "Governance without government" (Rosenau and Czempiel, 1992) is an answer, increasingly dominating the post-cold war scene in theory and policy, constructing "a half-way house" between anarchy and hierarchy (Holsti, 1992, 55-56). In particular, international regimes "as social institutions

consisting of agreed upon principles, norms, rules, procedures and programs that govern the interaction of actors in specific issue areas" (Levy et el., 1995, 274) represent such "non-hierarchical, voluntary, international collective self-regulation and self-organization of states" (Mayer et al., 1993, 398, 402).

In the epistemological and metatheoretical debates, liberal institutionalism as an objectivist "outsider" approach is based on the rational actor model of interest-formation where cooperation can be explained without recourse to common beliefs or shared values. Institutions affect international relations by changing state policy and behaviour. International society thinking comes close to constructivism (Dunne, 1995a) which sees that institutions can fundamentally change state interests. According to the reflectivist actor model, norms are not just constraints or coercive components of the international system, they are constitutive components that play a significant explanatory role in state behaviour by defining and reforming interests and identities (Klotz, 1995). Such a subjectivist "insider" approach understands cooperation as being what it means to belong to a community.

In neorealism, structure is exogenous to actors and causes outcomes such as a tendency towards balance through socialization and competition, irrespective of the motives of states. In international society constructivism, actors constitute structure through their practices or intersubjective institutions that are produced by common interests and values, perhaps a common political culture. Such a change can lead to a common set of rules or even beyond that to a common identity. (Dunne, 1995a)

Order and security in anarchy need not be based on hierarchical structure, relative power and security competition among state-actors; institutionalism suggests that there can be an orderly and peaceful system of independent states - not different from a well-functioning state - based on cooperation and common norms, values and institutions. (Goldmann, 1994, 4) The burden of proof with "internationalism"[6] is how, "law, organization, exchange, and communication may be expected to protect international peace and security" (Goldmann, 1994, 16). In addition to strengthening institutions (law or other norms and organizations), broader social change is sought after by means of, and in the form of, cooperative interaction at the international level in the institutionalist programme transcending the immutable world of realism.

Institutionalism as a theory may be moderate in its arguments and objectives. It claims that it is possible, if not solve, at least significantly ameliorate the instability problem caused by conflict inherent in a system of independent states. While denying that national independence and a sustainable peacable international order are incompatible - as asserted by realism -, institutionalism does not go as far as the universalist theory built on the idea of unity of mankind and a true community of interests among states or the world society made up of individuals with common ends and values (Little, 1995, 11). While it is not possible or necessary to replace anarchy with hierarchy, inherent conflict can be reduced and constrained through international law or rule making, organizations, interaction and communication. (Goldmann, 1994, 20-21)

There are two types of international efforts aiming at peace, security and stability, the two processes being

parallel and inter-linked. One is conflict-oriented, "coercive internationalism" (Goldmann, 1994, 4, 23, 27); the other is coexistence-oriented, "accommodative internationalism" (Goldmann, 1994, 4, 23, 46-47).

Within the coercive activity, the task is to set up, maintain and reinforce standards of behaviour, and to solve problems caused by a deviant behaviour such as violations of justice or equality. The method is to strengthen norms and organizations "even if it may mean coercing unwilling governments into compliance." For rules to be effective, governments have to comply with them; for organizations or regimes to have an impact, governments must comply with their procedural rules and substantive decisions.

Within the accommodative activity, the task is to bring states and peoples closer to each other, aiming at eliminating misperceptions, reducing the incompatibilities of interests, and increasing empathy among actors. The method used is creating and facilitating integration, communication and exchange at the international level.

The two types of strategy reflect "the Internationalist's Dilemma" in striking a balance between ostracism and empathy toward other states in upholding rules and promoting accommodation. (Goldmann, 1994, 59, 207) The similar dualism of international security policy is evident in the international society of states which can be both constraining (outlawing aggression) and enabling (tolerating difference whilst facilitating cooperation) on its members. (Dunne, 1995, 126)

Developments have given credence to the political applications of institutionalism as an effective

internationalist programme for peace, security and stability. Norms and organizations are significant factors in mitigating security dilemmas and creating confidence among states in the value of cooperation as a security strategy.

Empirical evidence in Goldmann's study suggests that increased cooperation has an impact on peace and security, if it is far-reaching and multidimensional; democracy and openness are essential; international opinion formation makes governments work together; and institution-building and cooperation reduce the likelihood of war between states; but the new pressing issue of intra-state war remains open in the post-cold war world. (Goldmann, 1994, 203-204)

Realist argumentation

Counter-arguments to the claims of theories relying on institutions (liberal institutionalism, collective security, critical theory) express doubts about their distinctive character from realism, their causal logic and the empirical record pertaining to the role and impact of international institutions in shaping state behaviour. (For an extensive and intensive treatise on such criticisms, see Mearsheimer, 1994/95)

According to realists, cooperation is constrained and inhibited by the role of the power structure which motivates security policies, the logic of security competition among states, their effort to maximize their relative power positions and their concern about security and survival caused by uncertain intentions and offensive capabilities of others. Under such conditions, institutions merely mirror the distribution of power in the system, and common rules agreed by states reflect self-interest based primarily on the

international distribution of power.

The core issue is about explaining international change. In particular, realism is hard-pressed to account for a change of such a non-linear and concentrated nature as the non-violent reform, retrenchment, and dissolution of the Soviet Union from the mid-1980s to 1991. (Gaddis, 1992/1993; Allan and Goldmann, 1992)

Several answers and modifications have been presented by realists to meet the challenge of change. The debate has helped to narrow the gap between neorealism and neoliberalism and illustrated their common characteristics.

Realism need not be invalidated by the post-1989 transformation, if not strengthened either; power need not be replaced as the key independent variable by such intervening factors as norms and institutions, if the strict structural variant of neorealism gives way to a non-structural realist argument stressing the importance of changes in decision-makers' assessments of capabilities and interests. By understanding the domestic forces at work in rival countries, leaders can tailor their policies to influence the behaviour of the target states. (Wohlforth, 1994/95; Evangelista, 1995)

Another realist counter-argument notes that fragmentation and complexity of the international system emerge in an analysis based on social identity theory and social psychological factors determining group behaviour. (Mercer, 1995) Anarchy can generate "other-help" systems wherein states identify with one another instead of viewing the other in mere instrumental terms, but the groups may be inherently competitive towards each other. The conclusion supports

the neorealist claim that the principle of action in anarchy is self-help (Mercer, 1995, 247), but it is a consequence of intergroup relations in anarchy (Mercer, 1995, 251). As competition is due to structure in neo-realism, and due to process in constructivism (which sees that institutions can change state interests), here it is cognition and desire for a positive social identity that generate competition. The problems of self-help and relative gains are only partly overcome, namely within in-group relations, whereas inter-institutional relations can remain competitive. Such a line of reasoning provides a realist interpretation to the significance of inter-institutional or inter-regional relations in the post-cold war system.

Another realist answer to the monopoly of the institutionalist explanation of cooperation is "contingent realism" (Glaser, 1994/95), which denotes that under certain conditions adversaries can best achieve their security goals through cooperative policies. The best-known example of cooperation as part of the power game is arms control, in particular during the cold war. In the search for military security, and when forces and equipment supporting offensive vs defensive strategies are distinguishable, states may opt for cooperation and communication of benign intentions through arms control or unilateral defence instead of going for offensive capabilities and military competition. Cooperative military policies can be a form of self-help under anarchy based on power calculations. (Glaser, 1994/95, 52-53).

Furthermore, an international security order can be complex also in realist terms. Among the central arguments of neo-realism in explaining the Westphalian states-system are self-help and functional non-differentiation: states tend to balance against power

and threat; and states are differentiated only by their power position within the system, not by their functions. Investigation of historical cases reveal a more complex and multi-faceted realm. States use other strategies such as hiding from threats by neutrality or isolation, transcending anarchy by cooperative policies, bandwagoning by joining the stronger side for protection or balancing against a hegemon. (Schroeder, 1994, 117) States of various size and power have been accorded status and recognition mainly on the basis of their specific functions within the system and not their power - a recent example is provided by the neutrals in the East-West system (Hakovirta, 1988). States have sought survival by specializing, claiming important functions and roles within the system. Such roles evolve and and vary, reflecting historical change. (Schroeder, 1994, 124-127, 148)

Alternative theories stressing the role of domestic sources in explaining outcomes - strongest among them the theory of democratic peace - challenge structural neorealism and its record as a theory. It is maintained, however, that structural realism is the only paradigm that explains the insecure nature of the anarchic international environment. Domestic and international determinants can be combined under realism in the behaviour of a rational and power-balancing, value-maximizing state. (Kapstein, 1995)

The theoretical debates have increased openness and pluralism in the use of realist and liberalist as well as critical approaches in the investigation of international relations and phenomena. In such an atmosphere, exclusion of one theory is not a conclusive event but the debates are bound to continue.

3. The OSCE between realism and institutionalism

The OSCE, in particular in the post-cold war environment, can be seen as an embodiment of institutionalist thinking on the possibility of cooperation in security, but it is not isolated from the effects of power competition as suggested by realism. The role of the OSCE, operating under the influence of political legacies and strategic residuals from the cold war as well as in the midst of post-division trends in integration and unification, has to be analyzed in realist terms as well.

The OSCE is an institution created by its participants and, in most phases of its development, dominated by great powers and security alliances as well as other coalitions. Many of its key characteristics, such as the consensus rule in decision-making, limited institutional resources and non-hierarchical relations with other institutions, demonstrate that the OSCE remains an intergovernmental organization with no self-expanding dynamics. The members control the effects of the OSCE on their rooms of manoeuvre by controlling its use and development.

Yet, the OSCE represents institutionalist thinking which believes in producing security for members through an organization that becomes stronger and more effective over time. In an earlier study (Möttölä, 1993), the CSCE was seen as representing the rationalist or Grotian idea among Wight's three philosophical schools of international relations (Wight, 1991; Yost 1994), although realist or revolutionary elements could not be excluded completely due to the uncertainties of post-cold war transformation. The OSCE cannot be placed in either end of the realist-utopian or realist-idealist continuum

(Yost, 1994, 278-279); it represents a third, in-between image. Consistent, albeit limited, steps have been taken to consolidate its legitimacy, strengthen its capability and enhance its prestige.
The OSCE study of a security model will have to cope with social and power-political developments. Its results will be influenced by the rearrangement of power relations in post-cold war Europe among the great powers and international institutions as well as by institution-building itself.

NATO enlargement

The question of the enlargement of NATO is a prime reminder of great-power politics in the evolution of the European security order. The enlargement of the European Union will affect the structure of the security order in a fundamental manner, too, even though its implications differ from those of NATO enlargement. In order to maintain cooperative and indivisible security, both enlargement processes have to be consistent with the integration of Russia in a unifying Europe, a goal set by both the EU and NATO for their policies towards Russia and great-power relations in general.

As a military alliance, NATO represents balance of power thinking in the design of its security strategy. In the post-cold war period, NATO has enlarged its role beyond the core military function of collective defence for its members by adjusting its security strategies and establishing outreach programmes. As a result, NATO is becoming an instrument serving peace operations under UN collective security and OSCE cooperative security and promoting out-of-area stability eastwards, an institutionalist policy by its nature.

The dualism in the role of NATO is reflected in the contentious debate on the objectives and effects of its enlargement. On one hand, enlargement is presented as projection of stability by its proponents (Talbott, 1995) and, on the other hand, it is viewed as a strategic challenge by Russia (Arbatov, 1995). Even though a NATO-Russian military conflict has been pushed to the realm of unprobability by the end of East-West confrontation, the US/NATO and Russia remain the two centres of military power on the European scene. Military balance, room of strategic maneouvre and offence-defence relationship remain on the security-policy agenda, which is reflected in the Russian demands for revision of the CFE treaty under the new post-bipolar conditions. (Falkenrath, 1995) At the same time, NATO remains a hedge against a resurgent Russia, as well as a deterrent against conflict in Eastern Europe or a safety lock against renationalization of defence in the West. (Glaser, 1994)

NATO is not a self-evident factor of stability, however. Multipolarity in the post-cold war system, according to classical realist theory, revives the significance of alliances as an instrument in security policy. But as the international system remains anarchic, states continue to worry about the reliability of alliance commitments. The nonideological character of the post-cold war world, furthermore, may weaken the credibility of alliances and raise doubts whether the conditions of the nonexcludability and nonrival consumption of security guarantees are met, as the public goods theory requires. (Goldstein, 1995, 68-71)

On the other hand, NATO's policy on enlargement encourages would-be members to seek security through alignment. Alliance-seeking behaviour is motivated by

balancing or bandwagoning, the former strategy aiming at self-preservation and the latter at self-extension (Schweller, 1994, 74). Both strategies lie behind the motivations of the active membership-seekers in Central Europe and the Baltic region; as transition societies, they seek integration and identification with the established Western democracies through bandwagoning; as security-seekers in a grey or middle zone, they seek protection against a resurgent Russia through power-balacing. In the post-cold war situation, incentives exist for both policies, which do not constitute opposite behaviours although their motivations differ. Balancing is done for security, the protection of values, whereas bandwagoning is done in expectation of making gains, obtaining values. (Schweller, 1994, 104-107)

Although balancing is identified with stasis and bandwagoning with change, it is symptomatic of the post-cold war situation that both of the policies exist as parallel security strategies. Likewise, the purposes set by NATO for its enlargement, ensuring the effectiveness of the alliance in its core function of collective defence and contributing to stability and security in the entire Euro-Atlantic (OSCE) area as part of a broad European security architecture, reflect simultaneously both realist and institutionalist thinking. (Study on NATO Enlargement, 1995)

EU enlargement

The European Union represents deep and partly supranational integration as a security strategy. Political and economic integration involves the transfer of sovereignty and the use of shared sovereignty by independent states for the promotion of security in the broad sense. As a process, integration

leads to an accumulation of economic and political power in a new centre; it can lead to deepening integration with concentric circles (Wallace and Wallace, 1995). The EU is an increasingly important factor in the multi-institutional security order. (Dansk og..., 1995, 51-63)

The EU's pre-accession strategy involves support to the Central European and Baltic states in their transition towards stable pluralistic democracy and effective market economy. But the prospect of membership is also a "carrot" policy, requiring the solution of such problems as minorities and borders in accordance with international norms by the candidate countries prior to accession.[7]

Because of the demanding membership criteria, EU enlargement is, above all, a peace-through-democracy strategy. The pre-accession transition will turn the candidates into established democracies, which are likely to have peaceful relations with the EU members, whether or not they join the Union themselves. (Gleditsch, 1995, 561)

While a wider Union would expand the zone of stability in Europe, it would redraw a structural line of division in the OSCE space in a new place. EU enlargement can only be a component of the broader security architecture in Europe. While the EU has a direct integrative impact on peace in its enlargement zone, it has an indirect impact on stabilization of the zone of turmoil eastwards, where the OSCE, COE and other institutions work for the same goal of democratic peace.

As power is the central concept in realism, the liberalist or idealist approaches stress the role of

democratic states in international relations. The main explanations in the democratic peace theory of the distinctive foreign policies of democracies are the extension of the constraining role of norms from domestic to external behaviour; institutional constraints of checks and balances on leaders; and interdependence by trade and other exchanges. (Russett, 1993; Gowa, 1995)

Despite the relevance of the democratic peace theory in the post-cold war environment, evidence of its explanatory power is mixed and contested in the ongoing discussion. (Gleditsch, 1995; Gowa, 1995; Kapstein, 1995) Democracies do not fight wars with each other, and the post-cold war expansion of democracy in Europe has strengthened peace and decreased violence. But a zone of instability remains and uncertainty prevails in relations with undemocracies. Democratic peace is not a simple or straightforward but more demanding and complicated objective than expected at face value.

Expansion of the community of democratic states, as a fundamental change in the international system, draws attention to the significance of the behaviour of states and their domestic characteristics. In addition to the societal attributes associated with republican or representative governance, institutional sources and international factors explain the peaceful behaviour of democratic states towards each other. The role played by the conceptions of justice and propriety by the political leaders must be included among the factors accounting for the link between democracies and peace. The cognitive aspect adds an element of uncertainty to the democratic peace model. (Kegley and Hermann, 1995)

Another phenomenon complicating the straightforward linkage between democracy and peace is historical

evidence which testifies that in the transitional period of democratization countries become more aggressive and war-prone and may fight wars with democracies. (Mansfield and Snyder, 1995) The pattern linking democratization, belligerent nationalism and war need not undermine the rationale for promoting peace through democratization, but it calls for an effective and determined policy for smoothing the transition in ways that minimize security risks. The first lesson is that democratization should aim and lead to a complete and not partial democracy. Furthermore, there should be benign strategies for creating economic and political roles in the new society for former leaders from the autocratic regime. A free, competitive marketplace of ideas is vital. International incentives through support and cooperation should bolster democratization of the transition countries. (Mansfield and Snyder, 1995, 94-97)

Western Europe is changing in a way that is relevant for the idealistic goal of the democratic peace theory of transferring to the international level the values applied inside a democratic state. The EU project of peace through integration brings to the fore the consequence for international relations of the decline of state as a political ordering principle, as a source of political legitimation and as the main actor. It is within the EU space where challenges by "regionalization within and beyond the state" (Haaland, 1995, 107) are felt most strongly. Territorial representation is becoming less important than functional or corporate representation, nationhood expressed in ethnicity or regionalism is becoming more important than statehood. The conception, connected with the rise of a modern liberal-democratic system of state-based governance, of the individual rights of man

being valid and confined to a given state is not sufficient any more, which has led to a greater interest in international institutions as a source of legitimacy and action. Within the EU, the question of democratic legitimacy of extra-statal governance is being tackled with the policy of subsidiarity - with federalism as a logical even if still largely contentious final solution. Even though the Union may be competitive towards other regional or continental or global actors, it is meeting the democratic criteria of governance as an international institution. (Haaland, 1995, 112-117)

Integration and a declining state highlight the complexity of the issue of levels in a future international system, both in terms of policy and theory (Onuf, 1995). State, non-state entity, community can be defined as parts but also as wholes which have relations with each other and with the whole international society. A new Europe is also about determining the levels of action and responsibility.

While the issue of democracy is a challenge for integration, weakening of the state is a self-evident or uncontested consequence. Explaining and understanding the EU remains an issue of rivalry between neofunctionalist and neorealist theories of integration, one stressing alternative agents and trends towards a transnational state, the other state-centric ideas and intergovernmental bargaining in producing integration outcomes. (Rosamond, 1995)

For the international society of states conscious of their common interests and values to extend within the international system of states in mere interaction, it presupposes the existence of a world society of individuals and elites adhering to the same culture and

sharing a common identity. The dynamics of change in an uneven international society is generated by the co-existence of gemeinschaft and gesellschaft societies in an open states-system. Gemeinschaft ties such as sentiment, experience, identity, culture pull states into a much tighter union than gesellschaft ties which link states on a contractual basis. (Little, 1995, 11-13)

The global arena is occupied by (European) states-systems and (non-European) imperial systems, where pulls toward hegemony and autonomy, respectively, generate cycles of change. (Little, 1995, 18-29)

The position of the EU can be assessed against an international system consisting of inner (gemeinschaft) and outer (gesellschaft) sectors. Not only the institutionalist but also the neorealist logic will drive states held together on a gesellschaft basis to join states held together on a gemeinschaft basis. The outer sector will only be permitted to join the inner sector, however, when its members are prepared to acknowledge that outer sector members have accepted their norms. (Little, 1995, 30)

Collective action and collective security

The OSCE security study will reflect the national and regional diversity of security assessments regarding what the OSCE should do and what it cannot or even should not try to do. The linkage between the model discussion and the controversy over NATO enlargement is a case in point. The broad fundamental issue concerns the characteristics of the security order - "a common security space" - to be established for the OSCE space. The capability for generating collective action in response to security needs and challenges is a key

criterion: What kind of a role would be assigned to the OSCE in such an international order to overcome the collective action problem?

Collective security - as a theory, doctrine and policy action - lies at the heart of the matter, even if the OSCE of today is not and may not become an international institution providing collective security proper. Collective security is a concept in a state of flux.

The end of the cold war has revived an interest in preventing the return of conflict and confrontation by collective security as a security model. (Downs and Iida, 1994) The idea of collective security is tarnished by the failures of the Wilsonian version of the League of Nations, labeled too idealistic and unpractical for a world of sovereign states, and the post-World War II version of the United Nations, which has given a special status to the great powers but has not worked under bipolarity. The idea is given a fresh look in the post-cold war environment, which is seen as a chance to make self-interested states cooperate for security among themselves.

Collective security is a demanding form of collective self-regulation; a group of states are committed to maintaining security within them and agreed to punish collectively any members that violate the system's norms upholding the security and integrity of the members, separately and in common. At issue is whether the flaws of collective security pointed out by its critics (Mearsheimer, 1994/95, 30-33; Downs and Iida, 1994, 20-30), leading to its inability to generate collective action in bad-weather conditions, can be overcome in post-cold war circumstances, making it not only an ideal but also effective model of action in

international security policy (Kupchan, 1994).

A pragmatic and flexible approach to collective security may show the way forward. Collective security as self-regulation is workable if it should generate more security benefits in protecting members from each other than would exist in its absence. (Downs and Iida, 1994, 35) As a specific application of collective security, humanitarian intervention, which may even involve "microenforcement", demonstrates the complexity of the concept and policy in a post-cold war milieu. (Väyrynen, na)

The collective action dilemma, regarding how norms and agreements can be sustained in situations where members have an incentive to renege and free-ride and where structural features lead to weak decision-making, remains a permanent challenge for collective security. The answer may be sought in the role of hegemons or leading powers or winning coalitions that would make the system work. (Bianco and Lindsay, 1994)

A concert of powers provides a model which is often recommended for post-cold war security. (Lipson, 1994; Väyrynen, na) Based on the lessons of the Concert of Europe, a concert is an arrangement for effective cooperation by the great powers over limited but significant collective goals that would benefit the whole international order. Neither an international organization nor a balance of power system, a concert nevertheless reflects the distribution of power among actors and operates with traditional diplomatic means. A concert could perform such security services as coordination of policies, regional conflict resolution or humanitarian intervention. Relevance of a concert model for the post-cold war scene lies in its emphasis on the mutual recognition of security interests among

powers, between the Western powers and Russia. (Lipson, 1994, 125-128)

On the other hand, a concert could be viewed as a transitional arrangement in a two-track policy where, at the same time, a genuine multilateral system of collective security is being strengthened through reforming the UN. (Väyrynen, na, 24) Even a looser version of collective security may be difficult to apply, however, in such revolutionary times as the post-cold war era. (Walt, 1994, 170)

The post-division era has expected and witnessed the growth of the actual role of the UN and the OSCE in international security governance. It is, however, not those collective organizations or even military alliances as such that have acted in critical situations like the Gulf War, Somalia or Bosnia (IFOR) but coalitions of the willing and able. Their use is a consequence of the weakness or inadequacy of formal institutions but it may also reflect a more permanent underlying logic of collective action in international security. Such coalitions are not concerts of powers in the traditional sense - they are more varied by composition and ad hoc by function - but they do reflect and may create a sort of structure for the evolving security order.

If a concert represents a less ambitious version of security system from the classical collective security, "republicanism as security governance" (Deudney, 1995) would be a more ambitious one. With its union-like structure "more substantial than alliance but short of a state" (Deudney, 1995, 226), such an order aims at replacing anarchy and avoiding hierarchy through "negarchy" as a third, and liberal principle of political order. (Deudney, 1995, 209)

The OSCE as a regional institution in the Chapter VIII meaning - to be harnessed by the "OSCE first" procedure on the referral of unsurmountable disputes by the OSCE to the UNSC[8] - and the OSCE members as UN member-states subscribe to the UN collective security system. The OSCE as an institution, however, represents cooperative security with a mandate characterized by consensus and equality in decision-maing and non-enforcement and non-compellance in collective action. The cooperative nature of the security role of the OSCE is embodied in inclusiveness of participation, equality in decision-making, consensus rules, comprehensive concept of security and non-hierarchical doctrine of inter-institutional relations. (Möttölä, 1995a)

4. Complexity in the management of the European security order

The post-cold war scene is a "multisystem" (Deudney, 1995, figure 209) security order in the making: a variety of security strategies, power structures and political principles co-exist, connected with security-policy organizations and institutions in different stages of development, adaptation, integration and hierarchy. As an international society, it is characterized by "uneven" (Little, 1995, 13) development, consisting of gemeinschaft and gesellschaft societies.

The mix of institutionalist and realist characteristics in the European security order provides the framework for the analysis of the role of the OSCE. As an all-encompassing institution, the OSCE is affected in its decision-making and concerted action by the complexities of institutional development, inter-state and inter-institutional policies of power and interest

and varieties of security strategies. Management of structural complexity and governance for effective security generation lie at the heart of the OSCE security model.

In terms of **power politics**, Europe is dominated by three main actors, the United States, the EU and Russia. In the short term, the triangle is characterized by cooperation and partnership along all its sides, even though instability in Russia brings uncertainty into its functioning. In the long term, various combinations of competition and rivalry in the triangle can be envisaged.

The EU is a centre projecting stability through integration but its disintegration would lead to a traditional system of European power politics. (Dansk og..., 1995, 75)

Aa a concert, the United States, the EU and Russia would have to cooperate on stability policy in the Central and Eastern European zone as well as on conflict resolution in the CIS space. Although such a security agenda exists, no such concert of powers is discerned to be in action. (see Lipson, 1995, 125-128)

The potential for leadership in the post-cold war multi-institutional and multidimensional politics of security lies with the US-EU axis. Even though states with similar positions on traditional security may have differences over other dimensions of security such as environment and economy, the situation is an incentive for the United States and the EU to institutionalize and solidify their relationship. They could provide leadership for the promotion of multilateral collective action around the new security agenda. (Peterson-Ward, 1995, 149) It is obvious, however, that the US-EU role

is short of hegemonic leadership, which will not be a solution to the rearrangement of post-cold war security.

Leadership is a dualistic issue; on one hand, a leader should set standards of behaviour, provide material resources and assume burdens of maintaining public goods, leading the system away from anarchy and towards stable, normative structures; in this sense, leadership is management and governance. On the other hand, a leader should employ skills to motivate followers to accept public goods provided and to organize action rather than merely provide public goods. (Wiener, 1995, 222-223)

In terms of **inter-institutional relations**, the basic solution registered in the Helsinki CSCE Document 1992 recognizes "mutually reinforcing institutions, each with its own area of action and responsibility." The doctrine provides a basis for cooperation and a rational division of labour between institutions. A situation where no institutions are being dismantled allows also for competition and overlapping. Making institutions work better together is a key to future security.

The main institutions, the EU, NATO and the OSCE, can be seen placed in a triangle where they perform security functions, bring capabilities and security strategies to the functioning of the security order (on the triangle idea, see Wæver, 1994):

- the OSCE, an all-European organization, performing norm formulation and having but limited capabilities for transition support, stability promotion and conflict management, representing cooperative security but being also relevant for collective security or

concert as security models;

- the EU, a regional organization, molding the political-economic order, supporting transition and promoting stability through its resources, representing integration as a security model;

- NATO, a regional organisation, leading military transformation with its resources, performing conflict management tasks through its capabilities, representing alliance/balance of power strategy but also cooperation.

The three organizations are connected as a triangle by side organizations or processes: the WEU as a link between the EU and NATO; the stability pact initiated and run by the EU and turned over to the OSCE for review and implementation; NATO's NACC/PfP programmes aimed at improving the capabilities of states to military crisis management within an OSCE mandate.

In terms of **conflict formation and resolution**, the OSCE space is divided into a zone of democracy and stability (EU-NATO) projecting stability eastward, a zone of transition or instability with risks of conflict (Central-Eastern Europe-CIS) and a zone of conflict (former Yugoslavia, parts of former Soviet Union). (Dansk og..., 1995, 72)

Causes for conflict are structural, having to do with such factors as power, sovereignty, territory, national interest; or functional, having to do with uncertainties, difficulties and instabilities connected with social, political and economic transformation, integration, and transnationalism. (see Conflicts in the OSCE Area, 1995)

Understanding the dynamics of post-cold war conflict is a key challenge to any OSCE security strategy. The list of root causes or background factors behind intra-state, intra-federal, and inter-state conflicts is long: implementation of national self-determination; status of national minorities; determination of the society-state relationship; identity and ethnicity; formation of new states; and leadership responsibility.

Resolution of post-cold war intranational, inter-ethnic conflict places the principles of Westphalian sovereignty and territorial integrity, Wilsonian self-determination and democratization and post-World War II human and minority rights regimes and peaceful change of borders in tension with each other. (Leatherman and Väyrynen, 1995, 66)

Resolution of ethnic conflicts, often intractable, mostly complex and difficult, requires not only understanding of their root causes and processes but also the innovative use of governmental, non-governmental and international instruments. Not only the methods and processes involved in conflict resolution but also such outcomes as secession, increased autonomy, incorporation and power sharing and peaceful division of states, calling for the redefinition of sovereignty, show that ethnic conflict management and resolution may have fundamental implications for the international order. (Väyrynen, 1994)

International mediation - or any other form of intervention as a form of conflict management - can become a force for change in the security system. Depending on the underlying theoretical assumptions, international conflicts may be viewed as a problem of order or as an opportunity for change. Within the

international society approach, conflict is not considered endemic to the system or a problem of order, and conflict resolution can become a means to achieve or re-establish legitimate social relationships or institutions. Within structural theory, mediation can be a form of domination by the powerful to prevent or achieve changes in the structure through conflict. When conflict is viewed as a problem of order, mediation may be power brokerage, within realism, or re-aligning perceptions, within political psychology, among the parties. (Kleiboer and 't Hart, 1995, figure 313)

5. Structure and governance in an OSCE security model

The discussion on a future OSCE security model is centred around such broad issue-areas as the role of norms and principles in security governance; regional aspects; harnessing the institutional and functional potential of the OSCE's; embedding the OSCE in the relationship among the evolving European and transatlantic security institutions; and the transformation of the European security order as a whole.

Institutional change within the OSCE seems to be slowing down or reaching its limits. There are political obstacles which can be demonstrated by the political infeasibility of such radical ideas as: transcending or revoking the rule of consensus in decision-making; giving the OSCE and its commitments a legal competence; making the OSCE into a full-fledged international organization; creating a European security council with the authority of making binding decisions; entrusting the OSCE with a coordinating role or an authority over other European and regional organizations in a hierarchy.

There is no consensus on the advisability of a uniform - such as an OSCE-centred - security structure. The complexity, unevenness and flexibility of the security order may be beneficial to European security, in particular as long as uncertainties and instabilities of the post-cold war scene continue.

The participating states realize that institutional limitations are not the only obstacle to results. The emphasis has been shifted to the use by the members of their joint institutions and mechanisms and other aspects of governance.

In the three functional areas of security policy, stability promotion, conflict management, military stability, the OSCE has performed varying and developing roles. (for a review, see Höynck, 1995)

In **stability promotion**, the OSCE provides legitimacy and support to countries in transition as the source of common norms and principles of democracy, the rule of law and economic liberty. Furthermore, the OSCE has its support programmes (ODIHR), and it is cooperating with the Council of Europe in promoting democratic security. The main institution in stability policy is the European Union with its resources and policies for transition support and stability projection eastwards. NATO and the WEU have a similar policy of transition support and stability projection in the military sphere.

The experience with the European Convention on Human Rights and the EC Court of Justice show that effective international regimes for promoting human rights depend on the prior convergence of domestic practices and institutions that mediate between society and state. Effective regimes with supranational abjudication and

consistent compliance are likely to spread slowly outside Western Europe. Outside the core region, there is time and place for the EU to use the promise of eventual membership, for the COE to use its post-membership support and follow-up mechanisms and for OSCE to use the more traditional instruments like soft-law norms and support to strengthening domestic civil societies and democratic political institutions. (see Moravcsik, 1995)

Conflict management covers activities and arrangements aimed at the total life cycle of conflict, providing the various phases of conflict with appropriate responses.

- Early warning is provided by the development of indicators and mechanisms by which escalatory conflicts can be identified at an early stage and in a manner that preconditions for effective preventive action are created. (Leatherman and Väyrynen, 1995, 59)

- Conflict prevention is provided by political actions by which governments and international organizations try to defuse the outbreak of violence and stop or slow down escalation of conflicts. (Leatherman and Väyrynen, 1995, 61)

- Conflict resolution is a state of affairs in which the parties agree to remove the perceived conflict through a mutually acceptable solution. Termination of conflict removes the underlying source of conflict; settlement achieves a settlement of cessation of overt hostility. (Leatherman and Väyrynen, 1995, 65)

- Peace-building means demilitarization of conflict, disarmament of the warring parties, reconciliation and the political, social and economic reconstruction and

rehabilitation of society. (Leatherman and Väyrynen, 1995, 73)

In conflict management, the OSCE has reached its best results in early warning (HCNM) (Bloed, 1995; van der Stoel, 1995) and conflict prevention (HCNM, CiO, missions) as well as political crisis management (CiO, missions). (Survey of OSCE Long-Term Missions, 1995)

Early warning could be the most fruitful area for further enhancement of the OSCE role. Another instrument in demand is peaceful settlement of disputes for which the OSCE offers a number of mechanisms. The OSCE may be a more acceptable tool of the international community in internal conflicts and disputes than other, politically exclusive institutions.

The OSCE remains a key forum for dealing with issues related to Russia's security interests and its geopolitical place in the new unifying Europe and also security problems within the CIS region. This perspective underlines the OSCE's role as the main instrument responsible for preventing new lines of division in Europe.

The policy of conflict management - mediation as well as humanitarian or military interventions - may create its own structure with zones of different accountability in reality. Mechanisms for conflict management are used not only for implementation of common norms but also for deterrence of violations. A stick-and-carrot policy is more effective with countries that have other, broader interests to attend to in their relations with the reviewers; this rule affects the Central European candidate countries' relationship with the EU and NATO. On the other hand, the influence is weaker with countries that have no

perspective of membership or tangible rewards from norm-abiding behaviour. Accordingly, the OSCE remains a key forum for non-exclusive security. Inclusiveness creates the basis for its flexible role.

In military crisis management, a first OSCE peacekeeping operation remains under preparation and planning. An important factor for the future role of the OSCE in conflict management is further operationalization of its cooperation with the UN under Chapter VIII.

The impact of multilateral organizations on state behaviour can be assessed by looking into situations where institutional consensus rules have been inconvenient for governments in the light of their national interests. In former Yugoslavia, where the EU, the UN and NATO have been the main institutional actors in crisis management, multilateralism has mattered in the policies of the main powers. (Jakobsen, 1995)

Multilateral institutions are durable but their use is subject to the influence of domestic factors. Furthermore, the Contact Group is an example of coalition politics which is played behind the formal international institutions. Since former Yugoslavia has not been a matter of vital interest for the main powers, crisis management does not refute the argument that the impact of multilateralism is limited. Despite certain successes, the consensus principle within multilateral organizations has also worked as an excuse for inaction. (Jakobsen, 1995)

In **military-strategic stability**, outside the strategic-nuclear sphere, the OSCE will act as the only forum for future European arms control in the post-CFE period. The OSCE norms set guidelines for further reforms and

changes in defence systems and security arrangements and for military partnerships, guided by the principle of sovereign equality and the freedom of choice of states.

The main challenge for cooperation in military affairs is the change from a bipolar into a complex milieu, where regional and local considerations of stability and offence-defence relationships dominate the agenda. Furthermore, the agenda includes ideas and proposals on developing, perfecting and harmonizing the OSCE and CFE regimes on confidence- and security building measures and arms control in the conventional sphere.

The post-cold war security environment has also inspired a discussion on the future of nuclear weapons and their devolution or elimination in security policy. (Gompert et al., 1995; Kamp, 1995; O'Neill, 1995)

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The place and role of the OSCE in the functional areas of collective security policy as well as the background theories and political trends in structure and governance of the complex security order are summarized in Table 1.

Table 1. An OSCE security model; structure and governance in three functional areas of security policy

1.1. Stability promotion

- theoretical basis: Institutionalist theory. Democratic peace theory. Political and economic regional integration. Cooperation in the wider region.

- goals: Democratic security. Enlargement of the democratic zone. Stabilization through change. A democratic community of states.

- institutions: The European Union as an integrative force and as a source of support to democratic transition. The Council of Europe as a source of transition support and monitoring. The OSCE as a source of legitimation and support. NATO/NACC/PfP as a source of support to transition.

- role of the OSCE: Normative guidelines. Legitimation. Limited operative functions.

- relationships: EU-Central European countries. COE-Central European countries. OSCE-CIS countries. NATO-PfP partners.

- governance: Prevention. Accountability. Accommodative activity.

2. Conflict management

- theoretical basis: Institutionalist and realist theory. Cooperation and collective action. Partnership across institutional divisions.

- goals: A compliance and accountability regime.

- institutions: The OSCE as a mandate provider in military crisis management, actor in conflict prevention and post-conflit rehabilitation. The UN as a mandate provider, actor in crisis management. NATO as an actor and organizer in crisis management. Coalitions of the able and willing.

- role of the OSCE: Normative guidelines and legitimacy. Operative functions in early warning, conflict prevention, potentially crisis management, peace-building.

- relationships: OSCE-unstable countries. Inter-institutional coordination and cooperation.

- governance: Management. Coercive and accommodative activity.

3. Military-strategic stability

- theoretical basis: Realist and institutionalist theory. Cooperation and partnership. Balance of power. Security competition.

- goals: Stability through defensiveness, transparency. Cooperative deterrence.

- institutions: NATO as a provider of collective defence. The OSCE as a forum for arms control. Alliances. Coalitions.

- relationships: US/NATO-Russia. States in conflict regions. Militarily aligned-non-aligned.

- role of the OSCE: Normative guidelines. Operative functions in CSBM. Forum for future arms control.

- governance: Protection. Dialogue. Power-balancing. Coercive activity.

Conclusions

A security model or a common security space for the OSCE region consists of goals, strategies, institutions, functional activities, and governance principles.

In a multisystem and uneven order, an environment where democracy and stability vary, institutionalism works as a complex network of ties and bonds, based on a common set of norms and principles.

The partnership and enlargement policies of the EU and NATO and their interface with the role of Russia set a scene where forces of institutionalism and realism co-exist.

While being embedded in inter-institutional competition and cooperation, the OSCE has a role which is unique in several respects.

- As a pan-European institution, the OSCE has to be a guarantor against a new division of Europe where the structure is diversified and states find themselves in different stages of democratic transition and integration. Performing its unifying role, the OSCE has to accommodate the evolution of other institutions such as the EU and NATO. The OSCE will be a bridge over the "soft" lines of division in Europe, giving reassurance of the indivisibility of security.

- The OSCE has to contribute to the resolution of the collective action dilemma among states that have different interests and agendas. Although the OSCE is not a forum for collective security, it can create confidence in security cooperation and facilitate political will and leadership for collective action.

- The OSCE can provide instruments for all functional sectors of security policy, stability promotion, conflict management and military stability. The OSCE in a significant forum for developing and formulating coordination, cooperation and the division of labour among security-related institutions.

- To meet the normative challenge, the OSCE has to ensure equality for all states and regions and guarantee the indivisibility of security for the whole OSCE space. The common rules of conduct and commitments provide a promise of support and assistance but also presuppose accountability for complying with the norms. While the OSCE is strong on norms, it is weak on creating a common identity.

The OSCE remains a gesellschaft organization as far as its impact on a common identity and culture is concerned; it is weak in terms of its resources and competences. The main role of the OSCE is on the coercive or constraining side, upholding and implementing common rules. It is the exclusive gemeinschaft organizations such as the EU and NATO that are effective in the accommodative or enabling side, creating empathy and facilitating cooperation among states.

The challenge of collective action for the OSCE remains large under such circumstances. Both a concert of powers, on one hand, and a system of collective security, on the other hand, involve problems of principle and implementation. A tighter union among OSCE members through further institutional development is equally unlikely.

There are limits to structural reforms and opportunities for governance reforms.

The research and policy question for the future is to what extent institutional and functional developments within the OSCE can generate a capability for transition support, and provide a forum for collective action in conflict management, sufficient to prevent or reverse a trend towards divisibility of security in the OSCE space. It is around this challenge where the institutionalist and realist perspectives of the OSCE are determined.

Notes

The present paper is part of ongoing research and may be viewed as an interim report.

1. The mandate is included in Chapter VII of the Decisions section of the Budapest Summit document: CSCE Budapest Document 1994. Towards A Genuine Partnership in a New Era, CSCE, Budapest 1994. Decisions of the Budapest Ministerial are included in Fifth Meeting of the Ministerial Council. Chairman's Summary. Decisions of the Budapest Ministerial Council Meeting, OSCE, Budapest 1995.

2. The principles of mutual relations between and rules of competence of security-policy institutions and organizations are determined in para 24 of the CSCE Helsinki Summit declaration: CSCE Helsinki Document 1992. The Challenges of Change, CSCE, Helsinki 1992.

3. The model of three functional areas in security policy is developed in (Möttölä, 1995b); for a similar approach, see also Keatinge (1995).

4. This section follows closely that in my paper 'Neonormativism and the OSCE: A Commentary on the Theory and Practice of Producing International Security', presented at the 36th Annual ISA Convention, Chicago, Ill., 21-25 February 1995.

5. "Multilateralism" - an institutional form which coordinates relations among states on the basis of generalized principles of conduct - means that all states subscribe to principles irrespective of their particular interests or strategic situations and expect diffuse reciprocity. If multilateralism finds expression in an organization, its decision-making rules become an important determinant of policy behaviour. (Jakobsen, 1995, 366)

6. Goldmann (1994) uses the term "internationalism" for what is here placed under the general heading of institutionalism.

7. The EU project for a stability pact is a case in point. The Pact on Stability in Europe, consisting of a political declaration, a list of good-neighbourliness and cooperation agreements and arrangements by the nine Central European and Baltic states with EU members and among themselves and other countries, and a supplementary list of measures taken or planned by the EU, was adopted in the Paris concluding conference, 20-21 March 1995. One of the innovation of the Pact is the constitution of regional round tables.

8. The EU-sponsored idea, the Kinkel-Kooijmans proposal, presented to the Budapest review meeting 1994, would not change the competences of the UN or the OSCE but generate operative cooperation in conflict management.

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The OSCE in the Maintenance of International Peace and Security

Ambassador Rauno Viemerö

Key note speach on the concept of "early warning" in the OSCE

The OSCE conflict prevention instruments are a result of historical process which is characterised by the lack of existing ready made tools which could be used to meet the challenges in the post cold war situation. Accordingly, these instruments have been developed in an evolutionary manner as responses to the emerging problems.

In addition to the overall political consultation process the inventory of Helsinki Document 1992 contains the following three main elements of conflict management:
Early warning, conflict prevention and crisis management (including missions and CSCE peacekeeping) and peaceful settlement of crisis.

The aim of early warning is to alert the OSCE bodies and provide them with relevant information in advance in order to give them enough time to react and take measures by preventive diplomacy or other means.

These impulses may come in from the member countries, Chairman in Office, High Commissioner on National Minorities, Heads of Missions, Groups of states, personal representative of The C.i.O, Fact finding missions, NGO's etc.

After having received an early warning, the OSCE decision making body today, as a rule, the Permanent Council will decide whether they need more information. In the next phase the OSCE will start negotiations, conciliation or other appropriate measures in order to solve the problem. If measures are needed, the Permanent Council may decide to use one or some of the mechanisms.

What is described above is an ideal case. In the real life however the reasons for conflicts, measures and countermeasures are blurred by actors in time and scope. Consequently, a clear line between early warning and preventive diplomacy would be rather artificial. The order of the measures taken is seldom so clear and consequent as described above.

The Helsinki decisions provide rather little operational guidance for the use of early warning. Experience suggest that there is still much to learn about how best to use early warning and about the possibilities it can offer. As a matter of fact there is no ready made concept of early warning yet in the OSCE.

The clearest definition of early warning is to be found in the mandate of the HNCM. It says i.a.:

"The HCMN will provide early warning and, as appropriate, early action at the earliest possible stage in regard to tension involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the HNCM have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating countries, requiring the attention of and action by the Council or the CSO".

Most of the work of the HCNM is silent diplomacy, persuasion of the parties to solve their disagreements and efforts to find solutions to their disputes.

The HCNM can also get involved with more concrete problems. Sometimes he is asked to give opinion a draft legislation concerning human rights etc.

Problems involved in connection of early warning are manifold.

Firstly: Problem of the availability of early information on possible emerging conflicts. Many countries and parts of the OSCE region are not yet in covered by the media as we understand it in the western industrialised countries.
Secondly: The ability of the conflicting party or parties to draw enough attention to the problems due to political, technical or cultural reasons.
Thirdly: Enormous amount of events and problems which do not come to the publicity or which simply are not known, omitted by the press, governments etc.
Fourthly: Even in the case, that the needed information would be available, the party or the parties concerned might not be ready to utilise the good services offered.
Etc, etc,...

The ability to observe and interprete the signals of a potential conflict is of vital importance for the international community. In order to illustrate the difficulty of the task, I would like to cite a study which was made on the outbreak of Yugoslavian crisis. I.a. following omissions were made by the international community:
-non-observation of warning signals
-non-observation of crisis developments
-insufficient knowledge of facts affecting the crisis
-insufficient observation of events
-misinterpretation of known warning signals
-stereotypic thinking

-false analogies in the expectations of developments
-false extrapolation of developments
-too optimistic expectations of rational behaviour by conflicting parties
-misinterpretation of the influence of domestic policies on events

Of course, I am not saying that the war in Bosnia could have been avoided, if these signals had been correctly understood not necessarily even if the international community would have taken early action. The most crucial factor also here is the political will of the international community to act.

I believe though that it is possible to collect information and analyse it in order to find out the risk-factors in a given environment and situation and give, if necessary, an early warning against potential conflicts.

Essential in this respect is that we are able to receive, read and interprete correctly and early enough those signals which are symptomatic to the developments in a society or between states embarking an open conflict. For that purpose we should be able to develop a framework of variables trough which it is possible to filter and register indicators essential to the birth of various types of conflicts.

I believe that even if conflicts are not similar, their reasons have some common characteristics. To these I would include i.a. following factors:
Changes in society in general and especially in the formation of new states followed by ethnic, national and international tensions; democratisation, human rights problems, social and economic tensions, redivision of land, property and labour, internal power struggle, mass migration etc.

Another aim of an early warning strategy should be to develop a raster trough which it would be possible to foresee the what

might be the propability, intensity, gravity and nature of the conflict.

This is certainly a difficult, if not impossible task, reasons being i.a. limited capacity in human and other resources, lacking expertise etc. Nothing should basically, however, prevent us trying to do this - let alone to fall into fatalism.

Therefore I think, it would be important i.a. to consider carefully the composition membership of the OSCE missions and fact finding groups so that they would have the widest possible experience and expertise in relevant areas (politics, social sciences, history, culture etc) according to the particular needs of the country/region concerned. This may sound self evident, but we know from experience that it is not always easy to find optimal people to these vacancies.

Furthermore, when developing early warning capability, enough attention should be devoted organising the collecting the flow of information. The importance of acces to information cannot be overestimated. In a conflict or preconflict situation the sources of information are not always sufficient. On the contrary. They are often poor or/and onesided. Free media is not always self- evident. The same goes to the freedom of opposition or other kind of organised interest groups, like labour unions, NGO`s etc. Sometimes the authorities are not necessarily very cooperative or objective.

The need for various sources of information is important especially in emerging democracies. In this respect the NGO`s and other groups alike can play a very valuable role just to mention two perhaps most valuable roles of them:

Firstly: Having often close connections to the local communities, the NGO`s can provide very valuable information trough their networks in the field. Secondly: Being in position of having or establishing confidential relations with the

parties, they can facilitate the dialoque and thus render valuable services to the OSCE's capability in early warning.

OSCE has developed cooperation with the NGO's in the last couple of years and good results have been achieved. No doubt, there is still room for development in this respect.

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The High Commissioner on National Minorities (HCNM): Development of the Mandate

DRAFT

María Amor Martín Estébanez (Turku Group) - Rome Meeting

Working hypothesis: The HCNM, avantgard expression of the need for the practical realisation of the OSCE comprehensive concept of security.

I. Introduction

The HCNM was established in 1992, in a separate Chapter II of the Helsinki Decisions, entitled: 'CSCE High Commissioner on National Minorities'. The mandate, profile, appointment, early warning and early action functions, accountability, sources of information, parties directly concerned with his/her action, conditions of travel, involvement of experts and budget of the HCNM were regulated within this chapter. Other references to the High Commissioner were included under Chapter III: 'Early Warning, Conflict Prevention and Crisis Management (including Fact-finding and Rapporteur Missions and CSCE Peacekeeping), Peaceful Settlement of Disputes'. In the latter, the HCNM was mentioned among those entities which could draw the attention of the CSO, through the Chairman in Office,[1] to "situations within the CSCE area which have the potential to develop into crises, including armed conflicts...".[2]

In the Budapest Decisions, the only references to the HCNM are contained in Chapter VIII, dealing with the Human Dimension. In the section entitled 'Enhancing Compliance with CSCE Commitments and Promoting Cooperation and Dialogue in the Human Dimension' the participating States "reconfirm their appreciation for the HCNM, who has, fully in line with his mandate, been able to focus on, and to successfully address a number of national minority issues, taking also into account specific situations of participating States and of parties directly concerned"[3] and "encourage the HCNM to continue his present activities, and support him on taking up new and further ones, including those related to his recommendations. They will increase their efforts to implement these recommendations". In addition, the participating States encourage "the Chairman-in-Office to inform the Permanent

[1] Helsinki Decisions, III, 5.

[2] Ibid., III, 3.

[3] Budapest Decisions VIII, 7.

Council of serious cases of alleged non-implementation of human dimension commitments, including on the basis of .... reports and recommendations ..." of the HCNM.[4] Another reference to the HCNM activity is provided in the section dealing with national minorities.

The inclusion of these references to the HCNM in the chapter of the Budapest Decisions dealing with the Human Dimension, when in the Helsinki decisions the HCNM had received a separate treatment, while being defined as an "instrument of conflict prevention at the earliest possible stage"[5] may not be coincidental, or the mere expression of the positive effects that the conflict prevention activities of the HCNM have had on the implementation of human dimension commitments. It may also be the - probably involuntary - reflection of a process whereby the HCNM besides its security based characteristics is increasingly becoming an expression of the comprehensive approach to security defining the OSCE and determining its uniqueness. Although this evolving connection between the security and particularly human dimension aspects of the OSCE, reflected in the Budapest document, might have encountered the opposition of some OSCE States, as an unforeseen, undesired development of the institutional and executive OSCE framework, this evolution is in fact developing in a smooth manner. Although during the discussions leading to the adoption of the Budapest document reluctance was expressed against the introduction of references to the HCNM within those provisions dealing with national minorities, no reluctance was encountered as to their only inclusion in the chapter dealing with the human dimension.

In addition, the activities of the HCNM seem to be actively contributing to the cryistalisation of the OSCE comprehensive security approach, as the HCNM is establishing strong links between security, on the one hand, and particularly the human dimension, but also economic and other

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[4] Ibid., VIII.6.

[5] Helsinki Decisions, II, 2.

aspects of the OSCE on the other.

II. Internal Aspects of the HCNM Mandate

II.1. Dynamic Aspects: Early Warning and Early Action

According to the mandate, the HCNM "will provide 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Council or the CSO".

The Helsinki decisions provide for a description of the 'early warning' and 'early action' activities of the HCNM. The differentiation between both types of activities is relevant to delimit the scope for independent action by the HCNM. However, this differentiation cannot be easily established on the basis of the nature of the activities being described. 'Early warning' includes the obtention of first-hand information from all the parties directly involved, the discussion of the questions with the parties, and where appropriate, the promotion of dialogue, confidence and cooperation between them.[6] 'Early action' includes the entering "into further contact and closer consultations with the parties concerned with a view to the possible solutions".[7] Although from a formal perspective both types of activity may have been differentiated, from a substantive one both types of activity seem rather similar. The fact that 'early warning' activities have been placed in the framework of 'a visit' to a participating State does not seem to introduce any relevant clarification as to the character of its activity and its differentiation from 'early action'.

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[6] Helsinki Decisions, II, 12.

[7] Ibid., II, 16.

The use of the words "and, as appropriate" however, seem to determine first, that both types of action may succeed one another and secondly, that 'early action' does not have to follow necessarily the existence of 'early warning'.

The drawing of the dividing line between both types of activity seems to correspond, first, to the formal 'provision of early warning', i.e. the issuing of a formal 'early warning' by the HCNM and its prompt communication by the Chairman-in-Office to the CSO (PC). This takes place if, on the basis of exchanges of communications and contacts with relevant parties, the HCNM concludes that there is a *prima facie* risk of potential conflict. Thus, the ultimate factor determining the move from an 'early warning' to an 'early action' stage in the HCNM activities is the HCNM's power of decision in this field. Once the 'early action' stage is reached, the CSO may alter the mandate of the HCNM.[8]

The second and practical dividing line between both types of activity seems to derive from the HCNM's own capacity of assesment in this field. As a consequence, the 'early action' stage has never come into effect yet. The handing out of a pre-conflict situation to the the OSCE political bodies and procedures through the provision of an early-warning would entail the recognition that the HCNM has reached the limit of its
ability to deal with a determined pre-conflict situation within its mandate. This practise of non-use of the 'early action' type of preventive diplomacy foreseen in the mandate of the HCNM has been supported so far by the fact that non of the situations in which the HCNM has become involved has further developed into violent inter-group conflict.
This practise evidences also the non-restrictive, flexible character of the mandate of the HCNM, which has allowed the HCNM to address the different situations in which he has become involved within the 'early warning' stage part of the mandate.

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[8] Ibid., II, 16.

The importance of the distinction between both phases of the activity of the HCNM, lies on the establishment of who is the holder of the power of initiative and decision-making with regard to the preventive diplomacy exercise concerning tensions involving minorities. Whenever "a particular national minority issue has been brought to the attention of the CSO, the involvement of the High Commissioner will require a request and a specific mandate from the CSO".[9] After an 'early warning' has been issued, the power of initiative and decision-making of the HCNM is restricted to the possibility of recommending "that he/she be authorised to enter into further contact and closer consultation with the parties concerned with a view to possible solutions, according to a mandate to be decided by the CSO".[10] This implies that once the CSO becomes involved in a minority issue, the functions of the HCNM are determined by the decision of the CSO. The preventive diplomacy exercise which follows loses its 'HCNM specificity', to become an exercise of preventive diplomacy common to those falling within the domain of competence of the OSCE political bodies.

The specificity of the preventive action of the HCNM lies precisely on the fact that disputes dealt with under its initiative and decision-making power do not constitute Inter-state disputes in a proper sense. They constitute instead disputes and tensions between State and Non-state actors, and this determines their being addressed, at least in principle, by a separate, independent body whose decisions are not dependent of Inter-state and political relations. Once a situation concerning minorities has become object of attention of an OSCE body whose decision-making is determined by Inter-state relations, the 'early warning' and 'preventive action' activities must be carried out in accordance with Chapter III of the Helsinki Decisions.

The present HCNM has defined his own mission as two-fold: "first, to try to contain and de-escalate tensions concerning

[9] Ibid., II, 7.

[10] Ibid., II, 16.

minority issues, and second, to alert the CSCE whenever such tensions threaten to develop to such a level that I would not be able to contain them with the means at my disposal".[11] The means at the disposal of the HCNM have in fact strongly ressembled the CSO initial activities of 'Political management of crisis' under Chapter III of the Helsinki decisions, including the promotion of steps to avoid any action which could aggravate the situation; the seeking of independent advice from relevant experts (ex. the HCNM team of experts to Hungary and the Slovak Republic) institutions and international organisations (ex. bilateral and trilateral consultations with the Council of Europe and the UN), or the setting up of frameworks for negotiated settlements (ex. the series of round tables established in Ukraine). This interpretation of the means at the disposal of the HCNM still fall within the scope of the provisions regarding 'early warning' activities contained in Chapter II, 12 of the Helsinki Decisions. The means that the HCNM has used so far can be considered as comprised within the reference to the 'promotion of dialogue, confidence and cooperation between the parties', included in this provision. The only element which could introduce doubts is the 'during a visit' requirement. However, the latter restriction, as well as other light-weight restrictions contained in Chapter II seem irrelevant both on the basis of the 'discouraging' attitude with which 'the provision of early warning' has been approached within the HCNM mandate[12] and on the State support for the HCNM line of action reflected in the Budapest Decisions.

In conclusion, the assessment by the HCNM of the possibilities to contain an escalation with the wide means at its disposal seems to determine the character and content of its own competence. It also determines when a dispute starts to be considered mainly as a dispute 'Étatique', then "the CSO

[11] Max van der Stoel: 'Preventing conflict and building peace: a challenge for the CSCE' in NATO review no. 4, August 1994.

[12] See for example, Ibid., II, 15 and II, 21.

will promote steps by the State or States concerned".[13] The Senior Council seems to have the monopoly of action for this type of disputes. The scope of action of the HCNM would seem to be restricted, instead, to those disputes which may not be qualified as 'mainly' or 'already' 'Étatiques'. This also means that other subjects, minorities, are considered of relevance *per se* to the security concept of the OSCE and occupy a specific and separate position within this concept.

II.2. Static Aspects of the HCNM Mandate: the Institutional Character.

According to the Helsinki Decisions: "The High Commissioner will be an eminent international personality ... from whom an impartial performance of the function may be expected"[14] and he HCNM "will act under the aegis of the CSO and will be an instrument of conflict prevention at the earliest possible stage".[15]

The characterisation of the HCNM has an institution has ocassionaly been discarded on the basis of the fact that in the Helsinki decisions he was not designated as such and that the High Commissioner was conceived as one person. Also on the fact that all OSCE institutions have directors who are instructed to do certain things, inter alia as regards openness. Also the characterisation of the HCNM as a mechanism has been ruled out "since that notion refers to certain procedures like the Vienna, Moscow and emergency mechanisms and not to bodies or officials".[16]

The fact that the HCNM has been established as a unipersonal organ, and the profile of the person called to exercise such function has been determined, does not offer enough ground to deny the institutional character of the HCNM.

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[13] III, 6.

[14] II, 8.

[15] II, 2

[16] Rob Zaagman "The CSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context" in Arie Blood (ed.), The Challenges of Change: The CSCE after the Helsinki Follow-up Meeting, 1992. Martinus Nijhoff, 1994.

References to the institutional character of OSCE institutions which have directors, such as the CPC, or the ODIHR, Secretary General, are not a feature common to OSCE documents. Although the political character of the CSCE process may lead to doubts as to the institutional character of any of its results from a strictly legal perspective, the institutional character of the HCNM encounters the same support than that of any other of the aforementioned bodies. The unipersonal character of the HCNM, and the lack of a hierarchical internal structure within the HCNM office, the HCNM embracing the activity of the advisers, experts and others working within the office and acting in the exercise of the HCNM power, do not offer enough grounds to denny the institutional character of the HCNM. Conversely, the HCNM *sui generis* position and capacity of initiative; independence in the field of decision-making; capacity to relate to other OSCE organs and international institutions and the specificity of such relation and capacity to create independent interrelations and links among other bodies and institutions of a legal character, or having international personality, seem to point, as a minimum, to a HCNM 'OSCE type' of institutional character, common to that of other OSCE institutions.

Institutional character comes in support of the independent existence and exercise of the HCNM functions. This character also serves as a basis for the development of so called 'institutional memory', in support of the HCNM line of action so far and the affirmation of current HCNM practises leading to succesful results.

The protection or 'guardianship' exercised by the CSO would point to an institutional rather than organic type of relation between the HCNM and other of the OSCE bodies. Besides the HCNM capacity of initiative and assessment, the HCNM decisions and recommendations are not subordinated to the decisions of other bodies and cannot be overridden by them.

However, it should be noted that this sui generis institutional independence applies clearly only with regard the 'early warning' stage in which the HCNM has developed its

activity so far. Were a minority issue to be brought to the attention of the CSO, the relations of the HCNM with this organ would immediately acquire a more 'organic' character of subordination. The HCNM would then have to exercise its function on the basis of a specific, **ad hoc** mandate which may be subject to change. Still, this would not seem to override the characterisation of these activities as 'HCNM activities'.

III. External aspects of the HCNM mandate

The Dutch initiative for the creation of the HCNM and enshrined in the Helsinki document was closely linked to the inability of the international community to take effective action in relation to the Yugoslav conflict. Also to the increasing awareness of the preferability of reducing tension before it leads to open armed conflict and of the fact that the majority of potential conflicts which could be identified at present appear to be rooted mainly in questions concerning national minorities.[17]

The strong link established within the OSCE between the Human Dimension and conflict-prevention related security aspects is illustrated by the fact that the human dimension is one of the areas of OSCE concern where increasing intrusiveness has largely developed. The procedures of the Human Dimension Mechanism illustrate this. However, in the constitution of the highly intrusive institution of the HCNM as 'an instrument of conflict prevention at the earliest possible stage' the security aspects have prevailed. This has served as a basis for analysts to emphasise the role of the HCNM as a 'facilitator' of the settlement of conflicts supporting an 'instrumentalist' view of its mandate.[12] This

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[17] See Hannie Zaal, 'The CSCE High Commissioner on National Minorities' in Helsinki Monitor, special issue, Helsinki II.

[18] See for example Diane Chigas, 'The CSCE High Commissioner on National Minorities' in Helsinki Monitor, 1994, no.3 and Conflict Management Group and Harvard Negotiation Project: 'Early Warning and Preventive Action in the CSCE. Defining the role of the High Commissioner for National Minorities. A Report of the CSCE Devising

has also led to the affirmation that "the HCNM's goal is not to resolve conflict ... While changes in policies or legislation might ameliorate a situation, they cannot solve what is at root a problem in the fundamental relationship between the parties".[19]

Admittedly, the mandate of the HCNM does not say that the HCNM should promote the application of CSCE commitments. The attempts by the Russian Federation to introduce in the Budapest Decisions a non-contentious reporting system on the violations of human dimension commitments in relation to persons belonging to minorities in which the HCNM was intended to play a protagonist role - on the line of the implementation system provided under some of the international legal texts providing for minority protection - did not find sufficient support. However, the limitation of the role of human dimension commitments and other international legal standards to a mere 'framework of reference' for the HCNM[20] may prove too restrictive.

The HCNM has referred to the close interrelationship "between peace and security and respect for democracy, the rule of law and human rights, or, in short, the human dimension of the CSCE. Human dimension concerns are often a critical component of conflict prevention in the short term, although it is in particular from the longer-term perspective that the intimate relationship between conflict prevention and the human dimension becomes apparent. Violations of human dimension commitments lead to tensions, social conflicts and distrust. At times, they may have cross-border consequences, such as involuntary migration. Especially if large groups, such as minorities are affected, the stability of states or even a region may be at risk".[21]

Session, October 19, 1992', Cambridge, Massachusetts, 1993.

[19] Chigas, loc. cit. at p.3.

[20] Rob Zaagman, 'The CSCE High Commissioner on National Minorities: An Analysis of the Mandate and the Institutional Context' in A. Bloed (ed.), The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath, Martinus Nijhoff, 1994.

[21] Max van der Stoel: "The Role of the CSCE High Commissioner on National Minorities in CSCE Preventive Diplomacy, in The Challenge of Preventive Diplomacy - The experience of the OSCE, Ministry for Foreign Affairs, Stockolm, p. 35.

The consideration of minorities as an important element of the security concept of the OSCE, which as served as a basis for the creation of a separate conflict prevention system to address the conflicts in which they are involved, points to the need for addressing minority situations taking into consideration their specific characteristics.

On the other hand, the fact that the HCNM mandate rules out the possibility for the HCNM addressing individual cases of violation of the rights of persons belonging to minorities; the confidentiality of its activities, even if aimed at the realisation of OSCE commitments; the fact that minority grievances have not necessarily become the main focus of the HCNM preventive diplomacy activities, and the High Commissioner's title 'on' National Minorities point to the impossibility of considering the HCNM as a mere instrument of implementation of OSCE human dimension commitments in general, and those concerning national minorities in particular.

In addition, when dealing with - the majority of - 'HCNM situations', in which the improvement of minority protection has become the main focus of the HCNM conflict prevention endeavours, the HCNM has not limited the framework of minority protection to that provided under the OSCE human dimension commitments. References to relevant international legal and other texts concerning minority protection have oftehn been made, as the HCNM recommendations addressed to governments illustrate.

This is the expresion of the existence within the international community of an 'acquis' concerning minority protection, which involves international conventions, declarations, court and organic decisions, pointing to an Inter-state agreement on what may be considered as the legitimate aspirations of minorities and an adequate response to their interests and claims. To a large extent this has crystallised in 'individual rights' type of provisions, but also the collective element has been present, providing for possible avenues to deal with security aspects linked to minority questions. The UN Declaration on the Rights of

Persons Belonging to National or Ethnic, Religious and Linguistic minorities, and the Framework Convention recently adopted in the Council of Europe are examples of this.

The references by the HCNM to the OSCE human dimension and other provisions relevant to minority protection have a double effect. On the one hand, the practical consideration of these provisions by the HCNM contribute to their reaffirmation: the 'costumarisation' in the international arena and the need for their 'incorporation' by State practise at the domestic level. On the other hand, the high level of intrusiveness of the HCNM activity and proposals for reform at the international and domestic level find a legitimation - further than that provided under the Moscow and subsequent OSCE douments - in the international legal provisions to which the HCNM refers.

IV. Concluding Remarks

The institution of the HCNM has an important human dimension aspect which not only gives specificity to the HCNM activities in the field of preventive diplomacy but also provides for guidelines in the development of this activity. This human dimension aspect - expression of one of the elements of the comprehensive security concept being proclaimed by the OSCE - affects the desirable outcomes of the HCNM conflict prevention endeavours and the conflict prevention activities of the other OSCE institutions. The achievement of these outcomes is increasingly becoming a relevant constituent of the OSCE security building process, not only from a short-term, but also, in particular, from a long-term perspective.

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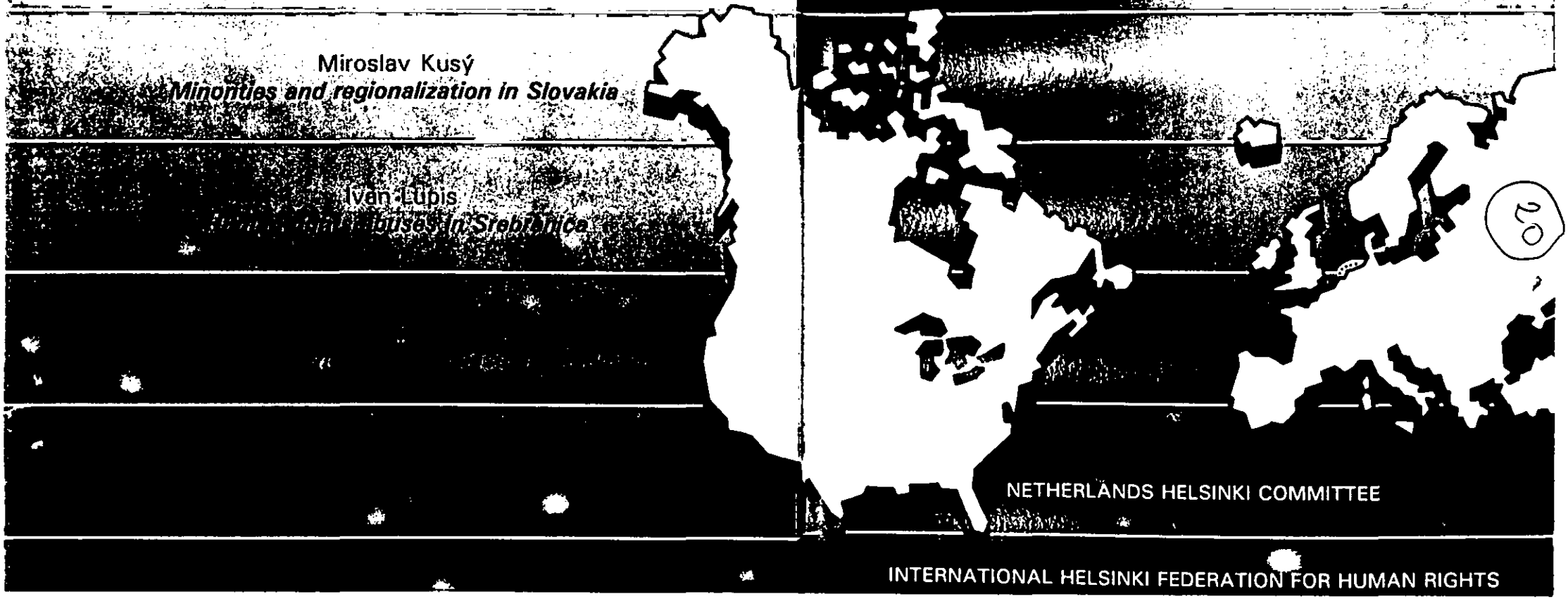

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Editorial and Administrative Office
Netherlands Helsinki Committee (NHC),
Jansveld 44, 3512 BH Utrecht,
The Netherlands
Telephone: +31 (0)30 2302535
Fax: +31 (0)30 2302524
E-mail: a.bloed@pobox.ruu.nl
Giro account: 469769

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The OSCE Implementation Meeting on Human Dimension Issues 1995

María Amor Martín Estébanez

The Organisation on Security and Cooperation in Europe (OSCE) Implementation Meeting on Human Dimension Issues 1995[1] was held in Warsaw from 2 to 19 October. It was also held at the cross-roads of OSCE development when the practical significance of the 'Human Dimension of the OSCE' is to be determined.

This implementation review meeting on human dimension issues took place during a stage of OSCE development already in evidence in the Second Meeting of the Council of Ministers of the OSCE in Prague[2] and further crystallised at the time of the elaboration of the 1992 Helsinki Document. Whereas a large proportion of the substantive aspects of the human dimension envisaged so far have received attention as regards standard-setting,[3] the same cannot be said when it comes to implementation, and the need to develop the operational aspects of the human dimension is increasingly being felt. This need, to which the decisions in Prague and Helsinki have already testified, was further acknowledged in the 1994 Budapest Document, where the OSCE participating states, 'reaffirming their commitments in the human dimension', decided 'while considering it essential to concentrate their efforts on the implementation of existing CSCE commitments [...] to enhance the framework of their cooperation'.[4]

Consistent with what had begun in Prague,[5] the OSCE participating states in Budapest reiterated the role of the human dimension as an essential component of security and cooperation in the OSCE region and confirmed 'the significance of the Human Dimension in all the activities'[6] of the OSCE,

1. Henceforth Implementation Meeting.
2. Arie Bloed (ed), *The Conference on Security and Cooperation in Europe: Analysis and Basic Documents, 1972-1993*, Martinus Nijhoff Publishers, Dordrecht-Boston-London, 1993, pp. 106-107.
3. See Audrey Glover, 'The Human Dimension of the OSCE: From Standard-Setting to Implementation', in *Helsinki Monitor*, 1995, no. 3, pp. 31-39 at p. 33. See also A. Heraclides, 'The Human Dimension's Swansong in Helsinki-II: The Normative Aspect with Emphasis on National Minorities', in A. Bloed, *The Challenges of Change: The Helsinki Summit of the CSCE and its Aftermath*, Martinus Nijhoff Publishers, Dordrecht-Boston-London, 1994, pp. 283-303.
4. CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era, Budapest Decisions (Henceforth, Budapest Decisions) VIII, 4.
5. Arie Bloed (ed), op.cit., note 2, pp. 106.
6. CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era, Budapest Declaration (Henceforth, Budapest Declaration) 14. In the Budapest decisions adopting the Code of Conduct on Politico-Military Aspects of Security the OSCE participating states confirmed 'the continuing validity of their comprehensive concept of security, as initiated in the Final Act, which relates the maintenance of peace to the respect for human rights

adopting several decisions in this regard.[7] The implementation of these decisions, as well as other ways and means in which the significance of the human dimension is to be articulated, have far-reaching consequences for the credibility of the OSCE and its capacity to make a difference in the field of international cooperation. The results of the OSCE conflict prevention endeavours will depend, to a large extent, on the level of thoroughness with which the OSCE comprehensive security concept - including its human dimension component - is applied. As these endeavours have become the main *'raison d'être'* and field of activities of the OSCE, special attention must be paid to the integration of its human dimension and conflict prevention aspects. The Implementation Meeting on Human Dimension Issues, charged with a 'thorough exchange of views on the implementation of Human Dimension commitments [...]' and 'the evaluation of the procedures for monitoring compliance with commitments'[8] has served to elucidate the current position of the OSCE and its participating states in relation to this integration.

The Implementation Meeting has served to review how the human dimension commitments have been implemented by the participating states and how the OSCE and other institutions have contributed to facilitate this implementation. Further, at the implementation meeting consideration was given as to how the human dimension has been integrated into the conflict prevention activities of the participating states and OSCE institutions. The views expressed during the meetings and the approach adopted by the participating states and the OSCE institutions towards the review process itself also help to elucidate the prospects for the development of human dimension implementation and the facilitation of its integration into conflict prevention activity. The Implementation Meeting may therefore have contributed to determining how such implementation and integration could be better developed in the future.

Participation and outcome

The Implementation Meeting was held on the basis of the Helsinki decisions, which entrust the Office for Democratic Institutions and Human Rights (ODIHR) with organising a three-week meeting at the expert-level of all participating states in order to review the implementation of human dimension

and fundamental freedoms' (IV, 2). The participating states also identified violations of human rights and fundamental freedoms and of other commitments in the human dimension as sources of tensions that may lead to conflict and made a commitment to cooperate to counter such tensions (IV, 17).

7. Budapest Decisions VIII, section on 'Enhancing compliance with CSCE commitments and promoting co-operation and dialogue in the human dimension' in particular. See further, Martin Harris, 'Human Rights Monitoring and the CSCE: a Perspective from Budapest', in *Helsinki Monitor*, 1995, no. 1, pp. 18-22.
8. Helsinki Decisions VI, 9, 9a and 9b.

commitments every year in which a review conference does not take place.[9]

As to the outcome of the proceedings, the closest antecedent to the review exercise held in Warsaw is to be found in the previous Implementation Meeting on Human Dimension Issues also held in Warsaw in 1993.[10] In the preceding human dimension implementation review, held during the 1994 Budapest Review Conference, no set of recommendations or suggestions resulted from the implementation review as such. The 1994 Budapest review Meeting was a major, biannual meeting and concluded with a summit of Heads of State and Government. This meeting reviewed all OSCE activities, including but not limited to the human dimension. Unlike the Warsaw meeting, which was not permitted to adopt decisions, the human dimension implementation review in Budapest framed the negotiations that led to the adoption of a section of the Budapest Document devote to human dimension issues. In Budapest — as in those review meetings preceeding the adoption of the Helsinki decisions — only to the extent that the lessons derived from the implementation review exercise could crystallise in provisions generally acceptable as a part of the concluding document could they formally become susceptible of further consideration by the political organs of the OSCE. In the Implementation Meeting — as in the 1993 Implementation Meeting — no negotiated document resulted from the meeting. However, the rapporteurs' reports following from the review exercise have provided at least a partial record of the problems being faced by the participating states and the OSCE Institutions in the implementation of the OSCE commitments and of the suggestions for their solution.[11] In connection with the fact that, in accor-

9. The specific review of the implementation of the human dimension commitments established in Helsinki was reinforced in Budapest, where the participating states indicated that 'periodic reviews of implementation of our commitments, fundamental throughout the CSCE, are critical in the Human Dimension'. Further, no change was introduced to the reviewing role accorded in Helsinki to the Implementation Meetings on Human Dimension Issues. According to the Budapest Decisions 'the current mode of review of implementation of all CSCE commitments will be maintained' (I, 25). See C. Krause, 'Budapest Review Conference: Towards a Genuine Partnership' in *Papers in the Theory and Practice of Human Rights*, Human Rights Centre, University of Essex, 1995, no. 16, pp. 39-42.
10. Henceforth 1993 Implementation Meeting. See T. Buchsbaum, S. Hammer, W. Suntinger and H. Tretter, 'The First Human Dimension Implementation Meeting, Warsaw, September - October 1993', in *Helsinki Monitor*, 1994, no. 1, pp. 64-74 and T. Buchsbaum, S. Hammer, W. Suntinger and H. Tretter, 'The First Human Dimension Implementation Meeting: Analysis of the Informal Recommendations', in *Helsinki Monitor*, 1994, no. 2, pp. 68-80. See also Arie Bloed, 'The CSCE between Conflict Prevention and Implementation Review', in *Helsinki Monitor*, 1993, no. 4, pp. 36-43, at p. 39-41. See further Elain Eddison and Borislav Petranov, 'The Warsaw Challenge', in *Papers in the Theory and Practice of Human Rights*, Human Rights Centre, University of Essex, 1994, no. 7.
11. For the text of the Rapporteurs' Reports see ODIHR, OSCE Implementation Meeting on Human Dimension Issues, Warsaw 2-19 October, 1995, Consolidated Summary. The texts of the Rapporteur's Reports have also been reprinted in *Helsinki Monitor*, no. 4, 1995, pp. 57-72.

dance with the Helsinki decisions, the Implementation Meeting did not produce a negotiated document, and the rapporteurs' repports do not represent binding agreements among the participating states, also the atmosphere, openness and structure of the implementation review proceedings of Warsaw contrasted with the situation in Budapest.[12]

A relaxed atmosphere characterised the implementation meeting, which also in accordance with the Helsinki decisions, was held at the expert level.[13] Representatives of 50 OSCE states took part in it and delegations of two Mediterranean non-participating states, Egypt and Israel, were also present.[14] Especially welcome was the active presence of representatives from the recently admitted participating states, which focused their interventions on the analysis of their respective domestic situation.

The states of Central and Eastern Europe also dealt mainly with domestic developments, in particular with regard to legislation. The Russian Federation went a step ahead of most participating states in relation to the substantive aspects of the implementation review, by giving an account not only of legislative developments, but also of the specific problems faced in the application of legislation, asking for support from the OSCE. Turkey adopted an active stand, both with regard to constructive comments on the procedural aspects of the implementation review and in expounding its failure to comply with different substantive aspects of human dimension commitments in the fight against terrorism.

Western European states were less active in analysing their domestic problems, doing so mostly as a reply to statements coming mainly from NGOs. This was particularly the case within the European Union (EU), where the recently enlarged membership has contributed to reducing the chances for outside criticism. The common foreign and security policy of the EU states tended to result in a general approach to the substantive aspects of the implementation review. The few exceptions were provided by the particular input from the member states on which the main responsibility for authorship of the respective statement fell. The statements for which Denmark was responsible were an example of the addressing of specific issues, although most EU member states adopted a general approach. Only Germany had a progressive

12. For an analysis of the Budapest Review Conference see C. Krause, op.cit., note 9.
13. The presence of governmental representatives and experts from the capitals was beneficial although a larger or more continuous presence of representatives from the OSCE permanent diplomatic missions in Vienna could have better facilitated the integration of human dimension implementation concerns in the current work of the political bodies.
14. Loc. cit., note 11, p. 6. The Chairman of the SWB2, during the sixth meeting of this SWB, welcomed the former Yugoslav Republic of Macedonia (FYROM) — which had until that time only participated in the meeting as an observer — as a participating state of the OSCE. The chairman read out the text of the decision subject to a silence procedure taken by the PC as its 40th Plenary meeting. Several statements were recorded in the journals of the Implementation Meetings on the debate by Greece and the FYROM on the issue of the denomination of the latter state.

attitude to analysing its own domestic situation under various items.

Two of the EU newcomers, Austria and Sweden, took an active stand: the former in bringing up general patterns of non-compliance, and the latter with regard to the operational aspects of the implementation review.[15] On the other hand, EU contributions were among the most thorough and forward looking in addressing these operational aspects. The United States, Norway and Canada were active throughout the Implementation Meeting, and their activity included the voicing of particular cases of non-implementation. Switzerland, responsible for the OSCE upcoming chairmanship, provided information on several domestic issues and was particularly active in relation to the operational aspects of the implementation review.

With regard to the OSCE Institutions, the High Commissioner on National Minorities (HCNM) who addressed the Implementation Meeting during the first day of the proceedings, provided a picture of how human dimension and conflict prevention aspects were integrated in practice. The latter applied also to the interventions of the representatives of several OSCE long-term Missions, addressing the human dimension aspects of the Missions' work. These representatives, either Head of Missions or Mission members, also had opportunities for informal meetings.[16] The Director of the ODIHR presented its report during the second plenary meeting.[17] Minister André Erdös, the Representative of the Chairman-in-Office (CIO), also addressed the meeting upon his return from the Permanent Council (PC) fact-finding mission to Croatia. These interventions, together with the opening statement by Mr. Alexander Łuczak, the Deputy Prime Minister of Poland, completed the official agenda for the opening plenary of the Implementation Meeting, which did not include any reference to participation of other OSCE institutions. The presence of the Secretary-General and the Chairman of the PC — who participated in the Implementation Meeting only as it related to discussions of the informal working group on the comprehensive security model — during the final stage of the meeting[18] were welcomed by several participating states. These states called for a more active involvement of these figures in the

15. See below p. 11: 'The structure of the meeting' and note 23.
16. One such meeting was organised by the ODIHR for the representatives of OSCE Missions to meet with the representatives of the NGOs.
17. The representation from the ODIHR was pronounced thoroughout the meeting, and several states expressed their satisfaction as regards its provision of background documentation.
18. The chairman of the PC was the chairman of the discussions held at expert level by the open-ended informal working group on human dimension issues of the Common and Comprehensive Security Model for Europe for the Twenty First Century. The Secretary-General, the chairman of the PC in his position of representative of the CIO, as well as Minister André Erdös, held an informal meeting on the Secretary-General's 'Study on Enhancement of NGO participation' (REF.SEC/212/95, 6 September 1995) to which the NGOs were invited. Also the Director of the ODIHR, the head of the CIO Support section of the OSCE Secretariat and the OHDIR NGO liaison officer were present at the meeting, where NGO participation was openly discussed.

human dimension implementation review. Also the OSCE Parliamentary Assembly was represented.

As regards other intergovernmental organisations, representatives from the International Committee of the Red Cross (ICRC), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and the Commissioner on Democratic Institutions and Human Rights, Including the Rights of Persons Belonging to Minorities of the Council of the Baltic Sea States, were present and actively contributed to the meeting.[19] The European Parliament was also represented. A representation from the EU Commission was in attendance througout the full implementation exercise as a part of the delegation of Spain, which held the EU Presidency. The Council of Europe had a pronounced presence at the meeting, both as regards representatives and the number of its interventions. Finally, the Prosecutor for the International Criminal Tribunal for the former Yugoslavia addressed the meeting.

All formal sessions of plenary and working bodies were open to NGOs, as they had been in the 1993 Human Dimension Implementation Meeting. This openness had already been established by the PC in its decision on the Organization and Modalities, Agenda and Work Programme of the Implementation Meeting.[20]

During the Budapest Review Conference, NGO participation in the formal meetings held in working group 3, dealing with the human dimension, had been restricted in the framework of the working group, on the basis of the possibility afforded by the decision of the 27th Meeting of the Committee of Senior Officials on the Agenda, Organizational Framework, Timetable and other Modalities of the Budapest Review Conference.[21] As a result, those meetings dealing with the role and activities of the ODIHR, human dimension seminars and programme for coordinated support, human dimension mechanisms, including the role of CSCE missions in the human dimension field, and cooperation with international organisations in the human dimension field were closed to NGO participation. This confinement of NGO access by the working group could not be considered just as a narrow interpretation of the term 'review of implementation' contained in the Council of Senior Officials (CSO) decision, restricting this expression to those items which had been dealt with under the same scope of the in subsidiary working body 1 (SWB1), 'Review of Implementation', during the 1993 Implementation Meeting, but was rather a political decision which crystallised in the framework of the working group. The fact that the decision of working group 3 to exclude NGO participation did

19. The Commissioner, Mr. Ole Espersen, addressed the second Plenary meeting.
20. This decision was adopted at the 25th meeting of the PC (REF.PC/268/95).
21. This decision stated: 'NGOs having relevant experience in the field of the human dimension are free [...] to attend and contribute to those meetings of Working Group 3, as determined by the Working Group itself in its work schedule specifically devoted to the review of implementation.' (CSCE/27-CSO/Dec. 1, p. 3).

not affect all items which in the previous human dimension implementation review had fallen outside the scope of the 'review of implementation' excludes the possibility of a narrow interpretation of the CSO decision. Further, in the 1993 Implementation Meeting, the items falling outside the heading 'review of implementation' subsidiary working body had suffered no restrictions on NGO access.

Against this background, the fact that during the last implementation review all formal meetings were opened to NGO participation can be considered a positive development. This was particularly so in light of the fact that a formal distinction between the 'review of implementation' or substantive aspects, and the operational aspects of the implementation reviews is becoming harder to maintain. In addition, as evidenced in Warsaw, the engagement of so-called 'local' NGOs into the operational aspects of the implementation reviews is not strong, since they do not see their main role as the proposing of changes in the OSCE mechanisms and structures that are usually difficult to apprehend, but rather as the voicing of violations of human dimension commitments in their specific areas of concern. The possibilities for widely-established, international NGOs, to affect closed discussions indirectly has been evidenced in the past, and the potential of their contribution, especially with regard to operational developments, seems to call for increasing openness. Although in Warsaw the level of NGO participation decreased quantitatively in relation to Budapest, it improved qualitatively.[22]

The structure of the meeting

In accordance with the guidelines established by the PC, the discussions of the 1995 human dimension implementation review were structured into two opening and two closing plenary meetings as well as an intermediary one. Other formal meetings took place in the two subsidiary working bodies (SWBs): 'Review of Implementation' (SWB1) dealing with the substantive aspects of the implementation review, and 'Review of the Human Dimension of the OSCE with a special focus on monitoring and enhancing compliance with commitments and on the use of existing mechanisms and procedures' (SWB2) dealing with the procedural aspects.[23]

There was one exception to this: a welcome innovation of this implemen-

22. 187 representatives of 131 NGOs registered for the Implementation Meeting and 24 written presentations were submitted. In Budapest the number of NGO representatives registered was 305 and 57 written presentations were submitted.
23. The issues dealt with under SWB1 and SWB2 are often referred to, in this report, as the 'substantive' and 'operational' aspects of the implementation meeting, respectively. HD implementation reviews entail a 'review of implementation' including those commitments adopted by OSCE states concerning procedures for monitoring and enhancing compliance with Human dimension commitments. This nothwithstanding that the 'Review of Implementation' of the OSCE implementation reviews have procedural components (at least, at the domestic level) and that the operational aspects always have a substantive element involved.

tation review was the joint meeting held by SWB1 and SWB2 during their ninth session and whose agenda was comprised not only of the separate subjects of the SWBs but also of a general 'Examination of proceedings at the Meeting and suggestions for improving its working methods'. It was especially during this meeting that the participating states expressed some interesting opinions on the existing structure and the future development of the implementation review.

A large number of states expressly referred to the usefulness of the Implementation Meetings and the desirability of their maintenance, although several states complained about their excessive length, arguing in favour of reducing it to two weeks. The need to improve several aspects of the Implementation Meetings was also pointed out, although no comprehensive set of proposals was presented to make better use of the time available. In fact, the above-mentioned reduction would have had no strong negative repercussions if better use were made of the time allocated. The working hours scheduled in the work programme established by the PC were short. The official daily working hours for the Implementation Meeting had been five and a half, while as the Director of the ODIHR indicated, an average of six working hours per day can be maintained with no additional financial implications being involved. In addition, the insufficient flexibility of the working programme led to a situation whereby a number of meetings (the majority of SWB2) ended long before schedule, giving rise to free time, whereas for others (of SWB1 in particular) time-shortages led to restraints on the speaking time. Several delegations advocated a two-third versus a one-third ratio in favour of SWB1 for future meetings.

A common concern was expressed on the need to pay closer attention to the agenda of future meetings and to ensure that they would incorporate current issues. The need that the time allocated to the implementation review would allow for a thorough review of implementation was emphasised.[24] It was felt that the time, and as we shall see below, other divisions between working groups should not be too rigid, nor the time allocated to each of the subjects dealt with.

Whereas several delegations were in favour of holding working groups in parallel,[25] the problem of over-stretching that this could entail for smaller delegations in particular was also pointed out.[26] As a large number of deleg-

24. The United States delegation which, during the meeting, had favoured the maintenance of the present duration of the Implementation Meeting, finally supported this more 'functional' approach to the question of the duration of the implementation review. This approach had been held by the Canadian delegation during the meeting and was reflected in the report of SWB2.
25. These included Switzerland, Canada, Romania, and the Slovak Republic. The Director of the ODIHR also envisaged this as a possibility.
26. Often the same representatives attended the morning and afternoon sessions. Similarly, NGOs facing economic constraints would have had difficulties in participating in several working groups simultaneously.

ations referred to the importance of achieving a stronger interaction between SWB1 and SWB2, the need for not reducing the existing linkages between the more substantive and more operational aspects of the implementation review was emphasised. The only element on the agenda of the implementation reviews which may have tended to facilitate such linkage so far - with the exception of the 'spontaneous' joint ninth meeting - has been the holding of alternating meetings of the two SWBs, which has allowed the same participants to attend both. The holding of parallel meetings may be premature given the present structure of the implementation review, since the existing gap between the substantive and operational aspects of this review could be widened if SWB1 and SWB2 were to meet in parallel. This, nothwithstanding the possibilities for further strengthening the operational capabilities of implementation reviews which the holding of parallel working bodies may provide, in the framework of a more thorough restructuring bringing closer the substantive and operational aspects of the implementation reviews.

The references by several delegations to the need for increased dialogue during the meetings is also closely connected with these operational possibilities. Only through real dialogue can practical solutions to existing implementation problems be attained in a positive and cooperative manner. Open dialogue within review conferences could bring together the lessons derived from SWB1 and SWB2, in order to ensure that action by participating states and OSCE Institutions adapt to specific implementation needs. However, as the delegation of Romania indicated, the meeting had not consisted so much of a dialogue as of a long series of monologues.[27] As most of the interventions were tied to formal statements, dialogue among participating states during the formal meetings was reduced to taking up issues addressed under previous agenda items, or to exercising the right of reply. Many delegations referred to the need for spontaneous discussion, although views differed on how this could be achieved.[28] Some proposals for enhanced dialogue envisaged a more active role for OSCE institutions, and in particular the ODIHR, in the discussions.[29] The possibility of having more key-note speakers in

27. Interested governments addressed the plenaries and the different agenda items usually on the basis of prepared statements, in accordance with their order of registration. Separate speakers' lists were held for interested international organisations and NGOs. The representatives of OSCE Institutions, the ODIHR in particular, took the floor at different stages of the proceedings and also organised open informal meetings, which offered opportunities for more flexible dialogue, such as in the case mentioned above (note 16). Several NGOs organised informal meetings too, attended both by governmental and non-governmental representatives.
28. By way of example, while the Turkish delegation favoured a more flexible exercise of the right of reply, it rejected the proposal made by Canada in favour of a single speakers' list on which no division would be made between governments and NGOs.
29. These proposals came from Spain-EU, Norway, and Turkey. The Director of the ODIHR indicated her willingness to highlight issues for discussion if asked to do so. In this context, she referred to the need for the provision of additional information from governments and

future meetings — particularly from other international organisations dealing with human dimension issues — was also mentioned, although the danger that this could take too much time away from the intergovernmental discussions was pointed out.

Some delegations, and that of the Russian Federation in particular, referred to a need for the establishment of reporting mechanisms similar to those used in the framework of other international organisations.[30] It should be noted, however, that these systems are often of a contentious character. Contentious mechanisms are proving less operative in the current stage of OSCE development, particularly in the human dimension.[31] Specific types of reporting systems may prove of value for the facilitation of the human dimension implementation review, but the cooperative approach which has been the basis of the OSCE success stories so far should not be abandoned. In this respect, several states, during the discussions, affirmed that the final responsibility for implementation of human dimension commitments should remain with the OSCE participating states, since the OSCE was not to become a judge or a tribunal. The cooperative approach has been the main factor responsible for the comparative advantages the OSCE enjoys over other international organisations in relation to various aspects of the human dimension.[32]

The content of the Implementation Review[33]

All items on the agenda drawn up by the Permanent Council were addressed, with minor changes of order, during the Implementation Review.[34] Two

NGOs on human dimension issues.

30. The Russian Federation reiterated the need for these kinds of reporting mechanisms to be introduced in relation to the majority of OSCE organs and procedures whose activity is relevant to the human dimension implementation review. In the opinion of the Russian Federation such reporting mechanisms were to become a component of the Common and Comprehensive Security Model for Europe for the Twenty First Century, as indicated within the framework of the discussions of the open-ended informal working group on human dimension issues on the Security Model.
31. Even the formalised procedures for inter-state dialogue under the human dimension mechanism have been approached restrictively in recent practice, including those modalities of the mechanism where the 'responsibility' for its triggering is shared among a large proportion (or all except one) of the participating states. See further, T. Buchsbaum, 'The Human Dimension after Helsinki-II', in A. Bloed, *The Challenges of Change*, op.cit., note 3, pp. 305-357, p. 333-336.
32. See Arie Bloed, 'The Human Dimension of the OSCE: Past, Present and Prospects', in OSCE Bulletin, 1995, no. 3, pp. 15-26.
33. For a detailed summary of the discussions of the SWBs, see the texts of the Reports elaborated by Mr. J. Haselhuber from Germany (SWB1) and Mr. W. Spencer from the United States (SWB2) op.cit., note 11.
34. Mr. J.-D. Vigny from Switzerland was the moderator of SWB1, and Mr. I. Komoroczki, later replaced by Mr. I. Szabó from Hungary, were the moderators of SWB2. A proposal was introduced by the moderator of SWB1 and approved by the meeting to get closer interrelated subjects: this brought 'freedom of movement' and 'education and culture' closer to 'treatment of citizens of other participating states', 'human contacts' and 'cultural

issues also underlay the debate, bursting forth throughout even if the first had not been included among the agenda items. The first was the role that the OSCE could play in post-conflict rehabilitation efforts in the former Yugoslavia, in particular with regard to its human dimension aspects. The second concerned the steps to be taken for the integration of human dimension issues in the work of the permanent political bodies, more thoroughly dealt with in SWB2.

Although in the early stages of the Implementation Meeting various delegations called for a discussion on the first issue, as the debate progressed it was increasingly in evidence that neither the review conference nor the OSCE permanent bodies in Vienna were the fora where the first issue was to be decided, at least as long as a general agreement on a peaceful settlement of the conflict was still pending elsewhere. However, some brain-storming on what the possible contribution of the OSCE could be in the post-conflict rehabilitation efforts did take place, Amnesty International putting forward a series of concrete proposals on several aspects of the possible involvement of the OSCE and the United Nations (UN).[35] Other aspects of the post-conflict efforts were presented during the closing plenary by the representative of the CIO and head of the PC fact-finding mission to Croatia, who pointed to the possibility of the establishment of a long-term mission in the country that would include within its mandate the protection of human rights and particularly those of national minorities and refugees. This long-term mission activity was to focus on the so-called 'critical areas' and respond to requests from the Croatian authorities to coordinate human righs monitoring.[36]

The discussions of SWB1

In connection with the above, and in the framework of the discussions in

heritage'. The rapporteurs also adopted a flexible approach with regard to the treatment of different agenda items: as an example, conscientious objection, addressed by the delegation of Denmark as a practical expression of the freedom of conscience, was considered as a separate item (2) in the report of SWB1.

35. With regard to OSCE involvement, Amnesty International indicated that the ODIHR should play a leading role. The duty to report regularly to the UN Security Council, the OSCE CIO and the PC by the OSCE and other civilian monitoring operations and any multinational military force with responsibility for enforcing the peace agreement was also referred to. The possibility for the International Criminal Tribunal for the Former Yugoslavia to request the multinational force to execute search or arrest warrants, to safeguard evidence such as grave sites and to protect witnesses was also established. See further, Amnesty International statement to the Implementation Meeting, 18 October 1995, 'The Challenge for the OSCE in Bosnia and Herzegovina'.
36. These areas, mentioned by the representative of the CIO during a press-conference, were those particularly affected by the events of the preceding August, which the International Helsinki Federation for Human Rights (IHF) was especially anxious to present to the meeting. See further, International Helsinki Federation for Human Rights, Report to the OSCE Implementation Meeting on Human Dimension Issues Warsaw, 2-19 October 1995, p. 50.

SWB1, the Canadian delegation pointed to the example of the former Yugoslavia to underscore the importance of identifying the misuse of the media to promote hatred, as an early-warning of conflict. Switzerland and the International Helsinki Federation also referred to the important role of the media before and during conflict. The United States spelled out a long list of specific cases of governmental control of the media and attacks on journalists in the OSCE states. This delegation also pointed to specific cases of the criminalization of the use of national minority symbols or defamation of state institutions as infringements of the freedom of expression. Article 8 of the Turkish Anti-Terror Law was repeatedly mentioned as a breach not only of the freedom of expression, but also of the right of peaceful assembly. Turkey and Belarus were also singled out in relation to their restrictions on the right to association and trade union activity.

Torture, especially during detention, proved to be a recurring phenomenon in many states, several countries involved in armed conflicts during the period under review being particularly mentioned. Adherence and support for relevant international legal instruments was widely called for.[37] A Norwegian reference to accusations ranging from ill-treatment to suspicious deaths in police custody reported in several Western European countries gave rise to replies from several EU states. The only delegation in whose framework arguments were made for the maintenance of capital punishment was the United States.[38] The rest of the states taking the floor referred to the measures adopted domestically or internationally[39] aiming at its restriction or abolition, and several references were made to statistical and scientific evidence proving its lack of deterrent effect. Portugal-EU advocated that OSCE states should notify the ODIHR of the decisions on death sentences, their antecedents and follow-up, as an adequate means of complying with the duty of exchange of information on this issue established in the 1990 Copenhagen Document.

The United states pointed to the recent increase in violations of international humanitarian norms finding contemporary reflection in Chechenya and Krajina. In its reply, Russia justified its military operations in terms of the re-establishment of the constitutional order, whereas Croatia informed the

37. In particular the European Convention on the Prevention of Torture, and the supervision of its implementation by the European Committee for the Prevention of Torture, as well as the United Nations Convention against Torture and other degrading Treatment or Punishment and its supervision by the UN Committee against Torture.

38. The Chief Prosecutor of Philadelphia addressed the meeting as a part of the United States Delegation, while indicating that her views on capital punishment 'do not necessarily reflect' the position of her government. These views found justification for the maintenance of capital punishment on the situation of internal violence to which the country was being subjected and on its deterrent effects on crime.

39. References were made to Additional Protocol VI to the European Convention of Human Rights and Additional Protocol II to the International Covenant on Civil and Political Rights.

meeting that proper measures had been taken by the authorities in relation to the reported cases of looting and brutality. Turkey argued that its situation with the Kurds, which it characterized as a fight against terrorism, was distinguishable from other instances where violations of humanitarian norms were cited. The Swiss delegation undertook, during its upcoming chairmanship, to discuss the Declaration on Minimum Humanitarian Standards, and states were called upon to support the activity of the International Criminal Tribunals.

Restrictive policies with regard to the granting of citizenship were one of the issues more widely discussed under the rule of law item.[40] Denmark-EU referred to the problems in the Czech Republic concerning the Roma, in Croatia with regard to the Serb minority and in the Baltic states in relation to the Russian-speaking population. The United States referred to cases of the violation of the independence of the judiciary in Albania, of defendants' rights in Georgia, of fair procedures of arrest in Russia and of the overall climate of political intimidation in the Slovak Republic. The need for increased OSCE involvement concerning the conduct of trials and for the ODIHR to report periodically on violations to the person of human rights' defenders were also pointed out. The non-free or at least unfair character of the election processes recently carried out in several of the newly established democracies was widely discussed and Italy underlined the need for increased debate on such cases in the framework of the PC.[41]

Switzerland, Canada and Germany described the measures they had adopted domestically to combat intolerance.[42] The issue of attacks on foreign residents, including migrant workers, was raised by Turkey, and Turkey asked for an effective follow-up on this issue by the ODIHR, emphasizing the duty of states to report regularly. The HCNM in his report had referred to the appropriateness of abandoning minimalist approaches with regard to minority protection, emphasising the need to create adequate structures for dialogue. He had also pointed to minority language schools, the minorities' approach to the question of territorial autonomy and the role of the kin-state as being particularly relevant. The HCNM had emphasised that the economic and financial

40. The need for OSCE support of the European Convention on Nationality being drafted in the framework of the Council of Europe was underlined, in addition to the adherence to the International Convention on the Reduction of Statelessness adopted in 1961 and which entered into force in 1975.

41. Whereas several of these countries had taken the floor to justify the enlargement of presidential power, and — particularly Kazakhstan — support for instruments of direct democracy, Austria specifically referred to the threat of instrumentalising a referendum for political ends as an abuse of democracy.

42. Germany referred in particular to the measures adopted in relation to computer games inciting racism and anti-semitsm. The Simon Wiesenthal Centre pointed to the fact that Neo-nazi computer games were now being passed through the internet, and to the need for monitoring, counteraction and prevention of the use of this information highway and the new technologies for incitement to hatred.

situation in the country was on many occasions a determinant, pointing in particular to the sensitive humanitarian situation of the Tartars in Crimea and their need for urgent support. Several states referred to their international, bilateral and domestic obligations in respect of minority protection.[43] Armenia and Azerbaijan debated under this, and under other items, the still enduring conflict and the existence or non-existence of a right of self-determination of the Armenian population in Nagorno-Karabakh and the role played by the kin state in this respect. The Chechen information centre referred to the oppression exercised by Russia on the 'Chechen people',[44] and the Russian Federation replied to its allegations on the non-granting of refugee status to the Chechen population. Greece responded to allegations by various NGOs of mistreatment of its Macedonian and Turkish minorities and Turkey of its Greek minority.

Statelessness, and its related problems, such as access to social security or education and high unemployment rates as well as discriminatory treatment by the media and the police were among the main concerns indicated in relation to the Roma.[45] The Slovak Republic and Romania interpreted their treatment of the Roma as that of one more national minority under domestic legislation.[46] Finally, the question of the situation of indigenous peoples, particularly in Canada, was raised by the Churches' Human Rights Programme.

The need to deal with migration and refugee problems at the international level was illustrated by all interventions in this field. The problem of overburdening some of the countries of Central and Eastern Europe as a result of voluntary migration towards Western OSCE countries, the return of those internally displaced to their homelands, and refugee flows deriving from conflicts, called for international cooperation and burden-sharing.[47] The

43. Hungary and the Federal Union of National Minorities expressed interest in the ratification by the Slovak Republic of the bilateral treaty to which both states have become parties within the framework of the 1995 Stability Pact.
44. The speaker referred to the mistreatement of the Chechen population living in Russia and to the fact that the Law on Rehabilitation of Oppressed Nations had never been implemented. It also asked for 'the expansion of the powers' of the OSCE Assistance Group to Chechenya as a response to recent events. See further, OSCE Newsletter, vol. 2, no. 10, October 1995.
45. The Helsinki Citizens Assembly reported on the problems of exclusion of the Roma population generated by the Czech citizenship law.
46. Although Romania acknowledged that the Roma have specific problems to be dealt with adequately, and reminded that it had been the inspirator of the contact point for Roma issues within the ODIHR, it did not see the necessity of making Roma issues a special task of the ODIHR. Romania also supported the designation of Roma in Romania as 'Gypsies'.
47. Reference was made to the international conference on refugees, returnees, displaced persons, and related migratory movements in the Commonwealth of Independent States and relevant neighbouring states. In addition, the UNHCR underlined the need for enacting national legislation as a necessary addition to the ratification of the Geneva Convention Relating to the Status of Refugees. It referred to the need to maintain an effective refugee protection system regardless of the tightening of anti-immigration measures, and asked for

Luxembourg-EU statement on migrant workers referred to the right of migrant workers to express their own character and pointed to the possibility of their voluntary resettlement to prevent their concentration in depressed economic areas. The Turkish delegation pointed to the need to improve the legal status of migrant workers, an improvement which should include the right to vote in local elections and the extension to migrant workers of the norms and commitments on minorities, *mutatis mutandis*. Although Turkey advocated the facilitation of the access of migrant workers to dual citizenship, it did not refer to the facilitation of conditions of naturalisation in the host country, an option supported by Germany, which indicated that German citizenship was a necessary requirement for granting the right to vote in local elections in that country.

Under the item of human contacts several Central and Eastern European countries criticised Western policies, in particular with regard to the imposition of visa requirements.[48] Ireland-EU argued that freedom of movement cannot be considered as a right under international, and particularly human rights law standards. Poland referred to the moral aspects of this issue and to freedom of movement as a stimulus to transition processes, calling for increasing liberalistation within the Schengen area and the creation of an expanding area of free movement. Bulgaria called for the convening of PC informal meetings to discuss issues related to human contacts in accordance with paragraph 41 of the Budapest decisions, something which thus far had not taken place.[49]

The discussions of SWB1, of which some issues have been highlighted above, served to illustrate the variety of human dimension implementation issues which demand the attention of the OSCE, while pointing to patterns of non-implementation common to different participating states which could be approached jointly. Although the question of how to facilitate cooperation for the implementation of human dimension commitments was referred to at

attitudes of precaution from states with regard to negative implications of the use of concepts such as 'safe country of origin' and 'safe third country' (also 'first country of asylum' or 'protection elsewhere') as well as 'accelerated or manifestly unfounded procedures'.
48. Bulgaria raised the issue of its inclusion in the Schengen 'negative list', considering this measure as contradicting the equality of opportunities (for membership) among EU Associated Members and a disregard of the progress made in Bulgaria in relation to its visa and emigration policy. In its reply, Spain-EU emphasised the separation between the visa regime of the EU member states and the process of membership. Germany referred to the Bulgarian statement as an example of a 'confrontational approach', arguing that the Bulgarian standpoint had already been presented in Vienna. It also referred to the EU visa policy as a means of inhibiting illegal emigration and that Bulgarians were heading the list of illegal inmigrants in Germany, a situation Germany tried to address through specific programmes. Germany called for the isolation of a state making use of language of this kind. Bulgaria replied that it had never sought confrontation, and emphasised its need for further assistance, as a non-military confidence-building measure.
49. Also Romania asked for these issues to become a part of the regular work of the PC.

different points in the discussions of SWB1, it was in the framework of SWB2 where states addressed this issue more thoroughly. As already indicated, it was a question of the better integration of the human dimension in the work of the OSCE political bodies and institutions, that mainly underlay this discussion.

The discussions of SWB2

The keeping of human dimension issues under constant review was considered a vital element for enhancing implementation of human dimension commitments by the OSCE states. Several states indicated that the development of new institutional arrangements was unnecessary to achieve this end at this stage, and that what was necessary instead was to make full-use of existing procedural and institutional capabilities. This required stronger support for the activities of the OSCE institutions dealing with human dimension issues by the participating states. Further, it required the better use of existing mandates for the incorporation of human dimension issues into the discussions of the OSCE decision-making bodies, in particular the PC.

The need to support the human dimension aspect of the Missions' mandate was addressed during the discussion. Switzerland pointed to the need for the Missions to act not only as a clearing-house but also to redress, at the political level, human rights violations, including through cooperation with representatives of other international organisations and NGOs. The Swiss argued further that the Missions should act as a catalyst with regard to the long-term structural problems of the country concerned. Hungary, which held the OSCE chairmanship in 1995, pointed to the need for the Missions to delimit their role as regard the type of activities in which they were involved. This issue is closely related to the need for coordination with other international organisations in the field. The appropiateness of the involvement of the OSCE Missions in different areas of activity within the countries concerned was illustrated by the interventions of several Mission representatives during the meeting. By way of example, reference was made to the progress being achieved in Moldova on issues ranging from endeavours for the establishment of autonomous arrangements — such as the Mission attempts to provide for a solution to the status of Transdniester similar to that provided to the Gagauz — to the attention to specific cases of safeguarding the rule of law, such as the Iliascu case.[50] In some cases, however, the technical or logistic demands of certain activities may call instead for delegation and coordination of activities with other international and non-governmental organisations.[51]

50. In relation to this case see IHF Report, op.cit., note 39 at p. 68.

51. By way of example, although the provision of funds for social support, requested by several Mission representatives, may prove an appropiate means of supporting the mission activities, the actual delivery of humanitarian aid or attention to the victims of conflict may probably be better performed by other international organisations with long experience of these types of activities in the countries concerned. In this respect, Switzerland welcomed the meeting organised by the Secretary-General with the heads of mission and institutions such as the UN, ICRC and UNHCR. The handing over by UNHCR of part of its responsibilities, particularly those related to the human dimension, to the OSCE Mission in Tajikistan was also praised as an example of positive cooperation.

Several representatives from long-term Missions addressing the meeting referred to the need for a non-limitative approach to the geographical scope of their activity so as to be able to approach effectively different issues of concern. In addition, the need for a higher level of expertise and further training of mission members was underlined.

The activity of the HCNM was praised by all states taking the floor, the majority of which actively supported a further term of office for Max van der Stoel. Several states also stressed the appropriateness of an adequate extension of the mandate of the HCNM Team of Experts addressing the situation of the Hungarian minority in the Slovak Republic and the Slovak minority in Hungary. The need for the support of the HCNM's activity, in particular following the presentation of his reports and recommendations to the state concerned and to the PC, was singled out by the HCNM himself during the presentation of his report. Also the need for coordination and cooperation with the field Missions and the OSCE Institutions was stressed.

Norway pointed to the need for a more frequent use of the Human Dimension Mechanism in addition to increasing the involvement of the CIO in relation to cases of non-implementation, and Amnesty International and the Kurdistan Human Rights Project asked for the application of the Mechanism in relation to Turkey. However, the fact that the Human Dimension Mechanism does not seem able to overcome the confrontational image that its previous use has conveyed was evidenced by the references of several member states to their non-dependence on the mechanism in their approach to cases of non-implementation. Several states shared the United States view that recent changes in the OSCE area and institutional developments, such as the PC, had made of the Human Dimension Mechanism an instrument providing for additional opportunities for dialogue, that could play a relevant role particularly when communication in the PC was hampered. They underlined the usefulness of its coexistence with other instruments of inter-state dialogue on human dimension issues.

The clear stand of the recently admitted participating states in favour of the activities of the ODIHR and the programme for coordinated support, was corroborated by their positive references to specific programmes, their backing of the newly established Tashkent office and their demands for the establishment of other regional offices, particularly in Central Asia. The tactful approach of the ODIHR to the specific situations in these countries was evidenced by their references to the ODIHR as a bridge of mutual understanding with other OSCE states. Turkey and the Russian Federation were strongly

supportive of the programme,[52] as was the United States, which stressed the need to make use of experts at large, as mentioned in the Budapest Decisions, to provide in-depth expertise on human dimension issues under the Programme for coordinated support.[53]

The need for increased emphasis on regional seminars established in the Budapest decisions was confirmed. In this context, reference was made to the possibilities for involving the long-term Missions in the organisation of seminars bringing together governmental representatives and NGOs. The only negative view in this regard was expressed by Estonia which considered the seminar organised by the OSCE Mission in Estonia and financed by the ODIHR as a non-effective spending of money.[54] The Estonian delegate also criticised the fact that several OSCE institutions concentrated activities on certain areas of the OSCE, while other areas were uncovered. She asked for the ODIHR to extend its activities to the Western part of Europe.

A set of proposals for the improvement of large-scale seminars was put forward by the Netherlands. These proposals stressed the need that these seminars should become more future-oriented, possible outcomes to be used in the framework of the OSCE, in particular by its decision-making bodies. The need for attendance by the people actually involved in the subject under consideration was also emphasised, and also for the choice of subject not being determined by the respective internal, political or other considerations of OSCE states.[55] Switzerland also proposed that the seminars should produce results of a practical nature. The United States delegation, in opposing such seminars drew up a concluding document, emphasised that dialogue and interplay was what was valuable. The German delegation indicated that the American position was a pointer to the existence of different concepts among delegations as regards the role of the seminars, indicating that dissemination and follow-up of the results should not only be a task for the ODIHR but also for the participating states.

The need for an increase in the resources of the ODIHR with regard to election observation was underlined by several states. While Switzerland

52. The Russian Federation pointed to its positive cooperation with the ODIHR under the programme relating to the rule of law, and Turkey expressed its willingness to give the programme financial support.

53. See Budapest Decisions VIII, 42. The United States also asked for the development of an ODIHR-administered fund to facilitate the participation of recently admitted participating states in the activities organised by the ODIHR under the programme, and particularly in the seminars.

54. It also gave negative consideration to the translation of major OSCE documents into the Estonian language, considering it preferable to leave it to the translation departments of the participating states.

55. The Netherlands set of proposals was supported by Turkey. It should be noted that the Netherland's call for rationalising the list of proposals for seminars elaborated in Budapest did not lead to successful results, states reiterating their support for seminars previously proposed or adding-up new proposals during the Implementation Meeting.

pointed to the fact that the ODIHR does not have enough resources to fulfil its mandate, Sweden and others emphasised that an involvement of the ODIHR of a mere symbolic nature could prove detrimental. Increasing coordination of bodies and international organisations involved in this activity was to be encouraged, with an emphasis, too, on the role that the ODIHR could play in this respect. Both Norway and Sweden pointed to the need for the ODIHR to develop a handbook on election monitoring and the calendar of upcoming elections.

The role of the Contact Point for Roma and Sinti Issues in identifying projects and bringing into contact governments and Roma NGOs was pointed out by the Netherlands delegation. Praise was given to the good cooperation with the group of specialists on the Roma established within the Council of Europe following the Warsaw seminar. The Contact Point-ODIHR representative referred to the mandate given in Budapest to the Contact Point, and mentioned the search for legal counsel assistance and community mediation as key needs, while discrimination and violence against the Roma were the main areas of concern. The representative of Romani Criss underlined the importance of this latter aspect and its connection with economic issues.[56]

When discussing the role of NGOs in the OSCE human dimension activities, several states welcomed the Secretary-General's 'Study on Enhancement of NGOs Participation'[57] as an appropriate basis for reflection and further consideration to lead to a more active dialogue among the delegations in Vienna. Although some states called for discussion on whether the recommendations by the Secetary-General went far enough, and for examining the opportunities to further NGO participation, no set of alternative proposals or initiatives was put forward.[58] Most delegations referred to issues contained in the study and supported stronger NGO involvement in the activities of the field missions, in their preparation and in the training of mission members, and the increased involvement of NGOs in areas of OSCE activity such as conflict prevention. In addition, issues such as the consideration of members of NGOs for the staffing of field missions, and the need for a higher level of transparency of NGO activity, were raised during the Implementation Meeting discussions. Turkey referred to the need to improve the procedures of NGO participation in the light of the fact that one NGO was initially prevented from participating in the meeting. As a result of the involvement of the Director of

56. These and other issues such as the need for follow-up action by the OSCE institutions with regard to situations of ill-treatment of the Roma were also discussed during the course of an informal meeting organised by the ODIHR Contact Point and chaired by the Head of the Netherlands delegation.

57. Op. cit., note 18.

58. This initiative was taken instead by several NGOs, such as the International Helsinki Federation for Human Rights, Minority Rights Group and Amnesty International. However, the representative of Amnesty International expressly supported the endorsement at the Implementation Meeting of the Study of the Secretary-General.

the ODIHR, this NGO was able to participate and address the meeting.

A large number of delegations pointed to the need for increasing the resources of the ODIHR. The Norwegian and Swiss delegations referred to the need to balance the ODIHR budget with its tasks. The latter delegation asked for an additional electoral counsellor and assistant and for the creation of a new slot in the ODIHR budget to allow for the hiring of experts for specific missions. The United States asked for the provision of sufficient funding to hire consultants for periods of four or six weeks (experts at large) and for the creation of a post of second deputy director for administrative issues. The necessity for the work of the ODIHR to be extended into the PC was underlined by several delegations, in particular to facilitate the implementation of possible suggestions for action. The participation of the ODIHR in the discussions of the PC was welcomed and the same applied to the informal meetings held during the course of the visits of the ODIHR staff to Vienna. The need was brought out for the ODIHR to exercise fully its capacity to advise the PC and its chairman and to take an active stand by raising specific cases more often and suggesting fields of action, while preserving its independence. The possibilities for the PC to ask the ODIHR through the mediation of the CIO to report on specific questions as well as for the ODIHR to elaborate written reports on specific subjects at the initiative of the CIO were also mentioned.

The better integration of the human dimension in the work of the political bodies was expressly addressed during the seventh meeting of SWB2. Several delegations affirmed that there was no need for new mandates at this stage, underlining the need to make full use of the existing ones. The need for the facilitation of more substantive human dimension discussion in the PC through measures meeting existing engagements, and the more systematic bringing of human dimension issues on the agenda of the PC were both stressed.[59] References were made to the role of the CIO in enhancing the integration of the human dimension in OSCE activities, highlighting issues and bringing human dimension issues more regularly on to the agenda of the PC.[60] The intiative of the CIO to hold information meetings on specific subjects of interest was welcomed. The ODIHR was asked to make full use of its mandate and bring issues of concern to the PC regularly. Also the more frequent use of operational instruments, such as the representatives of the CIO, the Troika, and PC missions in dealing with human dimension issues was advocated. Hungary emphasised the important role that the reports of the PC fact-finding missions play in providing the CIO with detailed information. The positive role of the

59. The Swiss forthcoming chairmanship was strongly supportive of this approach. Turkey pointed to the need to avoid placing too much emphasis on one dimension of the OSCE, given the limited time available to the PC.

60. In this respect, Poland referred to the need for the PC to address violations of human dimension commitments particularly from the perspective of early-warning, indicating that the treatment of human dimension issues as a separate item might bring some undesirable results, isolating rather than integrating the human dimension into political action.

visits to the PC of the representatives of long-term Missions and the HCNM was also stressed.

In relation to the cooperation between the OSCE and other international organisations in the human dimension field, several aspects of this cooperation were pointed out. Apart from the positive cooperation with the UNHCR,[61] the potential contribution by the UN Treaty bodies to implementation review meetings and to provide expertise for OSCE missions was referred to. The cooperation with the ICRC and UNESCO was mentioned. Norway supported the trilateral meetings of the OSCE, the Council of Europe and the EU to maximise the use of resources, whereas the Council of Europe indicated that the best use of the comparative advantage and limited resources of each organistion should be the guiding principle regarding cooperation. Sweden-EU referred to the possibility of involvement of the Council of Europe not only in fact-finding, but also in long-term missions, and felt that the link between the EU and the OSCE was vital. Turkey referred to the cooperation with the Western European Union (WEU) in sanction-assistance missions. It also indicated that it did not object to parallel activities of international organisations even if this required more use of resources, supporting mutually reinforcing activities instead of a clear-cut division of labour.

Concluding remarks

Whereas the importance of the human dimension implementation reviews remaining a responsibility of the participating states was affirmed during the Implementation Meeting,[62] the need for states that do not comply with their human dimension commitments, and the OSCE as a whole, to take responsibility for these shortcomings was emphasised.[63] The PC is maybe an ideal venue for presenting concerns, asking for clarification, or for a decision on action in the human dimension field,[64] while searching for a proper balance between all areas of the OSCE's activities.[65] Nonetheless, the opportunities offered by implementation reviews for a thorough follow-up and facilitation of the implementation of human dimension commitments throughout the OSCE region, in the framework of a long-term approach, must be supported and reinforced. These opportunities should be grasped, particularly in view of their relevance to the OSCE conflict prevention endeavors. The need for redefining the modalities and especially the objectives assigned to implementation reviews

61. In addition to the cooperation between the UNHCR and the OSCE Mission to Tajikistan already mentioned, the active involvement of the ODIHR in the prepatory work of the Conference on the international conference on refugees, returnees, displaced persons, and related migratory movements in the Commonwealth of Independent States and relevant neighbouring states organised by the UNHCR and IOM was also mentioned.

62. See the statement by the United States during the closing plenary.

63. See the statement by Italy during the closing plenary.

64. See Swiss statement during the 7th meeting of SWB2.

65. See Turkish statement during the 7th meeting of SWB2.

was mentioned during the meeting.[66] The need for the human dimension implementation reviews to become practical and action-oriented, so that problems identified could be appropriately addressed, was also stressed.[67] An appropriate means to address these needs may be to bring closer the substantive and operational aspects of the human dimension implementation reviews. These aspects have been divided due, to a large extent, to formal and structural elements of the implementation reviews, such as their agenda and formal procedures. The fact that the commitments and responsibilities undertaken in the field of the human dimension of the OSCE apply in their entirety and equally in each and all of the participating states[68] should be borne in mind when addressing the development of the future implementation reviews. Also the fact that all participating states can benefit from and contribute to the opportunities for cooperation in the field of the human dimension that the OSCE provides should be emphasised.

66. See the statement by France-EU during the 6th meeting of SWB2.
67. See the statements of Spain-EU and the United States during the closing plenary. The same applies with regard to the seminars, offering a framework for dialogue on specific issues which could lead to concerted action.
68. M. van der Stoel, 'The Heart of the Matter: the Human Dimension of the OSCE', in *Helsinki Monitor*, no. 3, 1995, pp. 23-30, on p. 29.

The OSCE Code of Conduct
Setting new standards in the politico-military field?

Rienk Terpstra[1]

Introduction
The Budapest Summit Declaration was adopted on 6 December 1994. Since then, the Code of Conduct on Politico-Military Relations, which constitutes an important part of the document, has not exactly been at the centre of discussion within the military, political, diplomatic and academic establishments of Europe and North America. Nevertheless, this document is a potentially important instrument in furthering the cooperation in security-related areas in Europe and increasing the transparency of the defence policies of the participating states of the Organisation for Security and Cooperation in Europe (OSCE).[2] It was for this reason that the German and Netherlands Ministries of Foreign Affairs and Defence and their respective academic institutions in Germany and the Netherlands, Ebenhausen and Clingendael, decided to conduct a series of seminars on the Code of Conduct. The most recent gathering was held on 11 and 12 December 1995, at which the document had to endure a heavy battering, especially from the academic community. This calls for a serious evaluation of the Code. Where does it come from, what exactly is it, what does it mean, where does it stand, what can it do? Without wanting to cut the ground from under the feet of the forthcoming Clingendael report of the Hague seminar, I will try to answer these questions sufficiently.

The origins of the Code of Conduct
Clearly the roots of the Code of Conduct lie in the 1975 Helsinki Final Act, like every CSCE/OSCE document since then. Antecedents of the Code's provisions can be found in Chapters I (respect for sovereignty), II (refraining from the use of force), III (inviolability of frontiers), IV (territorial integrity), VI (peaceful settlement of disputes), VII (respect for human rights), IX (cooperation) and X (fulfilment of international obligations).[3] The first specific mention of Code-like commitments however, is paragraph 25 of the Moscow Docu-

1. The author is grateful to Way Fong Lee, Tim Sneek, Commander Cees Wierema and Lieutenant Annemiek Wissink for their insights and comments. The views expressed in this article are solely attributable to the author.
2. The Code of Conduct itself only mentions the Conference on Security and Cooperation in Europe (CSCE). Except when referring to historical events, I will use the term Organisation on Security and Cooperation in Europe (OSCE).
3. Nevertheless, the Netherlands Helsinki Committee correctly stated in August 1994 that 'a strong reaffirmation of the Helsinki Principles would be useful in the light of the ongoing discussions about a Code of Conduct, the relationship of which to the Decalogue has remained unclear'. Netherlands Helsinki Committee, *A Focus on the Future: Using an Enhanced Conference on Security and Cooperation in Europe*, Utrecht, 15 August 1995, p. 10.

Merja Pentikäinen (The Turku group)

A draft paper prepared for the Rome workshop (29 - 31 March 1996) on "The OSCE in the Maintenance of International Peace and Security"

THE ROLE OF THE HUMAN DIMENSION OF THE OSCE IN CONFLICT PREVENTION AND CONFLICT MANAGEMENT

1. THE PURPOSE OF THE PAPER

The purpose of this paper is to consider the conflict prevention and management role and potential of the Human Dimension of the OSCE. We start from the normative part of the Human Dimension and proceed via national implementation to the international supervision of implementation. At the end we also consider other functions of the OSCE that can be seen as having a bearing upon the issue at hand.

2. THE HUMAN DIMENSION COMMITMENTS

2.1 The Broad Coverage of the Human Dimension Commitments

The notion of the "Human Dimension of the CSCE" was officially introduced at the Vienna Follow-up Meeting held in 1986 - 1989. In the Vienna Concluding Document the Human Dimension was defined to cover "all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character." Later the notion has been further specified to cover also the issues relating to democracy, democratic institutions, the rule of law and the protection of national minorities considered within the OSCE. Consequently, in comparison with any international human rights instrument, the Human Dimension of the OSCE covers a broad area of issues.

Regarding the human rights commitments incorporated into the OSCE documents the OSCE commitments include certain commitments which go clearly beyond the human rights provisions adopted in other international foras. As examples on this we can mention the OSCE commitments on freedom of religion and those relating to the rights of persons belonging to national minorities.

It is also notable that in addition to spelling out a number of concrete Human Dimension commitments, the OSCE documents also contain express references to several human rights instruments. These references are said to signify the further elaboration of the OSCE catalogue of the Human Dimension commitments, i.e. that by these kinds of references the OSCE catalogue is extended to cover also the obligations included in the instruments referred to.[1] It has also been put forward that Principle VII of the Helsinki Final Act implies that on becoming parties to various human rights instruments the participating States unilaterally increase the scope of the Human Dimension in relation to themselves.[2]

2.2 Characteristics of the Human Dimension Commitments

A far-reaching nature: Extending their coverage even to the matters relating to the domestic institutions of the State, the OSCE commitments touch upon matters belonging to the very internal sturucture of the State administration. Therefore, certain Human Dimension commitments of the OSCE, in particular those concerning democratic institutions and the rule of law, can be said to have a very far-reaching, even penetrating nature.

The Human Dimension of the OSCE is connected to the OSCE's comprehensive security appoach: The Human Dimension commitments and concerns are closely connected to the broader security concerns of the OSCE via the comprehensive security concept adopted by the organisation. This comprehensive approach to security, viewing also the Human Dimension questions as a part of security questions is a unique approach among those adopted in international foras. It is also the policy of the OSCE affirmed several times by the OSCE States.[3]

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[1] For example, the 1975 Helsinki Final Act includes the following passage: "In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations, and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound." See para. 8 of Principle VII in the Declaration on Principles in the Helsinki Final Act. Furthermore, the Vienna Concluding Document makes an explicit reference to the UN Standard Minimum Rules for the Treatment of Prisoners by also stating that the participating States will observe these rules. See para. 23.3. of the Vienna Concluding Document.

[2] This view can be supported by the declaration of the participating States to "also fulfill their obligation as set forth in the international declarations and agreements in this field,..., by which they may be bound." Para. 56 of the Helsinki Final Act. To support this interpretation, see e.g. Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in the CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, p. 151.

[3] There are explicit affirmations to this end e.g. in the Document of the 1992 Helsinki Follow-up Meeting. By adopting the document the participating States reaffirmed the linkage

The political nature of the OSCE and its commitments:
An important feature of the Human Dimension of the OSCE, as well as that of the whole OSCE, is their strictly political character. The OSCE is an international forum for political co-operation of the OSCE States, and the OSCE commitments incorporated into the OSCE Documents, thus including also those belonging to the Human Dimension, are politically binding upon the participating States.[4]

3. THE IMPLEMENTATION OF THE HUMAN DIMENSION COMMITMENTS

3.1 The Commitments of Implementation

Several declarations of the OSCE States suggest that the participating States of the OSCE have intended that the Human Dimension commitments accepted within the framework of the OSCE will also be observed. The duty to implement the OSCE commitments in good faith has been explicitly spelled out e.g. in the document adopted by the Helsinki Summit in 1992.[5] These clear statements regarding the observance of the OSCE commitments signify that the intention of the OSCE States has been to create international commitments with a binding force. This binding force obliges the OSCE States to adopt the State behaviour that is in line with the internationally agreed OSCE commitments. This commitment to implementation means that the OSCE States have to also take concrete steps at the national level, i.e. to take the OSCE commitments into account in national decision-making, if these steps are necessary for the implementation of the OSCE commitments.

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between the promotion and protection of human rights and the prevention of conflict. It was also stated that the fact that the major focus within the OSCE human rights and conflict prevention areas is on national minorities does not detract from the validity of the generality of the link. See also Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in The CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, p. 141.

[4] The only legally binding treaties concluded within the framework of the OSCE are the Treaty on Conventional Armed Forces in Europe (CFE), Treaty on Open Skies, and the Convention on Arbitration and Conciliation.

[5] See para. 43 of the Helsinki Summit Declaration. For the explicit commitment to implement the Human Dimension commitments, see para. 2 in Chapter VI of the Helsinki Decisions.

In the 1993 Rome meeting of the OSCE Council (subsequently the Ministerial Council) the Ministers of Foreign Affairs of the OSCE States stressed that the Human Dimension issues are fundamental to the comprehensive security concept of the C/OSCE and that the implementation of Human Dimension Commitments must be a focus of attention in the C/OSCE's conflict prevention efforts. See Chapter I of the document of the Rome Council.

3.2 The International Supervision of Implementation

3.2.1 The 'Internationalization' of the Human Dimension of the OSCE

The declarations of the OSCE States concerning the acceptance of international scrutiny regarding the Human Dimension commitments of the OSCE is a remarkable achievement in the framework of an international inter-State organisation. It was first at the 1991 Moscow Meeting on the Conference of the Human Dimension when the OSCE States irrevocably declared that the issues belonging to the Human Dimension of the OSCE do not belong to the internal affairs of the States. The same principle was later, in 1992, restated in the Helsinki Summit Declaration.[6] This kind of 'opening up' or 'internationalization' of the OSCE Human Dimension, which includes far-reaching and even penetrating natured international commitments, has no comparison in any other international fora of inter-State co-operation. In accordance with this principle assuming negotiations and bringing up issues concerning the Human Dimension of the OSCE cannot be regarded as an intervention in the internal affairs of the participating States. Thus, at least in theory, there exists a broad possibility to the international supervision of the implementation of the Human Dimension commitments. This supervision may be carried out in the framework of different OSCE meetings or by resorting to different mechanisms available in the OSCE.

3.2.2 The Consideration of the Human Dimension Issues in OSCE Meetings

The implementation of the Human Dimension commitments is tackled, as a rule, in the biennal OSCE review conferences and in the Human Dimension implementation meetings, the latter being organised in those years when a review conference does not take place.[7] These two meetings have been designated as the main forums of the review of the implementation or the OSCE Human Dimension.

The Human Dimension issues are also considered at Human Dimension seminars which have been organised since the Helsinki Follow-up Meeting to address specific questions of particular relevance to the Human Dimension and of current political concern. It is also possible to convene various kinds of expert meetings to tackle the Human Dimension questions.

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[6] According to the Helsinki Summit Declaration, "commitments undertaken in the field of the Human Dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned." See para. 8 of the Helsinki Summit Declaration.

[7] In accordance with the decisions made at the 1992 Helsinki Follow-up Meeting the review conferences replaced the traditional follow-up meetings and the Human Dimension implementation meetings replaced the Conference on the Human Dimension of the CSCE. See para. 4 of Chapter I and para. 9 of Chapter VI of the Helsinki Decisions.

The Human Dimension concerns may also be considered at the meetings of the various political bodies of the OSCE, including the meetings of the Ministerial Council, the Senior Council and the Permanent Council. In practice, however, and in spite of connecting the Human Dimension to the OSCE's comprehensive security approach, the Human Dimension issues have not been considered as a separate agenda item by these bodies.
(Here references to the Arie Bloed's contribution?)

3.2.3 The Human Dimension Mechanism

3.2.3.1 Towards the Establishment of the Human Dimension Mechanism

Under the 1975 Helsinki Final Act the only method of supervision was the "thorough exchange of views on the implementation of the Final Act"[8] held at the beginning of each of the Follow-up Meetings (and to a certain extent at the expert meetings).[9] At the Madrid Follow-up Meeting held in 1980 - 1983 some progress was made regarding supervising the implementation of the issues belonging to the so-called Basket three of the Final Act (Co-operation in Humanitarian and Other Fields). In the Madrid Concluding Document the participating States agreed "to give favourable consideration to the use of bilateral round-table meetings, held on a voluntary basis, between delegations composed by each participating State to discuss issues of human rights and fundamental freedoms in accordance with an agreed agenda in a spirit of mutual respect with a view to achieving greater understanding and co-operation based on the provisions of the Final Act."[10]

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[8] Para. 664c of the 1975 Helsinki Final Act.

[9] These exchanges of views included the raising of specific human rights cases in the course of differenct meetings: six at the 1977 Belgrade Follow-up Meeting and 65 at the Madrid Follow-up Meeting (1980 - 1983) by the United States alone. The delegation of the United Kingdom addressed 86 questions to the Soviet delegation at the Vienna Follow-up Meeting (1986 - 1989). Similar questionning took place at the 1985 Ottawa Meeting of Experts on Human Rights and Fundamental Freedoms and at the 1986 Bern Meeting of Experts on Human Contacts. For this information, see William Korey, Human Rights and the Helsinki Accord: Focus on US Policy. Foreign Policy Association, Headline Series, No. 264, New York 1984, p. 45; Stefan Lehne, The Vienna Meeting and the Conference on Security and Co-operation in Europe, 1986 - 1989. Colorado, p. 69. See also Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in The CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, p. 144.

[10] Between the Belgrade and Madrid Follow-up Meetings the US had already held bilateral talks on a broad range of CSCE issues, including human rights, with Hungary, Romania, the German Democratic Republic, Poland, Bulgaria, Sweden, Switzerland, Finland, Austria and Yugoslavia. See US Commission on Security and Cooperation in Europe, The Helsinki Process and East-West Relations in Perspective: Report on the Positive Aspects of

At the Vienna Follow-up Meeting held in 1986 - 1989 the Western participating States pushed actively the establishment of a permanent mechanism to monitor the compliance with CSCE undertakings in the areas of human rights and human contact.[11] These efforts resulted in setting up the "Human Dimension Mechanism" and the establishment of a Conference on the Human Dimension (CHD) "to achieve further progress" in the area of human rights and fundamental freedoms. The three meetings of this conference were scheduled for Paris (1989), Copenhagen (1990) and Moscow (1991).[12]

3.2.3.2 The Structure of the Human Dimension Mechanism

A specific machinery designated to monitor the implementation of the Human Dimension commitments of the OSCE is generally known as the "Human Dimension Mechanism". The Human Dimension Mechanism of the OSCE consists of two main elements that are generally known as the Vienna Mechanism and the Moscow Mechanism (the latter partly consituting a further elaboration of the Vienna Mechanism and partly introducing new supervisory procedures). Together these two mechanisms consitute a permanent machinery available for the OSCE States for supervising the implementation of the OSCE Human Dimension commitments.

The basis of the Vienna mechanism was laid down in the Concluding Document of the Vienna Follow-up Meeting (1986 - 1989). It has been further elaborated, in particular, at the meetings of the Conference on the Human Dimension in Copenhagen (1990) and Moscow (1991) and at the Helsinki Follow-up Meeting (1992). At present, the mechanism consists of the following four phases:

The mechanism requires the OSCE States
(1) to exchange information and to provide in the shortest possible time, but no later than ten days[13], a written response to requests for information and to representations made to OSCE States

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the Implementation of the Helsinki Final Act, 1975 - 1984, Washington D.C. 1985, pp. 8 - 10; Dante Fascell, "The CSCE Follow-up Mechanism from Belgrade to Madrid", in Vanderbildt Journal of Transnational Law, Vol. 13, Nos. 2 - 3, Spring-Summer 1980, pp. 335 - 357, p. 353. See also Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in The CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, p. 145.

[11] Stefan Lehne, op.cit., p. 71

[12] See the end of the section dealing with "Co-operation in Humanitarian and Other Fields" in the Concluding Document of the Vienna Meeting. At the 1992 Helsinki Follow-up Meeting it was decided that the Conference on the Human Dimension was to be replaced by the biennal Human Dimension implementation meetings. See the references above.

[13] In the Copenhagen Meeting of the Conference on the Human Dimension the time limit for a written response was fixed on the maximum of 4 weeks. See para. 42.1 of the

(in writing) by other participating States on questions relating to the Human Dimension of the OSCE. Such communications may be forwarded through diplomatic channels or be addressed to any agency designated for the purposes[14];

(2) to hold bilateral meetings with other participating States that so request, in order to examine questions relating to the Human Dimension of the OSCE, including situations and specific cases, with a view to resolving them. The date and place of such meetings will be arranged as soon as possible by mutual agreement through diplomatic channels, as a rule, within one week of the date of the request[15]. In the course of a bilateral meeting, the OSCE States shall refrain from raising situations and cases not connected with the subject of the meeting, unless both sides have agreed to do so.[16] The ODIHR (the Office for Democratic Institutions and Human Rights) may serve as a venue for such bilateral meetings.[17]

In addition,
(3) any participating State which deems it necessary may bring situations and cases relating to the Human Dimension of the OSCE, including those which have been raised at the bilateral meetings described in paragraph 2, to the attention of other participating States through diplomatic channels or through the ODIHR[18];

(4) any participating State which deems it necessary may provide information on the exchanges of information and the responses to its requests for information and to representations (para. 1) and on the results of the bilateral meetings (para. 2), including information concerning situations and specific cases, at OSCE meeting, in particular at meetings of the Senior Council (formerly the CSO), the biennial review conferences and at the human dimension implementation meetings.

Among the specific features of the Vienna Mechanism are its functioning on a permanent basis (it is available for use at all times), its non-voluntary character (when a State is faced with requests for information from any of the OSCE States within the framework of the mechanism, it is under

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Copenhagen Document. The 10-day limit was agreed upon in the Moscow Meeting of the Conference on the Human Dimension. See para. 2 of the Moscow Document.

[14] According to the decisions made in the 1992 Helsinki Follow-up Meeting this agency is the ODIHR. See para. 7 of Chapter VI in the Helsinki Decisions.

[15] In the Copenhagen Meeting of the Conference on the Human Dimension the time limit for the agreeing upon the meeting was 3 weeks. See para. 42.2 of the Copenhagen Document. The one-week limit was agreed upon in the Moscow Meeting of the Conference on the Human Dimension. See para. 2 of the Moscow Document.

[16] This addition was made in the Copenhagen Meeting of the Conference on the Human Dimension. See para. 42.3 of the Copenhagen Document.

[17] This addition was made in the Helsinki Follow-up Meeting. See Chapter VI paras 5 and 7 of the Helsinki Decisions.

[18] The role of the ODIHR in this connection was added in the Helsinki Follow-up Meeting. See Chapter VI paras 5 and 7 of the Helsinki Decisions.

an obligation to respond to these requests. It must also comply with a subsequent request to hold bilateral meetings), and its confidentiality (the bilateral phase is confidential; if the requesting State is not satisfied with the requested State's response, the information can be made public (the multilateral phase); only if this public information does not change the attitude of the country in question should OSCE structures be involved. Decision-making power on follow-up actions is entrusted to the Senior Council and the Permanent Council).

The so-called Moscow Mechanism was established at the Moscow Meeting of the Conference on the Human Dimension of the CSCE in 1991. By the decisions made in Moscow the Vienna Mechanism was supplemented by a system of missions of independent experts or rapporteurs in the field of the OSCE Human Dimension. These modifications introduced an independent element, the possibility of an independent investigation into violations of Human Dimension commitments, into the Human Dimension Mechanism that had been previously functioning at a strictly intergovernmental level.[19]

The supervisory system set up in Moscow was subsequently streamlined at the Rome Council Meeting in December 1993. The Moscow Mechanism is rather complicated encompassing five separate procedures which may be used independently of one another to set up missions of experts or rapporteurs.

Two of the procedures introduced in Moscow are linked to the Vienna Mechanism:

1) After having put into effect para. 1 or para. 2 of the Vienna Mechanism (a written response to requests for information and bilateral meetings), the initiating State(s) (the requesting State(s)) may suggest that the OSCE State (the requested State) should invite a mission of experts "to address a particular, clearly defined question on its territory related to the Human Dimension".[20]

2) If the requested State refuses to establish a mission of experts within 10 days from the request, or if the initiating (requesting) State(s) judge(s) that the issue in question has not been resolved as a result of a mission of experts, the requesting State(s) may initiate the establishment of a mission of rapporteurs. For the establishment of the mission the support of at least six OSCE States is needed. The consent of the requested State, for its part, is not necessary.[21]

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[19] The system of human dimension missions of independent experts or rapporteurs marked also the first major deviation from the hitherto strictly intergovernmental supervisory procedures of the OSCE.

[20] Para. 8 of the Moscow Document. A mission of experts may consist of up to 3 experts selected by the requested State from the OSCE's resource list. Paras 8 and 4 of the Moscow Document. In accordance with para. 4 of the Document the experts chosen cannot be the appointing State's own nationals or residents or any of the persons this State appointed to the resource list. In addition, there should be no more that one national or resident of any particular State in a mission.

[21] Para. 9 of the Moscow Document. A mission of rapporteurs consists of up to 3 members drawn from the OSCE's resource list, one appointed by the requesting State(s), one

In addition to the two above mentioned procedures which are linked to the application of the Vienna Mechanism, the Moscow Mechanism encompasses three other procedures which may be used to establish missions:

3) An OSCE State may voluntarily invite a mission of experts to "address or contribute to the resolution of questions in its territory relating to the Human Dimension of the OSCE".[22]

4) The Senior Council or the Permanent Council may decide to establish a mission of experts or rapporteurs upon the request of any participating State.[23]

5) In cases of "a particularly serious threat" to the fulfilment of Human Dimension provisions ten OSCE States may activate the procedure of establishing an 'emergency' mission of rapporteurs.[24]

Regarding the mandate of expert and rapporteur missions it is notable that it may vary according to the procedure from which these missions arise. Generally speaking the powers of missions of experts go beyond those of missions of rapporteurs. The purpose of missions of rapporteurs is to establish the facts, report on them, in addition to which these missions may also give advice on possible solutions to the question raised.[25] The purpose of missions of experts is "to facilitate resolution of a particular question or problem relating to the Human Dimension of the CSCE". For that purpose expert missions may gather information and, as appropriate, use their good offices and mediation services to promote dialogue and co-operation among interested parties. The State concerned will agree with the mission on the precise terms of reference and may thus assign any further functions to the mission of experts, *inter alia* fact-finding and advisory services, in order to suggest ways and means of facilitating the observance of OSCE commitments.[26]

In accordance with the agreed rules missions of rapporteurs submit a report to the participating State(s) concerned and to the OSCE (the ODIHR) within 3 weeks after the last rapporteur has been

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by the requested State (if it so chooses) and one by the first two rapporteurs, or by the ODIHR in case of their disagreement. Rapporteurs cannot be nationals or residents of, or persons appointed to the resource list by any of the States concerned. Para. 10 of the Moscow Document.

[22] Para. 4 of the Moscow Document. The State concerned itself selects up to 3 members of the mission from the OSCE's resource list. Para. 4 of the Moscow Document. For the restrictions in the selection of experts, see the remarks in footnote 11 above.

[23] Para. 13 of the Moscow Document. The role of the Permanent Council (formerly the Permanent Committee) as the initiator of a mission was agreed upon at the 1993 Rome Council Meeting. See Chapter IV para. 5 of the Rome Document.

[24] Para. 12 of the Moscow Document.

[25] Para. 11 of the Moscow Document.

[26] Para. 5 of the Moscow Document.

appointed. The requested State may submit any observations on the report within 3 weeks after the submission of the report. The ODIHR will transmit the report and the possible observations on it to all OSCE States without delay. The report must be placed on the agenda of the Senior Council or the Permanent Council, which may decide on any possible follow-up action.[27] The report will remain confidential until after the meeting of the Council.[28]
Missions of experts have to submit their report within 3 weeks after the completion of the mission to the inviting State and to the OSCE within further 2 weeks.[29] Reports of missions of experts may be discussed by the Senior Council or by the Permanent Council for possible follow-up action.[30] The observation and comments will remain confidential until brought to the attention of the Council.[31]

Regarding the scope of the questions that can be brought to the shpere of the Human Dimension Mechanism the Vienna Concluding Document refers to "all human rights and fundamental freedoms". Thus, based upon this statement one can support the view that the application of the mechanism seems not to be limited solely to the commitments explicitly listed in the OSCE Documents, but that it is possible also in respect of any other human rights obligations the OSCE State has accepted as binding upon it. This interpretation can be supported by referring to what was said previously about extending the Human Dimension commitments to cover also the human rights accepted by the OSCE States in other international foras.[32]

The major limitation of the system of convening bilateral meetings in accordance with the Madrid Concluding Document was its voluntary nature. The intention of the delegations proposing the

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[27] According to the Moscow Document the submission of these reports on the agenda of these political bodies was still optional ("may"). See para. 11 of the Moscow Document. In the 1993 Rome Council meeting this submission was made mandatory ("must"). The authorisation of the Senior Council to decide on follow-up actions based upon rapporteurs' reports, see para. 11 of the Moscow Document.

The authorisation of the Permanent Council to take follow-up actions based upon rapporteurs' reports, see para. 5 of Chapter IV in the Document of the Rome Council.

[28] Para. 11 of the Moscow Document.

[29] The ODIHR's handout on the Human Dimension Mechanism. These additions were made in the Rome Council meeting (Annex A to the Rome Document).

[30] The authorisation of the Senior Council to decide on follow-up actions, see para. 6 of the Moscow Document. For the auhtorisation of the Permanent Council, see Chapter I para. 22 and Chapter VIII para. 5 of the Budapest Decisions in the Concluding Document of the Budapest Review Conference.

[31] Para. 6 of the Moscow Document.

[32] See the text under the heading (2.1) dealing with the broad coverage of the Human Dimension Commitments above.

See also Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in the CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, p. 151.

Human Dimension Mechanism was to create an obligation for participating States to submit, on request, information concerning their practices in the areas of human rights and human contacts, combined with a binding commitment to participate in bilateral and multilateral meetings on these questions. Consequently, the formulation of the Human Dimension Mechanism became clearly mandatory[33] within the overall context of the non-legally binding nature of the OSCE. This mandatory nature signifies that the State that has been requested e.g. to provide information in accordance with the mechanism has no choice of the non-acceptance of the mechanism. Furthermore, there are no need for further steps such as ratification or a declaration of acceptance to bring the mechanism into effect.[34]

It is notable that no binding decisions, only recommendations can be made in the framework of the Human Dimension Mechanism. A binding decision is possible only as a follow-up to the procedures made by the Senior Council or the Permanent Council. However, resulting from the consensus principle applicable to the OSCE decision-making in material questions, no action against the will of the State(s) concerned is possible. The consensus-minus-one principle is the only, but largely theoretical exception to this rule. Consequently, in cases of proven violations of Human Dimension commitments there is no effective system of sanctions that can be applied against the violating State.[35]

3.2.3.3 Practice

The Vienna mechanism has been operative since the end of the Vienna Meeting, thus since January

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[33] The States "have, on the basis of the principles and provisions of the Final Act and of other relevant CSCE documents, decided...". See the Vienna Concluding Document.

[34] At the time of the adoption of the Human Dimension Mechanism Romania questioned the obligatory nature of the Mechanism and submitted a reservation concerning the acceptance of the Mechanism. This reservation was not accepted by other CSCE States that clearly specified that, in general, reservations to the CSCE commitments were not possible, but all provisions of the CSCE documents are equally binding on all participating States. See Rachel Brett, "The Human Dimension Mechanism of the CSCE and the CSCE Response to Minorities", in the CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, pp. 148 - 149.

[35] The consensus-minus-one principle was adopted at the Prague Council Meeting in January 1992. According to the principle, in situations of massive and gross ("clear, gross and uncorrected") violations of human rights the OSCE is entitled to adopt political measures against the State in which the violations occur, even without the consent of this State. The application of this principle is, however, limited to political measures (political declarations or other political steps) only. In addition, these political measures may be applied only "outside the territory of the State concerned". See para. 16 of Chapter IV in the Prague Document on Further Development of CSCE Institutions and Structures.

1989. In years 1989 and 1990 the mechnism was activated a number of times,[36] between January 1989 and April 1990 about 100 times.[37] The predominant usage was in the East-West context, most often by Western States (including the European Community) against Eastern States. The mechanism was used e.g. against Czechoslovakia [38], Bulgaria[39], East-Germany[40], Romania [41], USSR[42], and Turkey[43]. Regarding the application of the mechanism against Western States, the

[36] There is no general record of the use of the Human Dimension Mechanism. The information concerning the practice referred to in the following is mainly from the following publications: Rachel Brett: The Development of the Human Dimension Mechanism of the Conference on Security and Co-operation in Europe. Papers in the Theory and Practice of Human Rights, No. 1, Human Rights Centre, University of Essex, England 1991; Arie Bloed, "Monitoring the CSCE Human Dimension: In Search of its Effectiveness" in Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms. (Eds.) A. Bloed, L. Leicht, M. Nowak, A. Rosas. The Netherlands 1993, pp. 45 - 91.

[37] Brett, op.cit., p. 22. Bloed, op.cit., p. 72.

[38] This was the first activation of the Vienna Mechanism and it was done by The Netherlands. The activation of the mechanism was done in respect of the incidents concerning the treatment of participants in a peaceful meeting to commemorate the self-immolation of Jan Palach and the subsequent treatment of those detained, including Vaclav Havel. The Netherlands used all four phases of the mechanism, ultimately placing the matter on the agenda of the first meeting of the Conference on the Human Dimension (Paris 1989). See Brett, op.cit., p. 22. Brett refers to Arie Bloed: "Institutional Aspects of the Helsinki Process after the Follow-up Meeting in Vienna". XXXVI NILR 1989, p. 354.

In 1989 the UK invoked the mechanism three times in relation to Czechoslovakia.

[39] The mechanism was triggered by Turkey in the case of the expulsion of members of the ethnic Turkish minority. The USA resorted to the mechanism in the case concerning the Turkish minority and the detention of two members of Ecoglasnost.

[40] The issues concerned repressive measures against dissidents and incidents at the Berlin Wall.

[41] The issues concerned general human rights situation and some specific human rights cases.

The first time to apply the Vienna mechanism within Eastern bloc occurred in November 1989, when Hungary activated the mechanism in relation to Romania in order to raise the issue of violations of the rights of the Hungarian minority in Romania. See Bloed, op. cit., p. 73.

[42] The mechanism was triggered by the UK to get information on the refusal of exit permits. The USA triggered the mechanism due to the refusal to allow Lithuanian Americans into the USSR.

[43] The mechanism was triggered by Bulgaria in relation with the Kurdish question.

mechanism has been activated against The Netherlands [44] and UK[45]. In addition to address violations of human rights, the mechanism was also used repeatedly to raise specific cases of humanitarian hardship.[46]

After the revolutionary changes in Central and Eastern Europe and the end of the Cold War, the Vienna Mechanism has been resorted to very rarely.

In 1991 the Vienna Mechanism was activated in order to draw attention to serious situations, such as the civil war in Yugoslavia, and military actions by the Russians in Lithuania.[47] In March 1992 Austria asked Turkey to provide information on its military actions in the regions of the Kurdish minority (South Eastern Turkey) and the treatment of Kurdish civilians by Turkish security forces. This activation of the Vienna Mechanism is also an example of a use of the mechanism by a 'non-interested' party.[48] In spring 1992 Russia activated the first phase of the Vienna Mechanism (exchange of information) in order to get information on the Estonian legislation on citizenship.[49]

The Moscow Mechanism became operational in May 1992 after the registration of the required number of experts at the OSCE's resource list.[50] In the framework of the Moscow Mechanism only few missions have been sent to the participating States. In autumn 1992 (30 September - 5 October) an "emergency mission" of rapporteurs pursuant to para. 12 of the Moscow Document was sent to Croatia/the former Yugoslavia. The mission was established upon the initiative of the United Kingdom on behalf of the European Community States and the initiative was also supported by the USA. The mandate of the mission was to investigate reports of atrocities against unarmed civilians in Croatia and Bosnia, and to make recommendations as to the feasibility of attributing

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[44] The mechanism was triggered by Czechoslovakia (May 1989) and the issue concerned information on police treatment of anti-apartheid demonstrators.

[45] The mechanism was triggered by the USSR and the issue was the operation of the Immigration Act of 1988.

[46] It has been said that it was particularly in this category of interventions in connection with which positive results were achieved. See Brett, op.cit., p. 20.

[47] Bloed, op. cit., p. 73.

[48] Austria resorted only to the first phase of the Vienna Mechanism, i.e. to the exchange of information. As a kind of 'retaliatory' action, Turkey for its part invoked the Vienna Mechanism in order to raise the alleged Austrian support to 'terrorists' in its territory. Turkey did not proceed beyond the first phase of the mechanism either. See Bloed, op. cit., p. 74. See also Thomas Buchsbaum, "The Future of the Human Dimension" in Helsinki Monitor, Vol. 4, 1993, No. 2, pp. 5 - 24, p. 17.

[49] Bloed, op. cit., p. 75. This Russian initiative was followed by the Russian efforts to make Estonia to invite a mission of experts and to send a mission of rapporteurs to Estonia. For more, see footnote 52 below.

[50] In accordance with para. 3 of the Moscow Document.

responsibility for such acts. The additional mandate enabled the rapporteurs to visit areas which may be under threat of ethnic cleansing, and to investigate allegations of the arbitrary arrests of Serbs and Croats.[51]

In December (2nd - 5th) 1992 a mission of experts was sent to Estonia at the request of the Estonian Government on the basis of para. 4 of the Moscow Document.[52] The mandate of the mission was very broad. The mission was invited to study Estonian legislation and compare it, and its implementation, not only with the OSCE standards, but also with universally accepted human rights norms. The mission studied particularly Estonian legislation in the areas of citizenship and language, especially regarding minority rights.[53]

In the beginning of year 1993 (31 January - 3 February) the Moldovan Government invited a mission of experts pursuant to para. 4 of the Moscow Document. The mandate of the mission was to investigate current legislation, the implementation of minority rights and inter-ethnic relations.[54]

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[51] The report of the rapporteurs contained a detailed description of atrocities committed by Serbian and Croatian authorities, proposals for the establishment of a system for storing information concerning the cruelties in the former Yugoslavia and for the creation of an international tribunal for procecuting the perpetrators of war crimes. The report was released after the 17th meeting of the CSO in November 1992. The rapporteurs' report was well-received, and consequently, the Stockholm Council Meeting in December 1992 authorized the rapporteurs to refine its proposals on personal accountability, including by way of the establishment of an *ad hoc* war crimes tribunal. See para 14 of Chapter 1 in the Summary of Conclusions of the Stockholm Council Meeting.

[52] This mission was preceded by the Russian effort to make Estonia to invite a mission of experts, in accordance with para. 8 of the Moscow Document (as a part of the Vienna Mechanism), in order to investigate the Estonian legislation on citizenship (June 1992). Like the first Russian effort, also the second attempt by Russia to persuade Estonia to invite a mission of experts made in August 1992 was rejected by Estonia. After these frustrated efforts Russia tried to activate the Moscow mechanism under para. 9 of the Moscow Document, i.e. it tried to get a mission of rapporteurs established. This plan failed due to Russia's failure to get the support of five other participating States as required by the respective provision. See Bloed, op. cit., p. 75.

[53] The report of the mission of experts contains a number of detailed recommendations e.g. on the filling of gaps in legislation and the strenghtening of the judiciary and administration, and on nationality issues. The report of the mission was made public after the 19th meeting of the CSO in February 1993.

[54] The mission met with the representatives of all political parties as well as with officials of the self-proclaimed Republic of Trans-Dniestria and that of Gaugaz Republic. Representatives of the Bulgarian minority in the Teraclia district were also consulted. The final report (submitted in February 1993) contained comments and recommendations on constitutional and legal questions, the language law, citizenship law, and the law on religious freedom. The report was discussed at the 20th meeting of the CSO and released thereafter.

In addition to the completed missions of rapporteurs or experts mentioned, there have also been other initiatives to activate the Moscow Mechanism. In July 1992, during the CSCE Helsinki Follow-up Meeting, Austria requested Turkey to invite a mission under the Moscow Mechanism in accordance with para. 8 of the Moscow Document. Turkey rejected this attempt by referring to the fact that Austria had already invoked the first phase of the Vienna Mechanism. Turkey also viewed a mission of experts to be unnecessary as it supposedly only had problems with terrorism by Kurdish nationalists.[55] In January 1993 Uzbekistan rejected the request of Americans (that was channelled through the CSCE Chairman-in-Office) to create a mission of experts at its own initiative in accordance with para. 4 of the Moscow Document.[56] In June 1993 the CSO (subsequently the Senior Council) decided to sent a rapporteur mission to Serbia in accordance with para. 13 of the Moscow Document to investigate human rights violations.[57] The mission could not, however, be carried out due to the refusal of the Serbian authorities to grant visas to the members of the mission.[58] In 1994 the Nordic countries used the Permanent Committee (subsequently the Permanent Council) meeting to request Turkey to consider invoking the Human Dimension Mechanism.[59]

In the light of the existing practice on the use of the Human Dimension Mechanism we can observe that the end of the Cold War also signified a drastic drop in the use of the Vienna Mechanism. During the Cold War era the activation of the Vienna Mechanism seemed to be heavily dictated by political considerations rather than a genuine interest towards the implementation of the Human

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[55] Bloed, op. cit. pp. 80 - 81. Bloed refers to Rachel Brett's paper on "The Challences of Change. Report of the Helsinki Follow-up Meeting of the Conference on Security and Co-operation in Europe (CSCE) (24 March - 10 July 1992)". Papers in the Theory and Practice of Human Rights, No. 2, University of Essex, England 1992, p. 14.

[56] This refusal is said to be partly due to a lack of proper preparation of this diplomatic initiatiative on the part of the USA. Arie Bloed, "CSCE Process in Progress", in Helsinki Monitor, Vol. 4, 1993, No. 2, pp. 43 - 48, p. 45. On the other hand, if Uzbekistan had consented to the request, it would have resulted in the setting up a special ad hoc ODIHR mission instead of the establishment of a mission under the Moscow Mechanism. Consequently, formally this effort does not relate to the Moscow Mechanism. See Bloed, op. cit. p. 81.

[57] The Document of the 22nd Meeting of the CSO, Prague (29 - 30 June, 1993). The text on the former Yugoslavia: Human Rights in Serbia.

[58] Arie Bloed, "The CSCE between Conflict Prevention and Implementation Review" in Helsinki Monitor, Vol. 4, 1993, No. 4, pp. 36 - 43, p. 37.

[59] Martin Harris, "Human Rights Monitoring and the CSCE: Perspective from Budapest" in Helsinki Monitor, Vol. 6, 1995, No. 1, pp. 18 - 22, p. 19.

References to the practice regarding the Human Dimension Mechanism, see also Rachel Brett, "The Human Dimension Mechanism of the CSCE and th CSCE Response to Minorities", in The CSCE in the 1990s: Constructing European Security and Cooperation, (ed.) Michael R. Lucas, Baden-Baden 1993, pp. 143 - 160, pp. 149 - 153.

Dimension commitments. Also the practice in years 1989 and 1990 reveals this predominantly confrontational East-West nature of the Human Dimension procedure. In the Cold War atmosphere the willingness (or even desire) of the States to act in confrontational way even outweighed the usual reluctance of States to resort to inter-State complaint procedures. This view, considering the Human Dimension Mechanism as a weapon in the political battle between the Eastern and Western bloc, is supported by the drastic drop in the number of the activation of the mechanism since the end of the Cold War.[60]

Lately the activation of the Human Dimension Mechanism has not taken place. Reasons for the present non-usage of the mechanism, especially of the Vienna Mechanism, put forward include the lack of political will to activate the inter-State supervisory mechanism, the new political situation (during the Cold War the Human Dimension Mechanism became burdened by the reputation of being the weapon in the ideological war), and the creation of new mechanisms and political bodies within the OSCE framework that can be used to tackle also the Human Dimension issues. To this list one must also add a general reluctance of States to resort to inter-State complaint procedures, and especially the existence of this reluctance among Western States to apply international supervisory mechanisms in their mutual relationships. The Western OSCE States have explained their reluctance to activate the OSCE mechanisms in their mutual relationships by referring to the existence of other human rights mechanisms (e.g. the mechanism of the European Human Rights Convention) and to their better suitability in the solving of human rights problems.[61] The problem is, however, that despite these references to the better suitability etc. of the other human rights mechanisms, the Western States are clearly unwilling to activate even them in their mutual relationships.

3.2.4 Other OSCE Procedures and Instruments Available for the Monitoring of the Implementation of the Human Dimension Commitments

Besides the above referred possibilities to raise any issue relating to the OSCE Human Dimension at meetings of a variety of political OSCE organs (in particular the Permanent Council, the Senior Council and the Ministerials), at different meetings organised within the framework of the OSCE, and the possibility to activate the Human Dimension Mechanism, there are also other possibilities that can be used to tackle these issues. The Human Dimension issues may also be dealt with by invoking general OSCE mechanisms, such as the various procedures for the peaceful settlement of

[60] See also Brett, op.cit. p. 24.

[61] The question of the limited use of OSCE mechanisms was discussed in the Seminar on Early Warning and Preventive Diplomacy organized by the ODIHR in January 1994 in Warsaw.

disputes (PSD)[62] and the so-called Berlin emergency mechanism. In practice these options have been applied so far only very seldomly, and PSD procedures not at all (in respect of the Human Dimension issues or in general?).

Different OSCE Missions (long-term missions, various *ad hoc* missions etc.):
The different kinds of OSCE missions sent to or deployed in various trouble spots in the OSCE region also have a Human Dimension component in their mandates. For example, although the primary task of long-term missions is in the area of conflict prevention, their mandate has also been enlarged to encompass Human Dimension activities. (E.g. the long-term mission in Estonia has acted as a "mediator" in a number of individual cases concerning citizenship issues).
- Local OSCE missions often assist in nation-building (Estonia, Latvia). Promoting human rights was an important objective of the OSCE presence in Kosovo, Sandjak and Vojvodina, and it falls explicitly within the mandate of the Mission to Tajikistan. Addressing human rights violations is an integral part of conflict resolution efforts in Moldova and in the Transcaucasian area.
(Here references to the contribution(s) of Allan Rosas and Timo Lahelma?)

The role of the High Commissioner on National Minorities (HCNM): Although the HCNM is not a Human Dimension instrument, the Human Dimension questions, especially the OSCE commitments concerning national minorities, are of relevance in the everyday work of the HCNM. (Here references to the contribution of María Amor Martín Estebanez?)

The role of the ODIHR:
The Office for Democratic Institutions and Human Rights (ODIHR) with its headquarters in Warsaw is the central Human Dimension body within the OSCE. In the last few years in particular the ODIHR has been charged with a number of functions in the area of the Human Dimension. The activities of the ODIHR are also aimed at the establishment of a basis and framework for a viable and long-lasting stability within the OSCE by strengthening democratic processes and the creation of the rule of law within the OSCE States. The ODIHR is responsible, for example, for organising the biennial Human Dimension implementation meetings and Human Dimension seminars on specific topics. Apart from organising these meetings, the ODIHR is also very active in assisting the new OSCE States in a great number of issues concerning the Human Dimension. For example, the ODIHR is involved in organising special training seminars in a number of former socialist OSCE States touching upon issues like the rule of law, legislative activities, election laws, training of judiciary. These are the examples how the general OSCE commitments and principles are operationalized in practice.[63]

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[62] Resorting to the so-called Valetta mechanism constituted a first step to develop a CSCE instrument with a mandatory element. Note also the new OSCE Court established by the Convention on Conciliation and Arbitration within the CSCE.
(Here references to the contributions of the Frankfurt group?)

[63] It has been stated that this operationalization is an area which still needs a great deal of further development. This type of activity should also be well coordinated with other internatinal bodies which deal with the same issues (the Council of Europe, the United Nations, etc.).

The impact of the NGO input: The important role of NGOs in the area of the Human Dimension of the OSCE has been recognized e.g. by accepting their participation in a variety of OSCE meetings and seminars that deal with the Human Dimension issues. (The importance of the OSCE-NGO dialogue).

Other factors that have a bearing upon the Human Dimension and that may have a role in conflict prevention and conflict management:
- The role of the OSCE Parliamentary Assembly in the Human Dimension issues (election monitoring)
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4. THE ASSESSMENT OF THE ROLE OF THE HUMAN DIMENSION OF THE OSCE IN CONFLICT PREVENTION AND MANAGEMENT

(This section contains only preliminary remarks)

The comprehensive security approach adopted by the OSCE signifies that the OSCE puts emphasis on its conflict prevention task. The main security function of the OSCE is to prevent conficts by creating a viable basis for long-term stability in countries and regions where (potential) conflicts could erupt. The acceptance of this idea of comprehensive security within the OSCE linking the protection of human rights as well as economic issues to the maintenance of peace and suggests that the Human Dimension issues have been given an important place in the pan-European security architecture. In the light of State practice, however, one can view that in practice the Human Dimension has not been afforded the attention that this theoretical construction presupposes. The brilliant theories of the indivisibility of peace and the comprehensive approach to security have been developed, but there still exists a wide gap between the words and the practice.

It is, however, in this comprehensive approach of the OSCE in which also lies the strength and potential of the organisation. After the Cold War the OSCE involvement in the area of human rights (Human Dimension) is recognized in principle by all participation States. The OSCE record of involvement in matters that used to be considered part of the internal domain of participating States is an asset that makes the OSCE more suited than other international actors to intervene in a new generation of conflicts, which encompasses conflicts of clearly internal rather than of international character.

In the context of conflict prevention function of the OSCE the activities of the High Commissioner on National Minorities and of the long-duration missions deployed in various OSCE countries have been regarded to having achieved clear positive results. The functioning of the ODIHR should also

be included in this list.[64] Interaction with the public and with non-governmental groups (the role of NGOs in the OSCE) in the area of the OSCE Human Dimension can also be viewed as having a role in conflict prevention.

The potential of the Human Dimension Mechanism: the application of the Human Dimension Mechanism:
- may be used to indicate inplementation shortcomings that, for their part, might be early indicators of potential conflicts;
- qualified experts can be used to assess the conformity of the internal law and practice with the State's international commitments;
- the mechanism enables the participating States to acquire speedily information on specific human dimension questions in some OSCE State;
- may indicate international concern;
- may provide for an immediate/speedy international presence;
- may be used to gather information, to prepare for longer-term involvement;
- Political nature of the mechanism contributes to flexibility in its operation: Political framework more flexibile than more rigid judicial procedures of the similar kind; the potential for innovation.

Shortcomings:
- A short duration of the missions: The success of a mission heavily depends on a good preparation.
- Burdened by the reputation of being the 'Cold War weapon'.

It would be satisfying to be able to conclude that despite the present practical non-usage of the Human Dimension Mechanism the mere existence of the mechanism promotes conflict prevention (a 'deterrent factor'). The problem is that this cannot be tested. In addition, in the light of State behaviour one must connect strong doubts to this kind of conclusion.

Other remarks:

- The initial support from the parties directly involved/concerned is essential: the OSCE cannot solve the problems for the parties, but only the parties themselves can do it, with the assistence of the OSCE.
- To what extent can we expect the parties concerned to give their political support to the OSCE efforts to settle a dispute? To provide an answer to this question, we must ask ourselves what the OSCE can offer the parties:
    - A link to European political, economic and military structures in a broad sense. If this link is considered to be of vital importance, then the OSCE community possesses strong leverage.
    - E.g. because Estonia wants (wanted) to be part of the European family of nations, the Estonian Government, when faced with a crisis over its aliens law, was prepared to heed the advice of the OSCE. The country was prepared to pay a price for demonstrating, in deeds,

[64] Margaretha af Ugglas: "Conditions for Successful Preventive Diplomacy", in The Challenge of Preventive Diplomacy: The Experience of the CSCE. Swedish Ministry for Foreign Affairs, Stockholm 1994, pp. 14 - 16.

their commitment to OSCE values.[65]

- The existence of the intersection of short term conflict management and long term support for building democratic institutions in participating States: the latter efforts will pay off only in the course of time, but they are vital for long term prospects of promoting a peaceful resolution of conflicts in the OSCE area.
- The necessity of the long term approach: in the long run, the prospects of preventing and peacefully resolving conflicts in the OSCE area will depend heavily on the patience of the participating States and consistency in building democratic institutions and promoting the rule of law and respect for human rights. Support for work on new constitutions and other relevant legislation, for setting up independent judiciaries and for an intensified dialogue on human rights have been important results in new OSCE States in Central Asia and Transcaucasia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Armenia, Azerbaijan and Georgia). The essentiality to initiate the dialogue on human rights; while full and immediate compliance with all the relevant Human Dimension commitments cannot reasonably be always expected, it is nonetheless of vital significance that these States move in the right direction on issues related to democracy, the rule of law and human rights.[66]

- The prospects for preventing conflict or making peace are determined not only by the attitude of the parties themselves but also by the degree of support extended by other OSCE States to efforts to settle the dispute. Only strong political support from major OSCE States, given consisently through different channels and at a high political level is crucial.

- The importance of co-operation and co-ordination with other international bodies.

- The fundamental strengths of the OSCE: its capacity for innovation, its flexibility.

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[65] Margaretha af Ugglas, op.cit. pp. 14 - 16.

[66] The experiences of Margaretha af Ugglas, op.cit. pp. 29 - 30

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MEETING OF THE NORTH ATLANTIC COOPERATION COUNCIL
NATO HEADQUARTERS, BRUSSELS

6 December 1995

FOLLOW-ON TO THE 1993 ATHENS REPORT ON COOPERATION IN PEACEKEEPING

Introduction

1. In his "Supplement to An Agenda for Peace", based on the lessons learned since "An Agenda for Peace" was published, the United Nations Secretary-General notes the significant changes that have recently taken place "in both the volume and the nature of the United Nations activities in the field of peace and security". Since the 1993 Athens Report on Cooperation in Peacekeeping, many of us have found ourselves involved in a number of what the UN Secretary General has called "multifunctional peacekeeping operations".[1] These operations have been based on a broader understanding of peacekeeping and have often been carried out in the context of evolving crises, where it has been more difficult to maintain the consent of the parties and hence to implement the mandate. While the priority of the UN Security Council is to resolve the dispute by peaceful means, including the use of "provisional measures" referred to in Article 40 of the UN Charter, under these circumstances, the UNSC has occasionally authorised enforcement measures in order for the mandate to be fully implemented. This has involved greater risks to the peacekeeping forces and other personnel involved in the operations.

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[1] The phrase "multifunctional peacekeeping operations" is used for convenience throughout this document; it is not intended to imply the creation of a new category of peacekeeping operations, but only to describe the increasing complexity of certain recent operations. The definitions contained in the Athens document remain fully valid in this regard.

2. In its continuing endeavour to share experiences and learn lessons from peacekeeping operations, the Political Military Steering Committee/Ad Hoc Group on Cooperation in Peacekeeping has become aware of the need to elaborate on the principles contained in the Athens Report better to reflect recent operations. This Supplement is, therefore, intended to be read in conjuction with the Athens Report, which remains a basic working document, and to enhance our common understanding of developments in peacekeeping, so that we are better able to cooperate jointly in peacekeeping operations. It therefore provides a conceptual frame of reference for principal aspects of peacekeeping operations that are multifunctional in character, with a view to encouraging and facilitating peacekeeping contributions by NACC/PfP members, on a case-by-case basis, and in accordance with the provisions of the UN Charter and with national decision-making procedures. This document does not seek to determine the nature of future peacekeeping operations.

3. We remain committed to the principle of the peaceful settlement of disputes. Recent peacekeeping operations have evolved from traditional peacekeeping operations, which still have their place in the peaceful settlement of international disputes. The underlying principles of all peacekeeping operations remain the same: they are based on the UN Charter and, as appropriate, in the case of OSCE-mandated operations, on relevant OSCE documents; they are aimed at creating favourable conditions for parties to the conflict to reach mutually-acceptable agreement, which remains the only way to guarantee firm and durable settlements to crises; they are directed at supporting peace efforts and at moderating conflicts, as the situation requires; and they do not aim to impose political solutions to such conflicts.

General Characteristics

4. These recent multifunctional peacekeeping operations encompass both elements of traditional peacekeeping and new tasks. These include:

- control and verification of compliance with ceasefire agreements or armistice;
- assistance to fulfilment of agreements on peaceful settlement of the conflict;
- preventive troop presence;
- guarantee and denial of movement;
- mineclearing;
- demobilisation operations, including those involving foreign military personnel;
- humanitarian relief and assistance for civilian populations, including refugees;

- development assistance;
- human rights monitoring, protection and restoration;
- assisting in election organisation and monitoring;
- the maintenance or restoration of civil order and the rule of law; and
- coordination of activities supporting economic rehabilitation and reconstruction.

Such operations may be undertaken in a hostile environment, sometimes within a state where factions or irregular forces not controlled by the government may be operating.

5. Peacekeeping operations are carried out by the UN or, as appropriate, by the OSCE, with the consent of the principal parties to a conflict. However, this consent, which should always exist at the strategic/political level, may not always have the full support of local authorities or forces. These operations may require the application of a range of measures, including, where appropriate, a determined use of force in conformity with the relevant Resolutions of the UN Security Council, in order to allow for the mandate to be fully implemented. As a consequence, the UNSC would authorise a multifunctional peacekeeping operation under Chapter VI; but for some elements of certain UN operations, the authorisation of the UNSC can also be given for use of force in accordance with Chapter VII. An operation, however, is not under any circumstances to become a peace enforcement operation without specific authorisation from the UN Security Council.

6. Principles and Criteria. The following refinement of principles and criteria normally associated with peacekeeping reflects the complex, multifunctional nature of recent peacekeeping operations:

- Clear and Precise Mandate. The Athens Report states that "*the basis for any mission is a clear and precise mandate of the UN or the CSCE, developed through consultations with contributing States and organisations and/or interested parties, covering all of the essential elements of the operation to be performed*". Mandates for peacekeeping operations should be achievable and realistic, and linked to clear political goals. It is particularly important in multifunctional peacekeeping operations that clear mission guidance aimed at achieving political objectives on the basis of the principle of the peaceful settlement of the dispute be translated to Commanders on the ground, who can find themselves working in extremely complicated local situations. The mandate in such cases should be carefully crafted so as to permit a range of measures in response to evolving conditions on the ground, while not leading to an escalation of the operation. Appropriate advance

contingency planning, including appropriate military and civilian advice on operational feasibility, would be useful as a support to the initial drafting of mandates. When operating environments change substantially, mandates should be changed or, alternatively, missions ended. As well as when the mandate is first drafted, troop contributing states should also be consulted at times of:

- extension of the mandate, or its revision;
- a fundamental change of the situation in the mission area, which could negatively affect the implementation of the mandate;
- consideration of partial or complete termination of the mission.

- Consent of the Parties. According to the Athens Report, "*consent and cooperation of the parties to the conflict are essential prerequisites for a UN peacekeeping operation based on Chapter VI of the UN Charter or for a CSCE peacekeeping operation. Exceptions are only possible if an operation has been based on Chapter VII of the Charter by the UN Security Council*". Therefore, the principle of consent remains crucial for any peacekeeping operation under Chapter VI of the UN Charter. In this case, overall strategic/political consent for the mission and its objectives is an essential element that underwrites peacekeeping, even though it cannot always be guaranteed at the local level. Loss of consent can have a negative impact on the relationship between the peacekeepers and the parties to the conflict, subject peacekeeping forces and other personnel involved in the operation to serious threats to life and property, and can jeopardise the achievement of the mandate. Once a peacekeeping operation is underway, the loss of overall strategic/political consent would render its continuation as a peacekeeping mission impossible and would result in the need for the mandating body to bring the mission to an end. An important aim in a peacekeeping operation, along with the diplomatic process aimed at peaceful settlement of the dispute, is therefore to maintain and consolidate consent for the mission and its objectives by all parties involved. Commanders should strive, to the extent possible consistent with the mandate, to retain local consent, though this may be difficult because of the complex nature of the situation.

- Impartiality. As NACC Ministers agreed in Athens, "*all aspects of an operation need to be conducted impartially, in a manner compatible with the nature of the operation, as defined by its mandate*". Impartiality signifies that peacekeeping forces and other personnel involved in a

multifunctional peacekeeping operation do not take a side or part in a conflict. Impartiality means the even-handed treatment of the parties under the terms of the mandate; several measures in accordance with the UN Charter, including, as appropriate, the use of force, can be applied against one or another of the parties. The use of these measures shall be without prejudice to the rights, claims or positions of the parties concerned. Such measures must be balanced against the need not to compromise the perception by the parties at the strategic/political level of the impartiality of the peacekeeping force, thereby risking a loss of consent at this level. It is important that peacekeeping is not only impartial but is seen to be impartial.

- Use of Force and Force Configuration. As stated in the Athens Report, "*in all types of operations, the extent to which force can be used needs to be clearly defined either in the mandate or in the terms of reference. If authorised, use of force must be carefully controlled, flexible and at the lowest level consistent with the execution of the mandate. Forces involved in any operation retain the inherent right of self-defence at all times*". The force should be equipped and configured to be able to protect itself, to ensure that the mandate can be properly implemented, to discourage and to resist forceable attempts to prevent it from implementing the mandate, and, if required by the mandate, to prevent human rights violations, bearing in mind the possibility of a deterioration of the situation on the ground. In all cases, the use of force in any peacekeeping operation shall be in accordance with the provisions of the UN Charter and the rules of international law; only the minimum force necessary should be used.

- Rules of Engagement. Rules of Engagement (ROEs) should reflect the United Nations/OSCE formal political and legal directives and provide guidance to commanders at all levels, thus governing the use of force. ROEs are to be based strictly on the mandate and relevant UNSC Resolutions and other appropriate documents and developed in consultation with troop contributing nations. ROEs should be agreed and distributed early to ensure effective preparation by troop contributors and could be made known, where appropriate, to the parties.

- Participation. According to the Athens Report, "*The choice of contributors should take account of cultural, historical and political sensitivities and provide for multinationality of an operation*". Therefore, it is desirable to seek wide participation in the forces carrying

out peacekeeping operations. Moreover, multinational composition of the peacekeeping force can improve the perception of its impartiality in the eyes of the parties to the conflict.

- Safety of Personnel. All personnel involved in an operation should be trained and equipped in such a manner as to maximise their safety while carrying out their task. The safety of personnel is an important priority of the United Nations, as reflected by the Convention on the Safety of United Nations and Associated Personnel, and should be respected by the parties to the conflict.

- Conditions for Terminating the Operation. The mandating body must define the desired end-state of the operation. Advance contingency planning must include an end-state analysis in the original concept of the operation, to include criteria for judging success and terminating the operation, as well as modalities for eventual withdrawal of forces. An exit strategy should include planning for withdrawal in all of the circumstances in which a peacekeeping operation might be brought to an end.

- Coordination and Liaison. The Athens Report pointed out that, "*to be fully effective and efficient, there should be close coordination of all aspects of an operation, including political, civilian, administrative, legal, humanitarian and military*". The timely and effective coordination of the work of troop contributing nations and the agencies and organisations involved in a mission is essential for achieving its objectives. In order to ensure transparency and coherence, coordination arrangements should encompass all the political, military, diplomatic, administrative and humanitarian organisations concerned, and take into account that some humanitarian organisations (including UNHCR, ICRC, UNICEF and WFP) have permanent mandates of their own. Whenever necessary, and if required by the nature of the mission, this coordination may include Non-Governmental Organisations (NGOs) and Private Voluntary Organisations (PVOs). These coordinating arrangements should be supported by extensive liaison with all the agencies and organisations involved. Relations between the military component of an operation and non-military agencies should be based on mutual respect, communication and standardisation of support in order to ensure that one does not undermine the efforts of the other, that unnecessary overlap is avoided and that common efforts are concentrated on prevention or peaceful resolution of conflicts.