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LEGAL ASPECTS OF A TRANSITION
TOWARD A COMMON EUROPEAN HOUSE

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Discussion Paper

by

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1. Introduction

The CSCE is seen as a process, and its follow-up has given birth to a number of sub-processes in several sectors: security, economics, and human rights. This process has a low institutionalization and is based on the method of inter-governmental conferences. The 35 participating States meet in conferences devoted to different sectors of the CSCE and decide by consensus. Generally, the documents they adopt do not have treaty value. What are the goals of the CSCE process from an institutional point of view? Is it possible to foresee the birth of a regional institution under the Chapter VIII of the UN Charter? One can image the ultimate goal of the CSCE as the creation of a pan-European system. Its peculiarity, if compared with other regional institutions, would be the coexistence of a regional system with a number of subsystems. In other words, the creation of a regional system does not entail -- as a consequence -- the extinction of the organizations which are currently in existence. A possible instrument for reaching the above goal is the gradual transformation of the actual system of soft-law on which the current European process is based into a system of binding instruments and legal obligations.

2. The Maintenance of Peace and Security

At present, a new system of security is difficult to foresee. The premiss is that there are regional organizations which have security systems (for instance, the Organization of American States, the Arab League) and those which do not (e.g. the Organization of African Unity). On this point, it is possible to foresee a step-by-step approach, along the following lines:

- the reduction of armaments;
- the increase of CSBM;
- the guarantee by the CSCE States of those members which choose to follow a policy of permanent neutrality;

- the creation of an European system for settling disputes among CSCE members. This system is to be centered not only on non-binding mechanisms such as conciliation commissions, but also on a Court of arbitration with compulsory jurisdiction. Such jurisdiction should also embrace legal disputes related to security issues.

- gradual transformation of actual military alliances into political structures;

- inventory of duties stemming from Article 2 para.4 of the UN Charter prohibiting the threat and use of force in international relations;

- the creation of a system of collective security, linking the 35 CSCE States, provided it is compatible with the existence and maintenance into force of military alliances.

3. A Common European Legal Space

A common European legal space is of utmost importance for enhancing cooperation among the CSCE States. It can be instituted by using both the method of approximation of legislation and the creation of uniform law. The following fields are ripe for the creation of uniform law or for legislative harmonization:

- recognition of foreign judgements in civil matters (e.g. the EEC countries have concluded the 1968 Brussels Convention and this system now covers the EEC and EFTA countries through the Lugano Convention);

- company law;

- joint ventures;

- a statute of a model of a pan-European company;

- environment;

- transport.

Uniform law can be created, or harmonization of legislation reached through the conclusion of ad hoc treaties. However, one can imagine more flexible instruments, for instance, codes of conduct. Secondary legislation, on the model of EEC "directives", is foreseeable as long as ad hoc institutions are created. In effect, permanent specialized bodies should be constituted along the lines of the Conference of Participating States, which is to be considered the main organ of the CSCE process.

4. Economic Co-operation

There are a number of economic institutions linking CSCE members: EEC, EFTA

and COMECON. However, only the EEC has as an ultimate goal the political and economic integration of its members.

The CSCE should aim at creating and strengthening economic ties among the above institutions. How this goal is consistent with the actual EEC policy aimed at stipulating association agreements of broad scope with a number of Eastern European countries is a point worth discussing. In addition, new institutions, already in existence or those being created, could become tools for a pan-European cooperation, even though they have been established within the framework of a regional subgroup. For instance, the Environmental Agency being created by the EEC could become an institution to which other participating States can be associated. The Bank for Reconstruction and Development could become a bank of the CSCE countries. Eureka, at present linking EEC and EFTA countries, could become the instrument of the CSCE Participating States. Other agencies can be envisaged, especially for transportation, technical standards, etc. A problem to be solved concerns the power which should be granted to those institutions and the nature of their voting procedures. In particular, it must be determined whether decisions should be made by consensus only, or by some other procedure.

5. Human Rights

CSCE countries are bound by a number of human rights instruments. The members of the Council of Europe are bound by the European Convention on Human Rights, and nearly all European States are parties to the 1966 UN Covenants on Human Rights. CSCE members are also bound by the soft law established within the framework of the Helsinki and Vienna Conferences. Both political and social rights are guaranteed to all individuals and, to some extent, to minorities. Only peoples, not minorities, are titulars of the right of self-determination.

At present, the real problem is not the specification of human rights, but their implementation and safeguarding at the international level through appropriate judicial or quasi-judicial means before which individuals must enjoy a locus standi. A number of solutions can be envisaged in that direction:

- the acceptance of the optional Protocol to the 1966 Covenants by all European States;
- the adhesion to the European Convention on human rights and the acceptance of its optional clauses;
- the strengthening of the Vienna mechanism on the human dimension and the creation of a new judicial body within the framework of the CSCE.

Minority rights, as a rule, are guaranteed by the 1966 UN Covenant on Civil and

Political Rights. Minorities also are titulars of rights according to the basic principles of Helsinki Final Act. The critical point is their access to supranational institutions. If a new mechanism for the protection of human rights is considered at the European level, a separate chamber for claims related to minorities can be established.

6. Conclusion

The CSCE process requires better institutionalization in order to reach the above goals. A "light" form of institutionalization would consist of creating a sort of political committee composed of high ranking officials of foreign ministries of the CSCE countries. Regular meetings of the CSCE foreign ministers should be envisaged. If necessary, foreign ministers should be accompanied by other colleagues of their cabinet (e.g. Ministers of transportation, education, finance etc.; they can also meet on their own). These meetings should stimulate cooperation in the fields previously mentioned. Consensus should be the formula for approving decisions at the political level. However, the institutions created through a consensus procedure could work on the basis of majority voting, in order to accelerate the process of decision-making.

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